



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

THE AWARD WINNING HOUSTON CHAPTER

Chapter of Distinction

Outstanding Chapter Programming

Advancing the Risk Management Profession

September 2008

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FROM THE DESK OF THE CHAPTER PRESIDENT...

The **August 20th** Monthly meeting's topic was very timely and informative. As we brace for what appears to be a very active hurricane season, Jill Hassling, President of Weather Research Center provided valuable information regarding hurricanes, past and present.

If you are interested in furthering your education in Risk Management, the **September 17th** Chapter meeting promises to give you the information you need. There will be presentations on the ARM, CRM, RIMS Fellow, and CRIS designations and on the University of Houston-Downtown's Risk Management degree program. There will also be recognition of members who attained a risk management designation over the past year and an exhibit area with information on all of the above educational designations / programs. We highly encourage all members to enhance their knowledge in the evolving world of insurance and risk management and this is a perfect opportunity to find out how.

Remember that the September meeting starts at 11:30am and will be at the Briar Club on Timmons. Valet parking is free.

If you have not already, please be sure to register for the **RIMS Houston Chapter Fall Conference and Golf Tournament** at The Woodlands Resort which will be held on **October 17, 2008**. The Conference theme is "Building for the Future" and the speakers will bring a wealth of knowledge related to Construction, Insurance Legislation, Education and Workers' Compensation. Information regarding registration, sponsorship and vendor exhibits has also been distributed. I appeal to all our members and associates to join us on this special day. Proceeds from this event will go to help support Risk Management education programs here in Houston. Furthermore, CE credits will be offered by many of the presentations. You can find out more about this event on the Houston Chapter website or contact Ginny Penzell at Ginny.Penzell@elpaso.com or Marty Timpano at timpano.marty@corp.sysco.com.

Look forward to seeing you at these events.

See you soon!

Ginny Penzell

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September Meeting Topic and Speaker

Wednesday, September 17, 2008
11:30 AM – 1:00 PM

Topic: Education Meeting "Advancing the Risk Management Profession"

The Houston RIMS Chapter will host its 2nd Annual "Advancing the Risk Management Profession" Education Day luncheon meeting. This meeting will focus on Education and will include presentations on the ARM, CRM, RIMS Fellow, CRIS designations and the University of Houston Downtown Insurance & Risk Management degree program. We will also recognize members who attained a risk management designation over the past year. In addition to the various speakers, there will be an exhibit area with information on all of the above educational designations / programs.

We highly encourage all members to continually pursue educational objectives as a means of enhancing their knowledge in the evolving world of insurance and risk management. You are encouraged to attend that meeting and learn more about the continuing educational options available to you. This luncheon meeting will not provide Continuing Education credit.

Coverage Discussion

Marine Policies

Insurance on motorized craft or vehicles such as watercraft, snowmobiles or all terrain vehicles functions much like that of the Personal Auto Policy. Coverage applies to the Named Insured, a spouse, a resident family member, and those given permission to operate the craft or vehicle by the Named Insured.

In one federal court case in Michigan the insured had given his children permission to operate the insured's "Sea-Doo" watercraft, but had explicitly told them that their friends could only ride as passengers, not operate the craft. When the son disobeyed the instruction and allowed a friend to run the craft without the father's permission, the friend accidentally hit a girl who was standing in the water near the shore, injuring her. She sued both the craft's owner and the unauthorized driver.

Past President

Cynthia Vickers, ARM
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Web Master

Pending

Meeting Dates for 2008

September 17, 2008
Education Day

October 17, 2008
Houston Chapter
Fall Conference
and
Golf Tournament

November 19, 2008
ARM Completers Recognition

December 17, 2008

The homeowners' insurer for the unauthorized driver brought a declaratory relief action against the insurer for the craft's owner, seeking a pro rata share of defense costs and the ultimate judgment. The court denied the request, finding no evidence that either the insured or the spouse had granted permission for the other youth to operate the craft.

Ocean and inland marine claims on small craft and large ocean-going vessels, the cargo and liability are common losses. Containerized freight enters the country at a number of Pacific and Atlantic/Gulf Coast ports, and travels by truck and rail across the nation. Claims can result at any location.

The ancient marine policies, as well as the American Institute Hull Clauses provide coverage "touching the [adventures and] perils which the Underwriters are contented to bear and take upon themselves, they are of the seas, men-of-war, fire, lightning, earthquake, enemies, pirates, rovers, assailing thieves, jettisons, letters of mart and counter-mart, surprisals, takings at sea, arrests, restrains and detainments of all kings, princes and peoples of what nation, condition or quality soever, barratry of the master and mariners and all other like perils, losses and misfortunes..."

While it might be presumed that "pirates, rovers and assailing thieves" are rare in the 21st century, such is not the case. Modern day pirates are active off the coast of Somalia and elsewhere in the world, and "assailing thieves" are just as active anywhere cargo is in transit or storage.

Legal Discussion

By
James Cornell
Cornell & Pardue

On August 28, 2008, the Texas Supreme Court issued three important insurance opinions. In *Don's Building Supply*, the Texas Supreme Court finally resolved the issue of the correct theory of trigger for "property damage" claims. The Supreme Court held that coverage is triggered when the actual injury or injury in fact occurs. In *Ulico Cas. Co.*, the Texas Supreme Court held that coverage cannot be expanded by waiver or estoppels, and specifically rejected the Wilkinson exception to the general rule that coverage cannot be created by waiver or estoppel. Finally, in *Nokia*, the Court held that claims "damages" "because of" "biological injury" trigger the duty to defend.

The Houston Chapter RIMS
mailing address is

5090 Richmond Ave. #86
Houston, TX 77056-7402

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.

Please see our Chapter Website for
additional information:

[http://houston.rims.org/ChapterWebsite/
RIMSCchapter.cfm?CID=328](http://houston.rims.org/ChapterWebsite/RIMSCchapter.cfm?CID=328)

or

WWW.RIMS.ORG – Chapters - Houston

Don's Building Supply, Inc., v. OneBeacon Ins. Co. No. 07-0639 (Tex. Aug. 28, 2008)

Texas Supreme Court Adopts the Injury In Fact Trigger for
Property Damage Claims:

In *Don's Building Supply, Inc., v. OneBeacon Ins. Co.*, the Texas Supreme Court considered issues certified by the 5th Circuit Court of Appeals. The question presented was what is the correct theory of trigger for "property damage" under a commercial general liability ("CGL") policy. Texas courts had been split on this issue, with the majority adopting the manifestation trigger. Under the manifestation trigger, "property damage" "occurs" when it the damage "manifests" itself. In the case before the Texas Supreme Court, *Don's Building Supply* had been sued for distributing EIFS products which allegedly caused the underlying wood to rot and mold to grow. The issue was which policy was triggered for the purpose of defense and indemnity. Was it the policy in force when the "property damage" manifested itself, or when the actual injury arose? The Texas Supreme Court adopted the "injury in fact" or "actual injury" theory of trigger for "property damage" claims. The policy in force when the property is actually damaged is the policy which is triggered.

The Supreme Court stated:

"[W]e hold that property damage under this policy occurred when actual physical damage to the property occurred. The policy says as much, defining property damage as "physical injury to tangible property," and explicitly stating that coverage is available if and only if "'property damage' occurs during the policy period." So in this case, property damage occurred when a home that is the subject of an underlying suit suffered wood rot or other physical damage. The date that the physical damage is or could have been discovered is irrelevant under the policy."

With regard to the duty to defend, the Court found that the pleadings alleged "actual injury" within the policy period, and therefore, there was a duty to defend.

Ulico Cas. Co. v. APA, No. 06-0247 (Tex. Aug. 28, 2008)

Waiver and Estoppel Cannot Expand Coverage, But An Insurer Is
Liable When Its Actions Prejudice the Insured:

In this case, the Texas Supreme Court considered what has come to be known as the "Wilkinson exception" to the general rule that coverage cannot be created by estoppels or waiver. The Wilkinson exception stated that if a carrier undertook to defend an insured without issuing a proper reservation of rights that identified all policy defense then known to the carrier, and the insured was prejudiced, then the carrier was estopped to deny coverage and had waived its policy defenses.

Educational and Associations
Websites:

**American Institute for CPCU and
Insurance Institute of America**
www.aicpcu.org

**Charter Property Casualty
Underwriters Society**
www.cpcusociety.org

**Institutional Risk
Management Institute**
www.irmi.org

The National Alliance
www.scic.com

**Construction Risk and
Insurance Specialist**
www.cris-ce.com

In Ulico, the insured reported a claim after the claims-made-and-reported policy had expired. The carrier mistakenly agreed to defend the insured. The carrier issued two reservations of rights, sent the insured's counsel litigation guidelines, and stated that Ulico agreed to reimburse the insured for reasonable defense expenses. The attorney submitted his invoice of \$635,000.00

Ulico filed a declaratory judgment action seeking a determination that it did not have a duty to defend the insured. The insured counterclaimed and won at trial and on appeal. The Court found that the carrier had waived its right and was estopped from denying coverage.

The Texas Supreme Court held that Ulico's policy coverage was not expanded by either the doctrine of waiver or the doctrine of estoppel. If there is no coverage, then neither estoppels nor waiver can be used to expand coverage which is non-existent. The Court specifically rejected the holding in Wilkinson.

However, the Court went on the hold that if an insured is prejudiced by a carrier, the carrier can be liable. The Court stated that "Under some circumstances, insurers who take control of their insured's defense without a valid reservation of rights or non-waiver agreement can and should be prevented from denying benefits that would have been payable had the claim been covered because the insured is actually prejudiced by the insurer's actions... But the possibility that an apparent conflict of interest might arise under these circumstances is insufficient justification for judicially rewriting the parties' agreement."

"When an insurer's defense of or controlling the defense of the insured prejudices an insured, as happened in Tilley and Acel, the insurer cannot escape liability for the detriment its actions cause its insured. In those cases, the insurer was estopped from refusing to pay the damages its actions caused, but there was no rewriting of the insurance contract. We think Tilley's rule, ethical rules applicable to attorneys defending insureds, and the doctrine of estoppel all work to protect an insured without the necessity of remolding the doctrines of waiver and estoppel to create an anomaly in the law by judicially rewriting agreements between insurers and insureds."...

"In sum, if an insurer defends its insured when no coverage for the risk exists, the insurer's policy is not expanded to cover the risk simply because the insurer assumes control of the lawsuit defense. But, if the insurer's actions prejudice the insured, the lack of coverage does not preclude the insured from asserting an estoppel theory to recover for any damages it sustains because of the insurer's actions."

Zurich American Ins. Co. et al v. Nokia. No. 06-1030 (Tex. Aug. 28, 2008)

Allegations of Damages Because of Biological Injury Trigger a Duty to Defend:

In this case, the insured, Nokia, sought a defense from its insurers for class actions that were brought against it in lawsuits filed across the country. The lawsuits alleged that purchasers of cell phones suffered "biological injury" from radio frequency radiation and sought various forms of damages, including replacement headsets. The Supreme Court found that allegations of "biological injury" satisfied the "bodily injury" requirement in the CGLs. The court also found that the pleading alleged "damages" "because of" the "biological injury." Therefore, the carriers owed a duty to defend.

In contrast, in a one of the class actions, the class counsel specifically disclaimed any recovery for any theory that could lead to tort recovery of recovery for "bodily injury." That suit only sought recovery for breach of warranty and redhibition. The Court found that there was no duty to defend that class action.

2008 Fall Conference

Information and Registration

The Houston Chapter of the Risk & Insurance Management Society is hosting the RIMS Fall Conference.

The Conference is scheduled for **Friday, October 17, 2008** at the Woodlands Country Club in The Woodlands, Texas. The theme is "Building for the Future." This exciting event will include educational sessions with a focus on the ever-changing risk management industry, including risk management issues related to contracts and construction. Besides the educational morning, the program will include lunch, and a choice of participating in a golf tournament or team building exercises (at the Main Event) in the afternoon.

Please plan to join us. Please see the registration forms on the Chapter website.

2008 Fall Conference Donations

We are looking for donations of door prizes for the October 17 RIMS Fall Conference. The following items would be appreciated:

- gift cards (i.e. restaurants, golf stores, Department stores)
- sports tickets
- any golf items - drivers, putters, shirts, hats, golf bags, accessories, etc...
- goody bag items - (i.e., golf balls, golf towels, tees, divot tools, pens, office gadgets, etc.) If possible, a 100 of each item but any number will be appreciated.

All donators should e-mail John Ledbetter (john.Ledbetter@LibertyMutual.com) or call John at 1800-357-8366 x34017 for directions on how to get their donated item to him. He will arrange to pick-up large items.

Donations may be brought to the Sept. 17 luncheon meeting but please ask that they put their name/Company on it so we can recognize them during our awards ceremony.

2008 - 2009 Houston Chapter Membership Directories

The 2008 - 2009 Houston Chapter Membership Directories will be distributed at this month's meeting.

Professional Development Schedule

Directors and Officers Liability and Insurance

A RIMS Fellow® workshop

September 18-19, Seattle

This workshop will clarify the complexities of D&O coverage and the coverage and structural alternatives that affect D&O premiums. Learn how to evaluate and secure insurance that best fits your organization. Gain tools for reducing the risk of claims and tips for presenting risk profiles to D&O underwriters to achieve the best renewals.

Workers Compensation Management

A RIMS Fellow® Workshop

September 22-23, Dallas

Gain a comprehensive understanding of Workers Compensation laws and coverage. Learn how to manage your workers compensation exposure and reduce your organization's loss costs. Hear how adjusters, lawyers and other professionals can help you reduce costs and facilitate early return to work.

Enterprise Risk Management

A RIMS Fellow® Workshop

October 6-7, New York

This two-day interactive workshop covers the essentials of Enterprise Risk Management. Gain an overview of ERM, including a framework for beginning the process in your organization. Bring back a five-step model that will allow you to introduce an ERM framework process to your organization.

Alternative Risk Financing Techniques

A RIMS Fellow® Workshop

October 6-7, Boston

Alternative Risk Transfer (ART) grows in all market conditions, but savvy risk managers know that the best time to establish an ART program is in soft markets. This 2-day workshop is a no-frills "how-to" program designed to provide practical, useful information on how to set up a successful ART program.

Other Opportunities



The Energy School program is intended to enhance and develop the risk management skills of staff members by providing an intensive and challenging forum of various aspects of energy risk management.

What to Expect

- A forum for current energy industry risk management issues.
- Case study exercises dealing with "real world" industry scenarios.
- An opportunity for risk management colleagues to interact on common matters.

Where

Saint Joseph's University, Philadelphia, PA

When

October 19-24, 2008

Who Should Attend

The program is targeted for risk management professional staff and is designed to provide these individuals with knowledge and skills necessary to perform and adapt amid the challenges of the industry.

URL Address

<http://www.sju.edu/academics/hsb/special/energyschool/>

Welcome New/Renewed Members

Tara McCann – Anadarko Petroleum Corporation
Victor Pivetta – Key Energy Services, Inc.
Emily Roberts – ACE ESIS
Dawn Satterwhite – Dempsey Partners
Sandra Savage – City of Conroe

Job Postings

National RIMS Website

Risk Analyst – Irving, Texas
Assistant Risk Manager – Plano, Texas
Insurance Analyst – Irving, Texas
Manager, Casualty – Houston, Texas

Local Chapter RIMS Websites

Houston Area:

Director of Risk
Claims Analyst
Safety Manager
Regulatory Compliance Officer
Claims Examiner
Risk Management Accountant

Austin Area:

Claims Adjuster
Personal Lines Homeowners Property Claims Adjuster

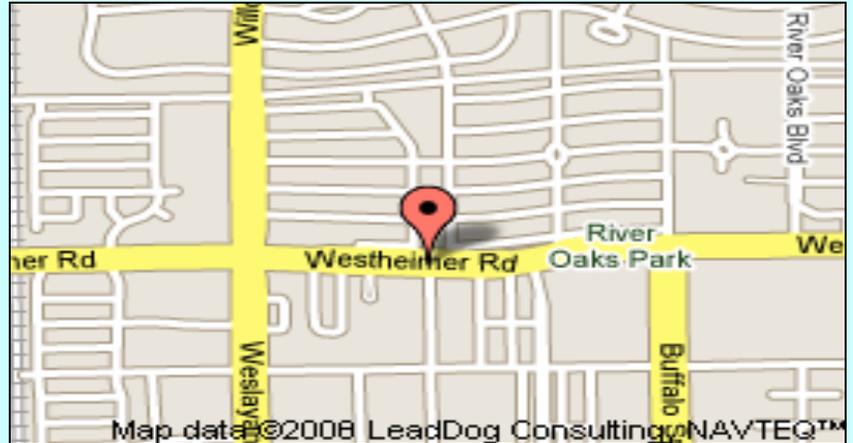
Dallas Area:

Risk Management Specialist
Risk Management Administrator
Risk Analyst
Insurance and Captives Manager
Senior Risk Management Analyst
Director, Risk Management

Please see the Local Chapter website and the RIMS.org Jobs Listing for details.

September Luncheon Meeting Place:

The Briar Club
2603 Timmons Lane
Houston, Texas 77027
Telephone: (713) 622-3667



Directions to The Briar Club

The Briar Club is located at 2603 Timmons Lane, Houston, TX 77027. It is on the corner of Westheimer and Timmons Lane between the north - south streets of Edloe and Wesleyan.

Border Streets

Between Wesleyan and Buffalo Speedway (N-S) and West Alabama and Westheimer (E-W)
» East of Galleria towards downtown
» West of Kirby and Shepherd

From George Bush Intercontinental Airport (IAH)

Go South on US-59/Eastex Freeway
Exit Buffalo Speedway and turn RIGHT/North
Turn LEFT on Westheimer
Turn LEFT on Timmons Lane @ WhataBurger

From William P. Hobby Airport (HOU)

Go North on I-45/Gulf Freeway
Exit US-59 South toward Victoria
Exit at Buffalo Speedway and turn RIGHT/North
Turn LEFT on Westheimer
Turn LEFT on Timmons Lane @ WhataBurger

From Sugar Land

Go North on US-59/Eastex Freeway
Exit at Buffalo Speedway and turn LEFT under the Freeway
Turn LEFT on Westheimer
Turn LEFT on Timmons Lane @ WhataBurger

From 290/Northwest

Go East on 290/Northwest Freeway
Take 610 South
Exit at Westheimer and turn LEFT under the Freeway
Turn RIGHT on Timmons Lane @ WhataBurger

From Katy

Go East on I-10 (Katy Freeway)
Take 610 South
Exit at Westheimer and turn LEFT under the Freeway
Turn RIGHT on Timmons Lane @ WhataBurger

From Kingwood

Go South on US-59/Eastex Freeway
Exit at Buffalo Speedway and turn RIGHT/North
To Westheimer
Turn LEFT on Timmons Lane @ Whataburger

