



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

THE AWARD WINNING HOUSTON CHAPTER Chapter of Distinction

June 2008

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FROM THE DESK OF THE CHAPTER PRESIDENT...

If you missed the May 15th Member Appreciation Evening Social you missed a wonderful opportunity to socialize and network with friends and peers. We look forward to planning similar get-togethers and hope to see you there!

The **June 18th** Chapter meeting promises to be very interesting as well as educational. **Christopher Giovino**, Managing Director of Dempsey, Myers & Company LLP will provide a presentation on occupational fraud, how it happens and how forensic accounting and analysis are used to catch the perpetrators. Chris will show how the criminal, civil, and insurance worlds can compliment one another in investigation and prosecution of these cases. Chris joined Dempsey, Myers after 27 years as a DEA agent with the US Drug Enforcement Administration where was involved in global-scale investigations involving the most complex drug, narco-terrorist and international money laundering organizations.

In addition, **Steve Kessler**, also with Dempsey Partners LLC, will discuss the fidelity issues related to property damage and business interruption losses.

This presentation promises to both entertain and make you more aware of your company's exposures in these areas. Remember that the June meeting will be at the Briar Club on Timmons.

RIMS Houston Chapter Fall Conference at The Woodlands Resort will be on **October 17, 2008**. If you are interested in helping to organize this event or provide donations please contact me at Ginny.Penzell@elpaso.com or Marty Timpano at timpano.marty@corp.sysco.com. This year we will also have vendor exhibitors, although space is limited. If you are interested in participating, please get your requests in to us early.

Look forward to seeing you at these events.

See you soon!

Ginny Penzell

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June 18, 2008 - Meeting Topics and Speakers

Truth and Consequences: Fidelity Matters - Lessons Learned

Chris Giovino joined Dempsey Partners LLC after 27 years with the US Drug Enforcement Administration. As a former DEA agent he was involved in global-scale investigations involving the most complex drug, narco-terrorist and international money laundering organizations.

Chris Giovino will discuss occupational fraud (even by people thought to be above reproach), how it happens, and how forensic accounting and other methods are used to catch these perpetrators. Chris will also give a case study regarding embezzlement in a mid-sized business by a trusted employee. He will show how the criminal, civil, and insurance worlds can compliment one another in investigation and prosecution of these cases.

Steve Kessler, also with Dempsey Partners LLC, will discuss the fidelity issues related to property damages and business interruption losses.

This presentation promises to both entertain and make you more aware of your company's exposures in these areas.

RIMS Goes to Washington June 8th to June 10th 2008 By Nikolas Kapatos Houston Chapter - Legislation

RIMS on the Hill takes place every year in early June. This year of approximately 50 members of RIMS from around the U.S. converged on Washington to meet with members of Congress and their staffers on four pieces of legislation. RIMS on the Hill is open to all RIMS members. If you have not attended in the past, please consider attending one of the sessions. It is a very enlightening experience.

The attendees were divided up into state delegations. Pete Fahrenthold from Continental Airlines and I from the Houston chapter were part of the Texas delegation. We teamed up with Terry Baker from Alliance Residential Management, Buddy Gillenwater from the City of Mesquite, Adrienne Draper from Centex Corporation; all from the Dallas/Fort Worth chapter.

Past President

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

Web Master

Pending

Meeting Dates for 2008

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

The Houston Chapter RIMS mailing address is

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

The main legislative item we spoke with the Senate members was the surplus lines bill S 929/HR 1065. This bill has passed the House twice in the past, but it has not yet passed in the Senate. The bill simplifies the regulatory scheme surrounding the collection and distribution of the surplus lines tax. It also makes it easier for companies who have a qualified risk manager to go directly to the non-admitted market without the necessity of having their brokers obtain declinations from admitted carriers. Our specific request was to get a hearing in the Senate banking committee, to get cosponsors and to amend the definition of qualified risk manager to match the broader definition in HR1065.

We also spoke with both bodies of Congress on the Optional Federal Charter (The National Insurance Act S 40/HR 3200) and the Insurance Information Act (HR 5840). The Optional Federal Charter will provide insurers, insurance agencies, and insurance producers the option to have a Federal charter. This act would exempt them from most state insurance regulations. It would create a dual regulatory system that would operate similar to the banking system where banks have the option of having either a state or a national charter. We believe that it would improve the marketplace by reducing the level of rate and form regulations that insurers would be required to adhere. Since the National Insurance Act expressly disallows rate and form regulation for national property casualty insurers, it would lower their costs and would speed introduction of new products to the marketplace. It would also help business development efforts of large insurers who vie for business on an international level.

HR5840 would establish an Insurance Information Office that would reside in the Department of the Treasury. It would serve as a repository for collecting and disseminating insurance reports at the national level. It would ensure that significant insurance issues get national attention. With the act's limited preemptive powers, it would be able to ensure the consistency of states' insurance laws regarding international trade agreements as well as form federal policy on an international insurance matters. We asked for cosponsors on both of these acts and for introduction of a companion Senate bill for HR 5840.

The final item that spoke about was HR5792 - The Insurance Coverage Options for Consumers Act of 2008. This bill would amend the existing Risk Retention Act. Presently risk retention groups and risk purchasing groups are able to obtain general liability coverage other than workers compensation insurance. HR 5792 would increase coverage options by allowing commercial property insurance. It would increase overall market capacity and would allow risk retention groups to provide better and more efficient services to its insureds. It would also enable businesses to obtain coverage is that otherwise might not be available or affordable in the regular insurance marketplace. We asked for cosponsors and support for the bill.



CHANGE THE WAY
YOU TALK ABOUT RISK

2008 RIMS National Conference Memories from San Diego

What is the biggest challenge that you are currently facing?

Ella M. Andrews, Insurance Manager,
Friedkin Companies, Inc., Houston, Texas
"The biggest challenge is getting lower premiums."



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Chapter Members in Action



Coasters Rock Luncheon

With their disco-way wrings and signature on-stage antics, the non-disciplined cover princes of rock and roll brought down the house at yesterday's RIMS Award Luncheon. The Coasters took the stage to rousing applause from the capacity crowd and lived up to their billing as they had attendees clapping their hands and tapping their toes to such classics as "Dustin Bry," "Love Potion #9," "Lately Yaki" and "Charley Brown," which with the help of one female attendee from the crowd became "Love Brown" as she added her background melody to the marquee line "why's everybody always picking on me." Their '50s motley singalong was another fan favorite.



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We encourage you to read more about these bills at the RIMS Legislative Action Center. We would also like to ask for your support in contacting our legislators to push for these bills. You can easily send emails to your specific legislators by accessing the RIMS Legislative action center. You can reach this page by going to www.rims.org and clicking on the Government Affairs tab and selecting Legislative Action Center. If you would like any additional information on RIMS on the Hill or on any of these bills, please call me at 713-507-2474 or e-mail me at nick.kapatos@banksterling.com.

Legal Updates

TEXAS SUPREME COURT CLARIFIES AND EXPANDS "ADDITIONAL INSURED" COVERAGE: CARRIER THAT WRONGFULLY DENIES COVERAGE CANNOT CHALLENGE SETTLEMENT

In *Evanston Ins. Co. v Atofina*, --- S.W.3d ----, 2008 WL 400394, 51 Tex. Sup. Ct. J. 460, (Tex. February 15, 2008), the Texas Supreme Court again took the unusual step of withdrawing its previous opinion and issuing a new opinion clarifying the scope of coverage afforded additional insureds. The new decision expands the scope of coverage afforded to additional insureds.

- o An "additional insured" provision can cover the *sole negligence* of the "additional insured."
- o Indemnity and insurance agreements are considered and interpreted separately. The indemnity agreement does not define the boundaries of coverage.
- o In the common situation where the carrier refuses to cover the insured, the insured can now enter into a settlement agreement and the carrier cannot challenge its reasonableness.

NO HARM, NO FOUL: LATE NOTICE TO INSURER DOES NOT BAR COVERAGE ABSENT MATERIAL BREACH OR PREJUDICE

In *PAJ, Inc. v. The Hanover Ins. Co.*, 243 S.W.3d 630, (Tex. January 11, 2008), the Texas Supreme Court finally addressed the issue of whether the breach of a condition precedent forfeits coverage absent a showing of prejudice to the carrier. The Supreme Court held that an insured's failure to timely notify its insurer of a claim does not defeat coverage under an occurrence-based policy, if the insurer suffers no harm from the delay. The Texas Supreme Court ruled that an insured's breach of a policy provision requiring timely notice of claims, if not material, does not deprive the insurer of the benefit of the bargain and thus

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.

cannot relieve the insurer of its contractual coverage obligation. The Court drew upon basic contract principles to hold that while a material breach of a contract may deprive a party of the benefit of the contract, an immaterial breach does not.

- The Texas Supreme Court basically held that all conditions which are imposed on the policyholder require a showing of material breach or prejudice. This would include the duty to cooperate.
- It does not matter if the provision is characterized as a condition, a covenant or an exclusion; the provision still requires proof of a material breach.
- This holding would appear to apply to any "occurrence" based policy, including homeowner and auto.
- The Texas Supreme Court showed great interest in the drafting history of the policy. In previous policy forms, the words "condition precedent" had appeared expressly in the policy. Justice Medina found it significant that those words had been eliminated in the policy under review. The Court interpreted the deletion of the words as further evidence that notice was not a "condition precedent."
- Undecided issue: whether prejudice is required in a claims made policy, where the claim was made late, but still within the policy period.

No Coverage For Old Men: FAILURE TO PROVIDE CARRIER WITH NOTICE OF SUIT FORFEITS COVERAGE, EVEN IF THE CARRIER HAD ACTUAL KNOWLEDGE OF THE SUIT, AND EVEN IF THE INSURED DID NOT KNOW HE WAS COVERED.

In *National Union Fire Ins. Co. v. Crocker*, --- S.W.3d ----, 2008 WL 400398 (Tex.), 51 Tex. Sup. Ct. J. 518 (Tex. 2008), a former resident of a nursing home sued the insured nursing home and its employee who was also an insured under the policy. The "who is an insured" provision defined employees as insureds. The employee did not know he was insured under the policy. The carrier knew that he did not know that the employee had been sued, and yet the carrier did not tell the employee that he was entitled to a defense and possible indemnity as an insured. The claimant lost his claim against the nursing home, but was granted a default judgment against the employee because the employee never answered the lawsuit. The claimant then brought suit against the carrier as a third party beneficiary of the nursing home's policy. The carrier defended by arguing that it had never been given notice. The Texas Supreme Court agreed.

Please see our Chapter Website for additional information:

<http://houston.rims.org/ChapterWebsite/RIMSChapter.cfm?CID=328>

or

WWW.RIMS.ORG – Chapters - Houston

- The Court's holding seems to be circular. The carrier had no duty to inform the hapless insured that he was covered. But, because he did not know he was covered, the hapless insured did not know he should give notice to the carrier.
- While it might be impractical for the carrier to let everyone who is an insured under a policy know that he/she is insured, in this case, the carrier knew who was insured and withheld that information. It then used the fact that the insured did not give notice against the insured.
- The Court distinguished this case from PAJ by saying that in PAJ, the insured gave notice, albeit late, while in this case, the insured did not give any notice at all.

*Information on this matter contributed by:

James Cornell
Cornell & Pardue

Additional information on the changes in the Legal landscape will be forthcoming in future newsletters

A full copy of the opinion is available upon request

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. Additional information will be sent out soon.

Educational Opportunity

If you are unable to attend this month's RIMS Chapter Meeting –

CPCU Society Risk Management Interest Group Members are invited to participate without charge!

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

The CPCU Society's Risk Management Interest Group
proudly presents a webinar on a timeless topic!

Contractual Liability *What's Covered and What's Not?*

When

Wednesday, June 18, 2008
12:05 – 1:05 p.m.

Where

At your computer!

What's it About?

This webinar focuses on one important, and often confusing,
aspect of the Commercial General Liability Coverage Form (CGL):
"blanket" contractual liability coverage.

Cost:

Risk Management Interest Group members: free!

Other CPCU Society members: \$29

Nonmembers: \$39

Presenter

Arthur L. Flitner, CPCU, ARM, AIC

Moderator

Martin J. Frappolli, CPCU, FIDM, AIS

Full webinar details are available online at
<http://www.cpcusociety.org/page/124270/>

RIMS Spring 2008

Professional

Development Schedule

Claims Management*

June 16-17 | St. Louis

Enterprise Risk Management*

June 18-19 | Charleston

Executive Risk: E&O and Professional Liability*

June 19-20 | Toronto

Fundamentals of Insurance

June 24-25 | Denver

Techniques of Risk Management

June 26-27 | Denver

* *Earns you credit towards the RIMS Fellow (RF) Designation*

"Year of Change in the Houston Chapter"

Topics of Interest and Information:

New degree program to be offered in Fall 2008 in Insurance and Risk Management at the University of Houston - Downtown

- Staff Appreciation Day at New Meeting and Luncheon location
- Fall Conference Committees forming
- Networking opportunities
- Vendor Corner
- Continuing Education Credits at many of the monthly meetings in 2008
- Future Social Events

Houston Chapter recognized as a 2008 Chapter of Distinction Award Winner

The Chapter Recognition Program (CRP) was created to annually recognize outstanding chapter achievement and the accomplishments of winning chapters serve as benchmarks for chapter excellence. Congratulations to our membership for achieving this honor.

Welcome New/Renewed Members

Robert Holzman – GEMSA Loan Service, LP
Patrick Stangle – HCP, Inc.
John Ward – Weingarten Realty Investors
Lee Williams – Grocers Supply

Job Postings

National RIMS Website

Director of Risk Management – Dallas, Texas
Assistant Risk Manager – Baton Rouge, Louisiana

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

Local Chapter RIMS Websites

Houston Area:

Director of Risk Management - (2)
Regulatory Compliance Officer
Manager/Supervisor – Risk Management
Assistant Risk Manager – Baton Rouge, Louisiana
Associate Director – Claims
Analyst - Insurance and Risk Management

Austin Area:

Risk Management Specialist
Environmental Health & Safety Specialist
Sales Representative
Property Program Manager – Underwriting
Assistant Director – Program Administration
Assistant Division Director – Risk Management
Developmental Marketing Underwriter

Dallas Area:

Director of Risk Management
Risk Management Specialist

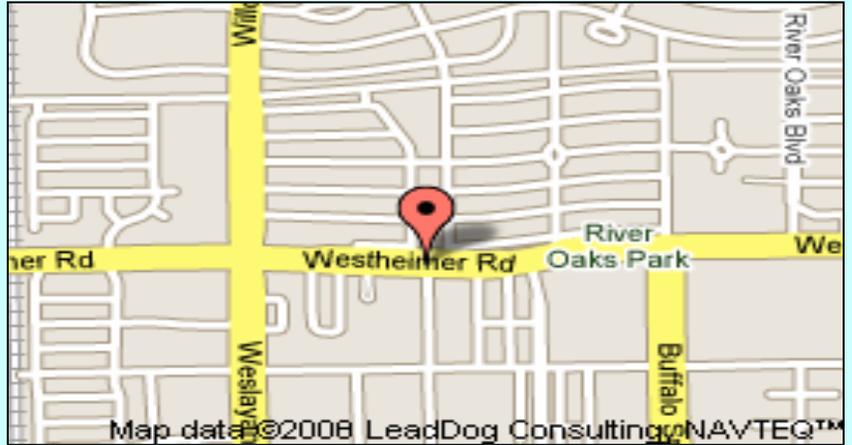
San Antonio Area:

Enterprise Risk Analyst

June Luncheon Meeting Place:

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

Please see following page for directions



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