



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

RIMS NEWS
August 2005

THE AWARD WINNING HOUSTON CHAPTER
Advancing the Risk Management Profession

August Meeting Topic

“Punitive Damages & Recent Jury Trends”

Guest Speaker: John Schouest

John Schouest, with Phelps Dunbar, will present enlightening facts about Punitive Damages and how recent juries have become more anti-corporation. Come and join us to hear about this interesting topic.

August Article

TEXAS SUPREME COURT ALLOWS INSURERS TO RECOUP SETTLEMENT PAYMENTS FROM POLICYHOLDERS

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Back in 2000, the Texas Supreme Court held in *Texas Association of Counties v. Matagorda County* that a liability insurer cannot settle a third-party claim against the insured and then obtain, based on lack of coverage, reimbursement from the insured, unless the insured expressly agreed to the insurer's right to seek reimbursement.

Recently, the Texas Supreme Court revisited in *Matagorda County* and handed down its decision in *Excess Underwriters at Lloyds, London vs. Frank's Casing Crew & Rental Tools, Inc.* In *Frank's Casing*, the Court found that an agreement by the insured to reimburse its insured for settlement payments for disputed claims can be implied in law in certain circumstances. Specifically, the Court held that an insurer has a right to be reimbursed if it has timely asserted its reservation of rights, it has notified the insured it intends to seek reimbursement, and it has paid to settle claims that were not covered in at least two circumstances: (1) when an insured has demanded that its insurer accept a settlement offer that is within policy limits, or (2) when an insured expressly agrees that the set-

tlement offer should be accepted.

In this case, Frank's Casing fabricated an offshore drilling platform for ARCO, and the drilling platform collapsed several months after it was installed in the Gulf of Mexico. Subsequently, ARCO sued Frank's Casing and others. Frank's Casing had a primary policy limits of \$1M and excess coverage up to \$10M. The primary insurer provided defense counsel for Frank's Casing. Arguably, ARCO had asserted covered and uncovered claims.

During the litigation, ARCO offered to settle the claims against Frank's Casing for \$9.9M, but Frank's Casing rejected the offer. Later, the excess underwriters contacted ARCO and tried to settle only those claims they conceded were covered, but no agreement was reached. ARCO subsequently offered to settle all claims against all defendants for \$8.8M, of which Frank's Casing would be required to contribute \$7.55M. The excess underwriters proposed to Frank's Casing that the excess underwriters pay two-thirds and Frank's Casing pay one-third of the amount with an agreement that all coverage issues would be waived. Alternatively, the excess underwriters proposed that they would pay \$5M towards that amount with the agreement that all coverage issues would be resolved in arbitration. Frank's Casing rejected both proposals.

As trial approached, the excess underwriters retained counsel to associate with the existing defense counsel. After the trial started, Frank's Casing's in-house counsel contacted ARCO and requested that it make a settlement demand within the excess policy limits, suggesting \$7M. ARCO promptly responded with a settlement demand of \$7.5M, and Frank's Casing demanded that the excess underwriters accept the settlement offer. The excess underwriters agreed that the case should be settled for this amount and agreed to fund to the settlement up to \$7.5M, less the remaining policy limits from the primary carrier, if Frank's Casing would expressly agree that all coverage issues would be resolved at a later date. Frank's Casing refused and again demanded that the excess underwriters accept ARCO's settlement offer. The excess underwriters then advised Frank's Casing that they would accept ARCO's settlement offer, but would seek reimbursement from Frank's Casing to the extent the settlement payments represented uncovered claims. The excess underwriters immediately accepted the settlement offer.

The excess policies required Frank's Casing's approval of any settlement, and Frank's Casing gave such approval. A formal settlement agreement was subsequently executed, and the settlement agreement preserved “any claims that existed presently” between Frank's Casing and the excess underwriters. Also, prior to the execution of the settlement agreement, the excess underwriters filed suit seeking reimbursement from Frank's Casing. (Continued on Page 3)

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From the Vice President's Desk

Hello Members!

I hope you and yours are having a good summer.

This month, John Schouest of Phelps Dunbar will discuss Punitive Damages and Recent Jury Trends. Come and learn how punitive damages litigation trends may affect your company.

The 2005 Fall Conference is shaping up quite nicely. The theme for the conference is "Sharpen Your Risk Management Skills" and will include topics on Return-To-Work supervisor training, Texas Workers Compensation Reform, Contractual Risk Transfer and ISO form changes and an off-site Risk Identification and Assessment session. Registration forms will be available soon

Virgil

New Members

We are pleased to announce the following new members who joined our chapter last month:

Corey Walsh—BMC Software, Inc.

Chris Brewster—PM Realty Group

Lance Nauman—Acordia of Texas- Assoc. Member

Mark O'Rear—Navigant Consulting- Assoc. Member

Houston Area Job Links for August 2005

- Sr. Manager, Risk Management—Friedkin Companies, Inc.
- Carriage Services, Inc.—Risk Management Assistant (part time)
- Energy Company (Galleria area) - Risk & Insurance Analyst
- Director Finance & Planning—Lord & Albus Company
- Workers Compensation Coordinator—NCI Building Systems, L.P.
- Assistant Risk Manager—Nabors Industries

For further information regarding positions or to place a job opening for your company in our newsletter, contact Pam Chavez, Director—Job Placement (832) 351-7144

Email: PChavez@weingarten.com

Listing descriptions and contact information can be found at The Houston RIMS website:

<http://Houston.rims.org>

Also, look online at the Houston Chronicle's classified web site under employment. Do a key word search for Safety or Risk Management at:

<http://www.houstonchronicle.com/classified>

Or look online at the Houston Press's classified web site:

<http://www.houstonpress.com/classifieds>

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In the ensuing coverage litigation, the trial court initially held that there was no coverage for the claims asserted Frank's Casing under the terms of the excess policies and that Frank's Casing was obligated to reimburse the excess underwriters. However, while the matter was still pending, the Texas Supreme Court handed down its decision to *Matagorda County*, and the trial court reversed its decision and held that the excess underwriters had no right of reimbursement under *Matagorda County*. On appeal, the Houston 14th Court of Appeals affirmed on the basis that *Matagorda County* was controlling.

On further appeal, the Texas Supreme Court noted factual differences between *Matagorda County* and this case. In *Matagorda County*, the insurer had the right to settle the claims against the insured without the insured's consent, and the Court in *Matagorda County* was concerned that when an insurer has a unilateral right to settle, an insurer could accept a settlement out of the insured's financial reach, and the insured would be required to reimburse the insurer for that amount: "The insured is forced to choose between rejecting a settlement within the 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." Noting that Frank's Casing had demanded that the excess underwriters accept and fund the settlement of ARCO in this case, the Court wrote: "When there is a coverage dispute and an insured demands that the insurer accept the settlement offer within policy limits, the insured is deemed to have viewed the settlement offer as a reasonable one."

The Court also noted that the insured is not prejudiced by allowing the insurer a right of reimbursement under such circumstances, as the insured's exposure to a greater judgment has been eliminated, and the insured is in the same position it would have been absent an insurance policy, except the insurer becomes the insured's creditor rather than the injured third party. Reimbursement rights encourage insurers to settle cases even when coverage is in doubt, to the benefit of injured claimants, and "the risk that the insured lacks the resources to fund a settlement shifts to the insurer and is lifted from the injured plaintiff who sued the insured."

Lastly, the Court held that reimbursement rights help to ensure that "whether the insurer ultimately bears the cost of a reasonable settlement with a third party should depend on whether there is coverage."

The Court also recognized that an insured's express agreement that a settlement offer should be accepted may be the functional equivalent of a demand for the insurer to accept the offer. The Court wrote: "Since Frank's Casing had consented to the settlement, knowing the excess underwriters intended to pursue a coverage determination and to seek reimbursement, Frank's Casing could not complain about excess underwriters seeking reimbursement of the settlement payments were not covered by the excess policies."

August Luncheon Meeting

Please send your response by email to jlyon@contactpsc.com or fax the notice to 713.625.7087.

The Luncheon Registration form is available on the chapter web site at www.rims.org

Choose “chapters” then “chapter web sites” then “Houston” look for the “Monthly Meeting Notice” on the list to the left.

Meeting Notices, Newsletters and other chapter correspondence are now distributed by email.

If you are a deputy member and are not receiving yours please let us know by contacting Victor Pivetta, Membership Director. Deputies can update/correct information by logging on to the Society web site: www.rims.org. Associates & Non-Members should contact Ginny Penzell

On the first page of each RIMS Monthly Newsletter, we publish a **brief** article of interest to our members. If you have one to submit for publication, please send articles of interest (no advertisements please) to: 34391.Stephen.Broderick@rimsmail.org

Houston Chapter of RIMS

UPCOMING EVENTS

Luncheon Meetings are at 11:30 am

RIMS Luncheon Meeting—
August 17, 2005

ARM 56—Essentials of Risk Financing—Houston

Tuesday evenings beginning August 16
Details and Application Attached

RIMS Houston Fall Conference

Friday, October 21 @ The Woodlands Resort & Conference Center.



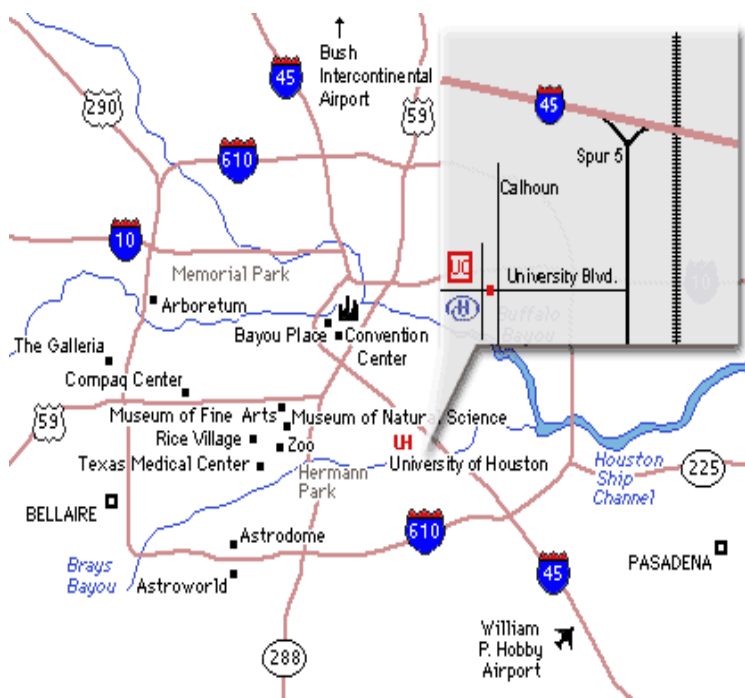
2005 LUNCHEON SCHEDULE

- September 21
- October 19
- November 16
- December (TBA)

MEETING PLACE

The Hilton University of Houston
University Drive—Entrance One, Suite 207
Phone #713.741.2447

- Parking is being provided by the Houston Chapter of RIMS.
- Be sure to pick up your token at the registration desk so you can get out of the parking garage free of charge



ASSOCIATE IN RISK MANAGEMENT
Classes Sponsored by the Houston Chapter of RIMS
Fall Semester 2005

The Houston Chapter of the Risk and Insurance Management Society, Inc. (RIMS) will be sponsoring an ARM 56 class this spring. This course is part of a three semester specialty program leading to the Associate in Risk Management (ARM) Designation. The course is open to the general public, including all risk management, insurance and safety professionals.

ARM 56 – ESSENTIALS OF RISK FINANCING

CLASS LOCATION: Bowen, Mickette & Britt
1111 North Loop West, Suite 400, Houston, Texas

CLASS START DATE: Tuesday Evenings–Starting August 16, 2005, 5:30 P.M. – 7:30 P.M.
(ends mid November 2005)

COURSE LEADER: Jim Drew, ARM, CIC
Office Phone: (713) 880-7172
E-mail: jdrew@bmb-inc.com

EXAM DATES: November 15 – December 15 testing window at Sylvan Testing Centers by appointment.

COURSE DESCRIPTION: Students will learn risk financing techniques as they relate to the risk management process. The student will focus primarily on the various forms of risk retention (including use of captive insurers) and of commercial insurance.

TUITION POLICY

The tuition per course, which does NOT include the exam fee or books, is \$110 for RIMS Deputy Members and \$135 for all others (including Associates of the Society). **In the event the student cannot attend the class, tuition will be refunded until the first night of class. After the first class has been held, the student will receive a CREDIT toward any of the ARM classes that may be held during the two semesters (12 months) following the class for which tuition was already paid.**

GRANTS:

Grants are available to those Deputy Members who wish to take an ARM course but are unable to due to financial hardship. Candidates must apply through the education director (Cynthia Vickers), provide a letter from their employer that the course is non-reimbursable, and write a one-page letter indicating why they feel they are deserving of the grant. Recipients of the grants will be notified prior to the second meeting night of class. The deadline for submitting an application is August 16, 2005.

PAYMENT INFORMATION:

Make checks payable to: **Houston Chapter of RIMS**

Please mail your check **and** enrollment form to:

Cindi Vickers, ARM
Education Director – Houston Chapter of RIMS
c/o El Paso Corporation
P. O. Box 2511
Houston, Texas 77252-2511
Phone: 713-420-5078
Fax: 713-420-6577
E-mail: cynthia.vickers@elpaso.com

Enrollment forms should be completed and returned no later than August 16, 2005. You also have the option of bringing the registration form and check to the first night of class. Call Cindi Vickers or Jim Drew for additional details concerning the class.

CONTINUING EDUCATION (C.E.) CREDIT INFORMATION:

The Texas Department of Insurance has approved this classroom course for 15 C.E. Credit hours. Students must attend at least 90% of the classes in order to qualify. The Insurance Institute of America/CPCU has also received approval for 15 C.E. hours for students who successfully pass the ARM exam. Students must choose **either** the class instruction credits or the exam credits. They may not choose both.

ORDERING BOOKS AND REGISTERING FOR THE EXAM:

Books may be ordered through the Insurance Institute at (800) 644-2101. The cost for books is approximately \$150. You may register for the exam at the same time you order your books. The cost for the exam is \$148 (for early registration). Please refer to the current AICPCU/IIA Key Information Guide for confirmation of test related fees and deadlines. You can request a Key Information Guide from the Insurance Institute via the web at www.aicpcu.org, via e-mail at cserv@cpcuiia.org, or via phone at (800) 644-2101.

ARM CLASS ENROLLMENT FORM

(Complete and make a copy to send in for registration.)

Name: _____ **Social Security No.** _____

Company: _____ **Title:** _____

Mailing Address: _____

Phone (office): _____ **Phone (home):** _____

Fax No.: _____ **E-mail Address:** _____

Amount Enclosed: _____ **RIMS Deputy Member: YES** _____ **NO** _____

Course:
ARM 56 Essentials of Risk Financing

IMPORTANT: ARM courses presume three years of broad-based industry experience or INS21.