



March 2011

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2011 REGIONAL RISK MANAGEMENT SEMINAR

sponsored by **texasprima** Texas Chapter Public Risk Management Association

**Save The Date!**  
**Regional Risk Management Seminar**  
**March 10th**

Harris County of Texas Prima’s Gulf Coast Region will host this year’s first Regional Risk Management Seminar. The seminar will be held on March 10<sup>th</sup> at the Baldree Building. The building is located at 13828 Corpus Christi Street, Houston, Texas.

Registration will begin at 8:30 a.m., followed by the presentations and lunch, which is sponsored by **KRS MSA, LLC**. The day will wrap up at 2:15 p.m. For more details and to register, visit [www.texasprima.org](http://www.texasprima.org).

**Ruminations from the President**



Another year - another president! I am excited and honored to serve as the Texas PRIMA president in 2011, and will work hard to assist our membership in facing our shared challenges head on, with opportunities to network and share best practices with colleagues from across the state. As a new year begins, your board members are working hard to find ways to help take Texas PRIMA to a new level. And this year looks to be getting off to a stressful start - presenting another set of challenges for us in the field of public entity risk management!

**What will 2011 bring for our members?**

As we are all very well aware, the Texas Legislature is now in session and the reality of the impact of the national recession is finally and fully impacting the Lone Star State. We read articles daily in our local papers about the impact of revenue reductions, budget cuts, and potential layoffs at all levels of State and Local Government. Working to maintain programs and services at levels our public is accustomed to will prove to be a daunting task over the next couple of years.

It has been said in the past that our profession needs to emphasize the value of cost saving strategies and tools to help our entities manage through difficult times. This year will emphasize the increasingly significant role played by those of us in the risk management field as we demonstrate the effectiveness of our programs.

Texas PRIMA intends to do its part to help you, our members. We are planning valuable, cost efficient ways to provide resources that will give you the tools you need to enhance your knowledge as well as offer opportunities for members to network and



learn, including webinars, regional meetings, and of course the annual conference.

At the recent board meeting in January, your representatives were tasked with planning these events and opportunities. Like our public entities, we are also faced with the need to do more with less. In addition to ongoing evaluation and planning for our annual conferences, new committees were assigned, our budget was set, regional seminar preparations got underway, membership enhancements were discussed, awards programs got revamped, and new membership dues and conference rates were set. Finally, we excitedly welcomed our newest board member, Sharada Phillips, from City of Waco.

Your membership with Texas Chapter PRIMA will continue to provide you with opportunities to help you and your entity throughout the year. We are all in this together and together we will be even stronger. You can help by spreading the message about Texas Chapter PRIMA membership to your peers who may not be members at this time.

Last year was a very active year, culminating in a conference that exceeded our expectations. This success could never have been achieved without the support of our members and corporate partners. Meeting the needs of our chapter members continues to be “job one” and we are here for you. As always, if you have any recommendations or suggestions, please don’t hesitate to contact Texas PRIMA and let us know.

Tracy Seiler,  
Texas PRIMA President

## WELCOME NEW MEMBERS TO TEXAS PRIMA



The Texas PRIMA Board of Directors would like to take this time to introduce new members to the organization. Please join us in extending, to our new members, a warm welcome to the largest state chapter of National PRIMA where they will have access to a multitude of resources available through their membership by becoming a part of a large pool of risk management professionals.

### **New Members:**

Rodney Bouffard – Texas Schools Property Casualty  
Rudy Fuentes – City of Corpus Christi  
Janie Gonzalez – San Benito ISD  
John Nixon – Esperta, LTD.  
Barry Robinson – City of Greenville  
Gene Tyler – United Specialty Benefits

Eloy Ceballos – City of Corpus Christi  
John Garcia – City of Kingsville  
Jay Haight – Eyetopia, Inc.  
Chase Patton – TML  
Lindsey Rumburg – City of Mesquite  
Mark Vacek – Port of Houston Authority

2010 was an exciting year for Texas PRIMA! We had one of our most successful conferences in the Hyatt Los Pines outside of Austin in November 2010. Many of our attendees responded to the post-conference survey and provided feedback about their positive experiences and the value they gained from the educational sessions. Of the many attendees at last year’s conference, we are pleased to report that approximately 58 were first time attendees.

The Membership Committee is working to create ideas and incentives to continue to expand the organization. By continuing to grow the pool of risk management and other related discipline professionals in the organization, Texas PRIMA will continue to be the nucleus of risk management programs, information and networking opportunities for all its members.

As we face the difficult times ahead due to the state’s financial shortfall and the impact that it is having on our governmental entities, we will need to turn to each other for support and ideas to help us help our organizations navigate this financial storm. Texas PRIMA offers resources and support. For more information about our organization please visit our website [www.texasprima.org](http://www.texasprima.org).

## How to Conduct Workplace Inspections

### Benefits of Conducting Inspections:

- Reduced workers' compensation, liability, and property exposures.
- Reduced costs associated with claims (lost productivity, new hires, new equipment).
- Employees and the public go home safe each night!
- Increased safety awareness/knowledge.
- Increased employee morale.
- Reduced theft and vandalism.

### Be Proactive, Not Reactive:

Inspections are a **PROACTIVE** way to help identify and correct hazards that could result in a loss (injury, property damage, and lawsuits).

### Safety Program:

A typical safety program should include 7 basic components to optimize success.

- 1. Management component** - a written policy statement of management's commitment to safety that assigns responsibilities and states safety goals.
- 2. Accident/incident analysis component** - which analyzes loss data to identify trends and develop corrective measures.
- 3. Safety program recordkeeping component** - if it's not documented, it didn't happen!
- 4. Safety, health education, and training component**— provides continuing safety awareness education.
- 5. Safety audit/inspection component** - assigns responsibility, identifies location frequency, etc.
- 6. Accident investigation component** - identifies the root cause of accidents/near misses.
- 7. Review and revision component** - ensures all exposures are addressed and that each component is still effective.

### Types of Inspections:

Facility (city hall, fire station, public works garage)  
 Vehicle (emergency and non-emergency)  
 Equipment (AEDs, personal protective equipment, tools)  
 Job site (work zones, trenches, fire scenes)  
 Parks (playgrounds, skating areas, trails)  
 Pools (signage, slides, diving boards)  
 Streets (street signs, potholes, vandalism)

### What to Consider When Conducting Inspections:

**Frequency**-typically once per month/per facility. Depends on: facility use, size, condition, accident rates, type of inspection (ex. vehicles-daily), staffing and capabilities.

**Location**-all locations where employees work or could potentially work. Shared public areas (sidewalks, parks, etc.) Assigned priority based on exposure and time spent in work area.

**Workplace specific checklist**-customize inspection checklists based on actual exposures. Keep records for at least two years.

**Corrective action process**-determine a method of how to correct issues identified in a timely manner. Work order system, 24-hour priority, etc. Follow up and document once completed.

### Take Pictures! "Pictures speak a thousand words"

Difficult to dispute if discipline is an issue.

Easier to communicate issues to a safety committee or management if not present during inspection.

Excellent way to document "before and after" (corrective actions taken).

### Equipment Inspections

Ladders - Welding contacts - Extension cords - Pneumatic hoses - Gauges - Tools - Forklifts - Hoists

### Vehicle Inspections

Tire pressure/condition - Lights - Strobes - Brakes/brake lights/signals - Truck beds secured - Windows/windshield clear/cracks - Loose objects that may move during sudden stops - Emergency kits (spare, blood borne pathogens kit, first aid, fire extinguisher, spare radio batteries) - Fluid levels/leaks - Mirrors - Seatbelts - Belts, hoses

*Continued on Page 4*

## 2011 Chapter Sponsors

### Platinum

McGriff, Seibels & Williams,  
Inc.

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### Diamond

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### Silver Sponsors

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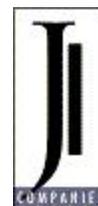
Block Vision of Texas

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## Sponsor Highlight: JI Companies



JI has become the *leading* claims administrator in Texas by helping our clients save money and consistently improve their Workers' Compensation and Liability/Property programs. JI has served public entities for over 25 years by providing high quality risk management services crafted to fit each unique client situation.

Satisfied clients are the foundation of JI's success *and* our continued growth—client relationships that are built on mutual trust and respect. At JI, we always keep our clients' goals and priorities at the forefront.

Technology plays a vital role in enhancing and streamlining our services. Easy, online, integrated; our systems increase efficiency, improve quality and give clients 24/7 access to abundant data. Every document is imaged and online allowing you to see every aspect of a claim in real-time. Want a report—access it online, too.

JI employs experienced professionals committed to quality, innovative business solutions and the highest ethical standards. Teamwork is evident in all that we do. JI teams possess in-depth knowledge with regard to all aspects of risk management and we keep current with continuing changes in the insurance industry and government regulations.

High Tech and High Touch—that's how JI defines service excellence.

### ***How to Conduct Workplace Inspections Continued...***

#### **Job Site Inspections**

Work zones (signage, vest, personal protective equipment) - Trenching/shoring in place - Mowing safety - Vehicle positioning - Fire scene

**Shared public areas** - Road conditions - Sidewalks - Vandalism - Traffic signs

#### **Park Inspections**

Playgrounds - Skating facilities - Trails - Restrooms/concessions/pavilions - Ponds - Fencing/security/vandalism—Trees/plants (poison ivy/oak)

#### **Swimming Pool Inspections**

Adequate signage (no diving, depth markers) - Slides - Diving boards - Security - Pool deck (trip/fall hazards) - Chemical storage area - Lifeguard training

#### **Develop A Safety Culture**

And you will...

- Keep employees going home safe
- Improve employee morale/reduce turnover
- Improve productivity
- Save \$\$\$

*Source: How to Conduct Workplace Inspections training program-TML Newsletter Vol. 1, Issue 3 April-June 2009*

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## Board Member Spotlight

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Welcome to the first “Board Member Spotlight”! In this edition, we spotlight our newest Board Member, Sharada Phillips. Sharada brings fresh ideas and enthusiasm to the Board of Directors. She has worked for the City of Waco as a Senior Claims Specialist for 5 ½ years. Her responsibilities include handling Workers’ Compensation claims for city employees. Sharada has a Bachelors in Business Administration from the University of Texas at Arlington and holds an All Lines Insurance Adjusters License in the State of Texas. She has worked in the Risk Management field for almost 10 years.



Sharada has also been a member of Texas PRIMA for over 5 years. She is currently serving her first year as an elected Board Member and has been appointed as the “Members Only” Chair, which is responsible for enhancements to the “Members Only” section of the Texas Prima website.

Sharada is married to her husband, Thomas, for 10 years and they are expecting their first child, a boy, in April. In her free time she enjoys spending time with family and friends, reading, and playing with their 6 yr-old miniature dachshund, Kira. Thanks to Sharada for her spotlight debut!

## Division of Workers’ Compensation (DWC) Educational Session Held 1/12/11

### Return to Work

The Division began the session with a short presentation on return to work. The goal of all stakeholders in the system is to return injured employees to work. The DWC-74 is a new form for employers to use to communicate job requirements to health care providers – the DWC-74 will allow health care providers to get a better understanding of what an injured employee’s job duties are. The Division wants employers with 2-50 employees to know that they could be eligible for advanced pre-authorization or a reimbursement of expenses up to \$5,000 for assisting an injured employee in returning to work or keeping them at work. For information on this program, please contact Danny Taylor at 512-804-4684.

### **Designated Doctor Rules – Effective February 1, 2011 | New Rules 127.1 – 127.25**

- Requesters must provide a reason for the examination, any changes to the injured worker’s medical condition, and compensable injury.
- A designated doctor appointment will be stayed (stopped) when an expedited contested case hearing is approved by the DWC to challenge the approval of a designated doctor request.
- Analysis sent to the designated doctor may only cover medical condition, functional abilities, and return to work opportunities.
- Medical records and analysis must be received by the designated doctor no later than three working days prior to the date of the examination.
- The Division should use the doctor previously appointed to the claim if the designated doctor still meets the designated doctor DWC requirements.
- Presumptive weight only applies to issues that the designated doctor was appointed to address.
- Parties may only request letters of clarification on issues that have already been addressed by the designated doctor or on issues that designated doctor was ordered to address but did not.

The majority of the questions involved letters of clarification. Erika Copeland, a DWC attorney who is heading up the Designated Doctor and Letter of Clarification changes, stated that Letters of Clarification are meant for times when there is actual confusion with the doctor’s report.

*Source: DWC Educational Session-RDG Client Newsletter, Law Offices of Ricky D. Green*



## Cellular Towers: What are the Risks?

One of the most important qualities of a public sector Risk Manager is the ability to adapt resources and personnel to meet the “challenge of the day.” From the most mundane to most unusual or extraordinary, new “risk” issues are forever appearing as blips on radar. Some risks are easy to address while others may take an inordinate amount of time and money to solve. One of the issues which may fall into the latter category is radio frequency/microwave energy which may be an issue brewing on the horizon for some public entities. In these tough economic times public entities who are cashed strapped have found leasing cellular antenna space to telecommunication companies as an economical and efficient means of creating a revenue stream. In some cases convenient locations for these towers are usually placed above roof tops, water towers or any other elevated facilities that may expose employees or the general public to radio frequency waves.

Television broadcasting, pagers, cordless telephones, business radio, microwave ovens and of course, the cellular telephone are just a few of the devices which utilize radio frequency energy.<sup>1</sup> Most of which we use daily in our lives.

Heightened public awareness of the expanding use of technology in consumer, industrial and telecommunications products and services has led some people and organizations to speculate that electromagnetic energy may cause significant health risk to humans.<sup>2</sup>

In 1996 Congress passed the Telecommunications Act and directed the Federal Communication Commission (FCC) to resolve the debate over radio frequency exposure levels and establish a national standard.<sup>3</sup> The FCC chose to follow the tradition of the Occupational Safety and Standard Administration (OSHA) by adopting the recommendations of expert organizations such as the National Council on Radiation Protection and Measurements (NCRP), American National Standard Institution (ANSI), and Institute of Electrical and Electronic Engineer (IEEE) who all developed exposure guidelines for these types of towers and antennas.<sup>4</sup>

Certain public entity unions have expressed concern regarding cellular towers at facilities that are located in close proximity to employees who live and work next the towers and are exposed to the emitting radio frequency and microwaves. This national union took a position to oppose public entities from locating cellular towers at public facilities based on scientific literature and studies, performed largely abroad, which reported a wide range of low level biological effects on humans. However, in many cases further research was unable to reproduce those initially reported effects.<sup>5</sup>

Pressure has been mounting from a national union and some of its local chapters to force public entities to cease placing telecommunication antennas at facilities which expose their employees and that existing telecommunication towers be moved to other locations. Obviously, complex issues could arise for those municipalities and other public entities which are engaged in this practice. To date there is no recognized medical evidence which confirms health hazards for those exposed to low level radio frequency energy. However, there appears to be agreement by the medical community that further medical studies need to be conducted regarding this issue. Bottom line there doesn't appear to be a correlation, but more medical studies need to be conducted.

In an effort to manage this “potential” risk for those public entities who do engage in this leasing practice, here are some recommendations learned through experience:

First, radio frequency energy is an evolving issue. It is important that Risk Managers partner with legal counsel to ensure any risk related to this operation is properly transferred to the lessee and that the lease agreement language ensures telecommunication towers are compliant with FCC standards and failure to do so could be grounds to terminate their lease.

Second, if possible, make lease agreements flexible. Telecommunications lease agreements have a tendency to run long term (i.e. 10 -30 years) and may constrain your entity's options of either renewing or terminating the lease agreement should any new medical developments present themselves.

*Continued on Page 8*

## The Importance of Controlling Your Insurance on Construction Projects

In our ever changing society, the traditional methods of protecting our assets maybe out of date. The strategies we once employed to protect and shield us from liability are no longer as effective due to changes in insurance coverage and law. No clearer example of this can be seen with the recent changes to the certificates of insurance (COI).

### **Old Cancellation**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL \_\_\_ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR

LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

### **New Cancellation**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

These changes to the COI are intended to clarify each party's responsible for providing notice to cancellation or change to the holder. The changes are complicated by various state laws and the recent ruling of *Lulich v. Sherwin-Williams Co.* In this case, the court upheld the prevailing understanding that a COI does not confer, extend or alter coverage provided by the policy, but is for informational purposes only so long as the COI contains the disclaimer language. In the case of *Pekin Insurance Co. vs. Kraemer*, the court went on to say that since its understood that the COI confers no rights to the holder it is their obligation to request a copy of the policy for review.

These rulings put tremendous pressure on public entities to review COIs as well as policies; an impossible task. To avoid these complications, many public entities have abandoned their traditional method of transferring the risk to the contractor and opted to directly purchase the insurance through a Commercial General Liability Owner Controlled Insurance Program and Builder's Risk Program for their construction operations. These programs may be implemented on any project size without the administration more commonly associated with workers' compensation, commercial general liability and builder's risk placements. These measures ensure that coverage is in place without an extensive COI and policy review process.

In addition to reducing administration, these programs offer many additional benefits such as:

### **Dedicated Limits**

The public entity will own a policy naming them, and other parties as dictated, as the Named Insured. A General Contractor's (GC) Master Program (CCIP) limits and sub-limits are pledged against all the projects that are performed in a year. Thus, it is possible that limits maybe exhausted without the knowledge of the insurance broker or public entity. The only solution to assure the required coverage is in place is for the public entity to purchase insurance protection solely for the construction project in question.

### **Coverage for Multiple Locations**

Public entities often have multiple elements under construction within a single project. Coverage placed by the public entity allows for a single policy with consistent coverage to respond. Master programs placed by the GC will only extend to elements not under contract; thereby leaving the possibility of coverage gaps and / or disputes over which policy will respond. Further, public entities often contract directly with specialty contractors for finish-out or installment of specialty items. An owner purchased policy can easily cover such elements.

### **Insurance can't be Cancelled without the Knowledge of the Public Entity**

If the GC's policy lapses for any reason, the public entity will not likely be notified, despite contractual assurances by the GC. Should a loss occur, the public entity must force the GC to pay the loss leaving the public entity with protracted legal proceedings and expenses that could last for years.

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Third, the FCC is the only agency which can regulate cellular towers and their standards are based on expert organization recommendations. According to experts, radio frequency ground readings in existing cellular communication towers are far below the FCC standard so it is important that the entity ensures that the leasing telecommunication companies provide you with updated inspections of their antennas to ensure compliance with federal regulations.

Finally, consider hiring an expert to provide recommendations above and accepted standards by the FCC. Although, it may require diligence, perseverance, and a moderate financial investment, their findings and recommendations will more than offset their cost.

Stay tuned for further developments.

Sources

- FCC Office of Engineering and Technology Bulletin #56 page 3
- FCC Office of Engineering and Technology Bulletin #56 page 1
- Telecommunications Act of 1996 Section 704 (b) Pub. L. No. 1-4-104, 110 Stat. 56
- Telecommunications Act of 1996 Section 704 (b) Pub. L. No. 1-4-104, 110 Stat. 56
- FCC Office of Engineering and Technology Bulletin #56 page 8
- FCC Office of Engineering and Technology Bulletin #56 page 3
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- Telecommunications Act of 1996 Section 704 (b) Pub. L. No. 1-4-104, 110 Stat. 56
- Telecommunications Act of 1996 Section 704 (b) Pub. L. No. 1-4-104, 110 Stat. 56
- FCC Office of Engineering and Technology Bulletin #56 page 8

*Gilbert M. Sanchez Risk Manager, City of Laredo*

*OCIP vs. CCIP vs. Certificates Continued...*

**Control of Policy Form**

Specific to Builder's Risk policy, there is more flexibility among insurers to modify the form. This requires the public entities to review and compare programs with differing sub-limits and deductibles. The different forms can create coverage gaps and disputes over who's at fault between GC, carrier, and public entity on projects where there are adjacent construction elements.

**Ensures Named Insured will be Compensated for a Covered Loss**

If the public entity is covered under the GC's policy, there is no guarantee the policy proceeds will flow to the owner. Even if both are shown on the claims payment check, unless the GC signs first, making the instrument negotiable, the public entity is at the mercy of the GC. The public entity can only hope the GC lives up to the terms of the contract and correct the problem. However, if the GC is suffering financial duress, as many currently are, then the money could go to another creditor.

**Delay in Opening**

If the insured property suffers a loss, it is possible that the property may not be completed by the target date. In most cases, this delay will result in a loss of income due to the delay in receiving cash flow. Most insurers will not provide coverage for a loss of income on the GC's policy. After all, it is the owner who will lose the revenue, not the GC. Contractual penalties resulting from a delay aren't typically covered under the standard builder's risk policy. Thus, the best way for the property owner to protect against a loss of income resulting from a loss to the property is to have his/her own policy.

**Cost**

Allowing the GC to procure insure leads to higher cost. After procuring the insurance the GC will markup the cost of the product as much as 25%. This can be a significant expense to many cash strapped public entities.

**No Deductible Games**

A common problem between public entities and the GC is the deductible. Realistically, the Scope of Work Agreement or Contract of Work should specify who is responsible for the deductible for insured and uninsured events. Some GC's don't share the details of their coverage with public entities and attempt to hold them responsible for deductibles that may even be higher than in their coverage. If the GC is to provide the coverage, the public entities

should have a complete copy of the policy to help reduce surprises later, including bankruptcy of the GC during a claim.

**Access to Insurer Loss Control/Engineering**

In the GC's placement, whether it is a single policy or a Master Program, the public entities will rarely receive any benefit from the insurer's loss control specialists. By controlling the insurance placement, the public entity can engage the loss control personnel BEFORE the contract is let. In this manner, the insurer is able to work with all parties to reduce the public entity's exposure to loss.

**Ability to Negotiate an Extension**

Occasionally, the need arises to extend the policy period. Reasons to request an extension include a claim event that delays the final completion date, change orders, or delays due to unforeseen circumstances, such as weather; misfeasance or malfeasance of the GC and/or the subcontractors. Depending upon the reason necessitating the request for extension, the public entity is in the best position to request an extension on the insurance policies, especially if the GC is responsible for the delay. It is important the rates for an extension be agreed prior to binding cover in order to prevent or reduce adverse negotiations with the insurers.

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**Upcoming Events:**

Regional Risk Management Seminar—March 10th—Houston, TX

Regional Risk Management Seminar—June 9th—San Benito, TX

Texas PRIMA Conference—November 16-18—Galveston, TX

**Correspondence**

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**About This Newsletter**

This newsletter is published quarterly for the benefit of Texas PRIMA members. However, the opinions expressed in the newsletter are those of the writers and do not necessarily represent the views of Texas PRIMA. The aim of this newsletter is to provide information to our members about Chapter events and risk management issues. Please send news, information, comments, etc. to the editor via email, [info@texasprima.org](mailto:info@texasprima.org).