



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

## THE AWARD WINNING HOUSTON CHAPTER

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

### May 2008

#### In This Issue:

- President's Note
- May 21st Meeting
- Legal Update
- Professional Development Schedule
- Business Continuity and Disaster Planning
- Year of Change
- Chapter Events
- New/Renewed Members
- Job Postings
- Chapter Meeting Place

#### 2008 Officers and Directors

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#### *FROM THE DESK OF THE CHAPTER PRESIDENT...*

RIMS National was **April 27th – May 1st** in San Diego. I saw lots of Houston faces in San Diego and everyone seemed to be having a great time. If you attended the RIMS Awards Luncheon, you know that the RIMS Houston Chapter received two awards from National, one was as Chapter of Distinction for Outstanding Chapter Programming and the other was Chapter of Distinction for Advancing the Risk Management Profession. Thank you to everyone for making this possible.

The **May 21st** Chapter meeting is dedicated to thanking the volunteers and support staff for all they do to help the RIMS Chapter throughout the year. Please join us on May 21st when our special speaker, Richard Justice, a sports columnist for the Houston Chronicle and correspondent for ESPN, shares with us his sports "war" stories. Also, remember that the **May meeting will be at the Briar Club** on Timmons.

Finally, if you have not already done so, please mark your calendar for the RIMS Houston Chapter Fall Conference at The Woodlands Resort 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](mailto:Ginny.Penzell@elpaso.com) or Marty Timpano at [timpano.marty@corp.sysco.com](mailto: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 the above events.

See you soon!

**Ginny Penzell**

### Vice President/Secretary

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## May Meeting Topic and Speaker

### Volunteers and Support Staff Appreciation Meeting

#### "NEW MEETING LOCATION"

**The Briar Club  
2603 Timmons Lane  
Houston, Texas 77027**

Without the help of volunteers and support staff, our monthly Chapter meetings, the Chapter Fall Conference and our annual Wellsprings event would be impossible. Our May meeting is dedicated to thanking all those who have helped make our Houston Chapter such a success. Please join us at this month's meeting so the RIMS Houston Chapter can express our appreciation.

The speaker this month is Richard Justice, the lead sports writer for the Houston Chronicle. He is a native of Forrester, Texas, and a 1976 graduate of the University of Texas. He has worked at newspapers all over Texas as well as Chicago, Baltimore and Washington. He has covered the Dallas Mavericks, Dallas Cowboys, Baltimore Orioles and Washington Redskins, among others. Richard spent 14 years at The Washington Post before joining the Chronicle in July of 2000 and was named lead sports columnist in 2004. He is married and the proud father of two daughters, Katy, 20, a junior at the University of Texas, and Lizzie, 16, an All-American swimmer at The Woodlands High School.

Richard will be speaking to us about -- what else -- sports, and will take a look at the state of our local teams. He will also tell some funny stories from his time covering sports.

Be sure to join us. It will be a great day!

## Past President

Cynthia Vickers, ARM  
El Paso Corporation  
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## Web Master

Pending

## Meeting Dates for 2008

May 15, 2008

Member Appreciation Social Event

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

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## SEA-CHANGE: THE CHANGING TIDE OF TEXAS INSURANCE JURISPRUDENCE

After a long silence, the Texas Supreme Court has exploded in the last several months, delivering a string of significant insurance opinions, at times withdrawing previously issued opinions and issuing wholly new decisions with completely different results and reasoning. The opinions range across a broad spectrum from the procedural to the substantive, and may finally represent a sea-change in the approach that the Texas Supreme Court takes to insurance issues. Below are some take away points of the more important recent decisions.

### REVERSAL OF MISFORTUNE: TEXAS SUPREME COURT ISSUES A STUNNING REVERSAL AND DENIES SETTLING INSURER'S REIMBURSEMENT CLAIM

In 2005, the Texas Supreme Court set off a firestorm when it issued its original decision in *Excess Underwriters at Lloyd's, London v. Frank's Casing Crew & Rental Tools* 2005 Tex. LEXIS 418; 48 Tex. Sup. J. 735 (May 27, 2005). In that opinion, the Texas Supreme Court reversed its previous holding in *Texas Ass'n of Counties County Gov't Risk Management Pool v. Matagorda County*, 52 S.W. 3d 128 (Tex. 2000). The Supreme Court created a new extra-contractual right of reimbursement in favor of carriers which settle claims that eventually turn out not to be covered. After re-hearing, and the participation of numerous amicus briefs, the Texas Supreme Court stunned the legal community on February 1, 2008 by withdrawing its former opinion, and reversing course 180 degrees.

The issue in *Frank's Casing* is whether the carrier has a right to be reimbursed for the settlement of a claim if it is later determined that there was no coverage for the claim in the first place. The Texas Supreme Court has now held that an insurance carrier *does not have an extracontractual right of reimbursement* for the settlement of uncovered claims. *Excess Underwriters at Lloyd's, London v. Frank's Casing Crew & Rental Tools*, 2008 WL 274878 (Tex. Feb. 1, 2008). This holding does not apply, however, if the insured gives its unequivocal agreement to reimburse those funds if a determination of non-coverage is made or reimbursement is written into the insurance contract.

- A carrier cannot unilaterally create a right of reimbursement through a reservation of rights.
- Reimbursement can be achieved through the express policy language.
- Nevertheless, if a carrier sends a reservation of rights and states that it is seeking reimbursement if the claims are later determined not to be covered, you should object in writing.

## 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.

- The original opinion had created an apparent conflict of interest between the insurance defense counsel and the insured. If a settlement demand was received and the defense counsel forwarded it to the carrier with a request or demand that the carrier accept the offer, the defense counsel could be seen as triggering a right of reimbursement in favor of the carrier, to the detriment of its client. This conflict has been ameliorated by the new opinion.
- There is no indication that carriers will be more successful in securing reimburse for defense costs if the claims are not covered.

## **POLICIES SHOULD BE WRITTEN IN “PLAIN ENGLISH, NOT CODE:” CONSTRUCTION DEFECTS ARE “OCCURRENCES”**

In *Lamar Homes, Inc. v. Mid Continent Cas. Co.*, 242 S.W. 3d. 1 (Tex. 2007), the Texas Supreme Court observed that insurance policies should be “written in English, preferably plain English, not code.” In *Lamar Homes*, the insured builder sought a declaratory judgment that its commercial general liability insurer owed a duty to defend and indemnify the insured in a homeowners' suit alleging construction defects. The homeowners purchased a new home from Lamar Homes, Inc. and several years later encountered problems that they attributed to defects in their foundation. The homeowners sued Lamar and its subcontractor complaining about these defects. Lamar forwarded the lawsuit to Mid-Continent Casualty Company seeking a defense and indemnification under its commercial general liability insurance policy. Mid-Continent refused to defend, prompting Lamar to seek a declaration of its rights under the CGL policy.

The Texas Supreme Court ruled as follows:

The complaint alleges an “occurrence” because it asserts that Lamar's defective construction was a product of its negligence. A “construction defect” can qualify as an “occurrence.”

- The Texas Supreme Court clearly rejected preconceived, overarching doctrines about what the policy covered, and instead focused on the language of the policy.
- The general liability policy does not refer to torts or contracts. It covers “occurrences” that cause “property damage” without regard to the legal theory under which they are asserted. The conventional wisdom that insurance does not cover a breach of contract is not true.
- The general liability policy does not require that the property which experiences the damage be third party property. It does not define damage by reference to ownership.
- The holdings regarding “property damage” and “occurrence” are not limited to construction defect cases.
- The economic loss doctrine is a defense to liability, not a defense to coverage or a tool for policy interpretation.



CHANGE THE WAY  
YOU TALK ABOUT RISK

- The Court examined the evolution of the policy language by referring to prior forms of the policy, and found the introduction of the subcontractor exception to the exclusion to be significant in interpreting the policy.
- The Prompt Payment of Claims Act and its 18% per annum penalty + attorneys fees applies to the duty to defend. When the carrier wrongfully refuses or delays in payment of defense, this statute provides leverage.
- This is another case where amicus briefs were key in persuading the Supreme Court.

### **THERE WILL BE BLOOD: SUPREME COURT REWARDS “OBJECTIVELY UNREASONABLE” CARRIER FOR ITS OBSTINACY**

In *Mid Continent Ins. Co. v. Liberty Mutual Ins. Co.*, 236 S.W. 3d 765 (Tex. 2007), two primary carriers paid widely disparate amounts to settle a claim against their common insured. The Texas Supreme Court held that the carrier which paid the bulk of the settlement, Liberty Mutual, cannot recover against the underpaying primary carrier, Mid Continent, under either contribution or equitable subrogation theories. In so doing, the Supreme Court unraveled decades of custom and law in circumstances where two carriers cover the same loss.

- This is one holding that is bad for both carriers as well as insureds.
- The Texas Supreme Court was under the mistaken impression that this fact situation did not arise often and its opinion would have little practical effect.
- The opinion has a seriously detrimental effect on settlement where two carriers have concurrent coverage.
- No longer can the reasonable carrier settle and the seek recovery through secondary carrier-versus-carrier litigation.
- The reasonable carrier would not be able to recoup its “overpayments” from its reinsurer, because the “overpayments” have been ruled to be voluntary.

\*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

Please see our Chapter Website for additional information:

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

or

[WWW.RIMS.ORG](http://WWW.RIMS.ORG) – Chapters - Houston

**Educational and Associations Websites:**

**American Institute for CPCU and Insurance Institute of America**  
[www.aicpcu.org](http://www.aicpcu.org)

**Charter Property Casualty Underwriters Society**  
[www.cpcusociety.org](http://www.cpcusociety.org)

**Institutional Risk Management Institute**  
[www.irmi.org](http://www.irmi.org)

**The National Alliance**  
[www.scic.com](http://www.scic.com)

**Construction Risk and Insurance Specialist**  
[www.cris-ce.com](http://www.cris-ce.com)

**RIMS Spring 2008**

**Professional**

**Development Schedule**

**Move Your Program to the Next Level: RIMS Risk Maturity Model for ERM\***

May 19-20 | Atlanta

**El Proceso de Administración de Riesgos**

May 19-20 | Miami

**Fundamentals of Insurance**

May 20-21 | New York

**La Administración Integral de Riesgos (ERM)**

May 21-22 | Miami

**Enterprise Risk Management for the Advanced Practitioner\***

May 21-22 | Chicago

**Techniques of Risk Management**

May 22-23 | New York

**Enterprise Risk Management\***

May 29-30 | San Francisco

**Directors and Officers Liability and Insurance\***

June 5-6 | Ottawa

**Workers Compensation Management\***

June 9-10 | Scottsdale

**Move Your Program to the Next Level: RIMS Risk Maturity Model for ERM\***

June 11-12 | Washington, D.C.

**Strategic Risk Control\***

June 12-13 | Philadelphia

**Risk Analysis Tools for Effective Risk Management\***

June 12-13 | Vancouver

**Finance for the Risk Manager\***

June 12-13 | New York

**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*

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### Business Continuity/ Disaster Planning and Management (BC) A RIMS Fellow Workshop

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*May 29-30, 2008 - Houston, Texas*

Does your organization have an effective business continuity plan? Join us and learn to help your organization prepare and deal effectively with a crisis and to recover from the event as soon as possible. Obtain the latest information on the subject. Leading business continuity expert Shanda Chronowich, Protiviti, Inc., will be facilitating this workshop.

For registration information, visit: [www.RIMS.org/bcm0508](http://www.RIMS.org/bcm0508)

### Our new Houston Chapter RIMS address is

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

### "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

**A Spring Member Appreciation Evening Social was held on  
May 15, 2008 at Champps Americana!**

A great time was had by all who attended

**Watch for future events in the coming months**



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## Houston Chapter members participate in the recent MS150

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Over 13,000 riders participated in this event to raise money for the National Multiple Sclerosis Society. The ride is from Houston to Austin and many members of the Houston Chapter competed in this event. Our own board member, Sondra Faul, and her son, Joseph, completed the ride.

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## Welcome New/Renewed Members

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Corey Cochran – Cotton USA  
Jill Gough – Hines  
Michelle Lusk – Tellespen Builders, LP  
Charles Sommer – Tellespen Builders, LP  
Robert Sturdivant – Quintana Minerals Corporation  
Corey Washington Tesco Corporation

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## Job Postings

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### National RIMS Website

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

### Local Chapter RIMS Websites

#### Houston Area:

Manager/Supervisor – Risk Management  
Assistant Risk Manager – Baton , Rouge, Louisiana  
Associate Director – Claims  
Analyst - Insurance and Risk Management  
Claims Analyst  
Claims Supervisor

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



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:

Risk Management Specialist

San Antonio Area:

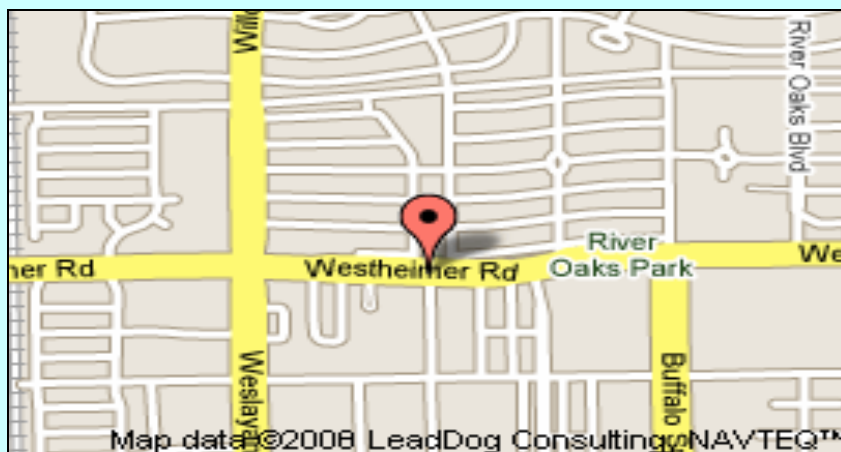
Enterprise Risk Analyst

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May Luncheon Meeting Place:

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

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Direction 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