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MUSINGS FROM THE PRESIDENT

Is it June already? Wow, time flies when you're having fun, or is it because I'm getting older? Well, either way, I am amazed at how quickly this year is flying by, and all that has transpired. A Texas team is back on top as the NBA champ (Go MAVS!), the legislature closed out its 82nd session – and promptly re-convened for a special session, and another great National PRIMA has come and gone (Portland was awesome). Oh, and it's only 5 more months until Texas PRIMA's annual fall conference, a seminar series packed full of public risk management educational sessions, continuing education opportunities, and networking. I hope you can join us this November in Galveston for another great program.

Did I mention National PRIMA? It is a GREAT time to be a Texas PRIMA member. This year's national conference, held last week in Portland, Oregon, was fantastic. There were so many great sessions to attend and I was thrilled to attend as the Texas Chapter President. And what an awesome chapter we are! Our immediate Past-President Regan Rychetsky was selected to serve as a National PRIMA board member and his term began this past week. We are so proud to be represented at the national level by one of our own – thank you Regan for your willingness to serve! In addition, we had numerous award winners from our great state. The Texas Chapter nominated David Kester, Risk Manager for Harris County, for a Chapter Service Award – we're so thankful for all David has done to support our chapter through the years. And this year's program winner went to Dallas ISD for their Workers' Compensation Medical Care Panel. What an awesome achievement!

And I am so proud to announce to you that James Huckaby, Director of Risk Management for Mesquite ISD, was selected as this year's National PRIMA Risk Manager of the Year award recipient. I have known James for years and he is the reason I joined PRIMA so many years ago when I worked at TASB. I cannot express how thrilled I was to be there at his table, along with many fellow Texas PRIMA members, watching him accept his award and moving us all to tears with his speech. What a remarkable job he's done at Mesquite, and he has always done an amazing job representing our state at the National level. James – we couldn't be more proud!

Texas PRIMA also has achievement awards categories that you can submit nominations to that are handed out at our annual Texas PRIMA conference in November. I encourage you to visit our website (www.texasprima.org) to apply. This year, you can fill out a very short form to nominate someone in your office or anywhere in the state, for a Risk Manager of the Year or Risk Management Associate of the Year. Also, we offer awards for achievement as well. What a great way to recognize your colleagues and entities for the fantastic work and time we spend investing in the public entities we work tirelessly to support. The application deadline

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UPCOMING EVENTS

Regional Risk Management Seminar

August 25, 2011—
Austin, TX

Texas PRIMA Annual Conference

November 16-18—
Galveston, TX

is July 31st.

As I mentioned, time is flying by, and we only have 5 months to go, so your board and conference planning committee will be hard at work preparing for another great conference. In the meantime, Texas PRIMA continues to have on-going educational opportunities for its members. I would like to encourage you all to attend one of our regional meetings this year. We're off to a great start with meetings held in Houston and the Rio Grande Valley area (San Benito). The next opportunity to attend is August 25th in Austin. Topics on the agenda include "Anatomy of a Workers' Compensation Program" and "Law Enforcement Liability." Go to Texas PRIMA's website for location and more information. These meetings are a great way to network with colleagues, earn continuing education credits, and become more educated about public entity risk management issues. And it's inexpensive too! Only \$10 for members and \$25 for non-members.

There are numerous issues up for debate in this first special legislative session, and we are watching with anticipation to see how budgetary issues are resolved state-wide and how that will impact our public entities. As we move through the heat of the summer, remember, reach out to your colleagues in PRIMA when you need help, input, or advice. Our group is diverse, knowledgeable, and always willing to help. We're working through trying times right now in Texas, but as Texas PRIMA members, we're all in this together.

Tracy Seiler

Texas Chapter PRIMA President

TEXAS SUPREME COURT RULES FOR PUBLIC ENTITIES IN LANDMARK WORKERS' COMP. CASE *TRAVIS CENTRAL APPRAISAL DISTRICT v. DIANE LEE NORMAN*

Austin, Texas, May 31, 2011-Last month, the Texas Supreme Court issued its ruling in No. 09-0100, styled, TRAVIS CENTRAL APPRAISAL DISTRICT v. DIANE LEE NORMAN, a case by a former employee against her political subdivision employer with a surprising result. The issue is the TEXAS ANTI-RETALIATION LAW, Tex. Lab. Code Sec. 451.001 (1) which prohibits a "person" from discharging or discriminating against an employee, who among other things, files a workers' compensation claim.

This section of the Texas Labor Code traces its origin back to the 1970's, an era of compensation law reforms to a time before political subdivisions were required to even subscribe to the Workers' Comp. Act. Broadly stated, this law forbids the termination, demotion, transfer or other retaliation by an employer against an employee who, in good faith, 1) brings a workers' compensation claim, 2) hires an attorney in a workers' compensation case, 3) appears as a witness or 4) causes to be instituted a proceeding (hearing) under the Act.

Shortly after filing a workers' compensation claim against TCAD, a political subdivision in Austin, Ms. Norman was terminated. She sued TCAD for retaliatory discharge. TCAD defended initially on the theory that she had failed to exhaust her administrative remedies under the grievance procedures in place at TCAD, before she could bring suit in court. Almost as an after-thought, TCAD also urged that its governmental immunity had not been waived and Ms. Norman could not bring suit against a political subdivision. Ms. Norman prevailed at the trial court level and at the Court of Appeals.

In their decision, the Supreme Court tracked the history of the Texas Anti-Retaliatory Law from its very beginnings in 1971, through the Political Subdivisions Law and considered the Texas Code Construction Act as well as several of its prior decisions. It reasoned that generally, political subdivisions of this state enjoy protection against lawsuit unless the Texas Legislature clearly waives this right. In reviewing the effect of each new law and decision, in order, it came to the conclusion that the argument of Ms. Norman that the Legislature had waived that protection was without merit. Since it was not clearly the intent to waive that protection from a review of these codes, it is not currently the law in Texas.

"Because a retaliatory discharge claim may not be brought against the government without its consent and the Political Subdivisions Law no longer provides such consent by waiving the government's immunity, the underlying claim in this case must be dismissed."

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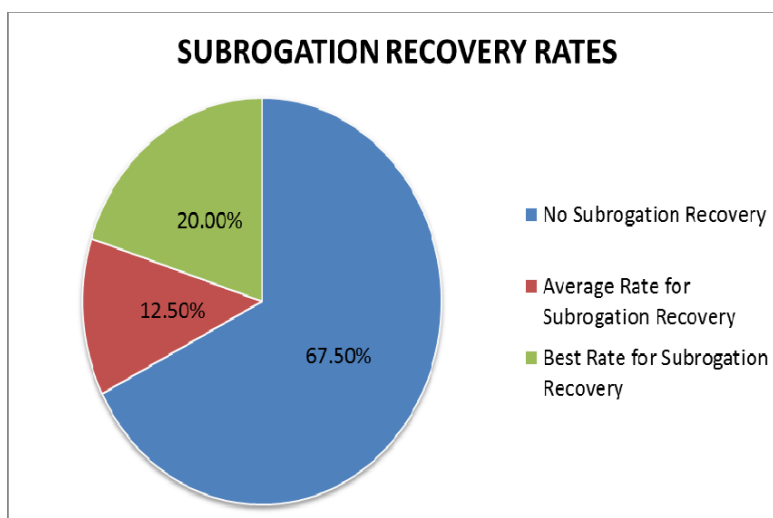
HARRIS & HARRIS believes this case to be an important case and its application is immediate. Political subdivisions should reassess personnel decisions made under the mistaken belief that it cannot terminate, reassign, demote or furlough employees for bringing workers' compensation claims, etc. This is not to say that injured workers should be terminated, only that injured employees must no longer be retained for fear of violation of this section of the Texas Labor Code. The decision allows a less-oppressive atmosphere for the decision process to exist in such injured employee matters.

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SUBROGATION

Sure we hear the word SUBROGATION. We talk about it and discuss whether or not you can pursue it, but do we really know what it involves? Beginning with this issue, and continuing in a three part series we will discuss how to identify, investigate and pursue subrogation.

Did you know that according to insurance.com, for auto insurance claims, the average successful rate of recovery for subrogation claims is only 12.50%, but some carriers achieve 20% success rate? If the claims adjuster can identify, investigate and pursue subrogation, those percentage of success rate numbers can definitely increase.



PART ONE:

HOW TO IDENTIFY SUBROGATION

We like to use a rule the following rule of thumb. If something other than the injured employee's own negligence caused the employee's accident, there is possible subrogation. Always look for a third party or third object contributing to the employee's injuries. If a shelf broke and struck an employee in the head, maybe the shelf was not manufactured or maintained properly. A few other examples: a police officer who is bitten by someone's dog; the meter reader who tripped and fell on a defective sidewalk; the office worker who caught her hand in a faulty elevator door; the delivery driver who slipped on water.

If you can identify a cause and an origin of a loss and a potential third party, then there is the possibility for subrogation. So the question then becomes, how do we identify the cause and origin?

When evaluating claims for possible subrogation the claims adjuster must look at all angles. In every case, the adjuster must ask themselves the 5 Ws. Who? What? When? Where? Why?

- Who is responsible?
- What caused the accident?
- When did the accident occur?
- Where and how was the employee injured?
- Why did the accident occur?

We have included some checklists below to help you determine if your claim should be investigated further for possible

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subrogation. The checklist is not exhaustive, but is meant to help you consider how to identify subrogation

WHAT CAUSED THE ACCIDENT?

- Items on the ground such as grease, water, food?
- In a MVA what was the cause of the collision? Speeding? Red light? Failure to stop?
- Were there contributing factors to the accident? Weather? Traffic?
- Did the injured employee contribute to the accident through horseplay or negligence?
- Did the insured employer contribute to the accident? i.e. improper or faulty equipment, poor employee training?
- Defective product? Burst pipe, leaky faucet, lose screws, faulty materials, etc.?

WHEN DID THE ACCIDENT OCCUR?

- What time of day? If an MVA, what was the traffic like? Was it rush hour?
- If the motor vehicle accident occurred outside, what were the weather conditions like? Did the weather contribute to the accident?
- Was the injured employee on duty during the time of the accident?

WHERE AND HOW WAS THE EMPLOYEE INJURED?

- Where did the injury/accident occur? What was the location? Be specific.
- On the way to or from work?
- On site?
- How did the accident occur? Ask the employee to be descriptive. Document your file

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DEALING WITH HEAT STRESS

Overheating (aka hyperthermia or hyperpyrexia) is a very common disorder which can happen to anyone at any time. The summer months are the most likely time for this to occur; however, other issues can be predisposing factors such as illness, medication, amount of alcohol intake, improper warm clothing or dehydration.



When you get warm, your body sweats to cool itself. As it gets warmer, your body must sweat more. As the sweat on your body evaporates (dries up in the breeze), your body gets cooler. If the weather is hot and humid, your sweat cannot evaporate very well. So, as the humidity goes up, your body doesn't cool off as well. This means that your body's internal temperature begins to rise. When you can't sweat enough to cool your body, you might get a heat illness.

Heat illness may cause you to feel tired, to have weak, tired or cramping muscles and to have dizziness, nausea, vomiting or headache. Heat cramps, heat exhaustion, heat stroke and sunstroke are different heat illnesses. They occur when your body isn't able to keep itself cool enough.

Heat-related illnesses consist of three stages: heat cramps, heat exhaustion and heat stroke. These can range from relatively mild to life threatening. Everyone should learn to recognize and treat the symptoms as soon as possible, especially before earlier stages progress to heatstroke.

Sunburn Symptoms: Red, painful skin, blistering and/or peeling. **Treatment:** Skin lotions, topical anesthetics. **Prevention:** Limit sun exposure on bare skin, use sun block SPF-15 or higher.

Heat Rash Symptoms: Red rash and itching. **Treatment:** Ointment. **Prevention:** Bathe regularly, keep skin clean and dry.

Heat Cramps Symptoms: Sudden onset of muscle cramps, hot moist skin, normal pulse, normal to slightly high body temperature. **Treatment:** Move into shade or improvise shade, loosen clothing, drink clear juices or sports drinks, if symptoms don't go away seek medical aid.

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Heat Exhaustion Symptoms: Heavy sweating, intense thirst from dehydration, fatigue, weakness or loss of coordination, tingling in hands and feet or headache. **Treatment:** Loosen or remove clothing and boots, cool the victim as fast as possible, call 911 if victim becomes faint or is unconscious.

Heat Stroke Symptoms: High body temperature; hot, red or flushed, dry skin; headache or dizziness, confusion or delirium. **Treatment:** Call 911 at the first sign of these symptoms.

Advanced Heat Stroke Symptoms: Seizure or convulsions, loss of consciousness, no detectable pulse. **Treatment:** Lower the victim's body temperature as fast as possible, don't give liquids to unconscious victims, call 911. **Prevention:** Allow your body to become acclimatized to your surroundings, follow scheduled work/rest cycles to avoid overexertion, drink 5-7 ounces of cool water every 15 minutes, eat a light, cool lunch instead of hot, heavy meals.

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WELLNESS BENEFITS

A little prevention goes a long way

Did you know that the U.S. spends more annually on health care than any other country? And for many companies, health insurance is the second highest expense following employees' salaries? ABC Company is well aware of these shocking statistics and cares about you, which is why wellness benefits and preventive care provisions are an important part of your health plan.

Consider These Facts

As the old saying goes, "an ounce of prevention is worth a pound of cure." Consider these eye-opening facts according to the Centers for Disease Control and Prevention (CDC):

- With over one million heart attacks occurring each year, heart disease has become the number one killer of both men and women in the U.S.
- Obesity is reaching monumental proportions, almost 1 in 5 American adults are considered obese; and over half of all Americans are overweight.
- Seriously overweight employees spend 30 percent more days in the hospital each year than active individuals, and are 20 percent more likely to call in sick more than one week per year.
- Approximately 10 million people in the U.S. have died from smoking-related causes; while 3,000 young people start smoking every day.
- On average, it costs employers \$1,300 a year to employ an employee who smokes.
- Workplace alcohol, tobacco, and other drug use costs U.S. companies over \$100 billion each year, with up to 40 percent of industrial fatalities being linked to alcohol consumption and alcoholism.
- Breast cancer is the leading cause of death among American women in their forties. Early detection is key to saving lives. The American Cancer Society reports that the 5-year survival rate for all women diagnosed with breast cancer is 87 percent. With early detection (when the tumor is confined to the breast) the 5-year survival rate jumps to over 95 percent.

Prevention Works When Used

Researchers have estimated that preventable illness makes up approximately 70 percent of the burden of illness and the associated costs. Researchers have also shown that when used, the outcomes of wellness benefits prove positive, for example:

- Immunizations for measles, mumps, and rubella can save approximately \$14 million for every dollar spent.
- Screening mammograms every two years for women 50 to 70 years of age yield an estimated net savings of more than \$200 million each year.
- It's just unfortunate that more organizations do not use the preventive services offered. According to the National Business Group on Health, fewer than 20 percent of employees use the preventive services offered in their health plan despite more than 90 percent of large companies offering employees some form of health promotion or prevention programs.

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SPONSOR HIGHLIGHT



CIGNA is the nation's leading health service company with a proud history dating back to 1792. CIGNA's mission, "To help the people we serve improve their health, well-being and sense of security," is supported by a wide spectrum of initiatives that focus on improving the health and productivity of its customers. As a result of these initiatives, CIGNA has received recognition both within and outside the health care industry: For the eighth straight year, the independent National Committee for Quality Assurance (NCQA) measured "effectiveness of care" of all health plans and CIGNA surpassed the Quality Compass® national average. CIGNA also surpassed the average of its main competitors for the majority of key health measures such as preventive care, health screenings, treatment of chronic conditions, behavioral care and access and availability of care (getting needed care and getting care quickly).

CIGNA HealthCare of Texas has been recognized by NCQA as the highest-ranked private HMO and Point of Service health care plans in Texas, according to "NCQA's Health Insurance Plan Rankings 2010-2011 – Private".

CIGNA is the first national health carrier endorsed by the J.D. Power and Associates Certified Call Center Program SM for providing "An Outstanding Customer Service Experience." This certification has been awarded for four years running, based primarily on surveys conducted with individual customers, and on audits done within customer service call centers. J.D. Power and Associates is the most demanding and well-respected quality certification in customer service today, regardless of the industry.

CIGNA is the only health service company to expand customer service hours to 24/7 – including weekends, holidays and overnight hours. No other health care plan is available 24/7 – all 365 days of the year – to support your employees and answer their questions. Readers of Business Insurance magazine chose CIGNA as offering the nation's best health plans in 2008. The award recognizes the company that the magazine's subscribers believe offers the best combination of quality, service, value, and innovation. For more information about CIGNA, visit www.cigna.com or call Tobin Hawkins at [713.576.4365](tel:713.576.4365).

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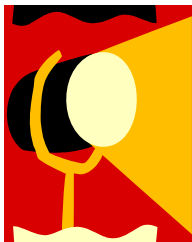
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**BOARD MEMBER SPOTLIGHT**

This newsletter's Board Member Spotlight is on Bill Tarro, Risk Manager for Lubbock Independent School District. Bill has worked for the Lubbock ISD since 1993 and is a Certified School Risk Manager. Currently, Bill serves as Secretary on the Board of Directors for Texas

PRIMA and has been a Board member since 2008. In 2007, Bill was named Texas PRIMA's Risk Manager of the Year! He was a nominee in 2005 and 2006 for the TASBO Commitment to Excellence and has served as the TASBO Risk Management Committee Chair. Bill is a graduate of Texas Tech University...Go Red Raiders!

He has been married for 41 years to his lovely wife, Barbara. Their son is married and has one daughter and is expecting a baby boy in July. In his spare time, Bill enjoys spending time with family, fly-fishing and playing golf. Thank you Bill for allowing us to spotlight you this month.

RISK MANAGEMENT AWARDS**Texas PRIMA wants to honor YOU!**

Texas PRIMA is looking for Risk Managers as well as programs that are saving money, reducing injuries, increasing wellness and benefiting the entity served by your efforts. Applications can be found at www.texasprima.org. Applications must be received no later than **August 1, 2011**.

Risk Manager of the Year and Risk Management Associate of the Year Awards honor individuals who exemplify the title through continual innovation and commitment to the Risk Management field.

Risk Management Program Achievement Awards honor public entities with creative and successful risk management programs.

If you think you are deserving of recognition by your peers or know of an individual or program that is deserving of recognition, Texas PRIMA encourages you to apply for the honor. The recognition will take place at the Awards Luncheon on November 17, 2011 at the Texas PRIMA Annual conference in Galveston, Texas at beautiful Moody Gardens. Risk Manager of the Year and the Risk Manager Associate of the Year will receive one night hotel accommodations and complimentary conference registration.

Contact **Charles Gillenwater**, Awards Committee Chairman, at cgillenw@cityofmesquite.com for any additional information.

Do not delay! Apply today!



NEW MEMBER SPOTLIGHT



In this edition we spotlight new members Melanie Hall and Lainey Castleberry. Welcome and thank you, Melanie and Lainey, for allowing us to spotlight you.

Melanie Hall
Lubbock County



Melanie currently works for Lubbock County in the Human Resource Department as the Benefit Specialist. She has worked with Lubbock County Human Resources since 2001. Melanie oversees and manages the County's insurance benefits, Workers' Compensation, unemployment claims and facilitates quarterly departmental safety meetings. Melanie holds a Bachelor of Science degree from Texas Tech University. She is a member of the Lubbock SHRM Chapter. For leisure she enjoys Texas Tech University football as a season ticket holder and also enjoys traveling, spending time with family and cooking.

Lainey Castleberry
City of Lubbock



Lainey began her career in Risk Management as a Subrogation Specialist for the City of Lubbock in 2006. Over the course of four years, in addition to recovering damages in excess of \$3.35 million for Lubbock taxpayers, she obtained first her Property & Casualty Adjusters license, then her All Lines Adjusters license. In October 2010, Lainey was promoted to Risk Management Coordinator. As Coordinator, her primary role is insurance procurement. She also oversees the Subrogation Department as well as supervising the City's TPA liability claims. Lainey is currently working on her AINS and ARM designations.

ANNUAL CONFERENCE GOLF TOURNAMENT

Dust off your clubs and come play. The Golf Tournament will be held at the Moody Gardens Golf Course on Wednesday, November 16, 2011 with a shotgun start at 9:00 AM. The fees are not yet determined, but it is rumored that it will be dirt cheap for Public Entities. We want you to play. New scoring system will guarantee a lot of winners no matter what your skill level. Watch for more information to come.



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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, info@texasprima.org.