

IPRF ISSUES

Risk & Safety Tips from the ILLINOIS PUBLIC RISK FUND Vol. 1 No. 1 • Quarterly Issue • January 2002

Gerald Grupe, Chairman • Paul Boecker, President • Tom English, Secretary • Arnold Andrews, Treasurer • Richard McGill, Vice President

The Illinois Public Risk Fund Continues to Soar with a **AA+ Exceptional Rating**

"We have assigned a Financial Stability Rating" of AA+. We believe that this rating reflects the IPRF's excellent liquidity as well as the strength of the loss and loss adjustment expense reserves presented in the claims development history of the audit."

Demotech, Inc.

The Illinois Public Risk Fund is a self-funded workers' compensation pool for public entities that was established on December 15, 1985 to provide a cost-effective alternative to escalating workers' compensation premiums and related costs.

Presently the IPRF has nearly 500 members comprised of Illinois local government entities and public agencies. The Board of Trustees oversees the operation of the fund and governs it in accordance with the Illinois Intergovernmental Cooperation Act and other guiding provisions of state laws, rules and regulations. Members participate in a dividend program based upon the Fund's and the individual member's experience.

The Demotech Financial Stability Management Audit and Rating system will enable a pool "to differentiate itself from other pools that are not rated" by establishing credibility, according to the Columbus, Ohio-based firm.

The audit examines, among other things:

- Loss reserves adequacy for each line of business as well as the entire pool.



- The pool's overall financial stability, including investment strategies and the operation's efficiency.
- Overall quality of administration, including marketing, underwriting, claims management and communications to constituents.
- Total current assets, liabilities and expenses.

Insurance agents and brokers can use a Demotech pool audit to quickly review an entity's financial stability, said President Joseph Petrelli.

A favorable rating "gives everyone a comfort level," said Mr. Petrelli.

To conduct the on-site analysis, Demotech's team meets with the entity's investors, claims managers and others to gather the pertinent information.

To assure professional day-to-day administration, IPRF Trustees have contracted with

Cambridge Integrated Services Group, Inc. for claims administration services. A formal loss control program has been developed to minimize losses and maximize the potential savings at no additional cost to members.

To limit the liability of those public entities participating in IPRF, the Fund is protected by Specific, Aggregate and Aggregate Excess Coverage. Over the years, the IPRF's total aggregate coverage limit has been broadened to over \$30 million.

The Fund has been designed to be responsive to the needs of the participants through an open system of communications whereby members have input into the development and ultimate resolution of claims.

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PLEASE CIRCULATE





The Tragedy in New York City

The unprecedented terrorist acts of September 11 and the heroic efforts of the rescue workers in the wake of the tragedy have generated many questions about the types of insurance coverage that may be available to the victims and their families. Under the circumstances, we wanted to provide our members with information concerning the potential applicability of the IPRF's worker's compensation coverages.

COVERAGE ANALYSIS:

What is the Scope of the IPRF's Coverage?

The workers' compensation coverage provided by the IPRF is strictly statutory. Benefits are payable to employees and their families for work-related injuries or death sustained in the course and scope of employment to the full extent accorded by Illinois law with two important unique enhancements. By virtue of special endorsements, the IPRF provides its members with coverage beyond what the law requires for authorized volunteers and employee participation in officially-sanctioned physical fitness and training programs. Additionally, IPRF members are covered for accidental injuries sustained by employees anywhere in the world as long as they are acting in the course and scope of their employment duties.

Incidentally, the Illinois workers' compensation coverages provided by the IPRF do not apply to federal employees who are eligible for benefits under the Federal Employee's Compensation Act (FECA) or other applicable federal laws. For these reasons, the attack on the Pentagon is not specifically discussed in this legal context.

Does an Exclusion Apply to Workers' Compensation Coverage for Acts of War or Similar Events?

The IPRF's Pooling Agreement tracks the coverages provided by the universal standard workers' compensation and employers liability insurance policy first introduced in 1922. Unlike property insurance, the standard policy did not then, and still does not, contain an exclusion for acts of war or terrorism committed in the United States.

Would Coverage be Provided under Illinois Law to Victims and their Families in a Similar Disaster?

In Illinois the mere fact that an employee is present at the place of injury because of his or her employment duties or obligations will not itself suffice to establish liability under the workers' compensation laws. In other words, more is required than circumstances causing the employee to be injured at work or in the line of duty. Illinois law imposes a burden on the employee to show this his or her injury was due to a cause connected to the employment.

With regards to the occupants of the buildings themselves and pedestrians, Illinois law provides a doubtful recovery. The landmark Illinois Supreme Court decision in *Brady v. Luis Ruffolo Sons Construction Co.*, 143 Ill.2d 542, 578 N.E.2d compensation to a draftsman who was severely injured when a truck veered-off a nearby highway and crashed into the building where he worked. The World Trade Center, however, has been the subject of a prior attack. In addition, it was "marked" as a repeat target by several terrorist organizations. These facts could provide enough evidence of "increased risk" so as to accord workers' compensation benefits to the victim office and

building employees and their families under Illinois Law.

As for the airline pilots and crews along with business travelers on the hijacked planes, there is little doubt that coverage would be provided and health benefits paid to the families of these traveling employees under the Illinois Workers' Compensation Act.

Finally, all of the law enforcement officers, firefighters, and other emergency workers' would be covered under Illinois law, provided that they were sent to assist by their employing governmental authorities or responded in accordance with official protocols. Unfortunately, any victim who responded in their individual, nonofficial capacity as a "good Samaritan," and who was not attempting to protect the business or property of their employer, or to aid a fellow employee, would not be covered under Illinois law.

Are IPRF Member Employees Covered if they Travel to New York to Assist or Participate in Related Events?

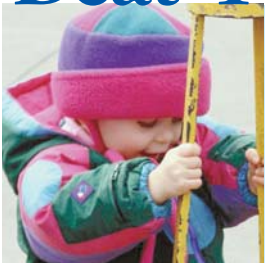
The general rule is that IPRF members are always protected in the event of a work-related accident occurring outside the jurisdiction, provided that the employee was acting within the course and scope of his or her duties or official capacity. Coverage therefore, is provided to police, firefighters, and emergency personnel who travel beyond their service territories to render aid and assistance in accordance with intergovernmental and mutual aid agreements, established disaster and emergency plans, or in accordance with a MABAS, IEMA, FEMA or other official channel request order. In several of these instances, especially in the event of a state emergency declared by the governor, the IPRF's coverages are secondary to the coverages provided by state funds.

News reports, however, have depicted firefighters and other public emergency personnel in this state traveling to New York City on their own in the absence of any order or resolution of their respective district, department, or municipality. In such cases, the IPRF's members need to be mindful that no coverage under Illinois law or otherwise is provided no matter how honorable the intentions.

In conclusion, the IPRF, its Board of Trustees join all our members throughout the State of Illinois in remembrance of the innocent victims and fallen heroes of September 11.

William N. Krucks, Counsel
Illinois Public Risk Fund

Beat The Cold!



Winter brings with it dangerously cold temperatures that can cause health and safety problems

if you are not prepared. If you have any older relatives, neighbors or friends, check on them often to make sure they are okay. If they do not have heat, call their local municipality or township about warming centers.

Common sense is the best defense...

- Wear layers of warm, dry clothing including hat and gloves; wet clothing negates insulating effect.
- Cover exposed skin surfaces as protection from frostbite (numbness, red-white nose, chin, fingers, forehead, stiff cheeks); warm gradually by wrapping or placing next to warm skin; do not rub affected areas.
- Be aware of hypothermia (body temperature 95 degrees or less); stiff muscles, puffy face, slowed breathing, poor physical condition, mental confusion; if these signs are recognized, call 911 immediately.
- Drink non-alcoholic beverages such as tea, coffee, hot chocolate, and soup.
- Maintain good nutrition and obtain plenty of rest.
- Prescription drugs may increase vulnerability to cold; check with your doctor or pharmacist.
- Be aware of elderly and disabled living alone; offer assistance.
- It is dangerous to use an oven as a heating device. All space heaters are a fire risk unless used properly.
- Individuals sixty-five and older should obtain a flu shot every year unless advised not to by doctor.

2002 Loss Control and Claims Procedures Seminar Schedule

For information, call 630-551-1668 or 888-532-6981

You will note the title of this year's seminar has been slightly changed to reflect our emphasis on Loss Control. While claims handling procedures are an important part of your workers compensation program, more seminar time will be devoted to reducing claims. This will be an excellent opportunity for Safety Managers and personnel responsible for Safety Programs within your organization to learn special instructing skills and information that can be shared with all employees.

With 90% of injuries caused by "unacceptable employee behavior" stated by Occupational Safety and Health Administration, the IPRF Loss Control Program will be focusing on Employee Behavior and Its Relationship to the Prevention of On-The-Job Injuries.

The 2002 IPRF Seminars will offer an in depth presentation "Train The Trainer," which is designed to prepare supervisors, managers and lead employees with the correct skills to present consistent and effective safety training to their employees.

The primary goal of this type of specialized training is to teach how to teach effective safety to others.

The instructors and seminar facilitators will be Jody Warner and Don Klinger of the IPRF Loss Control Program.

For more information call the coordinator of member services at 630-551-1668 or 888-532-6981 ext. 3633.

MARK YOUR CALENDER!

April 25th - Mundelein

May 23rd - Springfield

September 26th - Fairview Heights

October 17th - Crestwood

THERE IS NO CHARGE TO ATTEND THESE SEMINARS!!

A Little Humor

With the new year, I've taken some time to jot down some things I'm thankful for. Take a look at them, and see if you're thankful for them too.

*I'm thankful for all those dirty dishes in the sink,
because it means that I have plenty to eat.*

*I'm thankful for that pile of dirty laundry on the floor,
because it means that I have plenty to wear.*

*I'm thankful for my unmade bed, because it means
that I was warm and comfortable last night.*

*I'm thankful for the filthy oven that needs to be cleaned,
because it means that I've eaten lots of delicious home-cooked meals.*

*I'm thankful for the front door that constantly slams,
because it means that my kids are healthy and able to run and play.*

*I'm thankful for all these "inconveniences" of life,
because it means that I'm richly blessed.*

Isn't too bad that we don't retain as much of what we read as what we eat?

Experience is what you have left when everything else is gone.

*The quickest way for parents to get their children's attention
is to sit down and look comfortable.*

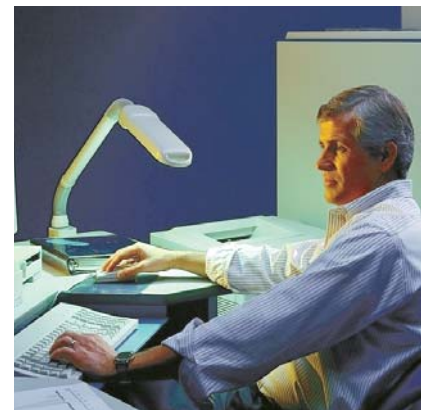
A Boss creates fear while a Leader creates confidence.

Practice Good Posture to Prevent Injury

As workers are increasingly susceptible to repetitive stress injuries of all kinds, remember that good posture is among the things you can do physically to help ward off unnecessary strain.

Try these tips:

- **Don't lean your head forward.** The average adult head weighs 10 pounds. When it's carried a mere three inches from the body's center of gravity, it adds an extra 30 pounds to the neck.
- **Stand properly.** Balance your weight between your feet and align your head over your shoulders, which, in turn, are in line with the pelvis.
- **Reach up.** Try this trick to correct your posture: Lift your arms above your head and stretch your hands to the sky. Then bring your arms to a relaxed position by your sides, shoulders down, but keep your rib cage suspended above your waist just as when you were reaching overhead.
- **Sit up straight.** If you have to sit in a chair that doesn't support your back, sit on the edge of the seat and use your muscles to keep you straight. And if you have to lean forward, bend from the hip joint, keeping your head, chest, and pelvis aligned.
- **Carry things evenly.** Avoid carrying shoulder bags and briefcases if possible because they distribute the weight unevenly. Instead, wear your backpack as it's made to be worn—slung over both shoulders.



New Safety Videos

During the year, Illinois Public Risk Fund Loss Control Department is adding 80 Safety Videos to the existing 200 plus videos currently in our safety library.

Added Safety Video Topics include:

- Carpel Tunnel Syndrome
- Ladder Safety
- Respiratory Safety
- Safe Lifting for the Health Care Provider
- Tree Trimming Safety
- Residential Pickup for Solid Waste
- Route Safety Analysis
- Incident Investigation
- Driver Fatigue
- Winter Driving
- Parking
- Hazard Communication
- and many many more!

Please contact your loss control consultant for further information and to reserve a video for viewing with your Safety Committee and staff.



News We Can Use...

Your letters of news or comments are welcome. Write to:

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Lisle, Illinois 60532

IPRF ISSUES

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The information contained in this newsletter has been obtained from sources believed to be reliable, and the editors have exercised reasonable care to assure its accuracy. However, the Illinois Public Risk Fund (IPRF) does not guarantee that the contents of this publication are correct, and the statements attributed to other sources do not necessarily reflect the opinion or position of IPRF.

Commuting Injuries...

Does Worker's Compensation Coverage Exist for Illinois Employees?

Injuries sustained while commuting to and from work are generally not compensable under the Illinois Workers' Compensation Act because commuting is a risk shared by the general public. However, there are several exceptions to the rule, namely for traveling employees, when the employer provides the means of transportation to and from work, if the employer pays for travel time, and cases in which the employee is performing an errand at the direction of the employer.

by William Krucks, Attorney, Freeborn/Peters

An accident must both "arise out of" and occur "in the course of" employment before workers' compensation liability is triggered. The injured employee must prove *each* of these elements by a preponderance of the evidence (a more likely than not standard) in order to be entitled to the benefits provided by Illinois workers' compensation law.

An accident "arises out of" the employment if there is a causal connection between the injury and the claimant's work for the employer. In other words, there must be some relationship between what the injured worker was doing at the time of the accident and what he or she was required to do as part of the job. In addition, the employment must have exposed the worker to an increased risk for injury when compared to the general public. To illustrate, acts such as standing, walking, and sitting are activities of everyday life and pose no increased risk. Injuries resulting from these acts, therefore, are generally not compensable.

"In the course of" employment, refers to time, place, and activity. To prove this element, the injured worker must show that the accident occurred at a time, place, and under circumstances reasonably required by the employment. Generally speaking, injuries which occur at a reasonable time before or after work, at a place where the employee is reasonably required or expected to be, and while engaged in an activity reasonably required by his or her employment are compensable.

Ordinarily, an injury sustained while commuting to or from work does not "arise out of" and "in the course of" employment because commuting is a risk shared by everyone no matter what the job. The rationale "is the employee's trip to and from work is the product of his own decision as to where he wants to live, a matter in which his employer ordinarily has no interest." This general rule, however, is subject to several exceptions.

Traveling Employees

The biggest exception to the general rule that commuting injuries are not compensable is for traveling employees. A traveling employee is defined as "one who is required to travel away from the employer's premises in order to perform his job." Such individuals are covered from portal to portal so long as the employee's conduct was reasonable, and of a kind which "might normally be anticipated or foreseen by the employer." The Illinois Supreme Court has reasoned that "[i]f the work of the employee creates the necessity for travel, he is in the course of his employment. Persons using the highway are subjected to certain traffic risks and one of them is the danger of collision. The perils of modern-day travel upon the highways are well-known. Risk of accident is an ever-present menace. When it is necessitated by the employment, the risks incidental thereto become the risks of employment and remain so long as the employee is acting in the course of his employer's business."

The Illinois Industrial Commission and the reviewing courts are very lenient in their determination of whether a traveling salesperson was in the "course of the employment" at the time of the injury. This is because deviations form the normal performance of duty which would not be viewed as reasonable...when made by locally employed persons, might be quite reasonable for the employee whose duties take him to distant places and unknown areas." Some examples of deviations that have been deemed reasonable and foreseeable are engaging in recreational activities, aiding a stranded motorist, and taking an indirect route to a particular destination. Therefore, the injuries sustained while traveling to and from these activities were found compensable. On the other hand, it was not considered reasonable or foreseeable for a traveling salesperson to take a midnight pleasure drive in unfamiliar mountainous terrain during a business trip.

Employer Provides Means of Transportation

A second exception to the general rule is cases in which the employer provides the means of transportation to and from work. Specifically, "[i]f the trip to and from work is made in a truck, bus, car or other vehicle under the control of the employer, and injury during the trip is incurred in the course of the employment. The justification for this holding is that the employer has himself expanded the range of the employment and the attendant risks. Therefore, injuries sustained while riding in an employer-provided vehicle used to transport workers to and from work have been found compensable. However, if a ride in a company vehicle is merely a courtesy, rather than pursuant to formal provisions, then the injury is not compensable."

This exception also extends to injuries sustained while driving a company car *if* the employer benefited from the employee's use of the company car. Examples of what have been considered a "benefit" to the employer are assisting the employee's job performance, facilitating customer relations and promoting business, stopping at an employer's office before making a service call, and co-workers driving to work together to save the employee the expense of reimbursing two employees for travel. However, if an employee is not engaging in a work-related activity at the time of injury, the fact that he or she is driving a company car is irrelevant. To illustrate, a FBI agent who was injured during a motor vehicle accident while driving a government vehicle was not entitled to workers' compensation benefits despite the fact that he was "on call" 24 hours a day. At the time of the accident, the claimant was returning home after having dinner and drinks after work which the court deemed a "frolic". The court suggested that the result would have been different had the claimant been returning to the office or on his way to a crime scene.

Employer Compensates the Employee for Travel Time

A third exception to the general rule is when an employer pays an employee's travel time to and from work. An injury sustained during such travel is compensable. "Although proof of payment for time spent in travel is supportive of a conclusion that the travel itself is within the course of the employment, the same is not true for reimbursement for the *expense* of travel. Crucial to the determination is whether the travel is sufficiently important in itself to be regarded as part of the service performed."

The fact that an employee may make a deviation during such a trip is generally found insubstantial. In one such case, the Illinois Supreme Court found the fact that an employee went to church services instead of going directly home after work inconsequential and not a substantial deviation to render his trip outside the course of his employment. In another case, the fact that an employee deviated from his business purposes to pick up three friends, stop at a music store and go to lunch were considered slight deviations and he was deemed in the course of his employment at the time of his injuries.

Special Mission for Employer

The final exception to the general rule that an injury suffered while commuting is not compensable is cases in which an employee is on a special mission for the employer when injured. These cases generally involve motor vehicle accidents while performing an errand at the employer's request. Despite the fact that an employee may make a deviation during the employer-designated trip or act negligently during such trip, these injuries are generally found compensable. An example of a minor deviation, and, therefore, one which did not take the employee out of the "course of employment" was picking up friends, stopping at a music store, and going to lunch. Alternatively, an example of an employee acting negligently while performing a special errand is a case in which the employee was driving at an excessive rate of speed after returning from an errand for the employer. Although the fact that he was speeding may have been negligent, this did not take him out of the course of his employment.

Generally, if there is no requirement by the employer that an employee undertake a special errand or trip, even though there may be some benefit to the employer, the accident is not considered compensable. This is true even if the employer knew of an acquiesced in the trip. The cases which are found compensable seem to be ones in which the court finds that employer retained some control over the employee at the time of the accident. An example is a case in which an employee was required to work late for his employer and was killed on his return back to the office. This is despite the fact that he left work to pick up his wife, a purely personal errand. The rationale for finding this case compensable was that the employee was at an increased risk for injury because he was required to return to work late at night to accommodate the unforeseeable demands of his employer and was being paid during the time in which he was away from the office. In another case, a police officer was returning to the office after eating lunch at home. The officer was driving an unmarked police car which was assigned to him at the time of the accident. In finding the officer's injuries compensable, the court held that "actively monitoring the police radio during the course of claimant's return trip to the station is sufficient evidence...that the employer intended to retain authority over claimant at the time his injuries arose." Also deemed significant was the fact that police officers may be called into duty at any moment "by events taking place in his presence, whether or not he is technically on duty."

