

No. 124690

IN THE
SUPREME COURT OF ILLINOIS

WEST BEND MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v.

GARY BERNARDINO,

Defendant-Appellee,

TRRS CORPORATION and COMMERCIAL TIRE SERVICES, INC.,

Defendants.

On Appeal from the Appellate Court of Illinois
Second Judicial District, No. 2-18-0934
There Heard on Appeal from the Twenty-Second Judicial Circuit,
McHenry County, Illinois, No. 2018 MR 798
The Honorable **Thomas A. Meyer**, Judge Presiding

BRIEF OF DEFENDANT-APPELLEE
GARY BERNARDINO

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STANDARD OF REVIEW

West Bend Mutual Insurance Company (“West Bend”) argues that a circuit court’s decision to grant or deny a stay is reviewed under an abuse of discretion standard. (App. 16). Ordinarily a circuit court’s decision to grant or deny a stay is reviewed under an abuse of discretion standard. (App. 15). However, the circuit court’s decision in this case, is not ordinary as pointed out by the appellate court. (App. 17). Here, the circuit court didn’t find that the doctrine of primary jurisdiction required it to stay the judicial proceedings while the issue of insurance coverage was referred to the Illinois Workers’ Compensation Commission (“IWCC” or Commission). To the contrary, the circuit court found the doctrine of primary jurisdiction didn’t require it to refer the issue of insurance coverage to the IWCC, and, therefore, there was no reason to stay the judicial proceedings. (R. 11). However, the circuit court misapplied the doctrine of primary jurisdiction when it stayed the proceedings of the IWCC. Furthermore, there were no evidentiary hearings or findings of fact prior to the issuance of the stay order. (App. 15). The circuit court held that it had “primary jurisdiction” as a matter of law as the issue was one of law and not fact. Based on this finding, it issued a stay of Gary Bernardino’s (“Bernardino”) IWCC proceedings. (R. 11). Based on this, the appellate court properly applied a *de novo* standard of review. (App. 16-17; citing, *In re Lawrence M.*, 172 Ill. 2d 523, 526 (1996)).

As argued below, given the misapplication of law by the circuit court, the issue concerns the circuit courts subject matter jurisdiction. The fact that the court found it had primary jurisdiction and used it to issue a stay of the proceedings of the IWCC is a misapplication of law and this appeal is concerned with the courts subject matter

jurisdiction. The question of whether the circuit court has jurisdiction is a question of law that is reviewed *de novo*. *McCormick v. Robertson*, 2015 IL 118230, ¶18 (2015).

ARGUMENT

I. WHETHER THE CIRCUIT COURT HAD PRIMARY JURISDICTION OVER THE ISSUE OF INSURANCE COVERAGE

As indicated by the appellate court in this matter, the circuit court should not refer the issue of insurance coverage to the IWCC. (App. 22). The reasons for referring the issue to the IWCC pursuant to the primary jurisdiction doctrine are not present in this case, and thus the circuit court has “paramount” jurisdiction. *Employers Mutual Companies v. Skilling*, 163 Ill.2d 284, 290 (1994). However, in this case, the circuit court lacked judicial authority to stay the lawful proceedings of the IWCC. *In re M.M.*, 65; *Bellville Toyota, Inc. v. Toyota Motor Sales, U.S.A. Inc.*, 190 Ill.2d 325, 136 (2002). (Ill. Const. 1970, art. VI. §9) Article VI, section 9 of the Illinois Constitution states, “Circuit Courts shall have original jurisdiction over all judiciable matters...” The IWCA vested exclusive jurisdiction in the commission over Bernardino’s proceedings in this matter. The stay of these proceedings would be contrary to the intent of the legislature and a degradation of the benefits bestowed on Bernardino pursuant to section 19(b) of the Illinois Workers’ Compensation Act (“IWCA” or Act) 820 ILCS 305/1, et. seq. (West 2016). The circuit court has no power, to stay the statutorily authorized proceedings of the IWCC. The IWCA has no provision which authorizes a circuit court to stay the agencies proceedings. 820 ILCS 305/1, et. seq. (West 2016). The appellate court was correct in finding that *Ultimate Backyard* improperly applied the doctrine of primary jurisdiction to support a circuit

court's authority to stay the proceedings of the IWCC. (App. 19; citing *Estate of Bass v. Katten*, 375 Ill.App. 3rd 62, 68 (2007)).

In *Skilling* this Court for the first time introduced the term “paramount” with regard to the jurisdiction of the circuit court under the doctrine of primary jurisdiction. *Skilling* at 286. *Skilling* held that “when the question of law was presented to the circuit court in the declaratory judgment suit, the jurisdiction of the circuit court became paramount.” *Skilling* at 290. However, early in the opinion this Court seemed to equate paramount jurisdiction with primary jurisdiction when it stated that “[t]he issue before us is one of jurisdiction. Is jurisdiction exclusive with the administrative agency, or is it concurrent with the circuit court? And, if it is concurrent, which is paramount? We rule that the jurisdiction is concurrent and that the jurisdiction of the circuit court is paramount.” *Id.* at 286. *Skilling* went on to state that “[t]he doctrine of primary jurisdiction provides that where a court has jurisdiction over a matter, it should in some instances stay the judicial proceedings pending referral of a controversy, or some portion of it, to an administrative agency having expertise in the area.” *Id.* at 288. In *Skilling* this Court sets forth a straight forward analysis with regard to how a circuit court should handle a case much like this matter.

First, this Court indicates that the declaratory judgment action frames the issue which is the foundation upon which the circuit court should analyze the motions before it. In *Skilling* the carrier filed a declaratory judgment action that asserted that it had no duty to defend or indemnify an insured employer under a Wisconsin workers' compensation policy for injuries sustained by an employee that occurred in Illinois. *Id.* at 285. The Court held that the issue framed by the declaratory judgment action was one of insurance coverage, a

judicial matter over which the circuit court had original jurisdiction. (Ill. Const. 1970 art. VI, §9) Id. at 287. *Skilling* held that pursuant to Illinois Constitution, the circuit courts have “original jurisdiction” over “justiciable matters.” Insurance coverage issues, as framed by the declaratory judgment action, are historically justiciable matters, and thus within a circuit court’s subject matter jurisdiction. In this case, the declaratory judgment action filed by West Bend seeks a judicial determination that it has no duty to defend or indemnify the employer under a workers’ compensation policy because the employer violated the notice provisions of the policy. (R. 4-57). Therefore, the circuit court has jurisdiction over the declaratory judgment action filed by West Bend. After determining that the circuit court had jurisdiction, this Court then looked to make a determination as to whether the circuit court and IWCC had concurrent jurisdiction. Id. at 287. The appellate court indicated that once a determination was made as to concurrent jurisdiction, the issue became one of proper venue. (App. 17). Although venue and jurisdiction are often used interchangeably, they are distinct. Venue refers to where a case is to be tried or heard. However, jurisdiction refers to the power of the court to adjudicate or hear a matter. See, 20 Am. Jur. 2d Courts, §54; citing, *Slepicka v. Illinois Dept. of Public Health*, 2014 IL 116927, ¶¶29-43, 2014 WL 4638861 (Ill. 2014).

Next, the Court analyzed whether the IWCC had exclusive jurisdiction over the insurance coverage issue. Although this Court didn’t specifically look at the IWCC’s authority to rule on issues of insurance coverage pursuant to section 4 of the IWCA, it implicitly found that the IWCC has jurisdiction over issues of insurance coverage when it held that the circuit court and the IWCC have concurrent jurisdiction over the issue. Id. at

287; 820 ILCS 305/4 (West 2016). This Court held that section 18 of the IWCA was insufficient to divest the circuit court of its jurisdiction to decide issues of insurance coverage. *Id.*; 820 ILCS 305/18 (West 2016). Therefore, the Court held that the circuit court and the IWCC had concurrent jurisdiction over the issue of insurance coverage. In this case, the circuit court and the IWCC have concurrent jurisdiction over the issue of insurance coverage presented by West Bend's declaratory judgment action.

Finally, *Skilling* engaged in a primary jurisdiction analysis. The courts are generally in agreement that the purpose of the doctrine is to promote proper relationships between the courts and administrative agencies. *Id.* at 288; See generally, *Western Pacific R.R. Co.*, 352 U.S. 59 (1956); *Kellerman v. MCI Telecommunications Corp.*, 112 Ill.2d 428, 444 (1986); *Pekin Ins. Co. v. Campbell*, 2015 IL App (4th) 140955; *Continental Western Ins. Co., Inc. v. Knox County EMS, Inc.*, 2016 IL App (1st) 143083; *Hastings Mut. Ins. Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751. The circuit courts and administrative agencies should not be looked at as opposing forces, but should work together to bring about justice. See, 20 Am. Jur. 2d, Administrative Law, §5; citing, *U.S. v. Ruicka*, 329 U.S. 287, 295 (1946). The primary jurisdiction doctrine is not concerned with labeling a circuit court as having paramount jurisdiction or an administrative agency as having exclusive jurisdiction. The analysis looks to see if either of the reasons for the application of the doctrine and referral of the issue to the administrative agency are present. If they are, the court should stay its proceedings and defer the matter, or some portion of it, to the administrative agency. *Skilling* at 288-89. The first reason underlying the application of the primary jurisdiction doctrine is the need for uniformity in the regulation

of an industry. This reason, and the doctrine of primary jurisdiction, owes its origins to *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U.S. 426 (1907). In *Abilene* a shipper filed suit and received judgment against a railway carrier for amounts that the carrier had overcharged the shipper based on rates that the Interstate Commerce Commission had not determined were unreasonable. *Id.* at 432. In upholding judgement, the Supreme Court noted that the fundamental question was the scope and effect of the Interstate Commerce Act had upon the right of a shipper to maintain an action at common law. *Id.* at 436. The concern was whether a court's subject matter jurisdiction to hear a common law complaint interfered with the intent of Congress to establish uniformity in the regulation of shipping rates. *Id.* at 440-41. It was the interference with the intent of the legislature to create uniformity in rates that was the concern. The second reason underlying the application of the primary jurisdiction analysis looks to whether the issue involved primarily the application of law or whether the court would be aided by the specialized skill and experience of the administrative agency in conducting evidentiary investigations into the facts underlying the issue. The second reason owes its origins to *Great Northern Ry. Co. v. Merchants' Elevator Co.*, 259 U.S. 285 (1922). In that case, the Supreme Court made a distinction between issues involving questions of law and fact. *Id.* at 291-92. The Court held that where the question is one of statutory construction or "solely of law" than the courts may reserve jurisdiction and rule on the issue. *Id.* However, where the terms used in a statute are technical and require a look into extrinsic evidence to determine their meaning or proper application the issue is said to be one of fact and of discretion in

technical matters which should be referred to the administrative agency. Id. See also, *Far East Conference v. U.S.*, 342 U.S. 570, 574-75 (1952).

In *Skilling* this Court held that the circuit court erred in dismissing the declaratory judgment action. The Court found that neither of the reasons were present to support the referral of the insurance coverage issue to the IWCC. The court held that when the insurance coverage issue as set forth in the declaratory judgment action was presented to the circuit court its jurisdiction became “paramount.” Id. at 290. In this case, as in *Skilling*, neither of the reasons are present to support the referral of the insurance coverage issue to IWCC. The filing of the declaratory judgment action by West Bend which sets forth the insurance coverage issue resulted in the circuit court’s jurisdiction over that issue becoming paramount.

A few things are worth noting at this point with regard to the doctrine of primary jurisdiction. First, in most cases, when courts refer to “paramount jurisdiction” they are referring to the fact that a bankruptcy court’s jurisdiction is paramount and exclusive to all other courts. See generally, *In re Jacobs*, 7 F. Supp. 749, 750-51 (Dist. Ct. N.D. Ill. 1934). In each case involving the doctrine of primary jurisdiction in Illinois, the courts have only referred to the term “paramount jurisdiction” in reference to this Court’s decision in *Skilling*. See, *Westport Ins. Corp. v. Atlantic Painting Co., Inc.*, 2007 WL 1302972, (Dist. Ct. N.D. 2007); *Hastings Mut. Ins. Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751 (4th Dist.); *Pekin Ins. Co. v. Campbell*, 2015 IL App (4th) 140955 (4th Dist.); *Continental Western Ins. Co., Inc. v. Knox County EMS, Inc.*, 2016 IL App (1st) 143083, (1ST Dist.); *Daley v. Jones Motor Co., Inc.*, 2018 WL 1565610 (Dist. Ct. SD). No cases

have been found where the Supreme Court has used the term “paramount jurisdiction” in reference to primary jurisdiction. Second, the power and jurisdiction of the courts predates the constitution and, as such, there are many terms to define and describe the source of juridical power and jurisdiction. See, 20 Am. Jur. 2d Courts §§53-82. However, administrative agencies owe their existence to the legislative branch’s enactment of a statute, in this case, the IWCA, 820 ILCS 305/1, et seq. Primary jurisdiction cases that find that an agency has jurisdiction over a matter, or some part of it, use terms that if they were applied to a court would have a different meaning. For example, In *Western Pacific R.R. Co.* the Supreme Court held that under the circumstances presented to the Court, the issue of tariff construction, as well as the reasonableness of the tariff as applied, were within the “exclusive primary jurisdiction” of the Interstate Commerce Commission. *Id.* at 63. In contrast, this Court in *People v. NL Industries*, 152 Ill.2d 82, 604 N.E.2d 349, 178 Ill.Dec. (1993), held that primary jurisdiction didn’t require referral of the matter. This court held that the circuit court, which was upheld by the appellate court, erred in dismissing a complaint filed by the State’s Attorney of Cook County on the basis of exhaustion of remedies. *Id.* at 90. This Court indicated that the appellate court had joined together the separate doctrines of primary jurisdiction and exhaustion of remedies when stating, “that the [Board], not the circuit court, had *primary and exclusive* jurisdiction to hear the action.” *Id.* at 95. Third, there is no means for a circuit court to refer a matter to an agency. In *Reiter v. Cooper*, 507 U.S. 258, 268 (1993), the trustee of a bankrupt carrier brought a common law action against a shipper for freight undercharges. The Supreme Court noted that the doctrine of primary jurisdiction requires the court to enable a ‘referral’

to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling. Citing, *Western Pacific R.R. Co.*, 352 U.S., at 63–64; *Ricci v. Chicago Mercantile Exchange*, 409 U.S. 289, 291 (1973); *Port of Boston Marine Terminal Assn. v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 65 (1970). The Court went on to state that “referral” of the issue to the administrative agency doesn’t result in the dismissal of the action, but that the court has discretion to either retain jurisdiction or dismiss the action without prejudice if the parties are not unfairly disadvantaged. In footnote 3, the Court also indicates that the term “referral” is a term which loosely describes the process by which a court refers a matter to an agency. ¹

II. WHETHER THE CIRCUIT COURT ERRED IN STAYING THE PROCEEDINGS OF THE IWCC BASED ON THE DOCTRINE OF PRIMARY JURISDICTION.

This Court in *Skilling* stated that “[t]he courts of Illinois have original jurisdiction over all justiciable matters.” (Ill. Const.1970, art. VI, § 9.). There is no argument that the

¹ *Reiter* at 268, fn3, “Referral” is sometimes loosely described as a process whereby a court refers an issue to an agency. See, e.g., 28 U.S.C. § 1336. But the ICA (like most statutes) contains no mechanism whereby a court can on its own authority demand or request a determination from the agency; that is left to the adversary system, the court merely staying its proceedings while the shipper files an administrative complaint under § 11701(b). See § 11705(c)(1) (second sentence). Use of the term “referral” to describe this process seems to have originated in *Western Pacific*, which asserted that, where issues within the special competence of an agency arise, “the judicial process is suspended pending referral of such issues to the administrative body for its views.” *United States v. Western Pacific R. Co.*, 352 U.S. 59, 64, 77 S.Ct. 161, 165, 1 L.Ed.2d 126 (1956). At the conclusion of that passage, the *Western Pacific* Court cited *General American Tank Car Corp. v. El Dorado Terminal Co.*, 308 U.S. 422, 433, 60 S.Ct. 325, 331, 84 L.Ed. 361 (1940), which in turn cited *Mitchell Coal & Coke Co. v. Pennsylvania R. Co.*, 230 U.S. 247, 33 S.Ct. 916, 57 L.Ed. 1472 (1913). *Mitchell Coal* spelled out the actual procedure contemplated, holding that further action by the district court should “be stayed so as to give the plaintiff a reasonable opportunity within which to apply to the Commission for a ruling as to the reasonableness of the practice,” *id.*, at 267, 33 S.Ct., at 924.

declaratory judgment action brought by West Bend presented the circuit court with a judiciable matter within its subject matter jurisdiction. However, with the exception of *Ultimate Backyards*, West Bend has cited no case which upholds a circuit court's stay of an agency's legitimate statutory mandated proper under the declaratory judgment statute. Both *Skilling* and *Ultimate Backyards*, the cases cited by West Bend in support of its argument that the stay issued by the circuit court in this case was proper, set forth the doctrine of primary jurisdiction stating "[t]he doctrine of primary jurisdiction provides that where a court has jurisdiction over a matter, it should in some instances stay the judicial proceedings pending referral of a controversy, or some portion of it, to an administrative agency having expertise in the area." *Skilling* at 288; *Ultimate Backyards* at ¶31; see also, *Western Pacific R.R. Co.*, 352 U.S., at 63–64; *Reiter*, 507 U.S. at 268; *Ricci*, 409 U.S. at 291; *Rederiaktiebolaget Transatlantic*, 400 U.S. at 65. It is clear that the doctrine provides for the stay of judicial proceedings in some instances. However, as stated by the appellate court in this matter, the stay of the IWCC proceedings turns the doctrine of primary jurisdiction on its head. (App. ¶19).

There is also no question that the IWCC has concurrent jurisdiction over the issue of insurance coverage. Furthermore, *Skilling* settled the question as to whether the court should refer an insurance issue to the IWCC. However, this doesn't answer the issue of whether the doctrine of primary jurisdiction also provides that a circuit court should, in some instances, stay the proceedings of the IWCC, while it determines the insurance coverage issue. *Western Pacific* indicated that primary jurisdiction "applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the

claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views." *Western Pacific R.R. Co.*, 352 U.S., at 64. The stay of the agencies proceedings is not mentioned nor discussed in this or any other case cited by West Bend outside of *Ultimate Backyard*. As stated above, the two reasons for the application of the doctrine of primary jurisdiction as set forth by this Court and the Supreme Court don't not apply in this case. What reasons would govern a circuit court's decision, if it was proper and it had the authority, to stay the proceedings of the IWCC while it decided a coverage issue? The reasons for referral to the IWCC don't apply in reverse. The circuit court, nor the appellate court, got into this analysis. This will be discussed below in regards to the authority of the circuit court to stay administrative proceedings. It is enough at this point to say that it is clear that the doctrine of primary jurisdiction cannot be employed to stay the proceedings of an agency.

III. WHETHER THE CIRCUIT COURT HAD AUTHORITY TO STAY THE PROCEEDINGS OF THE IWCC.

West Bend argues that, if the doctrine of primary jurisdiction as articulated in *Skilling* is to have any force, the circuit court must be able to restrain the IWCC. As discussed above, this isn't true. The reasons for the application of the doctrine are not present. Furthermore, the doctrine results in a referral to the IWCC, not a stay of agency proceeding pending a "referral" of the matter to the circuit court. The circuit court can still proceed with regard to West Bend 's declaratory judgment action and enter appropriate orders based on the motions filed by the parties. If, as West Bend claims, the matter will be settled by

summary judgement, then the circuit court can enter a declaratory judgement order that West Bend owes a duty to defend or indemnify Commercial Tire Services and/or TRRS, or it doesn't. Otherwise, the matter can go to a final disposition after the circuit court hears the evidence. Either way, the actions of the circuit court will not be procedurally affected by the actions taken by the IWCC. Whether the IWCC proceedings may or may not have some evidentiary effect on the proceedings before the circuit court is not at issue in this case. This case has not procedurally reached the point that was reached in *Kendall Casualty Ins. Co. v. Kendall Enterprises, Inc.*, 295 Ill.App3d 582, 587 (1998).

Additionally, answering the issue of coverage isn't required for the resolution of most of the issues presented by Bernardino's claims under the IWCA. (R. 186, R. 242, R. 250). Regardless of coverage, the commission could enter a judgment in favor of Bernardino and against TRRS, Commercial Tire and West Bend requiring the payment of medical expenses and temporary total disability. A finding of coverage is not necessary. Furthermore, the award of fees and penalties under sections 16 and 19(k) of the Act can be assessed without a finding of coverage. 820 ILCS 305/16, 19(k) (West 2016). However, the assessment of penalties under section 4(d) of the Act, would require the commission to make a determination that the employer negligently or intentionally failed to provide the employee with insurance. 820 ILCS 305/4(d) (West 2016). Therefore, the medical benefits, the temporary total disability, the attorney fees and the penalties sought by Bernardino in the hearing that was set for November 1, 2018 didn't require the commission to necessarily make a finding of coverage under section 4 of the Act. 820 ILCS 305/4 (West 2016). This doesn't mean that insurance coverage is not relevant and evidence relating to it couldn't be

introduced at the trial. If the doctrine of primary jurisdiction doesn't apply, what doctrine, if any, does apply? And if there is a doctrine that applies, under what authority can a circuit court stay the legitimate statutory proceedings of an administrative agency as it has done here?

There is no argument that the IWCA is a comprehensive statutory scheme which created the IWCC and empowered it with the authority to resolve disputes like Bernardino filed requesting an immediate hearing under section 19(b) of the Act, and for penalties for unreasonable and vexatious delay under sections 16 and 19(k) of the Act. 820 ILCS 305/19(b), 16, 19(k). If *Ultimate Backyard* is correct, the circuit court must have the authority or power to stay the proceedings of an administrative agency and the action to do so must have been proper. There is no argument that the IWCC proceedings set for trial on November 1, 2018, do not constitute a legitimate agency action. The circuit court's authority couldn't be derived from its constitutional authority to review administrative actions as provided by law, as the IWCC has taken no action for it to review pursuant to Section 19(j) of the Act. 820 ILCS 305/19(j) (West 2016). Therefore, the authority must come from an ancillary equitable power incident to the court's constitutional authority over all "judicable matters." However, this is a stretch that no case cited by West Bend has taken.

West Bend argues that pursuant to *Ardt v. Illinois Department of Professional Regulation*, 154 Ill.2d 138 (1992), a circuit court has "inherent equitable power" to issue stay orders directed to administrative agencies. (West Bend brief, pg. 15). However, the circuit court in *Ardt* acquired jurisdiction after the administrative agency had entered a

decision. *Id.* at 142. This case is distinguishable on that grounds alone. The stay entered in *Ardt* was with regards to the enforcement of the agency's sanctions pending the circuit court's review. *Id.* This case doesn't involve the stay of enforcement of the IWCC's orders, and is distinguishable on that point. Finally, *Ardt* involved the issuance of a stay based on the protection of a constitutionally guaranteed right which posed no risk of harm to the public during the pendency of the appeal. *Id.* at 143-44. In this case, West Bend makes no argument that it has a constitutionally guaranteed right to have the circuit court decide the coverage issue. At best, *Ardt* does involve an interesting starting point for an analysis of the inherent equitable powers of the courts.

West Bend would argue that primary jurisdiction is a means of expanding the power and authority of the circuit court to stay the legitimate proceedings of the IWCC. However, the cases cited by West Bend don't stand for this proposition. It is clear that the legislature may create rights and duties not found in common law by the enactment of a comprehensive statutory scheme and place exclusive jurisdiction over the adjudication of those rights and duties in an administrative agency. However, if the legislature intends to grant exclusive jurisdiction to the agency it must do so explicitly. *Skilling* at 287. *Skilling* ruled that section 18 of the IWCA didn't divest the circuit courts of jurisdiction. *Id.*

The issue raised by the West Bend's declaratory judgment action is one of insurance coverage. This is the source of the circuit court's subject matter jurisdiction. The statutory scheme of the IWCA didn't deprive the circuit court of jurisdiction over this issue. However, what is the issue when the circuit court stayed Bernardino's IWCC's proceedings? The issue of coverage in *Skilling* was defined by the declaratory judgment

action filed by the carrier. When the circuit court stayed the IWCC, the issue is defined by the petitions filed by Bernardino with the IWCC. This would include the claim for adjustment and the petition for immediate hearing under Section 19(b). (R. 186, R.C 242, R. 250). The issues raised in these claims, pleading and motions now serve as the subject matter upon which to test whether the IWCA has exclusive jurisdiction. Sections 18 and 19 of the Act place exclusive jurisdiction over the adjudication of these issues in the hands of the IWCC. 820 ILCS 305/18, 19 (West 2016). In this case, Bernardino's claims under the IWCA seeks factual determinations regarding: (1) the enforcement of section 4 of the Act; (2) whether an employment relationship existed; (3) whether the was negligent or intentional failure to provide workers' compensation coverage; (4) what the nature and extent of injuries were; (5) what defenses there may be to the workers' compensation claim. The IWCC has exclusive primary jurisdiction over these and the other issues that are set forth in his application for adjustment as well as the pending motions for immediate hearing under 19(b) and the request for attorney's fees and penalties under sections 16 and 19(k). It is not argued IWCC doesn't have specialized knowledge and skill in making fact-intensive determinations into such matters. Therefore, the IWCA has deprived the circuit court of jurisdiction over these issues. These issues are defined by the pending pleadings before the IWCC, not by the pleading filed by West Bend in its declaratory judgment action. The courts of Illinois agree that these types of issues are in the exclusive jurisdiction of the IWCC. *Continental Western Ins. Co., Inc. v. Knox County EMS, Inc.*, 2016 IL App (1st) 143083, ¶¶19-20; citing, *Bradley v. City of Marion, Illinois*, 2015 IL App (5th)

140267, ¶¶ 25, 32; *ABF Freight System, Inc. v. Fretts*, 2015 IL App (3d) 130663, ¶¶ 16–19; *Keating v. 68th & Paxton, L.L.C.*, 401 Ill.App.3d 456, 468 (2010).

In *Hartlein* this Court stated "[a]ccording to Illinois Power, any issue as to Hartlein's right to a continuation of his TTD benefits is within the province of the Illinois Industrial Commission. We would agree. The role of the circuit court in compensation proceedings is appellate only, and is limited by section 19(f) of the Workers' Compensation Act." *Hartlein v. Illinois Power Co.*, 151 Ill.2d 142, 157 (1992). In *In re M.M.* this Court clarified *Ardt* stating "[w]ith the exception of administrative review actions, where jurisdiction is conferred upon the circuit court by the legislature, jurisdiction is conferred by our constitution." *In re M.M.*, 156 Ill.2d 53, 65-66 (1993) In this case, there is no statute which has conferred jurisdiction over the benefits of Bernardino under the IWCA. To the contrary, the statute provides that the circuit court's jurisdiction is one of review only. 820 ILCS 305/19(j) (West 2016).

It may be argued that the Act creates "judiciable matters" which didn't exist under the common law, and the circuit courts have authority over all "judiciable matters" under the constitution. (Ill. Const. 1970, art. IV, §9). In *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A.*, 199 Ill. 2d 325, 334-38 (2002) this Court provided a detailed analysis of the authority of the courts under the constitution, both before and after the 1964 amendments, particularly with regard to judiciable matters created by statute. By enacting the IWCA the legislature created new judicable matters that didn't exist under common law. *Id.* A judiciable matter is not defined under the constitution, but is generally a controversy which the courts can rule. *Id.* at 335. Since the statute has created the judiciable matter, the circuit

courts have jurisdiction over the matter pursuant to Article VI, section 9 of the Illinois Constitution. (Ill. Const. 1970, art VI, §9). However, the court in exercising any jurisdiction is bound by rules of construction, doctrines of law, and principles of equity.

The stay of the IWCC proceedings constitutes an action by the court which is beyond its authority and jurisdiction. *In re M.M.* at 66. IWCA creates special proceedings which pertain to the duties and rights of the parties under the IWCA. 820 ILCS 305/1 et. seq. (West 2016). The legislature has granted exclusive jurisdiction over these proceedings to the IWCC. The stay of these proceedings violates the IWCC exclusive jurisdiction. Additionally, the stay of the proceedings, in essence, acts as a judicial amendment to the Act, whereby a carrier can if they have a reasonable basis to do so, obtain a stay of the IWCC proceedings where no such "time out" is authorized under the procedures for conducting hearing in the Act. 820 ILCS 305/1 et. seq. (West 2016). Section 19(j) provides that the circuit court has authority over the proceedings as a result of the entry of a final and appealable decision. 820 ILCS 305/19(j) (West 2016).

It is clear that the stay of the IWCC proceedings in this case violates Bernardino rights under the IWCA and is an unconstitutional exercise of judicial power. *In re M.M.* at 66. West Bend has cited no case that authorizes a circuit court to stay an administrative action or procedure which is being conducted pursuant to a comprehensive statutory scheme which specifically limits the circuit court's power to that of review. Even if the circuit court had the authority to take some action with respect to dictating how or when the IWCC should conduct hearings, it would have to exercise judicial restraint when considering any petition presented. Any action taken with regard to the proceedings of the IWCC would

have to be in furtherance of intent of the legislature in enacting the specific remedy and procedure. Surely the stay of Bernardino's right to an immediate hearing was not furthered by the stay. The IWCA provides no right in the carrier with regard to an immediate hearing or stay of proceedings while an investigation or hearing can be held on coverage. The legislative intent of section 19(b) is clear by its terms used. It was intended to provide a procedure whereby an injured employee could obtain needed medical and temporary disability benefits pending a final resolution of the matter. This intent was interfered with by the stay of proceedings and the ruling of this court should ensure that injured workers in future don't have their rights taken away as Bernardino's have in this case.

CONCLUSION

The circuit court had paramount jurisdiction in this matter. However, the doctrine of primary jurisdiction didn't authorize the court to stay the proceeding of the IWCC. The IWCC has exclusive jurisdiction over Bernardino's claims for benefits pursuant to the IWCA.

Respectfully Submitted,




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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342 (a) is 18 pages.



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No. 124690

NOTICE OF FILING AND CERTIFICATE OF SERVICE

IN THE SUPREME COURT OF ILLINOIS

WEST BEND MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v.

GARY BERNARDINO,

Defendant-Appellee,

TRRS CORPORATION, COMMERCIAL TIRE, SERVICES, INC.,

Defendants.

The undersigned, being first duly sworn, deposes and states that on August 2, 2019, there was electronically filed and served upon the Clerk of the Supreme Court of Illinois, Defendant-Appellee, Gary Bernardino's Brief, and on that same day, a pdf of same was emailed to the following counsel of record:

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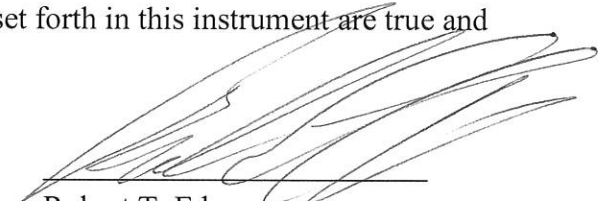
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Within five days of acceptance by the Court, the undersigned states that 13 copies of Defendant-Appellee, Gary Bernardino's Brief bearing the court's file-stamp will be sent to the above court.


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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.


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