



Risk and
Insurance
Management
Society, Inc.

THE AWARD WINNING HOUSTON CHAPTER

Chapter of Distinction

Outstanding Chapter Programming

Advancing the Risk Management Profession

November 2008

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FROM THE DESK OF THE CHAPTER PRESIDENT...

The RIMS Houston Chapter Fall Conference and Golf Tournament at The Woodlands Resort on October 17, 2008 was truly an educational and financial success, thanks to all our wonderful volunteers, contributors, participants, sponsors and speakers. I want to especially thank John Ledbetter for organizing and running a great golf tournament, Marty Timpano for not only co-chairing the conference but also organizing our first conference exhibition and all the board members for their untiring donation of time and excellent skills. The profits from the Fall Conference will go support Risk Management educational programs and scholarships at the University of Houston. Thank you for helping us achieve our goal of supporting Risk Management education in our community.

Every year the RIMS Houston Chapter sponsors a holiday party for the children of Wellsprings, a nonprofit organization that provides transitional and long-term housing to homeless and abused women. The mission of the organization is:

"To provide a safe, growthful environment for homeless and abused women, including those with children. We seek to empower them to become economically and emotionally self-sustaining members of society."

This year, the **Wellsprings Holiday party will be on Saturday Dec. 6th**. If you would like to help purchase gifts, plan activities for the party or help us celebrate, please contact me at ginny.penzell@elpaso.com or Pam Chavez at Pamela.chavez@marsh.com. More information will be sent out soon.

Our November monthly luncheon will be held on **Wednesday, November 19th** and will be roundtable discussions on the **"Use of Personal Autos for Company Business,"** This will be a great opportunity to discuss a relevant issue with your peers and gain insight into how different companies handle these situations. It will also be a good networking opportunity so bring your ideas and business cards and be prepared to share both!

The December luncheon and meeting will be held on **December 10th**.

Hope to see you soon!

Ginny Penzell

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November Meeting Topic and Speaker

Wednesday, November 19, 2008

11:30 AM – 1:00 PM

Topic: Roundtable Discussions on "Use of Personal Autos for Company Business" and Recognition of those who recently completed the Associate in Risk Management

The Houston RIMS Chapter November's luncheon will be roundtable discussions on the "Use of Personal Autos for Company Business". This will be a great opportunity to discuss a relevant issue with your peers and gain insight into how different companies handle these situations. It will also be a good networking opportunity. Please bring your ideas and business cards and be prepared to share both!

We will also recognize the individuals who have recently completed the Associate in Risk Management. We encourage all members to continually pursue educational objectives as a means of enhancing their knowledge in the evolving world of insurance and risk management and want to publicly congratulate and acknowledge this achievement. This luncheon meeting will not provide Continuing Education credit.

Risk Management Discussion

Where the Rubber Meets the Road: Risk Management for Employees Who Drive

BY JONATHAN COPPELMAN

When employers hire drivers, they routinely check driving records. That's just common sense. But when the same employers hire craftsmen, salesmen, technicians, attorneys, accountants, and others who have to drive to carry out their jobs, the screening focuses exclusively on the technical skills needed to perform the work. Is the individual a good carpenter or electrician? Is the individual a good salesperson? The employer rarely examines the applicant's driving skills. At most, the applicant must show proof of having a valid driver's license. Many times, employers accept the individual's word on having a license; they do not even ask to see it.

Throughout the American work force there is a pervasive disconnect between risk management programs and ordinary driving. In my experience with thousands of employers, I often see elaborate safety plans documenting evacuation routes, protocols for storing chemicals, proper

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Web Master

Pending

Meeting Dates for 2008

November 19, 2008
ARM Completers Recognition

December 6, 2008
Wellsprings Holiday Party

December 10, 2008

The Houston Chapter RIMS
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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.

lifting techniques, ladder safety, and so forth. Yet the fundamental fact remains that the highest risk for dying at work is the time spent behind the wheel of an automobile, and this is rarely addressed in safety plans. Driving is the most dangerous part of the workday for many people. However, for most employers, risk management ends, literally, where the rubber meets the road.

This disconnect occurs because most employers assume that their people not only know how to drive, but that they are adequate drivers. They assume a good mechanic or a good salesman is also a good driver. This assumption may not only be inaccurate, it's also fraught with hazard for the employer.

THE CONCEPT OF ENTRUSTMENT

Whether employers realize it or not, they have endorsed the driving skills of every individual who operates a vehicle during the course and scope of employment. This includes both the employee who was specifically hired to drive and also the employee who drives only rarely — running an errand, picking up some supplies, or dropping deposits at a bank when the person who normally performs the function is not available. It might even include the youthful summer intern who is given the keys to a vehicle to run an errand.

Just as an employer is responsible for the employee who operates a complicated machine press, employers are presumed to have taken steps to ensure that all employees behind the wheel during work are safe drivers. Employers have "entrusted" employees with driving responsibilities. If the employee has a record of dangerous driving, if his or her driving poses a direct threat to the safety of other drivers and pedestrians, it may be "negligent entrustment" to allow this individual to drive. If a serious accident should occur with the employee at fault, the employer will be liable for any damages that follow.

DRIVING AND WORKERS COMPENSATION

Is your company vulnerable? Does your company's safety program include explicit policies on safe driving? Is management fully aware of the driving records of every individual who operates a motor vehicle while performing his or her job? Most important, is "safe driving" defined as an essential job requirement? All too often, even the most comprehensive safety programs stop abruptly when employees climb into a motor vehicle. The safety focus is on every skill needed for the job except driving.

And while it is true that auto or liability insurance often comes into play when accidents occur on the road, if an injury happens to an individual who is working, workers compensation coverage pays the first dollar for that injury. There can be a direct correlation between driving skills of employees and workers compensation costs.

In addition to the injuries, motor vehicle accidents often involve loss of company property, prolonged loss of productivity from key employees, and serious disruption in the flow of business. The cost of the accidents far exceeds the direct insurance losses. Therefore, a focus on driving skills must be an essential part of every employer's risk management program.

WHEN ARE EMPLOYEES WORKING?

One of the most interesting aspects of workers compensation is determining

Please see our Chapter Website for additional information:

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

or

WWW.RIMS.ORG – Chapters - Houston

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

when an individual is "in the course and scope" of employment. In other words, when are employees working, and when are they on their own? Many of the ambiguous "course and scope" issues that I've encountered have occurred while people are in their cars.

In many instances, people are clearly "at work" while driving in cars. Some examples might include:

- a salesman on the road visits a sequence of clients in different towns;
- an electrician finishes one job and heads for another in his van;
- a company vice president flies to a distant city and drives off in a rental car to attend a meeting; or
- An administrative assistant drives to an office supply store to purchase work-related items.

In all of these cases, the individuals must drive in order to carry out their job-related responsibilities. If they become involved in accidents, their injuries, in most instances, will be covered by workers compensation. (Here's a possible exception: If a driver suffers a seizure and crashes his vehicle, the predominant cause of the accident might have nothing to do with work and hence, even though the person is "at work," the injury might not be covered by workers compensation.)

POLICIES ON ALCOHOL

Alcohol abuse is potentially a major issue in the relative safety of employees operating motor vehicles. Many employers in high-risk workplaces, such as construction or heavy manufacturing, have adopted zero tolerance policies about alcohol in the workplace. There obviously can be tragic consequences for any alcohol-impaired employee trying to work in these demanding environments.

The federal government has long recognized the danger of alcohol on our roadways. The U. S. Department of Transportation has established strict policies on substance abuse and drug testing for drivers holding commercial licenses. Operators of heavy vehicles and buses are routinely drug tested after every accident. Yet employees who drink and drive in the course of daily employment pose just as great a risk to the public as impaired commercial drivers as operators of heavy equipment.

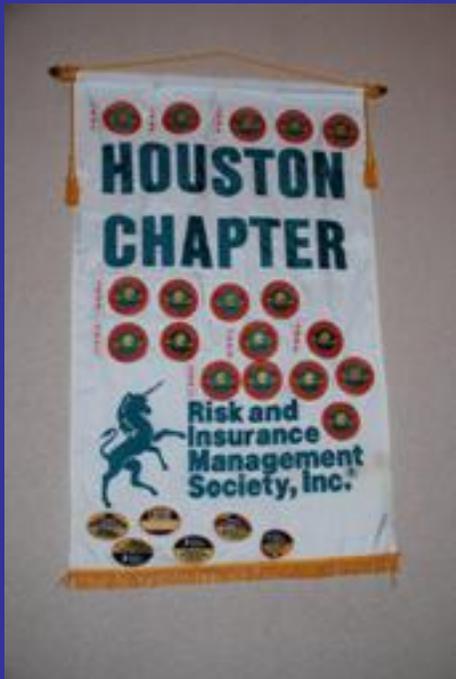
For example, many companies encourage employees to "entertain" actual or potential customers. While these employers might even have a zero tolerance policy on drinking in the workplace, they turn a blind eye to the social drinking that is considered a necessary part of doing business. The sales process may involve a few drinks at a local bar, followed by dinner (with a few more drinks), then a friendly lift back to the hotel. Unfortunately, at any number of points along the way, the employee may be in no condition to drive. Nevertheless, the drinking under these conditions is definitely work-related, and the liability for injuries to the employee falls under workers compensation.

An exception to this liability might emerge if the company could demonstrate that it not only has policies prohibiting the consumption of alcohol, but the policies are consistently enforced. In such cases, subsequent claims might be denied due to the "willful intent" (drinking to incapacity) of the employee.

"TO AND FRO"

An individual in the normal commute to and from work is not considered "in

2008 Fall Conference



course and scope" of employment. If employees have accidents on the way to or from work, they are usually on their own and will not have access to benefits under workers compensation. However, there are a number of circumstances when employees may be covered during the commute. For example:

- An on-call employee is called back to the workplace. This individual is usually covered from home to work and then from work back to home.
- An employee has no geographic starting point for employment (e.g., a salesperson). He or she heads off in a different direction every morning. There is no single "workplace." This individual is covered from the time of leaving the home until returning.
- An employee conducts a work-related errand. An employee is asked to pick up some supplies on the way home. This "deviation" is considered part of employment and any accident or injury during the "deviation" from the regular route would be covered.
- An employee heads out for lunch in his personal vehicle (a "personal errand" not covered by workers compensation). A supervisor asks the employee to "pick up some fries." This errand now has a work-related aspect and workers compensation may well apply under the "dual capacity" concept.

What is striking about these "to and fro" exceptions is how common they are. Even though employees in the above situations might drive only rarely under the workers compensation umbrella, in most states they are covered by workers compensation. Hence, any accidents would have a direct impact on the employer's experience rating (or self-insurance, for those who cover their own losses).

Sometimes coverage may begin even before an employee gets into his or her car. On-call employees are covered from the moment they receive the call back to work; a fall down the stairs at home might be considered workers compensation! In a case from Connecticut, a salesman was asked to go out on the road immediately after a snowstorm. He didn't want to go, but his supervisor insisted. While shoveling the snow from his driveway, he had a heart attack. The Connecticut Supreme Court determined that he was "in the course and scope" of employment, because he had to clear the driveway in order to operate the car. And he had to operate the car in order to carry out his job.

VOLUNTEERS AND SUMMER HELP

It's important to remember that anyone who carries out the interests and work of the employer may be considered an employee under workers compensation.

As a result, exposure to workers compensation liabilities in driving may not be limited to conventional employees. For example, some organizations rely heavily on volunteers. These volunteers may be called upon to provide transportation to clients or to run errands in their vehicles.

While not technically "employees," when these individuals become involved in injuries, the courts often place a dollar value on the work they provide and extend workers compensation benefits to them.

It's also worth thinking about summer help. Many companies provide summer jobs to young people. These youthful employees might have their own vehicles and might be asked to run some errands, or they might be given the keys to a company vehicle and asked to drive. This is a very risky



situation for the employer. On the one hand, statistics show that younger drivers are much more likely to have accidents; on the other hand, the screening of summer hires — and specifically, a check of driving records — is often a very low priority.

NOT-SO-INDEPENDENT CONTRACTORS

In another gray area pertaining to coverage, many small general contractors hire independent contractors to carry out at least part of the work. The building of firewalls to keep these independents off the workers compensation payroll is well beyond the scope of this article (but an area that often comes up in employer seminars). However, it is worth mentioning that many “independents” fail to meet the criteria for independence, and hence end up on the payroll as part of the workers compensation calculation. The argument that they are paid via the 1099 form is not compelling to an insurance auditor or, for that matter, to a claims specialist.

It does not require a great stretch of the imagination to envision the following scenario: A subcontractor with no workers compensation insurance of his own is involved in a serious vehicular accident while picking up materials for the jobsite. Even though he is a long-time friend of the general contractor, he might try to file a claim under the general contractor's policy to cover his huge medical bills and help replace his lost income. If he does not meet the explicit criteria for “independence” — and many subs do not — his claim could well be accepted and would have a direct impact on the general contractor's insurance costs.

SAFE DRIVING POLICIES

It should be clear that there are driving exposures for almost all employers, and that these exposures can have a dramatic impact on workers compensation costs. As a result, safe driving must be an integral part of every employer's risk management program.

Every company with employees on the road should have explicit policies concerning safe driving, and every company should define safe driving as an essential job requirement.

At the heart of a written safe driving program, I recommend that employers develop a written contract, with explicit driving standards, to be signed annually by every employee who may drive in the course and scope of employment. This contract should be signed not only by those who drive regularly, but also by those who might be asked to drive only rarely. At a minimum, these contracts should cover the following:

1. The importance of courteous and defensive driving.
2. Mandatory use of seat belts for the driver and any passengers.
3. Policies on cell phone use. (see below)
4. Policies on drug and alcohol use.
5. Annual submission of motor vehicle driving records and proof of a valid driver's license.
6. Policies on garaging and loaning company vehicles to non-company drivers.
7. Requirement that any accidents be reported immediately.
8. Requirement that any moving violations (on or off the job) be reported within seven days. (Be prepared to take disciplinary action when you learn of moving violations!)
9. Requirement that any medication that might impact driving be reported.



Each employee should sign this agreement annually. One copy should go to the employee and one should go in the personnel file. When a new employee joins the company, the form should be included in the orientation packet.

In addition, if employees might find themselves in a position to drive customers around in personal vehicles, seat belts for passengers should be required. Prudent employers will also require proof that their employees carry adequate insurance (with coverages up to specified minimums).

POST-ACCIDENT DRILL

An important part of a safe driving program involves the reporting and documentation of accidents. Does your company tell employees how to respond after a driving accident? Do they know what to say and what not to say? Have they been trained to take accurate notes?

For example, do they know that they need to document not just the name and license number of other drivers involved, but also the names of passengers in their own and in other vehicles? Do they know how to secure the names of witnesses? Virtually all employers instruct their employees how to report accidents at the worksite, but often these reporting protocols ignore incidents that happen on the road.

I recommend keeping a comprehensive accident kit in each company vehicle, as well as making these kits available to any employees who commonly drive in the course of carrying out their jobs.

The kits should provide guidance to employees about what to do, what to say, and how to document the incident. In high-risk areas (such as my hometown of Boston), disposable cameras might be provided so that the incidents and resulting damage can be photographed.

A MANAGEMENT ISSUE

Safe driving is like any other aspect of a business. Once senior managers identify the issue, there are many positive steps that can be taken to minimize risk. As with other safety issues, driving does not manage itself. It requires time, attention, and resources. But given the extraordinary exposures that we all face on the roads of America, it is well worth the effort. Safe driving must be defined as an essential job requirement for every employee who drives — anything less is a recipe for disaster wherever the rubber meets the road.

Legal Discussion

In the past few weeks, the Houston area has lived through a hurricane and its devastating impact. We hope that everyone reading this message fared well through the storm. Houston and the surrounding area have been dealing with the aftermath of Hurricane Ike.

Natural disasters caused by Hurricanes Ike, Katrina and Rita, and man-made disasters such as the destruction of the World Trade Centers have focused new attention on business interruption and extra expense. Business interruption insurance is one of the least

understood of the insurance coverages that a business may maintain. The policyholder's property insurance pays the policyholder for damaged property, but it does not protect the policyholder from loss of income or extra expenses. Business interruption coverage provides insurance coverage these losses, and can help can place the policyholder in the position it would be in if "no loss had occurred."

Attached with our newsletter is a very informative white paper by James Cornell of Cornell & Pardue on the following subject.

"HURRICANE IKE: HOW TO PREPARE, SUBMIT AND WIN YOUR INSURANCE CLAIM"

2008 Fall Conference

The Houston Chapter of the Risk & Insurance Management Society 2008 RIMS Fall Conference

The year's "Building for the Future" conference was truly an educational and financial success, thanks to all our wonderful volunteers, contributors, participants, sponsors and speakers. The profits from the Fall Conference will go to support Risk Management educational programs and scholarships at the University of Houston. Thank you for helping us achieve our goal of supporting Risk Management education in our community.

2008 - 2009 Houston Chapter Membership Directories

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

Professional Development Schedule

Techniques of Risk Management

November 19-20 / Miami

Examine the major concepts in risk identification, including risk mapping and quantifying losses. This workshop also covers risk financing, including a special section on the use of captives.

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

November 20-21 / Phoenix

A RIMS Fellow® (RF) workshop

Learn how to determine the current ERM maturity level of your organization, build an ERM charter to provide a stronger mandate for ERM and create an annual action plan to adopt the most important practices that drive ERM quality.

Entrepreneurial Risk Management (ERMe): Risk Management as a Profit Center

December 4-5 / New York

A new workshop

This workshop covers the essentials of entrepreneurial risk management (ERMe) and will teach you how to begin the process in your organization.

Enterprise Risk Management Boot Camp Webinar

Available On-Demand

This enterprise risk management (ERM) webinar provides viewers with a practical, hands-on approach to ERM implementation. The concepts and tools presented will help the traditional risk manager turn the corner in launching a process that aligns risk management efforts with an organization's overall strategic goals. **Julie Pemberton, Manager Enterprise Risk Management for Chiquita Brands International, Inc.** and **Ruth Unks, Risk Manager for Maricopa County Community College District**, will provide an introduction to ERM and practical examples for implementation from their own organizations.

This 45-minute webinar is listed in the RIMS Webinar Archives and is available on-demand for your convenience. The webinar also includes contact information for each presenter in case you have further questions. The webinar can be viewed at www.RIMS.org/ERMbootcampwebinar

The registration fees for this webinar are: RIMS Members-\$30, Non-members-\$75

2009 National RIMS Conference

Registration for RIMS 2009 Conference & Exhibition is now open!

Developing a solid risk program means encountering many twists and turns.

Learn how to navigate the complexities of risk at **RIMS 2009 Annual Conference & Exhibition in Orlando on April 19-23.**

With 120+ sessions offered at all experience levels and presented by 400 industry experts, you'll find the instruction you need to strengthen your risk program.

Browse the Exhibit Hall and find hundreds of companies offering the latest innovations and breakthrough solutions. And be ready—you'll experience networking opportunities at every turn.

Register now at www.RIMS.org/RIMS2009 and save \$105! Early bird registration rate expires February 20, so don't delay!

Welcome New/Renewed Members

Samuel Brightwell - McDermott International, Inc.
Jeff Bullen – Shell Oil Company
Wayne Caldwell – David E. Harvey Builders, Inc.
Paula Dimarco – Shell Oil Company
Kristin Gasser – Total Safety US, Inc.
Jon Gifford – Link Staffing Services Corporation
James Mason – MAXXAM, Inc.
Barry Meeks – American Bureau of Shipping
James Rief - Total Safety US, Inc.
Charlene Ripley – Linn Energy
Heather Sturrn – Linn Energy
Michael Thompson – Gordius Consulting, LLC

Job Postings

National RIMS Website

Director, Risk Management – Houston, Texas
Risk Manager – Irving, Texas
Manager, Claims – Dallas, Texas
Risk & Safety Manager – Dallas, Texas

Local Chapter RIMS Websites

Houston Area:

Director of Risk Management
Claims Analyst
Manager, Casualty
Assistant Risk Manager and Insurance Analyst

Austin Area:

Claims Adjuster
Personal Lines Homeowners Property Claims Adjuster

Dallas Area:

Insurance and Captives Manager
Director, Risk Management (2)

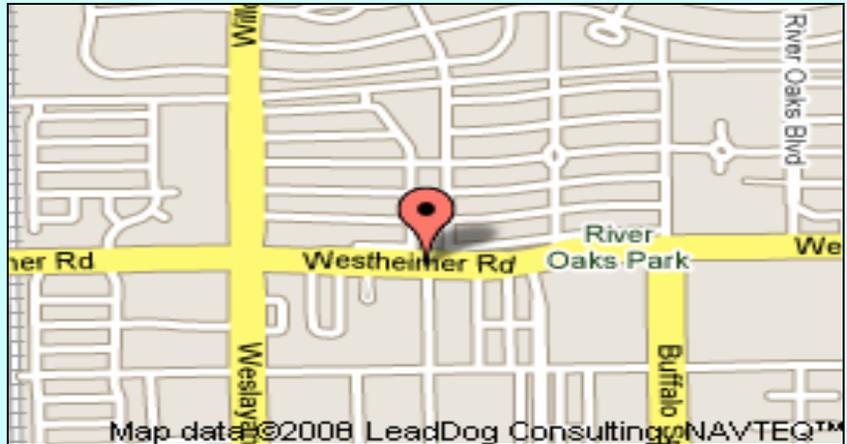
San Antonio Area

Risk Analyst

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

November 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