



**Risk and
Insurance
Management
Society, Inc.**

THE AWARD WINNING HOUSTON CHAPTER

Outstanding Chapter Programming
Advancing the Risk Management Profession
(Chapter of Distinction)

February 2008

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2008 Officers and Directors

President

Ginny Penzell, ARM
El Paso Corporation
ginny.penzell@elpaso.com

First Vice President

Nancy Stucky
GPM, Inc.
acunavlaw@aol.com

Treasurer

Stephanie Degreve
Swift Energy
Stephanie.degreve@swiftenergy.com

Assistant Treasurer

Michelle Wilkerson
Newfield Exploration Company
mwilkerson@newfield.com

Vice President/Secretary

Sondra K. Faul, CIC
The University of TX HSC-H
sondra.k.faul@uth.tmc.edu

FROM THE DESK OF THE CHAPTER PRESIDENT...



The year of Change! That's what we hear from our politicians and it was a theme that your Board decided to embrace as we met on Saturday, February 2nd at our annual Board Retreat to talk about what could be done to improve our RIMS Houston Chapter and make it one which our members and associate members participate in actively and enthusiastically.

To reach this goal the Board is considering various changes. These include modifications to our monthly format and venue to enhance networking opportunities, include vendor exhibitions, increase prospective job communications, and improve programming and CEU opportunities. With our new and improved chapter we hope you will be inspired to not only be a member of RIMS but also be an active participant.

Starting in February you will see the beginning of these changes with a job opportunity bulletin board at every meeting. Please contact Barbara Lewis at Barbara.Lewis@jacobs.com (832-351-7149) to get your job posted on the board. In addition, a committee has been formed to review venue choices and other programming activities. By our March meeting we should have more news. In the meantime, please do not hesitate to share your thoughts or ideas with anyone on the Board or better yet, join us in our quest to be the best RIMS Chapter ever.

If your company has workers' compensation claims, our February speaker Leslie Schumacher, VP of Operations with MedAllocators, Inc. will be of great interest. Her topic will be Medicare Set-Asides. Medicare Set-Asides, mandatory for Workers' Compensation claims since 2001, requires documentation showing the amount of dollars that must be "set aside" for a Worker's Compensation liability case. These set-aside funds are used for coverage of future medical expenses.

On behalf of the Board of Directors, we look forward to seeing you at the February meeting.

Ginny

Vice President/Asst. Secretary

Victor Pivetta
Houston ISD
vpivetta@houstonisd.org

Membership/Attendance

Marty Timpano
Sysco Corporation
timpano.marty@corp.sysco.com

Associate Director/Membership

Jennifer Howard
The Blood Bank
jhoward@giveblood.org

Public Relations/Newsletter

John Lawson, ARM
Goodman Global, Inc.
john.lawson@goodmanmfg.com

Job Placement

Barbara Lewis
Jacobs Engineering Group
barbara.lewis@jacobs.com

Chapter Liaison

Christine Sparks, ARM
TOTAL American Services, Inc.
christine.sparks@total.com

Education

Wayne Dauterive, CIC, CRM, ARM,
RF, CRIS
Metro National Corporation
wayned@metronational.com

Associate Director/Education

Shona Bascon
Shell Oil Company
shona.bascon@shell.com

Legislation

Nikolas G. Kapatos
Sterling Bancshares, Inc.
nick.kapatos@banksterline.com

RIMS Delegate

Ella Andrews
Friedkin Companies, Inc
eandrews@friedkin.com

Past President

Cynthia Vickers, ARM
El Paso Corporation
cynthia.vickers@elpaso.com

Web Master

Pending

February Meeting Topic and Speaker

This program has been approved by the State of Texas Department of Insurance for continue education credit toward all general insurance lines

“Medicare Seat-aside Arrangement”

Speaker: Ms. Leslie Schumacher

Medicare Set-Asides (MSA) are a risk control that the federal government has set in place to ensure that they are being taken into consideration prior to a settlement. Many injured workers who receive large worker's compensation settlements have then gone to Medicare and requested full benefits from them. Medicare must be considered in any Workers' Compensation settlement when the client might rely on Medicare to cover any future medical costs related to the covered work injury.

The MSA is used to track or monitor the medical aspect of an injured worker's settlement so the government is not overpaying. MSA are now applicable to general liability settlements as well as workers' compensation settlements when injuries are sustained and large settlements granted. Self insured employers and carriers or third party payers who do not ensure that the MSA is done for claims that meet certain financial thresholds are subject to fines and/or penalties from the government. Ensuring that an MSA is done will mitigate risk for those self insured employers, carriers and third party administrators.

Ms. Leslie Schumacher is currently Vice President of Operations for MedAllocators, Inc., an industry leading independent National provider of Medicare Set-Aside and other Complex Care Services.

Ms. Schumacher is a Certified Life Care Planner also holding the credentials of Certified Registered Rehabilitation Nurse, Certified Case Manager, Legal Nurse Consultant Certified and Medicare Set-Aside Consultant Certified.

Ms. Schumacher also lends her expertise to various organizations in the industry as she serves as chairperson of the NAMSAP (National Association of Medicare Set-Aside Professionals) education committee, board member of IARP (International Association of Rehabilitation Professionals) and NovaCare advisory Council. She has also been appointed adjunct faculty member with the advanced Medicare Set-Aside training program at the University of Florida.

Please bring interested people in your Claims, Human Resources and Worker's Compensation departments to hear Ms. Schumacher to garner information and answer questions regarding this important and timely subject.

Meeting Dates for 2008

February 20, 2008

March 19, 2008
Joint Meeting
With CPCU Hosted by RIMS

April 16, 2008

April 27- May 1, 2008
46th Annual RIMS Conference
San Diego, CA

May 21, 2008
Staff Appreciation Day

June 18, 2008

July 16, 2008

August 20, 2008

September 17, 2008

October 17, 2008
Houston Chapter Fall Conference

November 19, 2008

December 10, 2008

Texas Supreme Court Issues Stunning Reversal: No Right of Reimbursement For Insurers

In 2005, the Texas Supreme Court created a firestorm when it issued its original decision in Excess Underwriters at Lloyds of London (Lloyds) vs. Frank's Casing Crew & Rental Tools (Frank's Casing) creating a right of reimbursement in favor of carriers which settle claims that eventually turn out not to be covered. On February 1, 2008, the Texas Supreme Court stunned the legal community by withdrawing its former opinion.

The issue in Frank's Casing is whether the insurers have a right to be reimbursed for the settlement of a claim if it is later determined that there was no coverage for the claim. The Texas Supreme Court has now held that an insurer does not have a general right of reimbursement for the settlement of uncovered claims. This rule does not seem to apply, however, when the insured gives its unequivocal consent to reimburse those funds if a determination of non-coverage is made or reimbursement is written into the insuring agreement.

In Frank's Casing, the insured was sued by Arco Oil & Gas Company in the underlying suit when a platform that Frank's Casing had constructed for Arco collapsed. During trial, Arco made a \$7.5 million settlement demand, which the Excess Underwriters accepted and paid, after Frank's Casing refused to contribute in any amount. The \$7.5 million settlement demand was within the Excess Underwriters' \$10 million policy limits. The Excess Underwriters then brought a declaratory judgment action against Frank's Casing for reimbursement of the \$7.5 million settlement payment. The trial court originally ruled in favor of the Excess Underwriters, but then reversed and held for Frank's Casing after the Texas Supreme Court issued its opinion in Texas Association of Counties County Government Risk Management Pool vs. Matagorda County. In that opinion, the Texas Supreme Court held that an insurer could only seek reimbursement if it obtained the policyholder's clear and unequivocal consent to both the settlement and the right to seek reimbursement. On appeal, the Fourteenth Court of Appeals reluctantly upheld the trial court judgment, stating that "this is a matter the underwriters must take up with the superior court."

Writing for the Texas Supreme Court majority, Justice O'Neill harkened to Matagorda County, phrasing the question presented as follows:

"Whether to recognize an exception to the rule in Matagorda County and imply a reimbursement obligation when the policy involves excess coverage, the insurer has no duty to defend under the policy, and the insured acknowledges that the claimant's settlement offer is reasonable and demands that the insurer

NOTICE:

Effective January 1, 2008, the RIMS Society has changed their method of collecting Local Chapter Dues. In the past there were two deputies included with the membership, then a charge for each additional deputy added. Under the new structure they will begin collecting chapter dues on a per deputy member basis. The new structure for the Houston Chapter Dues is \$55 per deputy member. The change will be reflected on the renewal invoice. The dues structure for associate membership has not changed.

accept it. Because none of these distinctions alleviates the concerns that drove the Court's analysis in Matagorda County, we decline to recognize such an exception."

After re-stating its general rule as held in Matagorda County, the court turned to whether an implied-in-fact contract for reimbursement existed between Frank's Casing and the Underwriters. The insurer argued that Frank's Casing agreed to reimbursement by participating in settlement negotiations and demanding settlement of the claim. Emphasizing that no meeting-of-the-minds existed to establish a right of reimbursement, the court determined that no contract could be implied in fact: "Frank's Casing's agreement to reimburse the excess insurers cannot be implied in light of its consistent position that the insurers alone were responsible for the claims."

Finally, the carriers argued for reimbursement on equitable theories of quantum meruit and assumpsit. Under quantum meruit, one who provides valuable services to another, may establish that the service recipient has an implied-in-law obligation to pay when the recipient has reasonable notice that the service provider expects to be paid. Under assumpsit, however, a cause of action arises when money is paid for the use and benefit of another. The court rejected both lines of recovery for two primary reasons. First, an insurer may receive reimbursement only when it obtains the insured's clear and unequivocal consent to reimburse such funds. To do otherwise would force insureds "to choose between rejecting a settlement within policy limits or accepting a possible financial obligation to pay an amount that may be beyond its means, at a time when the insured is most vulnerable." Second, allowing an equitable reimbursement right would rewrite the language of the parties' contract for insurance, which the courts refuse to do. Accordingly, the underwriters were not entitled to reimbursement.

Given the holding in Frank's Casing that there is no extra-contractual right of reimbursement for settlement without an express agreement, is there a right to seek reimbursement of defense costs? Courts across the nation are split, with the majority finding a right of reimbursement. It is an open legal issue in Texas, but practically speaking, with the new Frank's Casing decision, it appears unlikely that there can be such a right without express agreement.

This opinion was quite unexpected, and hopefully signals a new direction in Texas insurance jurisprudence.

*Information on this matter contributed by:

James Cornell
Cornell & Pardue

A full copy of the opinion is available upon request

Please see our Chapter Website for additional information:

<http://www.rims.org/ChapterWebsite/RIMSChapter.cfm?CWID=6652>

or

WWW.RIMS.ORG – Chapters - Houston

46th Annual RIMS Conference San Diego, California April 27- May 1, 2008

If you plan to attend, please let the us know and if you would like to be included at the Houston Chapter tables in the General Session

“Year of Change in the Houston Chapter”

Topics of Interest and Information:

- We are looking for your opinion on where do you want to hold the monthly Chapter meetings?
- New degree program to be offered in Fall 2008 in Insurance and Risk Management at the University of Houston - Downtown
- Staff Appreciation Day – Nominate your staff
- Fall Conference Committees forming
- Networking opportunities
- Vendor Corner
- Continuing Education Credits at many of the monthly meetings in 2008

Welcome New/Renewed Members

- Ability Services Network – Mark Mager
 - HMT – Kathy Adams
 - Texas Medical Center – Denise Castillo-Rhodes
 - Newpark Resources, Inc. - Karen Dryden
 - Fluor Corporation – Mark Fichter
 - Texas Medical Center – Lawrence Jones
 - Marathon Oil Company – Treva Kigar
 - Westlake Chemical Corporation – Jo Anne Lancaster
 - Capstone Associated Services – Lance McNeel
 - Shell Oil Company – Andy Stilley
-

Texas Job Postings

Houston Area:

- Assistant Risk Manager
- Claims Adjuster
- Lead Analyst – Risk Management
- Risk Management Generalist

Dallas Area:

- Claims Manager
- Risk Management Specialist

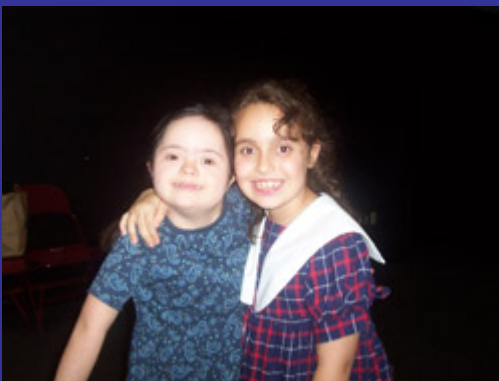
San Antonio Area:

- Risk Manager – Engineering
- Risk Manager – Construction

Lubbock Area:

- Executive Director – Risk Management

Please see the chapter website (hot link at end) and the RIMS.org Jobs Listing for details.



This is an organization that does great work in the community and has presented to our Chapter in December 2007 and 2006. Please see the performance dates and times.

Changing Lives...One Act At A Time

Love is a Disability



DIONYSUS THEATRE

Joe Frank Theatre
Jewish Community Center
5601 S. Braeswood Houston
Houston, Ts. 77096
713-728-0041

DATES
Sat., Feb. 23—7:30 p.m.
Sun., Feb. 24—3:00 p.m.
Thurs., Feb. 28—7:30 p.m.
Sat., Mar. 1—7:30 p.m.
Sun., Mar. 2—3:00 p.m.
Thurs., Mar. 6—7:30 p.m.
Tickets—\$20
\$15 seniors/groups

Back by popular demand!

Give yourself and those you care about the gift of **LOVE** in February!

Come celebrate love, life and the pursuit of happiness with our most popular original show! It's the show that keeps on giving!

Changing Lives One Act At A Time

Dionysus Theatre entertains, educates, enlightens and empowers through the theater experience. Come join us!





RIMS is looking for the best and the brightest stars in risk management.

You may know someone who excels at the task at hand, someone who goes above and beyond the call of duty. Now is your chance to submit an award nomination and recognize a risk professional or RIMS Chapter that best exemplifies the meaning of extraordinary. You know who deserves the spotlight—now let us know!

The RIMS award categories are:

Harry and Dorothy Goodell Award

For outstanding lifetime achievement furthering the goals of risk management and the Society, our most prestigious award.

Ron Judd Heart of RIMS Award

For individuals keeping their local chapter and the discipline of risk management vibrant and resilient.

Arthur Quern Quality Award

For raising the quality of products, services and enterprise risk management.

Richard W. Bland Memorial Award

For impacting risk management in the field of legislation or regulation through outstanding performance by a RIMS deputy member.

Chapter Recognition Awards

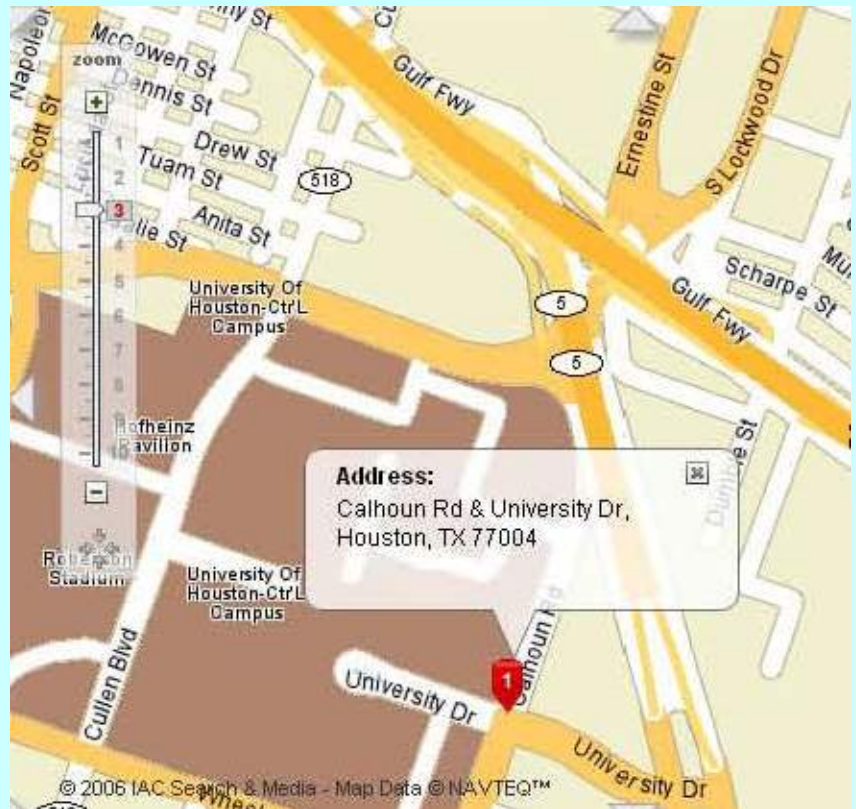
For hard work, dedication, achievement and excellence of a RIMS chapter in:

- Outstanding Chapter Programming
- Advancing the Risk Management Profession
- Outstanding Member Services
- Overall Chapter Excellence

February Luncheon Meeting Place:

The Hilton University of Houston
University Drive – Entrance One
Houston, Texas 77004
Phone (713) 743-2500

Map to Meeting Location



**Copy and paste the link below to go to the map
to find directions from your location to
The University of Houston,
Conrad Hilton Hotel**

<http://maps.ask.com/maps?l=lt%3D29.72604%7Clg%3D-95.3403%7Cal%3D0%7Ccx%3D-2221590%7Ccy%3D-726011%7Czm%3D4%7Cvt%3D0~lt%3D29.71905%7Clg%3D-95.33891%7Cad%3DCalhoun%20Rd%20%26%20University%20Dr%2C%20Houston%2C%20TX%2077004%7Csd%3D0%7Cdm%3D0~#1>

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