

# IPRF ISSUES

Risk & Safety Tips from the ILLINOIS PUBLIC RISK FUND

SPECIAL ISSUE • January 2003

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



## Smallpox Vaccinations

On Friday, December 13, 2002, President Bush formally announced a plan to protect an estimated 10 million healthcare and emergency response workers by vaccinating them against smallpox. Under the White House plan, the vaccinations will be administered in a series of phases, with the vaccine first being made available to front-line public health and hospital personnel. That initial phase will be followed by a second wave of vaccinations for other healthcare workers, firefighters, police, and emergency responders. The vaccination effort is voluntary, and will be carried-out on the state level by local health departments. According to the plan filed by the Illinois Department of Public Health (IDPH), the state's 93 local health departments will first offer the vaccine to an estimated 8000 to 16,000 public health smallpox response teams and hospitals. The vaccination program may begin as early as January 24, 2003.

The smallpox vaccine is the most dangerous of all human immunizations. Its side effects can prove lethal. The vaccine contains a live virus (vaccinia) that can be accidentally transmitted from the recipient, effectively causing the involuntary inoculation of others and placing them at risk of potentially life-threatening complications. The question, therefore, arises who will be held liable if something goes wrong.

Section 304 of the Homeland Security Act, passed in November, shields the vaccine's manufacturers and those who administer the vaccine from liability. The system calls for compensation claims to fall under the Federal Tort Claims Act. But, there are many unanswered legal questions.

Following the President's announcement, HHS Secretary Tommy Thompson, said that people who experience adverse effects from the vaccine should get coverage from their own health insurance. He also said that coverage would exist under the state workers' compensation systems. The later statement is problematical. As the Illinois Hospital Association observed recently, employees who are injured as a result of voluntary activities generally are not entitled to workers' compensation benefits. That is a correct analysis of Illinois workers' compensation law.

In 1924, the Illinois Supreme Court considered a case where a company doctor administered the smallpox vaccine to employees of a printing company in Chicago. The vaccination of employees was undertaken in response to the City's Commissioner of Public Health issuing a notice advising employers to have their employees vac-

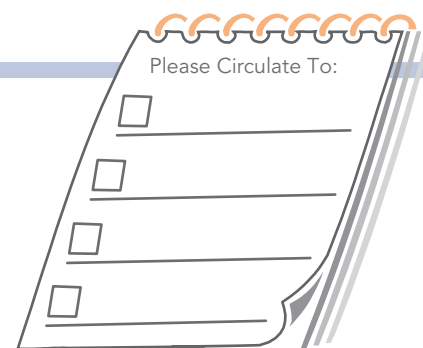
nated in light of a 1921 outbreak of the disease. One employee, William Lasseter, died of a related infection at the vaccination site. A claim for death benefits under the Workers' Compensation Act was brought by the employee's widow. Compensation was awarded by the Illinois Industrial Commission. On appeal, the Illinois Supreme Court, however, reversed the award because the vaccination did not constitute an accidental injury or incident of employment. The court observed the vaccination was caused by the acts of a governmental agency - - not the employer; and, that there was nothing about the employee's duties or conditions of employment that increased the risk of harm from the vaccination. The case, *Jefferson Printing Co. v. Industrial Commission*, 311 Ill. 575, 144 N.E. 356 (1924), remains a correct statement of the Illinois workers' compensation law.

The IPRF cannot voluntarily provide coverage beyond the boundaries of the law without risking its own fiscal integrity. As a consequence, workers' compensation claims will not be voluntarily accepted and paid for vaccine recipients who suffer adverse health consequences. On the other hand, the IPRF will provide coverage for "bystander" healthcare and emergency response employees who become involuntarily vaccinated from work-related exposures would be entitled to workers' compensation coverage for the cost of related medical treatment along with benefits, lost-time from work, and disability.

William N. Krucks  
Freeborn & Peters  
311 South Wacker Drive • Suite 3000  
Chicago, Illinois 60606-6677  
Counsel to the Illinois Public Risk Fund  
Direct 312.360.6504  
Fax 312.360.6572  
Bkrucks@freebornpeters.com

Inside this  
*Special Issue...*

- 1 Smallpox Vaccinations
- 2 Illinois Public Risk Fund Supervisor Training



Illinois Public Risk Fund  
Cost Control Through Cooperation Since 1985



624 Columbine Avenue  
Lisle, IL 60532

FIRST-CLASS MAIL  
U.S. POSTAGE  
**PAID**  
MAILED FROM  
ZIP CODE 60477  
PERMIT NO. 273

