



March 2009

Texas PRIMA's Hot Topic Conference

April 8, 2009

Austin Airport Hilton

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2009 - PRIMA'S 30TH ANNUAL CONFERENCE - DALLAS



National PRIMA's Annual Conference will be held in Dallas from May 31 to June 3, 2009 at the Hilton Anatole.

Texas Chapter PRIMA is proud to be the host Chapter for this year's national conference.

Conference:

PRIMA's 30th Annual Conference will have more than 60 diverse educational sessions across 9 learning tracks. Three of our very own Texas PRIMA members will be presenting sessions: Joey Page and Darrell Wells will be presenting "Reducing Healthcare Costs through On-Site Medical Clinics: Is a Clinic Right for You?" and Robert Bookhammer and Charles Gillenwater will be presenting "RFP's Do's and Don'ts".

For more information including a complete listing of educational sessions, visit National PRIMA's Web site at www.primacentral.org. Registration is

open, with early bird discounts through March 13.

Golf Tournament:

Texas PRIMA will host the conference golf tournament at the Tribute Golf Club on May 31st. The Four Person Scramble is scheduled for 8:00 a.m. (shotgun start). Named by Golf Digest as the #1 Public Course in the Dallas area and one of America's 100 Greatest Public Courses for 2007-2008, The Tribute Golf Club sits on the shores of Lake Lewisville and features the finest elements of traditional Scottish golf, including wide-swept dunes, sea washed grasses, and challenging water hazards.

Awards will be given for First, Second, and Third Place Teams, for Closest to the Pin (Men and Women), and the Longest Drive (Men and Women). Golf registration is \$75/public entity and \$100/corporate. *Continued on page 2....*

TEXAS PRIMA AT UNIVERSITY OF NORTH TEXAS

Over the last year or so, Texas PRIMA has been working diligently to develop relationships with some of the universities here in Texas that offer risk management programs. We want these programs and students to know about public risk management as a career opportunity. So far, we have provided speakers at Baylor and the University of North Texas, attended a career fair at St. Mary's, and are currently working with SMU. It feels extremely rewarding to be helping educate and guide a future generation of risk management professionals!

On February 18, 2009, Texas PRIMA had a second opportunity to participate in a career fair at the University of North Texas (UNT). Texas PRIMA had a booth at this event and while there, had the opportunity to talk to a number of very bright students about public risk management. Several Texas PRIMA members volunteered at the booth and answered questions about public entity risk management and Texas PRIMA. They also passed out informational sheets and candy.

Submitted by Scott Payne, Past President



Traditionally, the title of such an article might read “From the desk of the President,” but who uses their desk these days anyway (except to pile paper on)? We are “tied” to our keyboards and computer screens and our “in box” is never empty. The term “day to day” activity has evolved into minute to minute and a new challenge is as close as an e-mail or cell phone call away. It is little wonder how we can get overwhelmed, frustrated, and stressed out. How do YOU handle it?

While I certainly do not have a fail safe solution to this reality of life and our profession, I do have some suggestions and ideas. The first is support. Support means to not do it alone. People need you and you need people, it is as simple as that. As we rise to positions of increasing responsibility in our careers, we often believe that it is not only our responsibility to make everything happen, but to do everything on our own (which certainly does not define “teamwork” does it!). The second is patience and confidence. (Ok, I guess that is two things, but you need both).

I do not have to tell you that the economic difficulties and uncertainty facing our nation is daunting. I will not waste print space here elaborating on it since it is before us 24/7. What I do see at a time like this is an opportunity for risk management. For example, now may be the time to implement that new safety procedure you have been trying to “sell” for years; and getting support for your wellness program to help contain (or cut) health costs may not be as difficult as it was before. After all, it is our job as risk managers to help guide others through periods of uncertainty.

To that extent, I know that you are “busy” and I want you to know that your PRIMA “family” is here to help. Now more than ever we need to call on each other for “help” and to mentor and empower those on our staffs who can bring in new ideas and enthusiasm.

I also want to encourage you to pay attention to the Texas Legislature and potential bills proposed this session. As a non-profit organization, Texas PRIMA is prohibited from “lobbying” or taking a particular position regarding any specific legislation, but we do encourage our members to stay informed and to be involved in their professional capacity and in conjunction with your local governing body. This year, I have asked Darrell Wells to head up our Legislative Committee and he will be providing information to help keep you informed.

We will also be scheduling several regional meetings and hot topic sessions to help you do your job and provide crucial networking opportunities with your peers.

Obviously, we will be preparing for our annual conference in Galveston, November 18-20, over the next several months, but I hope that you will also take advantage of our educational opportunities at a regional or hot topic meeting. Finally, I hope that you will be able to attend National PRIMA’s conference “Grabbing Risk by the Horns” in Dallas May 31-June 3.

Remember, we are all in this “together” and I look forward to continuing to show everyone the “value” of Risk Management through these trying and uncertain times.

David Kester, President

2009 - PRIMA’S 30TH ANNUAL CONFERENCE - DALLAS continued...

The registration fee includes transportation from the conference hotel, green fees, cart, range balls, and trophies. Taylor Made club rental is available at The Tribute Golf Club for \$45 per set (advance reservation is required). Golf registration information is available at www.texasprima.org.



Texas Reception: Texas PRIMA will once again host a reception for Texas attendees. The reception will be held at the conference hotel, Hilton Anatole, on Monday, June 1st from 6:30 p.m. to 8:30 p.m. in The Bar at Nana. If you are attending the National Conference, please make plans to stop in and unwind with your fellow Texans and take in the stunning 27th -story view of the Dallas skyline.

TEXAS PRIMA AND THE LEGISLATURE: THEY'RE BA-A-A-CK

As Molly Ivins opined in an article dating back to 1999, “We didn’t ask for it, we don’t want it, we’re not ready for it, and we haven’t done anything to deserve it; nevertheless, the Texas Legislature is about to start again”.

The first question you might ask is, “Why do I care?” Here are some possible answers:

How about having all of your public safety personnel: police, fire, sheriff’s office, school district patrols, having every conceivable illness or disease covered under Workers’ Compensation? Think it can’t happen? Think again!

How about losing all of your public entity’s immunity or limitations of liability and, despite your many differences, being treated like Enron when it comes to auto or general liability? The bill is already filed.

How about contractual relationships with all of your contractors? Do you routinely make them responsible for injuries and damages occurring during their operations? Think again. The contractors are in Austin; what about you?

Do you handle benefits as well as property and casualty? How about making your health plan cover the services of doulas (birthing coaches) or lactation consultants? And, if you’re thinking that’s not so bad, how about brujos and curanderas and palm readers? Does the expansion of dependent coverage (for “children” up to age 30 years old) and “other” relatives concern you?

Bottom line?

The legislature listens but, they may not hear you over

the voices of “special” interests that want—something [fill in the blank].



So what can you do?

First of all, David Kester has asked me to track bills impacting PRIMA members (WC, Liability of all kinds—GL, AL, EPL, LEL, POL, Contractual, you name it, benefits (which types of providers have to be covered, which types of services, and what categories of employees and dependents have to be covered and under what conditions and for how long). I have a day job—but Kester is a hard taskmaster and is forcing me to compile the data and get it to you.

Then what?

You have elected officials, legal representatives, and senior managers. You have regional public entities. You all have at least one State Senator and one State Representative. You have email, phone, fax, and even snail mail. We’ll be identifying issues but it will be up to you to make your voice count during the legislative session.

Remember, we’re not asking for you to support US. We’re asking you to help yourselves. WE are US—and we’re all in this together. Otherwise, you may end up explaining to your boss why a lot of large claims have to be paid because the (new) law says so.

Keep an eye on this space and other communications about legislation. We promised to stick with them as long as they’re in session and, then, when the dust settles, we’ll assess the damage and discuss actions we can take to mitigate it. That’s what risk managers do. Right?

Submitted by Darrell Wells

ATTENTION PUBLIC SECTOR BENEFITS PROFESSIONALS:

Come join the State and Local Government Benefits Association at the Omni Interlocken outside Denver, Colorado, April 26-29, and explore the educational and networking opportunities to create your own “Mile High Experience” in 2009.

Denver is the perfect place to be for the 2009 SALGBA National Conference. The conference offers many educational sessions, roundtable discussions, service and product resources, and networking opportunities to provide attendees with the latest information on hot topics, tools, and techniques to improve benefit plan performance. The 2009 SALGBA Conference offers one of the

best cost/benefit returns on your time and continuing education budget.

Attendees can go further and receive credit in the SALGBA Certified Government Benefits Administrator (CGBA) professional development program, which serves as the continuing education benchmark in the public sector benefits management field.

SALGBA is happy to offer member registration rates to members of Texas PRIMA. For more information, log-on to www.salgba.com or call (859) 985-0720 today.

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DOWN'S WAS WRONGLY DECIDED

The Texas Supreme Court's recent decision in *Southwestern Bell v. Mitchell* corrected "an anomaly in the law". The Supreme Court announced after five years "Downs was wrongly decided". The Supreme Court stated emphatically that it should overrule *Downs* for essentially the same reasons that were argued originally to the "Downs Court".

The issue decided by *Downs* was whether the carrier would be precluded from disputing a claim if it did not dispute within seven days per Texas Labor Code §409.021. In conflict with the seven day deadline was the 60-day waiver provision, which occurred if the carrier did not dispute compensability within 60 days of written notice. The holding in *Downs* compelled carriers to pay or dispute within seven days. The progeny of *Downs* spawned decisions in which carrier's failure to dispute compensability within seven days ultimately included

waiver of all conditions not disputed that could have been discovered within seven days.

In the aftermath of *Downs*, the Texas Legislature promptly amended §409.021, effective September 1, 2003, to make clear what the "Downs Court" wrongly decided. In the 2003 amendment, carriers were required to pay or dispute within 15 days of written notice. However, the carrier's failure to meet the 15 day deadline did not waive the carrier's right to dispute compensability.

Submitted by Randy McNeal, in Bulletin 65-08, 12-19-08, published by THORNTON, BIECHLIN, SEGRATO, REYNOLDS & GUERRA, L.C., ATTORNEYS AT LAW

5TH CIRCUIT LIMITS ADVERSE EMPLOYMENT ACTION

For the several years, employers have been grappling with the U.S. Supreme Court's expansion of what constitutes an "adverse employment action" sufficient to support a retaliation claim.

The Fifth Circuit recently held that the supervisor's remarks to an employee's co-workers about the employee creating problems by filing EEO complaints was not an adverse employment action, meaning that it was not an act that would dissuade a reasonable worker from making or supporting a claim of discrimination.

Based upon these standards, the Fifth Circuit held that supervisor's remarks were not "materially adverse" and, therefore, not actionable because: the remark was made only once, the remark was not made directly to the employee, and no adverse consequences immediately followed the remark.

So what does this mean in the employment retaliation landscape? In the Fifth

Circuit, at least for now, a single negative comment without immediate negative consequences should not constitute an adverse employment action. This should alleviate the general fear that workplace discussions about an EEOC charge could be deemed retaliatory. Nonetheless, employers should continue to preclude any such discussions because there will always be the concern that the particular remark or discussion "would dissuade a reasonable worker from making or supporting a claim of discrimination," since the analysis considers the totality of the circumstances. Also, of course, what may dissuade a reasonable worker from making or supporting a claim of discrimination is still a fluid thing and could always expand with future court decisions.

By Ashley S. Wilson of [Strasburger & Price, LLP](#), Dallas, office, from an article in the [Labor & Employment Newsletter](#), February 16, 2009. For the complete text of the article, see: <http://www.strasburger.com/calendar/news/labor/limits-to-meaning-of-adverse-employment-action.htm>



McGriff, Seibels & Williams joined the BB&T family of companies in 2004 creating the 6th largest insurance brokerage company in the U.S. and the 7th largest in the world. The BB&T family has over 29,000 employees and over \$152 billion in assets. BB&T is currently ranked #250 on the Fortune 500 list. McGriff and BB&T are one of the largest providers of insurance and risk management services to public entities in the U.S. with offices in 32 states and is the largest Public Entity broker in Texas. *Submitted by Tracy L. Seiler*

To assist in the timing of approved budgets, I have exciting news for our membership! On behalf of the Member Services Committee and the Board of Directors, I would like to announce changes in annual dues collection.

For our current members, who will be renewing their membership, this year's dues will be included in the 2009 Annual Conference registration fee. The conference registration process will begin later this year and will include your dues for 2009 AND this year's conference fee.

When you register for the Annual Conference, your membership will be good through September 30, 2010. So don't send in your dues yet! That's right; you don't have to pay for several more months.

If you have already sent in your 2009 dues, we will contact you regarding a refund or a credit towards a future Texas PRIMA meeting. Current members who are unable to attend this year's conference will receive a membership dues invoice in the fall for a membership term of September 30, 2009 to September 30, 2010. Membership for new members will expire September 30, 2009.

“Alive @ 25”: Saving Lives Through Education



The leading cause of death for all Americans under the age of 25 is car crashes. The “Alive @ 25” Program is a defensive driving course developed by the National Safety Council in 1995 to address the growing problem of fatalities for people under the age of 25. It is designed specifically for young persons 15 through 24 years of age. The course has two components, the Parent Program designed for parents of teen drivers and the Teen Program, a defensive driving course for teens.

The Colorado State Patrol was the first law enforcement agency in the United States to start the program in 1996. In their first year, they taught approximately 250 students statewide. Currently they are on pace to teach 20,000 students per year and growing with more than 160 courts using the program in Colorado alone. Since then, more than 100 other agencies in 10 states have started the program.

The **Alive @ 25 Teen Program** is a minimum four hour classroom driving course designed for young drivers and passengers. The course focuses on decision-making, responsibility and risk assessment. The instructor guides students to come to their own conclusions on why young drivers are at such high risk. The students formulate their own ideas as to what they can do to reduce their exposure to those risks. Finally, they learn about different types of consequences and how their choices behind the wheel affect others. Placing this curriculum in the hands of experienced law enforcement professionals brings the course to life in a way that truly does change the attitudes of young drivers.

The **Alive @ 25 Parent Program** is a three hour course designed to educate parents on the many challenges that are specific to young, new drivers. The program also provides parents with the tools to develop an open dialogue with their children concerning the high risks young people face while driving, the reasons why and how to deal with them - both as a passenger and as a driver. When taken concurrently, the classes culminate in a parent-teen contract specifying unsafe behaviors and the consequences at home for partaking in such behaviors.

Nearly every community in the U.S. that has built a successful Alive at 25 Program has seen a dramatic reduction in injury and fatal crashes among students who complete the course. In Colorado, where the program has been in use statewide for 12 years, they have had tremendous results. The fatality rate for the 14-24 age group according to NHTSA is 20.1 per 20,000. Students who have completed the Alive at 25 Program in Colorado have a fatality rate of 4.0 per 20,000, which is 80% below the national average.

These two courses are being offered to PRIMA Members and their young drivers at the discounted rate of \$35 per student or, if parent(s) attend the Parent class held in an adjoining classroom the cost is only \$50 for both! Should you have any questions or would like further information, please visit our website at www.texasaliveteam.org.

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About This Newsletter

This newsletter is published quarterly for the benefit of Texas PRIMA members. However, the opinions expressed in the newsletter are those of the writers and do not necessarily represent the views of Texas PRIMA. The aim of this newsletter is to provide information to our members about Chapter events and risk management issues. Please send news, information, comments, etc. to the editor via email, hdkaplan@garlandisd.net. The deadline for the next issue of this newsletter is May 8, 2009.