

IPRF ISSUES

Risk & Safety Tips from the ILLINOIS PUBLIC RISK FUND Vol. 1 No. 4 • Quarterly Issue • October 2002

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



Transmission electron micrograph of Hepatitis B virus

Contagious from Legionnaires disease to hepatitis exist within the work environment. Public buildings may harbor molds and bacteria as well as asbestos. Healthcare facilities present increased risks of exposure to blood borne pathogens, tuberculosis, and other diseases. An outbreak of infection in the workforce can be staggering to any employer's claims experience. Several states, including California and Pennsylvania, have amended their workers' compensation statutes to make certain infectious diseases like hepatitis and pneumonia presumptively occupational diseases of firefighters and law enforcement officers so that workers' compensation and related benefits will flow automatically. In Illinois, there have been no changes in the law. Unfortunate employees who contract work-related debilitating diseases with long latency periods, such as those relating to

asbestos exposure, are often left without a remedy at the Industrial Commission.

Infectious hepatitis is an urgent medical concern according to the Atlanta-based Centers for Disease Control and Prevention (CDC). Although cases of hepatitis B (HBV) may be on the wane among healthcare workers on account of the management and administration of HBIG (hepatitis B immune globulin), the hepatitis-B vaccine, and post-exposure prophylaxis, the risks associated with hepatitis C (HCV) infection are on the rise. Today, more than 4 million Americans are infected with the hepatitis C virus. The HCV infected population in this country is four times larger than the number of reported cases of human immunodeficiency virus (HIV). The hepatitis C infection can lead to serious liver diseases such as cirrhoses and cancer. Often the

infection goes undiagnosed for years until the chronic symptoms appear with irreversible consequences. There is no vaccine, and the current preferred treatment protocol of interferon has severe side effects. The only way to prevent the disease is to reduce the risk of exposure to the virus which can be contracted quite easily by contact with blood or body fluids. The risk is not just limited to workers having contact with patients. Other job classifications, including those involved in healthcare, laboratory, and public safety settings, are also at risk. The risk is also not confined to employees in the traditional sense, but also embraces students, contractors, attending clinicians, and volunteers.

Whether disability and medical benefits are available to employees under the Illinois workers' compensation laws for cases of infectious disease, however, is not easily predictable, as the following example illustrates:

A firefighter/paramedic receives a needle stick while treating an accident victim known to be an AIDS carrier. Following the incident, the employee submits to AIDS testing (post-exposure evaluation and follow-up) every 6 months over the course of the next 3 years with negative findings each time. The employee retires, and 6 months later tests positive for the AIDS (HIV) virus. Presumably, the employee did not test positive for HIV until at least 3 1/2 years after the duty-related needle stick incident. No case is filed with the Illinois Industrial Commission until after the positive blood test result.

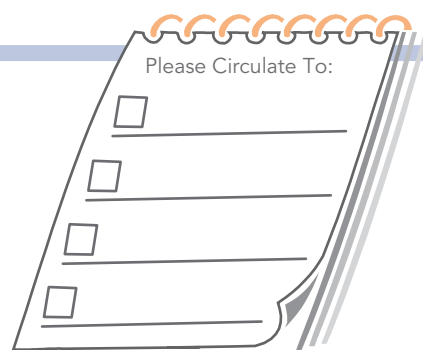
SHORT ANSWER The subject employee would not be entitled to workers' compensation disability or medical benefits because any and all claims under the Illinois Workers' Compensation and

continued on next page...

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Occupational Diseases Acts would be time-barred. The employers liability, if any, would be for claims made under available pension, duty disability, and group medical insurance plans. Ironically, if the employee should die as a result of the infectious disease or its complications, then the surviving spouse, children, or other dependents may have a separate and independent cause of action for death benefits under the Workers' Compensation Act, but not the Workers' Occupational Diseases Act.

DISCUSSION Illinois workers' compensation law is embodied in two separate and distinct statutes: the Workers' Compensation Act (820 ILCS 305/1 et seq.) and the Workers' Occupational Diseases Act (820 ILCS 310/1 et seq.). As of the current date, there are few reported cases dealing with infectious diseases. Additionally, unlike several other states, neither statute has been amended to accommodate the long latency periods (perhaps 10 years or more) of AIDS (HIV) and other infectious diseases. Accordingly, all claims for workers' compensation benefits on account of illnesses are governed by the rather basic limitations provisions of each statute.

The Workers' Compensation Act requires that all claims for workers' compensation benefits must be filed by the employee within 3 years from the date of the injury, or 2 years from the last payment of compensation, whichever date is later. If the Application for Adjustment of Claim is not filed with Industrial Commission within the applicable limitations period, then the employee's claim is barred and no liability on the part of the employer or its insurer can result under the Act.

There are, however, certain payments which can operate to "toll" or extend the limitations period. For example, section 8(j) of the Workers' Compensation Act provides that if an employee receives lost time or medical benefits under a non-occupational group insurance plan paid for in whole or in part by the employer during the limitations period allowed for filing a workers' compensation claim with the Industrial Commission, then the time for giving notice and for filing an Application for Adjustment of Claim does not commence until after termination of the group insurance payments. It is, therefore, possible that the payment or provision of bills for medical services relating to post-exposure evaluation (testing) and follow-up could operate to extend the limitations period for prosecuting a workers' compensation claim before the Industrial Commission in an HIV or other infectious disease case.

Additionally, even if the subject employee's claim is time-barred, then in the event that he or she later dies from AIDS or the disease's complications, the surviving spouse, child or children, or other dependents have 3 years from the date of death to file a claim for death benefits before the Industrial Commission. At current levels, the maximum death benefit for a surviving spouse or other dependent exceeds \$1 million over the potential 20-year payment period.¹

The limitations of the Illinois Workers' Occupational Diseases Act are more complicated. First of all, the employee must experience "disablement" (meaning the manifestation of the disease) within 2 years after the last day of the last exposure to the hazards of the disease on the job. Secondly, an Application for Adjustment of Claim must be filed with the Industrial Commission within 3 years after the date of disablement, or

within 2 years of the last payment of compensation benefits, whichever date is later. Both conditions must be met in order for an employee to secure workers' compensation benefits under the Occupational Diseases Act. Because the subject employee did not experience the symptoms of the infectious disease within 2 years of the needle stick, all claims will be time-barred under the Workers' Occupational Disease Act.

We must be mindful of the fact that just because infectious diseases like HIV and HVB and C are each known and understood as a "disease," it does not necessarily follow that they will be treated as an "occupational disease" under the terms and conditions of the Illinois Workers' Occupational Diseases Act. The term "occupational disease" is technical and legal in nature. It presumes a disease which has its origin in exposures to occupational hazards over a period of time. On the other hand, disabilities, including physical illness and disease, which have as their origin an accidental injury traceable to a definite time, place, and cause are handled under the Illinois Workers' Compensation Act. This distinction is most significant because the subject employee's survivors have a separate and independent cause of action upon death under the Workers' Occupational Diseases Act because the "disablement" did not occur within 3 years of the date of last exposure to the hazards of the occupational disease.

William N. Krucks, Partner
Freeborn & Peters

¹ This substantial workers' compensation contingent liability "tail" demonstrates the importance of Fund members' reporting promptly all blood borne pathogen incidents of the nature contained in the hypothetical fact situation.



Save Your Back!

Handling of medical oxygen cylinders has always been a safety concern in our department. The M, G, or H size oxygen is depleted from the cylinder. To change out the cylinders requires lifting the cylinder over the compartment threshold and lowering approximately two feet to the floor. Installing the new cylinder is just the opposite; lifting a full cylinder approximately two feet into the compartment. This is an awkward operation at best, and although no one has reported an injury to date, the potential exists for back strains and muscle sprains. In addition to this injury potential is the possibility that the cylinder could slip and be damaged. Although the cylinders are never moved without a safety cap securely installed, the potential exists for an accident of catastrophic proportions.

Our supplier of ambulance equipment now has a solution to this safety issue. It is essentially a safety cart for transporting, loading and unloading oxygen cylinders in the ambulances.

Therefore, in the interest of safety I have ordered this safety cart for our department. The cart is now in use, it has proven to be a safe and effective device for the handling of large oxygen cylinders.

Oxygen Cylinder Loading System Reduces Back Strain for Ambulance Crew

To: Paul Boecker, President, IPRF
From: Fire Chief Charles Geraci, Alsip, IL

Average & Maximum Weekly Disability Benefits



The maximum TTD benefit can be no more than 133-1/3% of the statewide average weekly wage on the date of the injury or last exposure.

	STATE AVERAGE WEEKLY WAGE	MAXIMUM TTD BENEFIT
July 15, 2001 to January 14, 2002	\$729.09	\$972.12
January 15, 2002 to July 14, 2002	\$742.24	\$989.65
July 15, 2002 to January 14, 2003	\$748.59	\$998.12

LAST SEMINAR!
Thursday, Oct. 17, Crestwood
Loss Control Procedures
THERE IS NO CHARGE TO ATTEND!!

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.

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. or PHB3@aol.com.**

The ABCs of Safety

- A safe **Attitude** means staying alert and focused on the job at hand.
- Safe **Behavior** means taking safety guidelines and practices seriously.
- **Control** means taking responsibility.

Safety is more than just following your company's guidelines while on the job. Safety is actually a combination of safe attitude, behavior, and control both on and off the job. Attitude means your frame of mind, the way in which you approach a given situation. Control refers to making your surroundings where you do, what you do, safely. Safe attitude, behavior, and control add up to a safer more productive you.

Attitude: When it comes to safety, attitude isn't exactly everything, but it's very close. A safe attitude means staying alert and focused on the job at hand, taking safety guidelines and practices seriously, never horsing around on the job, and not letting

emotions like anger and frustration get in the way of job performance.

Behavior: How you react to a situation is an important part of being safe. Following established safety guidelines and procedures, refusing to take "short-cuts," using personal protective equipment, and asking questions when you need more information about the task at hand. All of these also mean helping friends, co-workers, and family members understand the importance of safe practices at work, home or play.

Control: Control means taking responsibility for making your worksite, home, or recreational facility a safe place to be. You can help keep your surroundings safe from potential hazards by keeping them



clean and orderly. Keep machines in good repair, clean up spills and debris (or report them to the appropriate person) and make sure that walkways are free from obstacles. Store chemicals properly (both at home and on the job) and

never switch containers. At work, be sure to report faulty equipment, ventilation, or any potential hazards to your supervisor.

ABCs – EASY AS 1-2-3 Attitude, behavior, and control are the three most important (and perhaps the simplest) aspects of personal safety both on and off the job. Take a moment to review your safety ABCs to see if you're doing all you can to protect yourself, your co-workers, and your loved ones from careless, needless injury,

CO-SPONSOR OF THIS NEWSLETTER ISSUE

To Whom It May Concern

You say you love me a lot, but sometimes you sure don't show it.

In the beginning, you couldn't do enough for me. But now you seem to take me for granted. In fact, some days I wonder if I mean anything to you at all.

Maybe when I'm gone you'll appreciate me and all the things I enable you to do for your church, your family and yes, even for yourself.

After all, I'm responsible for putting food on your table and clothes on your back. I put that new roof on your house and helped put your kids through college. I even contributed – and heavily I might add – to your summer vacations over the years. If it wasn't for me, you'd be forced to take a bus to work instead of driving a car.

I've kept quiet and waited to see how long it would take for you to realize how much you really need me.

Let me give you a little friendly advice: take good care of me, because if you don't, I could be gone.

Don't get me wrong – I don't want to be the end or be all in your life. That wouldn't be right on my part or yours.

Who am I? I'm your job. All I'm asking is that you try to enjoy and appreciate me every day. Just remember, if you don't want me, somebody else will.

R. Bauer & Associates, Inc.



If you have to get even with someone, get even with someone who has done you a kindness.



You'll live longer once you realize that any time spent being unhappy is wasted.



A wise person knows how to win an argument. A genius knows how to avoid an argument.



To handle yourself use your head.
To handle others use your heart.



Standing (l to r): Eric Disney, David Reynolds, Carl Kessinger, Ed Vokoun, Kim Parks, Juan Arias, Scott Kelemetec
Seated (l to r): Marilyn Phillips, James Gallen

Downstate Claims Counsel to the Illinois Public Risk Fund

Evans & Dixon, L.L.C. has built an excellent reputation over the past 57 years and today is one of the largest workers' compensation firms in the United States. Since our inception in 1945, we have specialized in the defense of insurance companies facing litigation over work injuries or illnesses. Evans & Dixon has represented many insurers, self-insurers, third party administrators and governmental entities in the defense of workers' compensation and occupational disease claims.

- Our downstate Illinois experience includes handling cases before the Illinois Industrial Commission, Circuit Courts, Appellate Courts and Illinois Supreme Court.
- Evans & Dixon today has more than 60 attorneys dedicated to workers' compensation, civil litigation defense and business litigation in Illinois, Missouri and Kansas.
- We are dedicated to an ongoing program to make major investments in advancing technology to help us achieve the highest efficiency at the lowest cost.
- Committed to continually improving service to our clients, we focus our efforts on staying abreast of legal issues, developments and industry trends that are changing the bottom line for insurance providers. Each year, we offer seminars, programs and informational materials to share our insights.
- Our philosophies are based on hard work, adherence to the law, professional excellence and a complete commitment to clients.



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Overview of Workers' Compensation

Workers' compensation laws were the first acts of social legislation passed in the United States, and they have always been controversial. At the beginning of the 20th century, employers feared the assumption of liability for work-related injuries would destroy their businesses, while workers feared financial ruin from disabling injuries.



Before the laws took effect, an injured worker seeking compensation had to file a lawsuit against his or her employer in court. At the time, the common law held that the employer had a duty to provide a safe place to work and safe tools; to give warnings of dangers; and to provide a sufficient number of appropriate fellow servants to perform the tasks.

In court, the employee had to prove negligence. The employer could present a defense that blamed the injured worker's contributory negligence, or attributed the injury to the negligence of a fellow servant, or argued that the employee assumed certain risks in accepting the job. The process was prolonged and uncertain, with large risks to both employee and employer.

The high injury and death rates throughout the Industrial Revolution and growing dissatisfaction with the common law gradually led to the enactment of employer liability acts. Employers were held more responsible for negligence, but employees still had to file lawsuits for damages.

The first workers' compensation laws originated in Germany in 1884 with a compulsory system of accident insurance covering all employees in manufacturing, mining, and transportation. Similar laws passed in other European Countries.

In the U.S., laws were passed on a state-by-state basis. Most of the early laws covered only hazardous occupations and were frequently challenged as unconstitutional. Maryland passed the first act in 1902, which was restricted to fatal cases. The first law of general application that withstood legal challenges was Wisconsin's act of 1911. Illinois passed its law in 1911, effective May 1, 1912. It took until 1948 for all states to establish a workers' compensation law.

Workers' compensation laws contain two tradeoffs:

- Employees gave up their right to sue and potentially win large awards in court in exchange for more modest but prompt compensation;
- Employers gave up their common law defenses in exchange for limits on their liabilities.

Workers' compensation was established as a no-fault system. The theory behind the law is that the cost of work-related injuries or illnesses should be part of the cost of the product or service.

Originally, the courts administered the Illinois act. The volume overwhelmed the courts, however, and on July 1, 1913, a three-member Industrial Board was created. In 1917, a five-member Industrial Commission was created within the Illinois Department of Labor. In 1957, the Commission separated from the Department of Labor and became a self-standing agency.

Almost every employee who is hired, injured, or whose employment is localized in Illinois is covered by workers' compensation. For the most part, benefits are paid for accidental injuries that are caused, in whole or in part, by the employee's work. This includes the aggravation of a pre-existing condition and injuries brought on by the repetitive use of a part of the body.

Illinois employers pay for workers' compensation benefits through insurance policies or by self-insurance. Benefits are based on the worker's earnings, subject to certain limits. Cases are first heard by arbitrators, whose decisions may be appealed to commissioners. If warranted, cases may proceed on to the circuit court, Illinois Appellate Court, and the Illinois Supreme Court. Most cases, however, are settled between the parties.

Illinois workers are experiencing fewer accidents and less severe injuries. Employees benefit by avoiding the pain and uncertainty involved in injuries, while employers benefit through lower insurance premiums. In fact, after adjusting for inflation, the 2002 Illinois advisory rate for workers' compensation insurance represents a 39% decrease since 1989. In Illinois, the workers' compensation insurance business is highly competitive. More carriers write w.c. policies in Illinois than in any other state. In addition, Illinois has a smaller residual market than most states, indicating that employers can buy insurance with relative ease. The Commission converted all its forms from legal size to letter size, and posted them on the website. Since 1996, the Commission has enforced the law requiring employers to obtain workers' compensation insurance. Over \$2.5 million in fines have been assessed against employers that fail to carry workers' compensation insurance, bringing employees important protection and other employers a fairer competitive arena.

Employers can dramatically reduce their workers' compensation costs by taking steps to prevent accidents. Costs vary more within a state than from state to state. Proportionately, Illinois spends less on the administration of the workers' compensation program than nearly every other state in the country. Given its limited resources, the Commission does well with little.

MISSION STATEMENT *The Industrial Commission was created to resolve disputes that occur between injured workers and their employers regarding workers' compensation. The Commission strives to assure financial protection to injured workers and their dependents at a reasonable cost to employers.*

*The Commission performs four main functions: **Resolve disputes.** The Commission strives to provide a fair, timely process by which disputed claims may be resolved. **Ensure compliance with the law.** The Commission protects the rights of employees and employers under the Illinois Workers' Compensation and Occupational Diseases Acts. **Administer self-insurance.** The Commission evaluates and approves eligible employers that wish to insure themselves for their workers' compensation liabilities. **Collect statistics.** The Commission compiles information on work-related injuries and diseases.*

The Commission intends to accomplish these goals while looking constantly for ways to improve the quality of service and treating the public and co-workers with respect. The success of this organization depends on the commitment and full participation of every member.

Reprinted from the Industrial Commission of Illinois Annual Report for 2001 – John W. Hallock Jr., Chairman.

NEW! Illinois Public Risk Fund Distribution of Files

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<u>ANALYST</u>		
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Cindy Shatkowski	618 (M-Z members) 217 (A-I members)	2225
Glenn Macey	815 (A-La members)	2234
Sharon Barnes	309 & 815 (Lb-Z members)	2233
<u>Supervisor: Chris Mendel</u>		2226
Todd Brown	847 (A-G members) 708 (N-Z members)	3635
Cathy Balcerak	708 (A-M members)	2229
Linda Talarico	847 (H-Z members) 630 & 773 & 312	2228
Barbara Keller	SUBROGATION	2231

Medical Only Claims - By Claimant's Last Name

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Mari Curless	M-Z	2132

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Claims Assistant:	Carla Newell	2130
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News We Can Use Your letters of news or comments are welcome.
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