



# Los Angeles Chapter of RIMS Quarterly Newsletter

Fall 2010

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## Contact Us

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## President's Message

The Los Angeles Chapter of RIMS recently completed our Strategic Planning for 2011 and I am very excited about the events that we have planned for the remainder of this year, and throughout next year. The Chapter made some significant changes in 2010 to refresh our image within the Risk

Management community and we are planning to build upon this "changed foundation" in the future.

Our annual holiday party is quickly approaching and we have moved the venue to The Woodland Hills Country Club. Everyone enjoys a casino night themed event and we plan on bringing this back to our holiday party in a big way. Please mark your calendars for December 10<sup>th</sup> and plan to attend this much anticipated event.

Our Educational Program was moved to the Beverly Garland Hotel in North Hollywood and this has also been a huge hit. This venue provides a more centralized location, an excellent food selection and, of course, our speakers have been sourced from across the country and have been fantastic. Our Education Day is on October 20<sup>th</sup> and I encourage you to visit our website for the speaker line up we have planned for this ½ day event. Many of the future educational presentations are already on the calendar and I encourage you to submit any topics of interest to our Chapter so we can ensure that we are bringing you speakers that meet your interests.

Although it may seem a long way off, time flies by quickly, so our Chapter Golf Committee is already hard at work, and we have selected June 1, 2011, as our date for the Los Angeles RIMS Annual Golf Tournament. Brookside Country Club in Pasadena is, once again, the location of the tournament and our Risk Management partners are already locking down their sponsorship holes. Please contact any board member if you are interested in sponsoring a hole, want to join our Golf Committee, or wish to secure your foursome for what we believe will be a sold out tournament. More information will follow through e-mail blasts and updates to our website.

I am certainly optimistic that the US economy has seen its worst days and that we will finish the year stronger than we were last year at this time. Networking and continuing your educational endeavors should be in your mix as you position yourself toward the future. We encourage you to use our chapter events as a resource for staying current on emerging risks and you should use your fellow chapter members to brainstorm about issues they may have already solved. We are all stronger by sharing the knowledge that we have garnered over our careers.

I hope you had a fantastic summer, and I look forward to seeing you at one of our upcoming events.

Kurt Leisure

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## Upcoming Events

October 20, 2010 Education Day  
8:00 a.m. – 1:30 p.m.  
Beverly Garland Holiday Inn

November 17, 2010 Monthly Luncheon  
Beverly Garland Holiday Inn  
Speaker: Douglas Rawles, Reed Smith, LLP  
Topic: Data Privacy & Security: Claims and Coverage

December 10, 2010 Annual Officer Installation Dinner and Holiday Party  
Woodland Hills Country Club

January 19, 2011 Monthly Luncheon  
Beverly Garland Holiday Inn  
Speaker: Mark Elliott, Safety Director, The Walt Disney Company  
Topic: Safety on the Set

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## Lawyer's Corner

### **MMSEA COMPLIANCE: THEY MEAN IT THIS TIME—WE THINK** **By** **Teddy Snyder**

Is your RRE ready to go? Do your TPAs and attorneys know what to ask for to assure MMSEA compliance? What needs to be done starting 10/01/2010? What is the least expensive way to take Medicare's interests into account? If all this is new to you, you need to catch up in a hurry.

The Medicare, Medicaid and S-CHIP Extension Act of 2007 ("MMSEA") was signed by President Bush on December 29, 2007 and by its terms became effective on July 1, 2009. The Act includes new reporting requirements for primary payers such as insurance companies and self-insureds.

For all settlements, judgments, payments and awards to Medicare beneficiaries in claims for compensation for medical injuries, the primary payer must electronically report to the Centers for Medicaid and Medicare Services ("CMS"). This includes employment cases with medical claims.

The reports must be electronically reported by the Responsible Reporting Entity ("RRE"). There are over 100 data fields spelled out in the most recent User Guide. Experts say publication of User Guide 3.1 indicates there will be no further delays.

CMS pushed back the reporting start date several times. Now we are on the eve of an important “trigger date” for MMSEA compliance. Risk managers who have not implemented compliance procedures may be in for a rude awakening.

#### Two kinds of liability

MMSEA creates Medicare *reporting* liability for the primary payer. The penalty for failure to report is \$1,000 per day per claimant. Primary payers are assigned a one-week window per quarter in which to report the gross amount of settlements, judgments payments and awards under MMSEA. There is no way to report what part of that payment represents compensation for claim-related Medicare-eligible expenses.

Initial reports are due in the first quarter of 2011. **The data to be reported is for liability claims concluded after October 1, 2010 and workers compensation or no-fault claims open as of January 1, 2010.** A claimant’s Medicare status needs to be determined through informal inquiry or formal discovery before making any payment. CMS has created a status inquiry form for this purpose. Obtaining a copy of a claimant’s Medicare card definitively resolves the issue.

Medicare *reimbursement* liability has been the law for 30 years. The Medicare Secondary Payer law requires that Medicare’s interests be taken into account. If a “primary payer”, such as a casualty carrier or self-insured, is responsible for payment of a medical expense, Medicare as secondary payer does not pay. If Medicare pays an expense later determined to be the responsibility of a primary payer, Medicare has a “right of recovery.” Medicare can seek reimbursement from the primary payer, the Medicare beneficiary, the medical provider or the claimant’s attorney.

Under Medicare reimbursement liability, a casualty carrier or self-insured can be called upon to reimburse Medicare even though it has fully paid its obligation to close out the claim. In other words, the defense might have to pay as much as the total settlement again.

MMSEA allows better enforcement of the Medicare Secondary Payer law. Once Medicare is notified of a primary payment to a Medicare beneficiary, a bill for treatment of the same condition with same onset date may be refused. Reports allow CMS to seek reimbursement more efficiently.

#### Taking Medicare’s interests into account

The statute and regulations do not spell out how Medicare’s interests are to be taken into account, but CMS has issued multiple Alerts and Memoranda defining how to fashion a Medicare Set-Aside.

A Medicare Set-Aside is an allocation for future claim-related Medicare-eligible expenses. The allocation should be a good-faith calculation based on the medical information in the file. CMS has prosecuted liability defendants for failure to create a Medicare Set-Aside. In 2002, Dow Corning settled one such prosecution for \$9.8 million.

There are two ways to fund a Medicare Set-Aside: all cash now, or an initial deposit plus annual payments in a structured settlement annuity. Using a structured settlement reduces the cost of the Set-Aside because it discounts for present value. Using a structured settlement frees up more money for unrestricted purposes. Because the claimant has more money to pocket, it is more likely the

case will settle within authority.

### Closing documents

Settlement documents for claims brought by a Medicare beneficiary need new language to show that Medicare's interests have been taken into account. If the claim is tried or arbitrated, the defense will have no input into this process, but it still has potential liability. Add this to the list of reasons why a mediocre settlement may be better than a good trial.

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Teddy Snyder is an attorney and structured settlement broker with Ringler Associates in Beverly Hills, CA. She is available to assist in concluding claims using structured settlements, including documentation of protection of Medicare's interest. There is no fee to any party. She can be reached at 310/461-3550 or TSnyder@RinglerAssociates.com

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## New Members

The Los Angeles RIMS Chapter Welcomes New Members

**Darius Nathaniel** – Risk Technologies, Inc.

**Armando Beltran** – Guess?, Inc.

**Jermame Drake** – IAT Group

**Paul Stevens** – Stevens Consulting

**Eleanor Richards** – DaVita, Inc.

**Bradley Seeley** – BCBG Max Azria

**Sheryl Higa** – CPS Security Solutions

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## Adjuster's Corner



*Robb Greenspan, SPPA is a senior partner of The **Greenspan Company/ Adjusters International**, a public adjusting firm established in 1946 in Los Angeles. Greenspan/AI is dedicated to representing the policyholder's interest in property claims only. Robb has written numerous articles and papers on insurance and has been teaching continuing education classes for agents and brokers as well as other professionals for over 20 years. Robb Greenspan is currently serving as a member of the Curriculum Board for the California Department of Insurance and was a past member of the Insurance Commissioners Consumer Complaint and Unfair Claims Practices task force. He holds the Senior Professional Public Adjusters accreditation issued by the National Association of Public Adjusters.*

*Visit [www.greenspan.com](http://www.greenspan.com) for more information.*

### **The Late Night Call**

By

Robb Greenspan, SPPA

It's 3 AM and you just hung up the phone from a call with the fire department. You grab your keys and jump into the car to see what happened to your business. Recalling the phone call you are somewhat relieved that you renewed your insurance coverage and adjusted your values upward from last year, just a few

months ago. And besides the fire dept. said it was a small fire to a store room and the business is ok.....or is it?

Upon arriving you see and smell smoke. All your goods have a light coating of smoke and soot; some items near where the fire occurred have a few water stains on them.

This is not good. "We cannot sell these goods for they are damaged, and if I clean them they are no longer 'new' items, so what will I do?"

The adjuster from the insurance company arrives and reassures you that you will be OK. He agrees with your assessment of the condition of the goods and is willing to "total loss" these items and pay you for them. Of course the insurance company now owns them and will pick them up for **salvage**. You feel reassured as you and your company begin to focus on rebuilding the business and repairing the damages. This is where the problems can begin if you did not contemplate this scenario--when your goods with your branding on them hit the salvage market.

It is a few weeks later and a retailer of yours or perhaps a customer calls to say, "Your product is on 'sale' at 50 cents on the dollar at a discount store down the street." You cannot fathom this so you visit that store to see exactly what is going on yourself. In talking to the owner she informs you she bought this distressed merchandise at a salvage sale. Wow, do you have a problem, from customers, vendors and for warranty repairs. What can you do to protect your brand name and reputation? Whether the damage is from fire or water staining, the problem will be the same.

There is a solution, but as the RM you need to address this with your insurance company before a loss occurs. An endorsement called "Brands and Labels" can be added to your insurance policy that allows you to control the process when your goods are taken over by an insurance company (following a total loss) and farmed out to a salvage company to recoup some of their payments to you.

This "BRANDS and LABELS ENDORSEMENT" allows you to control the process of salvage. Whether it is removing your label or identification or marking it as distressed merchandise, (a very costly process which is now paid for by the insurance company) or by directing what geographic areas or markets it can be sold into, you now have the right to *control the salvage process* and be paid for the labor costs you incur.

Why do I recommend this endorsement? In my many years of adjusting losses for the policyholder, I have noticed that in the garment and similar industries, the loss of reputation and market caused by the above scenario is a recurring nightmare for the owners of these businesses. Sometimes we are able to negotiate letting the policyholder mark the labels after a fire but as mentioned above it is very time consuming and labor intensive and is not reimbursed by the insurer. Without this endorsement it becomes a cost borne solely by the policyholder. With the "Brands and Labels" endorsement, your insurance carrier becomes a part of the process and not only must allow you to mark or remove the label completely, but they must reimburse you for these expenses. You thus avoid the problems with customers seeing your goods sold at discount. Additionally, if these items make their way back to you for warranty repairs you can identify them as "salvaged goods" and take appropriate actions.

If your products or goods have name recognition, I would strongly recommend your talking with your broker about protecting your company's name and its integrity.

## The Value of RIMS Membership



RIMS membership costs your company less than \$1.35 per day for full membership for up to two of your corporate risk professionals and provides benefits and services valued at more than \$3,000 per year. Please see below for an outline of these benefits and services.

- **RIMS Career Center** offers free searches and substantial discounts on postings for the industry's most targeted, cost-effective recruiting website.
- Our **Risk Management Benchmarking Survey** is the single source of comprehensive insurance premiums and ERM data generated from over 1300 independent policies from the small business to the Fortune 500 Company. The intelligence saves both contributors and buyers a huge amount of money each year. If you aren't a contributor, you can still save 33% over the non-member book price and 20% on the online version.
- Our **2008 Compensation Survey** allows your company to assess its risk management compensation program by comparing itself to companies in the same industry, geographic area and of comparable size. Over 2,000 RIMS members provided input to formulate and validate the RIMS 2008 Compensation Survey. Data contributors receive the publication for free while non-contributor members save 60%.
- **RiskWire** delivers an executive summary of the most important risk management stories to your computer's inbox each morning. Over 8,000 members have consistently registered to receive daily industry news updated from our RiskWire service which saves them a tremendous amount of research time.
- **\$315 discount** on full-conference registration to the world's largest and best attended risk management conference—RIMS 2010 Annual Conference & Exhibition in Boston, MA.
- More than **60 professional development workshops annually** that provide in-depth instruction on how to apply new skills back on the job. RIMS facilitates 90 minute "coursecasts" to provide requested training on relevant topics our members need to be proficient in a particular discipline.
- Subscriptions to **Risk Management magazine** included with membership. On average, Risk Management Magazine reaches 87% of risk management executives in Fortune 500 companies.
- **Financial Services** – RIMS members now have their own credit union. RIMS has partnered with OASFCU to provide RIMS members with financial services ranging from employee and executive benefits to individual retirement and investing services.
- **Completely Revamped RIMS Buyer's Guide** – We have revamped and upgraded our Risk Management Buyer's Guide, a unique online resource that enables users

to search for the products they need from suppliers like you – which is why your basic information will automatically be included in the directory database **at no cost as a benefit of your RIMS membership.**

- **Selecting and Working with a Broker** – a completely updated edition for 2009 with forms in downloadable, revisable formats.
- **RIMS ERM Center of Excellence** – your constantly updated source for state-of-the-industry news, tools and networking on all topics related to enterprise risk management!
- **Risk Insights** – RIMS and Ernst & Young present a series of white papers titled Risk Insights. Risk Insights deals with current issues that impact the risk management profession and are available exclusively to RIMS members at no cost through 2010.

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## Top 10 Reasons to Join RIMS

### Career Services

- For job seekers, employers and recruiters
- Newly-introduced Student Resource Center

### Professional Development Courses

- These "hands-on" workshops and courses will benefit those who want to update their knowledge on current thinking in risk management.

### Local Chapter Meetings

- Chapters offer educational and informational opportunities, special events, community involvement projects and local networking with fellow risk manager and service providers.

### RiskWire

- An exclusive news service for RIMS members, provides an executive summary of the most important risk management stories of the day.

### E-Groups

- An online networking forum, a great way to share solutions and network with the experts; over 10,000 of your peers are accessible .

### Risk Professionals Directory

- Provides members with great networking opportunities, blogging capabilities, etc.

### Risk Management Magazine

- Membership includes a free subscription to Risk Management Magazine

### RIMS Annual Conference & Exhibition

- From presentations by top industry leaders to community service events, lively entertainment to face-to-face networking opportunities, RIMS Annual Conference will inspire you to energize your RM Strategy.

### Discounts on RIMS Products & Services

- Receive discounts on all items in the RIMStore, PD courses, and registration fees to Annual/Regional Conference

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### Professional Certifications

- Includes RIMS Fellow (RF) designation, ARM, and CRM