

# IPRF ISSUES

Risk & Safety Tips from the ILLINOIS PUBLIC RISK FUND

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## Loss Control Services

The Illinois Public Risk Fund (IPRF) provides Loss Control Services that can help to reduce employee injuries and educate employees on proper safety controls. For information regarding Loss Control Services please check out the constantly growing website at [www.iprf.com](http://www.iprf.com). Once there you can click on the tab for Loss Control.



Signing in is easy; use your four-digit IPRF number as the Username and iprf as the Password. Signed in, you will find many safety-related resources to choose. You can sign up for our email 'blasts' of safety news sent to you. You can read them on your smart phone or your computer. Blasts include:

### NOTICE OF WEBINARS

### RELEVANT INDUSTRY INFORMATION

### MONTHLY RISK REMINDERS

Next you'll find links that apply to all entities. First is Written Safety Programs, Manuals and Checklists that you can use in your safety program. The next button opens our Training page. Here you'll find links to interactive training, training videos, and our free lending library of DVDs and tapes. The top right button opens Risk Reminders. You can open these PDF files and print them to use for safety topics, bulletin boards or 5-minute 'tailgate talks'.

The next six buttons are industry-specific for Municipalities, Fire Departments, Park Districts, Police, Public Works and Schools. On each topic you'll find Checklists, Online Resources, and sample Safety Programs such as Confined Spaces or Lockout-Tagout.

In addition to the resources found on the website, each IPRF member has a Loss Control Representative assigned to them. The Rep can answer safety questions, provide training, perform inspections and assist members to provide a safe working environment for their employees. Training is available for Hazard Communication, Bloodborne Pathogens, Personal Protective Equipment and other IDOL required topics.

If you have questions or need additional information, please contact your Loss Control Rep or Donna Ryan, IPRF Loss Control Administrative Assistant, at 630-649-6082 or email Donna Ryan at [donna.ryan@ccmsi.com](mailto:donna.ryan@ccmsi.com).

**We look forward to working with you to make 2013 a Happy and Safe New Year.**

## Spiro Besbekos, Accounting Manager for IPRF, Retires After 22 Years



Tom English (l) with Spiro Besbekos (r)

When Spiro Besbekos retired from his job as Accounting Manager for IPRF, he left a legacy of dedication to IPRF members. By making customer service a top priority, Spiro has contributed significantly to member satisfaction over the past two decades.

"We have an open door policy when it comes to serving our members, and making ourselves readily available to anyone who calls with questions about their premiums, statements, or any number of issues regarding their coverage," said Spiro, who served as Accounting Manager for the Illinois Public Risk Fund. Evidence of this strong commitment to its membership is demonstrated by the fact that the IPRF has grown to become Illinois' largest self-insured risk pool for workers' compensation coverage. Further evidence is seen in how well the IPRF performed in its Demotech Financial Stability Management Audit, earning AAA ratings, the highest rating that Demotech, Inc. assigns.

"Spiro has been a sincere, loyal and revered friend," says Chairman Tom English. "Trustees and members are very fortunate to have dedicated representatives such as Spiro working for the betterment of the IPRF."

In his retirement, Spiro plans to stay active and fit with his weekly tennis games, golf and swimming, and spend more time with his wife Katherine. We wish Spiro a happy and healthy retirement!

*Inside this issue...* **2** 5 Minute Safety Talks

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# 5 MINUTE SAFETY TALKS

## Protect Yourself from Winter Work Hazards

When you work in the cold, your body uses 60 percent of its fuel just to keep itself warm. Because of this, you can tire more easily than you notice. As you get more tired, you're more prone to the dangers of winter weather hypothermia, frostbite and poor awareness.

### Here's how to protect yourself:

#### Acclimate to the cold.

Before you launch fully into outside work, give your body a chance to get used to the cold.

#### Take enough breaks.

Take turns with a co-worker on being outside. As one person tries to warm up, the other is outside working.

#### Wear layers.

The Occupational Safety and Health Administration recommends that workers wear three layers of clothing to stave off the cold.

#### Get extra protection for hands and head.

Your mother was right to make you wear a hat in the winter. It can help retain the 40 percent of body heat that otherwise would escape from your head.

#### If you have to wear a hard hat, use a hard-hat liner that covers your ears, cheeks, and chin.

And always wear the proper hand gloves. Make sure they're neither too small, which can further restrict blood flow to your fingers, or too large, which can get caught in machinery.

#### Insulate your feet.

In addition to wearing warm woolen socks, use insulating muffs around your ankles and over the top of your work shoes.



## When the going gets rough... POOR VISIBILITY

Every officer needs to see the road clearly at all times. When anything cuts down on your visibility, the job gets a lot harder.

Unlike other professional drivers, police officers cannot always get off the road when poor visibility situations develop. This could be critical if a pursuit situation develops. You have to be ready.

### The following are two examples:

#### Driving in Fog

When you run into fog, slow down and turn on your lights, but keep them on the low beams. High beams will cause the light to bounce back at you from the particles of water. Your tail-lights will help others to keep track of you.

You should also turn on your windshield wipers. You are driving in a cloud, and your windshield will soon be covered with mist.

Your speed is dictated by how far you can see. If you can see six vehicle lengths ahead, you can go 20 or 30 miles per hour. If you can only see two vehicle lengths, reduce your speed to 10 or 15 miles per hour. Remember, it's better to go too slow rather than too fast.

#### Visibility Problems

Many circumstances can interfere with your ability to see. The most predictable case comes once every 24 hours, when the sun goes down. But you may also run into seeing problems in mid-day because of rain, snow, fog, smoke, dust or overly bright sunshine.

Your ability to see can also be compromised by trees, signs, large buildings and other physical objects which obstruct the field of view. At these times, you realize the importance of keeping your own vision at its best. Get your eyes checked regularly, and see an eye doctor whenever you sense that your vision has changed.

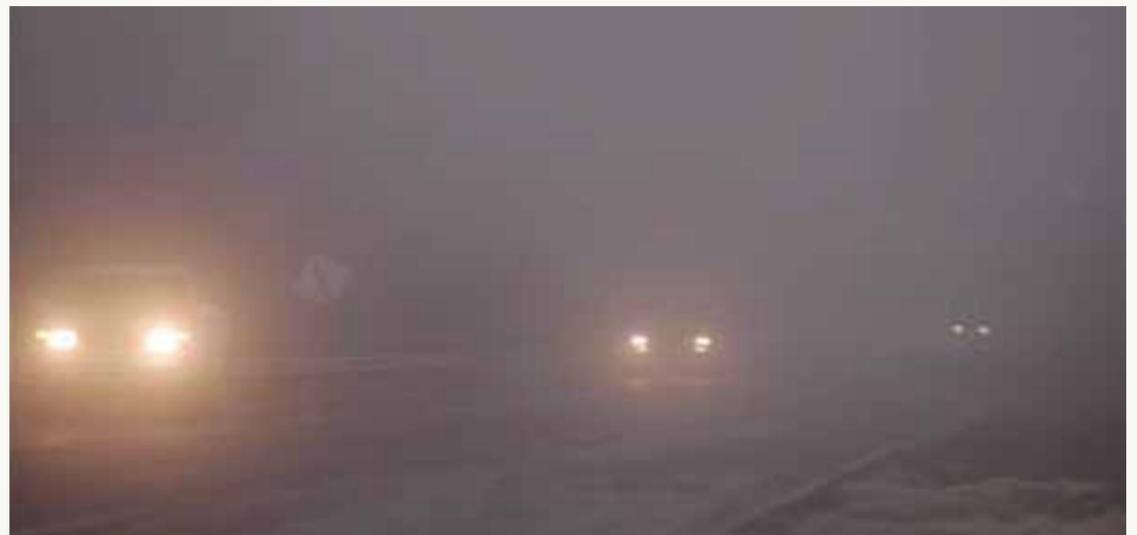
Clean glass is also vital. Clean windows and windshield often, inside and out. In cold weather, be sure the defroster works well. Clear off ice and

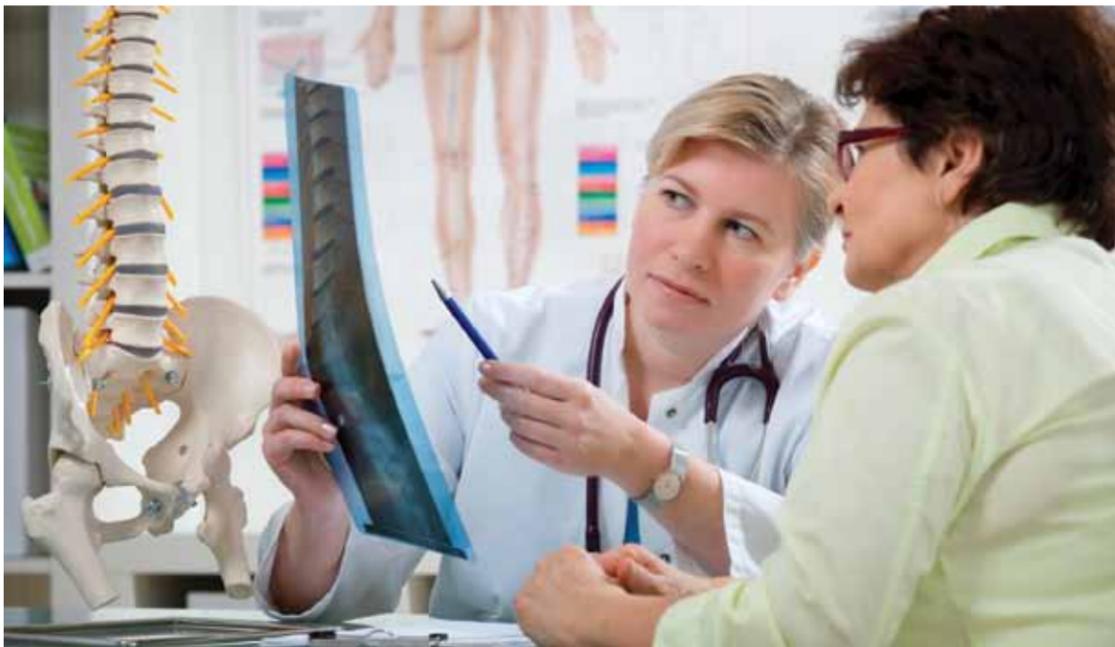
snow when you're starting up. It's not enough to look out through a tiny peephole either. You have to scrape the whole windshield.

#### Give Yourself Some Help

When your eyes are taxed to the limit, your ears can help. Drive with one window partly open and pay close attention to road noises. They can tell you a lot about conditions around you. Turn on your lights, regardless of the time of day. If it's in the afternoon or early evening, when the sun is low, you may find yourself switching back and forth between bright sunlight and dark shadows. Switch your lights on. It's a bad time to wear sunglasses, unless you can flip them up and down quickly without taking them off.

At dusk, your lights should go on a half hour before sunset.





## The Treating Doctor v. The Independent Medical Examiner: *Who Does the Commission Believe?*

Section 12 of the Workers' Compensation Act gives the employer the right to demand an independent medical examination. The employer has an absolute right to a Section 12 independent medical examination (IME). In fact, the employer can request multiple IMEs so long as the requests are reasonable. If a claimant fails to attend, his right to compensation benefits is suspended. He cannot claim entitlement to continuing compensation benefits until he actually attends the requested IME. Any benefits not paid during the period of time where the claimant failed to attend the IME are not ever to be paid. This is true even if the claimant proves he was disabled during the period of time that he failed to appear for the IME.

Employers frequently question whether it is worthwhile to proceed with an IME. Some argue the Commission is more likely to rely on the treating doctor opinion rather than the IME opinion.

The question is does the Commission always rely on a treating doctor and ignore an IME doctor because he is a "hired gun"? Moreover, IMEs are expensive. Is it worthwhile to invest money in an IME if the Commission is simply going to rely on a treating doctor's opinion because the treating doctor is arguably more objective than the IME?

The answer to that question is no. The Commission does not always rely on the treating physician over the IME. There is no reason to assume that a treating doctor is more objective or credible than an IME doctor. Moreover, we frequently are dealing with treating doctors who may not be high quality treating physicians. Arguably, treating physicians are more biased in favor of the injured worker rather than objective in their analysis.

**Here is an example. We recently litigated and won a case on behalf of an IPRF member where the Commission adopted the IME doctor's opinion and rejected the treating doctor.**

In the case of Thomas Mattson v. City of Hickory Hills, 11 WC 8941, petitioner sustained an undisputed accident on December 16, 2010. He was doing some heavy work and he injured his low back. He initially treated with a family doctor, Dr. Hohner and was prescribed an MRI. According to the radiologist, the MRI showed disc bulging at L4-L5 and L5-S1 but no disc herniations. Petitioner was referred to an orthopedic surgeon. He sought treatment from Dr. William Earman at Ortho Spine Center. Dr. Earman ordered a CT scan. According to the radiologist, the CT scan showed degenerative disc disease and possibly a left paracentral protrusion at L4-L5. Dr. Earman ordered epidural steroid injections. Petitioner complained primarily of right leg radiculopathy.

At our request, petitioner was seen by a respected neurosurgeon, Dr. Andrew Zelby, on May 25, 2011. His physical examination proved essentially normal. He reviewed the MRI and found that it was fairly negative. He noted that petitioner had symptoms of right-sided radiculopathy. He noted that the CT scan showed some disc prominence to the left at L4-L5. Nevertheless, he felt petitioner was at MMI and petitioner was released to return to work.

Petitioner remained under the care of Dr. Earman for the next several months. He continued to have intermittent symptoms of back pain and radiculopathy. He continued to complain of back pain with radiating pain to his right leg.

Dr. Earman ordered repeat MRI. This test was done February 14, 2012. It reportedly showed a central disc herniation at L5-S1. Petitioner complained of pain radiating to both legs. Dr. Earman prescribed a microdiscectomy at the L5-S1 level.

We had petitioner re-examined by Dr. Zelby on April 4, 2012. Dr. Zelby examined petitioner and also reviewed all of his diagnostic tests. He concurred there was evidence of a central and left-sided disc protrusion at L5-S1. However, he concluded that this was a new and unrelated finding. He concluded that this condition was not caused by petitioner's work accident.

Nevertheless, Dr. Earman issued a report concluding that petitioner's disc injury at L5-S1 was causally related to the accident of December 16, 2010. He continued to prescribe surgery.

The arbitrator ruled in our favor. The arbitrator reviewed the MRI films and the reports of the treating doctor and IME doctor. She noted the discrepancies in the MRIs. She relied on the opinion of Dr. Zelby. She concluded, "Having carefully considered the entire record, the arbitrator gives greater weight to the opinion of Dr. Zelby that the proposed surgery is not causally connected to the work accident."

This decision shows that IMEs are critical and can serve as a good basis for disputing and denying accident, causal connection, TTD and medical. In many cases, they are well worth the investment. In this case, we avoided liability for medical expenses for surgery, several months of TTD and a significant PPD award.

# HAPPY NEW YEAR FROM IPRF

## On The Lighter Side...

*The heart is happiest when it beats for others.*

*Leadership is the ability to rock the boat without sinking it.*

*Knowledge can be memorized.  
Wisdom must think things through.*

*The self-made man always seems to admire his maker.*

*In the good old days, people who saved money were considered to be misers. Now they're considered to be miracle workers.*

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

## 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, 2012 to Jan. 14, 2013	\$971.60	\$1,295.47
Jan. 15, 2012 to July 14, 2012	\$966.72	\$1,288.96
July 15, 2011 to Jan. 14, 2012	\$946.06	\$1,261.41
Jan. 15, 2011 to July 14, 2011	\$930.39	\$1,243.00

## How Can We Better Serve You

The IPRF is dedicated to its members and is always working toward higher levels of service.

We need your input on:

- Safety Concerns
- Claims Information
- Timeliness of Claims Processing
- Helpfulness & Courtesy of our Claims Team
- Loss Control
- Topics to be addressed in this newsletter

Please contact Paul Boecker III  
at [pboecker@ccmsi.com](mailto:pboecker@ccmsi.com) or  
630-649-6053.

# Anatomy of Why a Seemingly Defendable Case Can Be Lost



by John Power, Power & Cronin, Ltd., *Howell v. SOI/Menard Correctional Center*

Recently, all of you have heard a lot of press about a terrible decision where walking was held to be compensable. Many people have said that this case should be a winner and one wonders where did things go wrong.

But let's look at the case from a proof standpoint to see what occurred (please note the case is enclosed for your review). The Petitioner testified that the activity engaged in, duration of the activity in years, how much of the time the Petitioner was engaged in such activity, the types of purposes encountered in traversing the area range in daily walks from 3-5 miles to 8-10 miles, there was some climbing involved and the number of flights and the number of steps, and the number of times per day that rounds were made. Further, Petitioner testified that the Petitioner's job required ascending and descending hundreds and sometimes thousands of steps per day.

Petitioner noted an onset of symptomatology and testified that he then saw his family doctor who then referred the Petitioner to an orthopedic surgeon. The orthopedic surgeon provided treatment and diagnostic tests, formulated a diagnosis, removed the Petitioner from work again, MRIs and performed two surgical interventions on the Petitioner. The Petitioner was disabled at the time the trial commenced. In addition to introducing the medical records of both the treating physicians and the surgery reports, the Petitioner introduced a statement from the treating orthopedic surgeon causally relating the increasing symptomatology and pain to the work the Petitioner performed for the Respondent.

Turning to the Respondent's proof, it is noted by the Arbitrator and Affirmed by the Illinois Workers' Compensation Commission that the Respondent did not have the Petitioner examined under Section 12. The Respondent did not have the Petitioner's medical records reviewed by a medical provider, and the Respondent did not obtain a Utilization Review report to challenge the necessity of the medical treatment. Respondent presented no witnesses to rebut the Petitioner's account of his history of the repetitive trauma. Respondent presented no photographs or diagrams or videos of the working conditions to challenge Petitioner's version of events.

The Arbitrator viewed this situation and found the matter compensable and awarded a 19(b) for temporary total disability and medical expenses.

The matter was appealed to the Commission and, upon a review, members of the Commission affirmed the finding of compensability by the Arbitrator.

From a proof perspective, the case clearly stands for the proposition that though the Petitioner must prove each element of the case by a preponderance of the evidence, said burden can be met by the Petitioner's un-rebutted testimony or by a medical report stating causation. Thereafter, the Respondent must present contravening proof in order to prevail.

Simply put, the Respondent employer must position themselves to rebut a seemingly non-compensable situation with proof followed by good arguments. While good arguments are always entertaining, it is proof that is necessary to prevail.

**Practice tip: Always position the file with as much proof as possible to support your position. This will improve arguments to be made and increase odds of success. Arguments are great but it is proof that wins cases.**

**OSHA 300 & 300A  
Logs available on iCE**

The Illinois Public Risk Fund will have the 2012 OSHA logs available on line during the month of January. OSHA requires posting of these logs effective February 1, 2013. The logs can be run online thru the claims web portal on iCE. Instructions are available on line and support from IPRF Claims office can be found by contacting Paul Boecker, pboecker@ccmsi.com or 630-649-6053.

## Meet Caryn Maiorana, Claims Specialist

With over 20 years in Workers Compensation Claims, and prior experience as a Para Legal, Caryn came well armed to start a career with IPRF. She services area codes 630 J-Z and 815 Lj-Z, and mostly larger Fire District accounts. She has developed great understanding and compassion for their many challenges and finds that to be most rewarding. Caryn lives with her twin sister and two adorable and mischievous little Westies, Augie and Clancy. Her hobbies are reading and travel. She also has a great appreciation of music, theatre, and the arts, and hopes to return to New York to see another Broadway show.



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