



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

**RTMS NEWS  
SEPTEMBER  
2003**

**THE AWARD WINNING HOUSTON CHAPTER**  
**Advancing the Risk Management Profession**

## **“Maximizing Insurance Coverage: What Every Business and Risk Manager Should Know About Insur- ance Coverage”**

**James L. Cornell, Haynes and Boone, L.L.P.**

Understanding your insurance policy can make the difference between the policy affording coverage or not affording coverage. “Maximizing Insurance Coverage: What Every Business and Risk Manager Should Know About Insurance Coverage” will allow attendees to gain a working knowledge of their rights under the policy, maximizing coverage, notice requirements, duty to defend, claims v. occurrence, rights under 21.55, proof of loss, primary v. excess coverage, and other language that is basic to most policies.

James L. Cornell was admitted to the State Bar of Texas in 1983. He did his undergraduate education at Houston Baptist University and his legal education at University of Houston and achieved a Juris Doctorate. Mr. Cornell began practicing law in 1983 and joined Haynes and Boone, L.L.P. in 1997. Mr. Cornell is affiliated with numerous associations and has written and presented multiple articles. He has been published in many well-respected periodicals, some of which include Cornell’s Texas Insurance Law Digest, Texas Lawyer, Texas Journal of Insurance Law.

## **MAXIMIZE YOUR INSURANCE COVERAGE**

There is a little known weapon that you, as a business policy owner or risk manager, have on your side in handling first party claims. It is the Prompt Payment of Claims Act. Many risk managers and even brokers are not familiar with this important statute. Rest assured that the carriers and their adjusters are very familiar with this Act. They conduct in-house training on it, know its requirements and deadlines, and know how to frustrate its purpose and avoid its penalties. As a business policy holder, you should know this statute, too.

The Prompt Payment of Claims Act sets out a series of deadlines which the carrier must meet or suffer 18% penalty and attorneys fees. It is a strict liability statute. A violation of any part of the statute subjects the carrier to the penalty. In order to have your claim adjusted and paid promptly, you must know these deadlines and how to use them to force the carrier to respond.

The first step in activating the Act is reporting the claim. Make sure that you give notice of the claim in writing. This step seems very obvious, but it is surprising that, when claims go to litigation, it is often uncertain when the first notice was actually given. Since penalties flow from the first notice, it is important that this step be completed properly and promptly.

The written notice triggers the first deadline for the carrier. Within 15 days, the carrier must do three things: (i) acknowledge the claim; (ii) begin its investigation of the claim;

*(Continues on page 3)*

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# From the President's Desk

Over the past few months our board and our committee members have been working behind the scenes to plan our annual conference. We are all very excited about the programs we have planned for our members. The Fall Conference and Golf Outing will be back at the Woodlands Conference Center this year. As always we appreciate your support through attendance and sponsorship. Please make plans to join us on Friday, October 17th for an educational and fun filled day with your peers. You should have received the registration notice by email this past month, however, if you need a copy you can visit our chapters web site at [www.rims.org](http://www.rims.org).

We are drawing close to the article deadline for the Houston Business Journal. Thanks to those of you who offered to author an article for us. A special thank you goes out the companies who purchased advertising in the HBJ. Without your support, this project would not be possible. We are very excited about this opportunity to showcase the Houston RIMS and CPCU chapters in the upcoming Insurance Supplement. Be on the lookout for it in the October 3<sup>rd</sup> edition of the Houston Business Journal.

See you at the meeting,

*PAM*



## Upcoming Events

### WELLSPRINGS CHRISTMAS PARTY

Believe it or not, the Holidays will be here before you know it. We are already starting to plan our Wellsprings Christmas Party which is scheduled for December 6<sup>th</sup>. We will need volunteers to help go shopping; wrap presents in gift bags and bake cookies, all prior to the party. Then we will need volunteers to join us for the party to setup tables, serve food, help the children decorate cookies, help Santa pass out presents, clean up, play with the children and best of yet, HAVE FUN!

If you are interested in helping out with any of these tasks, please contact Susan Sanders at 713-625-7015 or by e-mail at [ssanders@ContactPSC.com](mailto:ssanders@ContactPSC.com).

**MAXIMIZE YOUR INSURANCE COVERAGE** (Continues from page 2)

and, (iii) request additional information that is reasonably necessary for the carrier to adjust the claim.

The request for additional information is a key provision that the carriers use to frustrate the Act. They request information and then when they receive the information, they request more information. In order to counter this strategy, the business policy owner must: (i) make the carrier put the request in writing; (ii) gather the information and materials as quickly as possible, and provide them to the carrier with a written letter documenting that you have complied with the request; and, (iii) if the carrier then asks for more information or documents, make the carrier state the reasons for the additional information in writing. At a later date, you may need proof that the carrier engaged in unreasonable requests for information.

Once you have provided the carrier with the information and documents requested by the carrier, the second deadline is triggered. The carrier must accept or reject the claim not later than the 15<sup>th</sup> business day after the carrier receives the information and documents.

In the event that the carrier rejects the claim, the carrier must notify the business policy holder in writing of the reasons for rejecting the claim. If for some reason the carrier cannot accept or reject the claim within the 15 business day period, it must notify the insured and state the reasons that it needs additional time. The carrier must accept or reject the claim not later than the 45<sup>th</sup> business day after notifying the insured that it needed more time.

The carrier has 5 business days to pay after it has notified the insured that it will pay all or part of a claim. If payment is conditioned on the performance of some act by the insured, such as providing a proof of loss, or an inspection, then the carrier must pay the claim not later than the 5<sup>th</sup> business day after the act has been performed.

The Act provides two powerful remedies in the event of a violation: an 18% interest penalty and attorney's fees. If the carrier does not comply with any portion of this statute, then the carrier is liable for the amount of the claim, plus 18% per annum penalty, and reasonable attorney's fees. (Continues on next column)

This means that if the carrier does not notify the insured of the acceptance or rejection of the claim within 15 business days after receipt of materials and information, then the carrier is penalized. Likewise, if the carrier does not acknowledge the claim and begin investigation within 15 days of receiving the notice, the carrier must pay the penalty. Finally, if the carrier denies a claim that is later found through litigation to be a valid claim, the carrier will be penalized with the 18% penalty even if the carrier's denial of the claim was made in the good faith belief that the claims was not covered. Good faith is no defense.

As a business policy holder, knowing how to use this Act can provide you with a powerful weapon in your dealings with a carrier. Just as importantly, it can also insure that if you have to litigate against the carrier, you have triggered the provisions of the Act and carefully preserved the penalties, including attorney's fees, which the Act provides you. The carriers know this Act backwards and forwards. Shouldn't you understand it, too?

Written by:  
James L. Cornell, Haynes and Boone



**And the winners are.....**

Door Prize- Bill Hastreiter won a \$20.00 gift certificate from Home Depot.

Speaker Evaluation Drawing - Sondra Faul won \$60.00 cash. We start over with \$20.00 in September.

Remember you have to be present to win.



# Regulatory & Legislative Issues

## Workers' Compensation Headed for Trouble

Texas employers are witnessing a workers' compensation system that is in trouble and on the verge of a major crisis according to the Insurance Council of Texas. Insurers say the driving factors are double-digit increases in medical payments and the increasing amount of time injured employees are off from work. The result has been an increasing number of Texas employers questioning whether or not they are going to continue to carry workers' compensation insurance coverage due to rising premiums.

The Research and Oversight Council on Workers' Compensation (ROC) reported in a February 2002 report that almost half (48 percent) of current subscribers indicated that they would consider dropping coverage if premiums increased by some increment up to 20 percent. The ROC noted that this propensity of employers to seriously weigh the possibility of opting out of the system in the event of higher costs holds across employers of all sizes.

Employers in Texas have the option of maintaining workers' compensation coverage for their employees or going without it.

Steve Nichols, manager of workers' compensation services at the Insurance Council of Texas, says costs associated with medical and income replacement benefits continue to increase despite a decrease in the number of claims, improvements in work site safety, a drop in the number of fatal work related accidents and a decrease in the severity of injuries.

(Continues next column)

"The system has every factor working in its favor with the exception of the cost of treating the patient," said Nichols. "Texas has the highest costs for treating injured workers in the country and the costs keep going up. We have to get a handle on this before workers' compensation insurance becomes completely unaffordable for every business owner."

"The Texas workers comp system is broken and in need of immediate repair. It is fast approaching the point of no return," said Dr. Robert Hartwig, Chief Economist for the Insurance Information Institute. Hartwig said that the state's problems are eerily reminiscent of those in California, where skyrocketing medical costs, fraud, abuse and a state fund with a 50-plus percent market share have pushed the system to the brink of collapse. Hartwig added that neglect of the state's workers comp system ultimately costs the state jobs. "Failure to enact serious reform will raise costs for employers throughout Texas, forcing businesses to scale back on employment or even consider relocating to another state--this is exactly what is happening in California today," he warned.

Texas Insurance Commissioner Jose Montemayor has also commented that this line of insurance is under stress as many companies are showing unacceptable loss ratios, and that we have lost a significant amount of market capacity over companies going insolvent, or not writing the line of business.

The "Top 25" writers of workers' compensation insurance reported cumulative net losses of \$2.1 billion during 2001. The Texas Department of Insurance has reported that seven companies writing workers' compensation policies have become insolvent while two others have gone into run-off and exited the Texas market since 2001.

Another major concern is the fact that the state's "insurer of last resort," the Texas Mutual Insurance Company (Texas Mutual), now writes a quarter of the workers' compensation policies in the state and is growing rapidly.

(Continues on page 5)

## Member's Corner

### The Houston Chapter has the privilege of welcoming the following new Corporate Deputy members:

- Continental Airlines
  - Daniel Dehart, Aviation Hull Claims Manager
- American Bureau of Shipping
  - Thomas Miller, VP General Counsel & Secretary

Meeting Notices, Newsletters and other chapter correspondence are now sent out by **e-mail**. If you are a deputy member and are not receiving yours please let us know by contacting Jim Lyon, Membership Director. All others, Associates and Non-Members, please contact Monica Olis. Deputies can update/correct information by logging on to the Society web site: [www.rims.org](http://www.rims.org).

The increase in Texas Mutual's market share is a clear indication that fewer insurance companies are offering workers' compensation insurance and that premiums will continue to rise.

Nichols pointed to four major problems facing the workers' compensation system:

- Medical costs in the Texas workers' compensation system are the highest in the nation and increasing.
- Injured employees in Texas are off work for longer periods of time as compared to other states.
- Income replacement (indemnity) benefits are on the rise at a time, when the number of injuries is down.
- Insurance premiums will continue to rise as system costs increase.

The Texas Legislature is expected to take action on several workers' compensation issues during the 2005 legislative session as part of its "sunset review" of the Texas Workers' Compensation Commission.

**Used with permission from Mark Hanna, Insurance Council of Texas.**

### Houston Area Job(s) Listing for September 2003

#### **Risk Manager - for a National Restaurant Chain – Houston, Texas (8/2003)**

#### **SYSCO Corporation – Sr. Risk Analyst – (8/2003)**

Sr. Risk Analyst to join the Treasury Department

- ❖ Any job listing descriptions, contacts, etc. can be found at The Houston RIMS website: <http://houston.rims.org/ChapterWebsite/RIMSChapter.cfm?CID=328>
- ❖ For further information regarding positions or to place a job opening for your company in our newsletter, contact Toni Green, Director - Job Placement, via email at [toni.green@nli-usa.com](mailto:toni.green@nli-usa.com) or by telephone at (281) 423-3357.
- ❖ For information regarding National RIMS listings, contact Jennifer Berman at RIMS New York at (212) 286-9292 or email: [jberman@rims.org](mailto:jberman@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: [www.houstonchronicle.com/classifieds](http://www.houstonchronicle.com/classifieds) or look online at the Houston Press's classified web site: [www.houstonpress.com/classifieds](http://www.houstonpress.com/classifieds)

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## Houston Chapter of RIMS

### UPCOMING EVENTS

Luncheon meetings are at 11:30 am

**2003**

**September 17, 2003**

**“Maximizing Insurance Coverage: What Every Business and Risk Manager Should Know About Insurance Coverage”**

**October 17, 2003**

**Fall Conference**

**The Woodlands Convention Center**



**November 19, 2003**

**Roster of New Board Members Presented**

**December 17, 2003**

**50th Anniversary Celebration  
Installation Ceremony: New Officers**

**January 21, 2004**



**February 18, 2004**

**March 17, 2004**

**April-No meeting due to  
42nd Annual RIMS Conference  
in San Diego, CA**

Check the web Site: [www.rims.org](http://www.rims.org) >chapters  
>chapter web sites > Houston.  
Watch for event information.

### Reservation Deadline

is **Monday, September 15, 2003 at 4pm.**  
Please send your response by e-mail to  
[ginny.penzell@el Paso.com](mailto:ginny.penzell@el Paso.com) or fax the  
notice to her, at 713.420.6350.

The Luncheon Registration form is avail-  
able on the chapter web site at  
[www.rims.org](http://www.rims.org)

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

### MEETING PLACE

**Crowne Plaza Medical Center Hotel.**

**6701 Main @ Holcomb, Houston, TX 77030.**

**Phone # 713.797.1110**

**Parking is available in the hotel garage for \$3.00.  
Bring your parking ticket to the registration table  
for a validation sticker.**

**Parking is also available on the surface  
lot to the south of the hotel**

