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,
Twenty-Second Judicial District, McHenry County, Illinois, No. 2-19-0478.
There Heard on Appeal from the Circuit Court of the Twenty-Second Judicial Circuit,
McHenry County, Illinois, No. 2018 MR 798.
The Honorable **Thomas A. Meyer**, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLANT WEST BEND MUTUAL INSURANCE COMPANY

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POINTS AND AUTHORITIES

NATURE OF THE CASE

WEST BEND filed a declaratory judgment action seeking a declaration that it does not have a duty to defend or indemnify TRRS CORPORATION ("TRRS") and COMMERCIAL TIRE SERVICES, INC. ("COMMERCIAL TIRE"), in a worker's compensation case and a civil lawsuit filed by GARY BERNARDINO ("BERNARDINO") under a workers' compensation and employers liability insurance policy because of late notice of injury. BERNARDINO set the worker's compensation case for a hearing pursuant to Section 19 of the Workers Compensation Act, 820 ILCS 305/19, which prompted WEST BEND to seek a stay of the proceedings in the Illinois Workers' Compensation Commission ("IWCC") until the Circuit Court could decide the late notice issue. The Circuit Court granted WEST BEND's Motion to Stay. (App. at A3). BERNARDINO filed an interlocutory appeal of the stay order pursuant to Illinois Supreme Court Rule 307. The Appellate Court reversed the Circuit Court's stay order in an opinion issued on March 1, 2019. (App. at A4).

The question presented to this Court is whether the Circuit Court properly stayed the IWCC proceedings pursuant to the primary jurisdiction doctrine.

ISSUES PRESENTED FOR REVIEW

The issues presented for review are:

1. Whether the Circuit Court, not the IWCC, is the proper forum for deciding WEST BEND's late notice coverage case;

2. Whether the Circuit Court's stay order is in accord with the underlying principles established by this Court for the primary jurisdiction doctrine; and

3. Whether the Circuit Court has authority to stay IWCC proceedings.

STATEMENT OF JURISDICTION

The Appellate Court issued its decision on March 1, 2019 under 2019 IL App (2d) 180934. (App. at A4). This Court allowed Plaintiff's Petition for Leave to Appeal on May 22, 2019. This Court has jurisdiction pursuant to Illinois Supreme Court Rule 315.

STATEMENT OF FACTS

On October 2, 2018, WEST BEND filed a Complaint for Declaratory Judgment in the Circuit Court of McHenry County, Illinois, against COMMERCIAL TIRE, TRRS and BERNARDINO. (R.C 4-57). The WEST BEND Declaratory Judgment Complaint seeks a declaration that WEST BEND does not have a duty to defend or indemnify COMMERCIAL TIRE and TRRS in an IWCC proceeding and a bodily injury lawsuit, both of which arose from an April 18, 2017 injury to BERNARDINO, under a Workers' Compensation and Employers Liability Insurance Policy WEST BEND issued to COMMERCIAL TIRE and TRRS. The Declaratory Judgment Complaint alleges that coverage is unavailable because COMMERCIAL TIRE and TRRS violated the notice provision of the insurance policy. (R.C 7).

Prior to the filing of the WEST BEND Declaratory Judgment Complaint, BERNARDINO filed a petition in the IWCC pursuant to § 16 and § 19 of the Workers' Compensation Act, 820 ILCS 305/1, et seq., which sought medical benefits, penalties and attorneys' fees. (R.C 0186, R.C 0242, R.C 0250). At the time BERNARDINO filed the petition, WEST BEND was not a party to the IWCC

proceedings. However, on October 12, 2018, BERNARDINO filed an Amended Application for Adjustment of Claim in the IWCC which added WEST BEND as a Respondent. (R.C 0266). Section 4(g) of the Workers' Compensation Act, 820 ILCS 305/4(g) allows an insurer to be named a respondent in an IWCC proceeding, and further provides that the insurer can be made jointly liable with the employer for any award entered in favor of the employee.

BERNARDINO's § 19 Petition was set for trial before Arbitrator Michael Glaub on November 19, 2018. On October 12, 2018, WEST BEND presented an Emergency Motion in the Circuit Court to stay the IWCC proceedings. (R.C 60). The motion was granted, *ex parte*, but the Circuit Court continued the case to October 26, 2018, to give all parties an opportunity to be heard on the stay. (App. at A1). On October 25, 2018, BERNARDINO filed an Emergency Motion to Vacate the October 12, 2018 stay order. (R.C 183-278). The Circuit Court allowed further briefing on BERNARDINO's motion and set the matter for hearing on November 1, 2018. (App. at A2). BERNARDINO's Motion to Vacate the stay order made clear that he wanted the IWCC to decide the late notice coverage issue stated in WEST BEND's Declaratory Judgment Complaint, as well as his claim for worker's compensation benefits. (R.C 192).

The Circuit Court began the November 1, 2018 hearing by vacating the October 12, 2018 stay order, and then allowed the parties to argue the merits of the entry of the stay of the IWCC proceedings. (R. 12). Rather than address the question of the Circuit Court's primary jurisdiction to hear the insurance coverage issue, BERNARDINO argued that the Circuit Court should not consider the case

because there was no insurance policy in place covering the location where BERNARDINO's injury occurred. (R. 13). BERNARDINO made this argument despite admitting that he was advised by WEST BEND that its policy provided coverage for the location. (R. 14). WEST BEND confirmed that it was not arguing that coverage for the location did not exist. Rather, the coverage issue centered on late notice. (R. 21-22).

WEST BEND argued that the primary jurisdiction doctrine as stated in *Employers Mutual Companies v. Skilling*, 163 Ill.2d 284 (1994) and *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC,* 2012 IL App (1st) 101751 dictated that the Circuit Court, rather than the IWCC, was the proper forum for deciding WEST BEND's coverage case. (R.C 121-130). The Circuit Court agreed that the late notice issue should be decided by the Court, and determined that the stay was necessary to permit the Court to decide the issue before the IWCC entered orders which would be binding on WEST BEND. (R. 44-48). Therefore, the Circuit Court reinstated the stay of the IWCC proceedings. (App. at A3, R. 21-22).

On November 8, 2018, BERNARDINO filed a Notice of Appeal of the November 1, 2018 order pursuant to Illinois Supreme Court Rule 307(a)(1). (R.C 369-372). The Second District Appellate Court issued its Opinion on March 1, 2019, reversing the Circuit Court's November 1, 2018 Order staying the IWCC proceedings. (App. at A4). The Appellate Court's reversal was not based on grounds raised by BERNARDINO in his briefs on appeal. (App. at A21, ¶ 30). The Appellate Court acknowledged that BERNARDINO did not challenge the Circuit Court's primary jurisdiction over the late notice issue raised in WEST BEND's

Declaratory Judgment Complaint. (App. at A16, ¶ 24). [1] Additionally, the Appellate Court agreed that pursuant to *Employers Mutual Companies v. Skilling*, 163 Ill.2d 284 (1994), the Circuit Court was correct in determining that it had concurrent and primary jurisdiction to decide the coverage case. (App. at A17, ¶ 24). The basis for reversal was the Appellate Court's disagreement with *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC,* 2012 IL App (1st) 101751, wherein the appellate court reversed a circuit court order denying a stay of IWCC proceedings to allow the circuit court to exercise its primary jurisdiction over an insurance coverage declaratory judgment action. (App. at A17, ¶ 25, A20-21, ¶ 29). On March 27, 2019, WEST BEND filed a Petition for Leave to Appeal from the Appellate Court's decision which this Court allowed on May 22, 2019.

ARGUMENT

STANDARD OF REVIEW

The Appellate Court applied a *de novo s*tandard of review in this case. (App. at A11, ¶ 16). To the extent that the issue in this case involves the Circuit Court's subject matter jurisdiction, that issue is reviewed *de novo*. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.,* 2011 IL 111611, ¶ 26; *Continental Western Insurance Co., Inc. v. Knox County EMS, Inc.,* 2016 IL App (1st) 143063, ¶ 15. However, the Circuit Court's decision to grant or deny a stay is reviewed under an abuse of discretion standard. *Hastings Mutual Insurance Co. v. Ultimate Backyard,*

[1] On appeal, BERNARDINO made the same argument he put forward in the Circuit Court, that the WEST BEND Policy did not cover the accident location, but the Appellate Court found this argument unavailing. (App. at A16-17, ¶ 24).

LLC, 2012 IL App (1st) 101751, ¶ 29; *Allianz Insurance Co. v. Guidant Corp.,* 355 Ill.App.3d 721, 730 (2nd Dist. 2005).

I. The Circuit Court's Stay Order in Reliance on *Skilling* and *Hastings Mutual* Was Proper

The Appellate Court agreed that, based on *Employers Mutual Companies v. Skilling*, 163 Ill.2d 284 (1994), the Circuit Court has primary jurisdiction to decide WEST BEND's coverage case. (App. at A11, ¶ 17; A17, ¶ 24). However, it reversed the stay order because of its disagreement with *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC,* 2012 IL App (1st) 101751, where the First District relied on *Skilling* to stay IWCC proceedings. The Appellate Court reversed because it believed the stay order violated the principles underlying the primary jurisdiction doctrine. (App. at A13, ¶ 19). WEST BEND will show herein that the Circuit Court's entry of a stay order of the IWCC proceedings in reliance on *Hastings Mutual* is consistent with the principles underlying the primary jurisdiction doctrine stated in *Skilling.* Therefore, the Appellate Court judgment should be reversed and the Circuit Court affirmed.

This Court's opinions in *Kellerman v. MCI Telecommunications Corp.,* 112 Ill.2d 428 (1986), *People v. NL Industries*, 152 Ill.2d 82 (1992), and *Skilling* hold that the primary jurisdiction doctrine applies when the circuit court and an administrative agency have concurrent jurisdiction over a case. [2] The circuit court must then determine whether to defer to the agency because of its specialized or technical expertise that would help resolve the issue. *Skilling*, 163 Ill.2d at 288-

[2] If the court does not have original or concurrent jurisdiction, the primary jurisdiction doctrine is inapplicable. *Crossroads Ford Truck Sales v. Sterling Truck Corp.,* 2011 IL 111611, ¶ 47.

89, citing *Kellerman*, 112 Ill.2d at 445. If the issue does not call upon the agency's specialized knowledge or expertise "courts should not relinquish their authority over a matter to the agency." *Kellerman*, 112 Ill.2d at 445.

There is no dispute in this case that the Circuit Court has primary jurisdiction over WEST BEND's declaratory judgment action. The problem arises when, as here, there is a danger that the IWCC will decide the issue before the Circuit Court has an opportunity to do so. That is the situation the Circuit Court was faced with here when BERNARDINO wanted the IWCC to decide the coverage issue. To protect its jurisdiction, the Circuit Court stayed the IWCC proceedings so that it could decide WEST BEND's coverage case. In doing so, the Circuit Court relied on *Skilling* and *Hastings Mutual.* In *Skilling,* this Court considered whether the circuit court or the IWCC had primary jurisdiction to decide a dispute involving insurance coverage under a workers' compensation policy. This Court decided that the construction of the insurance policy was a question of law for the circuit court to decide, and did not present factual issues requiring the specialized knowledge and expertise of the IWCC. *Skilling*, 163 Ill.2d at 288-89. This Court concluded, therefore, that the circuit court's jurisdiction to hear the coverage case was paramount over that of the IWCC. *Skilling*, 163 Ill.2d at 289.

At issue in *Skilling* was whether a workers' compensation insurance policy covered injuries that occurred outside of Wisconsin. The insurer filed a declaratory judgment action, alleging that it was not obligated to defend or indemnify Skilling's employer or pay worker's compensation benefits to Skilling for injuries which occurred in Illinois, because its policy only covered injuries occurring in Wisconsin.

Skilling moved to dismiss the insurer's complaint, arguing that the insurer was required to exhaust its administrative remedies in the IWCC. *Skilling*, 163 Ill.2d at 285-86. The circuit court dismissed the complaint and the appellate court affirmed the dismissal, but this Court reversed based on the primary jurisdiction doctrine. *Skilling*, 163 Ill.2d at 290. Regarding the primary jurisdiction doctrine, this Court stated:

> "The doctrine of primary jurisdiction is 'concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties.' Under this doctrine, a matter should be referred to an administrative agency when it has a specialized or technical expertise that would help resolve the controversy, or when there is a need for administrative standards. Applying these foregoing principles to the present case, we conclude that the circuit court should not have declined resolution of this insurance coverage dispute in deference to the Commission. **It is the particular province of the courts to resolve questions of law such as the one presented in the instant declaratory judgment case. Administrative agencies are given wide latitude in resolving factual issues, but not in resolving matters of law."** *Skilling*, 163 Ill.2d at 288-89 (emphasis added, citations omitted).

In *Hastings Mutual*, the First District reversed the circuit court for refusing to stay a worker's compensation case pending the resolution of an insurance coverage issue. The appellate court in *Hastings Mutual* relied on *Skilling* to hold that the circuit court should exercise primary jurisdiction over an issue concerning the cancellation of an insurance policy. The Court provided the following explanation for its ruling:

> "The doctrine of primary jurisdiction provides that even when the circuit court has jurisdiction over a matter, it should, in some instances, stay the judicial proceedings pending referral of the controversy to an administrative agency. Referral of the matter is proper so long as the administrative agency has a specialized or technical expertise that would help resolve the controversy, or where there is a need for uniform administrative standards. (citations

> omitted). We find that resolving the controversy at issue does not require the specialized expertise of the IWCC.
> This court finds the facts of *Skilling* to be most analogous to the case at hand and, therefore, finds its reasoning to be instructive. The question that is posed by Hastings Mutual asks the lower court to interpret section 4(b) of the Workers' Compensation Act. Interpretation of a statute is a question of law, which is best answered by the circuit court and one that does not require the specialized expertise of the IWCC. Therefore, the IWCC does not have primary jurisdiction, and as stated in *Kendall*, when there is a ruling on a question of law that could foreclose needless litigation, it is best addressed by the circuit court. *Kendall*, 295 Ill App. 3d at 586. We find that this is the exact situation present before us.
> For the above-mentioned reasons, we find that the lower court abused its discretion in granting appellees' motions to dismiss and denying Hastings Mutual's motion to stay. We, therefore, reverse and remand. **We direct the lower court to stay the proceedings before the IWCC on the underlying workers' compensation claim until it determines if the notice of cancellation that Hastings Mutual submitted to the NCCI met the statutory requirements of *section 4(b)* of the Workers' Compensation Act, relying on the undisputed fact that the NCCI logged and date stamped the notice of cancellation prior to its rejection.** *Hastings Mutual,* 2012 IL App (1st) 101751, ¶ 31-34 (emphasis added)."

In the case at bar, the Appellate Court agreed that the Circuit Court had primary jurisdiction to decide the late notice issue. This was made clear when the Appellate Court stated "we hold that the circuit court was correct in determining that it had both concurrent *and* primary jurisdiction over the subject matter of West Bend's declaratory judgment action". (App. at A17, ¶ 24) (emphasis by the Court). However, the Appellate Court found that the Circuit Court erred in ordering the stay in reliance on *Hastings Mutual*. In the Appellate Court's view, *Hastings Mutual* was wrong because the court there failed to recognize that ordering the stay was based

upon an "inverse application of the primary jurisdiction doctrine." (App. at A13, ¶ 19).

The Appellate Court cited *Casualty Insurance Co. v. Kendall Enterprises, Inc.*, 295 Ill.App.3d 582 (1st Dist. 1998) to support its disagreement with *Hastings Mutual*. The Appellate Court read *Kendall* as prohibiting "the insurance provider from using the doctrine of primary jurisdiction as a mechanism for circumventing the administrative process." (App. at A21, ¶ 29). The flaw in the Appellate Court's analysis of *Skilling, Hastings Mutual* and *Kendall* lies in its belief that WEST BEND is attempting to circumvent the administrative process. (App. at A22, ¶ 32). This belief is flawed because the stay issued by the Circuit Court does not circumvent the IWCC's system for compensating injured workers, it merely puts a hold on that process until the Circuit Court can fulfill its role of determining whether the insurer is obligated to cover the claim.

The Appellate Court's reliance on *Kendall* overlooks a critical distinction between *Kendall* on the one hand and *Skilling* and *Hastings Mutual* on the other. In *Kendall*, the issue was whether the insurance company had properly cancelled the workers' compensation policy. At an IWCC hearing, the arbitrator heard testimony and found in favor of the employee and employer, concluding that the insurance company could not provide conclusive proof of receipt of a notice of cancellation as required by the Workers Compensation Act. *Kendall,* 295 Ill.App.3d at 583-84. It was not until after the arbitrator made findings against the insurance company that the insurance company filed a declaratory judgment action. *Id.* at 585. The circuit court dismissed the declaratory judgment action and the appellate

court affirmed, holding that despite the insurance company's attempt to frame the issue as a question of law, the insurance company's declaratory judgment action was merely contesting the findings of fact by the arbitrator. *Kendall,* 295 Ill.App.3d. at 586.

The Court in *Kendall* distinguished *Skilling* in two ways. First, in *Skilling,* the IWCC had not made any factual findings, and second, the insurance company in *Skilling* contested the authority or jurisdiction of the IWCC to hear the case. *Kendall* at 587. Therefore, the court in *Kendall* held that dismissal of the declaratory judgment action was not precluded by *Skilling*.

In *Hastings Mutual*, the insurer filed a declaratory judgment action contending that it had properly cancelled a workers' compensation policy. *Hastings Mutual*, 2012 IL App (1st) 101751, ¶ 4. The insured employer and the injured employee moved to dismiss the declaratory judgment action, arguing that the cancellation issue involved factual determinations which should be decided by the IWCC. *Id.* at ¶ 6. The circuit court granted motions to dismiss the insurer's complaint and denied the insurer's motion to stay the IWCC Proceedings. *Id.* at ¶ 8. On appeal, the employee relied on *Kendall* to support the dismissal of the insurer's complaint. However, the appellate court reversed and, based on *Skilling*, held that the circuit court had primary jurisdiction to decide the insurance coverage case. *Id.* at ¶ 31-32. Regarding *Kendall*, the *Hastings Mutual* Court stated:

> "This court is unpersuaded by Vasquez's argument and finds that the present case is easily distinguishable from the facts in *Kendall*. First, Hastings Mutual affirmatively states on the record that it sent notice of cancellation to the NCCI. Furthermore, Hastings Mutual asserts, and the appellees do not rebut, that the notice of cancellation was not only received by the NCCI, but was also logged into its system

> and stamped by the NCCI's unique date coding system. Second, the relevant facts in *Kendall* that distinguish its holding from *Skilling* are present in the case *sub judice*, namely, Hastings Mutual's contesting the authority and/or the jurisdiction of the IWCC to hear the underlying workers' compensation claim as well as the IWCC not yet making any factual findings." *Hastings Mutual,* 2012 IL App (1st) 101751, ¶ 19.

Thus, while the insurer in *Kendall* may have been attempting to use the declaratory judgment action as a means of circumventing the Commission's review of the arbitrator's findings, the same cannot be said of the insurer in *Hastings Mutual* since in that case, the arbitrator had not held a hearing or made factual findings relating to the coverage issue. The same is true in this case. Although BERNARDINO wants the IWCC to decide the coverage issue, the Circuit Court prevented it from doing so by the stay order. While the issuance of a stay of IWCC proceedings was not considered in *Skilling, Hastings Mutual* recognized that for the primary jurisdiction doctrine to be effective, the circuit court had to stay the IWCC proceedings until the court decided the coverage question. *Hastings Mutual* distinguished *Kendall*; the Appellate Court here should have done so as well.

Contrary to the Appellate Court's belief, there is nothing "inverse" about the application of the primary jurisdiction doctrine in *Hastings Mutual* or in this case. (App. at A13, ¶ 19). In both instances, the doctrine determined where the coverage question should be decided and in both cases, the determination was that the coverage case should be decided in the Circuit Court, not the IWCC. This determination was grounded on the recognition that the coverage issue did not fall within the specialized knowledge and expertise of the IWCC. On the contrary, the coverage issue in this case falls within the "conventional competence of the

courts." *Kellerman*, 112 Ill.2d at 446, citing *Nader v. Allegheny Airlines, Inc.,* 426 US 290, 305, 48 L.Ed. 643, 656, 96 S.Ct. 1978, 1987 (1976).

The circuit courts frequently address the late notice coverage issue presented in WEST BEND's Declaratory Judgment Complaint. See *Country Mutual Insurance Co. v. Livorsi Marine, Inc.,* 222 Ill.2d 303 (2006); *Northbrook Property & Casualty Insurance Co. v. Applied Systems, Inc.,* 313 Ill.App.3d 457 (1st Dist. 2000); *INA Insurance Co. of Illinois v. City of Chicago,* 62 Ill.App.3d 80 (1st Dist. 1978). Furthermore, while the reasonableness of an insured's notice is determined by the facts and circumstances of each case, the issue is often resolved on summary judgment, as a matter of law. See *INA v. City of Chicago,* 62 Ill.App.3d 80 (1st Dist. 1978); *Illinois Valley Minerals Corp. v. Royal-Globe Insurance Co.,* 70 Ill.App.3d 296 (3rd Dist. 1979); *Twin City Fire Insurance v. Old World Trading,* 266 Ill.App.3d 1 (1st Dist. 1994); *Northbrook Property & Casualty Co. v. Applied Systems, Inc.,* 313 Ill.App.3d 457 (1st Dist. 2000); *Northern Insurance Co. v. City of Chicago,* 325 Ill.App.3d 1086 (1st Dist. 2001); *AMCO Insurance Co. v. Erie Insurance Exchange,* 2016 IL App 1st 142660. It is, therefore, beyond dispute that WEST BEND's case belongs in the Circuit Court, not the IWCC.

The Appellate Court held that "the circuit court was correct in determining that it had both concurrent and primary jurisdiction over the subject matter of WEST BEND's declaratory judgment action," citing *Skilling* and *Continental West Insurance Co. v. Knox County EMS, Inc.,* 2016 IL App (1st) 143083. (App. at A17, ¶ 24). *Knox County* is instructive for its consideration of the primary jurisdiction

doctrine. *Knox County* involved a declaratory judgment action relating to "other states" coverage for a worker's compensation claim filed in Illinois, involving an Illinois accident, under a Workers Compensation Policy issued to an Indiana insured. 2016 IL App (1st) 143083, ¶ 3-6. The insured argued that resolution of the "other states" coverage issue required an interpretation of the Workers Compensation Act, which should be made by the IWCC. *Id.* at ¶ 13. Both the circuit court and appellate court disagreed and, based on *Skilling,* the appellate court held that the circuit court had primary jurisdiction to decide the coverage case, stating:

> "As in *Skilling*, the declaratory judgment action at bar solely concerns the scope of coverage afforded in a workers' compensation insurance policy. The construction of Continental's insurance policy is not a determination of the factual issues related to a determination of workers' compensation benefits, such as the nature or extent of the injury or the potential defenses to the workers' compensation claim. If it was, the circuit court would have no original jurisdiction in the case and the Commission would have exclusive jurisdiction as it would be in a better position to draw on its special expertise to answer these questions." *Knox County*, 2016 IL App (1st) 143083, ¶ 19.

In the *Knox County* court's view, the coverage issue concerned "matters of contract and statutory interpretation that are collateral to the adjudications of Stevens' worker's compensation claim." *Id.* at ¶ 29. Similarly, the late notice issue in WEST BEND's declaratory judgment action is collateral to BERNARDINO's worker's compensation claim, and should be decided by the Circuit Court.

The Appellate Court's reliance on *Skilling* and *Knox County* to hold that the Circuit Court had concurrent and primary jurisdiction to decide the WEST BEND declaratory judgment action was clearly correct. However, the Appellate Court

then disrupted the proper relationship between the Court and the IWCC, which was promoted by the stay, by concluding that *Hastings Mutual* was an anomaly and should not have been relied on by the Circuit Court to order the stay. (App. at A20, ¶ 29).

The fact that *Hastings Mutual* is the only case to address the issue does not mean it was wrongly decided. On the contrary, if the primary jurisdiction doctrine as articulated in *Skilling* is to have any force, the Circuit Court must be able, in the appropriate case, to restrain the IWCC while the Court decides the insurance coverage question. Once the coverage question is decided, the IWCC can proceed, with or without the insurer, depending on how the Circuit Court decides the coverage issue. Without the stay, the coverage issue could be proceeding on two tracks, in the Court and in the IWCC, creating the risk of conflicting decisions. The stay of the IWCC proceeding ensures that the coverage issue, which should be decided in the Circuit Court, is decided there. This is not turning the primary jurisdiction on its head, but is serving the purposes for which the doctrine was established.

Finally, if the Appellate Court's disagreement with *Hastings Mutual* stems from a concern that the Circuit Court overstepped its jurisdictional authority by staying the IWCC proceedings, such a concern is unwarranted. The circuit court's authority to issue the stay of the IWCC proceedings is not derived from the primary jurisdiction doctrine, but from the Court's constitutional grant of original jurisdiction over all justiciable matters, which is found at Article VI, § 9 of the Illinois Constitution. Ill. Const. 1970, art. VI, § 9. In *Ardt v. Illinois Department of*

Professional Regulation, 154 Ill.2d 138 (1992), this Court held that the circuit court has inherent equitable power to issue stay orders directed to administrative agencies. True, this power is constrained where a matter involves the review of an administrative agency's decision. See Ill. Const. 1970, art. VI, § 9; *In re MM*, 156 Ill.2d 53 (1993)*; Hartlein v. Illinois Power Co.*, 151 Ill.2d 142 (1992). In this regard, this Court recently explained:

> "Illinois courts are courts of general jurisdiction and enjoy a presumption of subject-matter jurisdiction. *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418, ¶ 14. That presumption is inapplicable, however, where administrative proceedings are involved. *Id.* Illinois courts are empowered to review administrative actions only 'as provided by law.' Ill. Const. 1970, art. VI, § 6 (appellate court), § 9 (circuit court). When the legislature has, through law, prescribed procedures for obtaining judicial review of an administrative decision, a court is said to exercise 'special statutory jurisdiction' when it reviews an administrative decision pursuant to that statutory scheme. *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2014 IL 116642, ¶ 10. Special statutory jurisdiction is limited by the language of the act conferring it. Id. A court has no powers from any other source. *Id.*" *Ameren Transmission Co. v. Hutchings*, 2018 IL 122973, ¶ 13.

However, the present case does not involve a review of an IWCC decision by the circuit court, and the stay was not issued in furtherance of the Circuit Court's review of an IWCC decision. Rather, the opposite is true. The purpose of the stay was to maintain the *status quo* and allow the Circuit Court to decide the insurance coverage issue before the IWCC made any decisions concerning the existence of insurance coverage and the payment of benefits which would impact the insurance coverage.

Neither the Appellate Court in *Ultimate Backyard* nor the Circuit Court here was exceeding its jurisdiction when it determined that a stay of the IWCC

proceedings was necessary to allow the Circuit Court to decide the declaratory judgment action. In *Segers v. Industrial Commission*, 191 Ill.2d 421, 427 (2000), this Court stated, "primary jurisdiction involves a question of timing, not of judicial competence to hear a particular case." In this case, both timing and judicial competence come into play. It is agreed that the WEST BEND declaratory judgment action is "within the conventional competence of the courts." *Kellerman*, 112 Ill.2d at 446. Furthermore, it is clear that the stay order insures that the Circuit Court decides the insurance coverage issue before the IWCC decides issues relating to the payment of workers' compensation benefits which may or may not be covered by the insurance policy. Therefore, the Appellate Court erred when it held that the Circuit Court's stay order was contrary to the underlying principles of the primary jurisdiction doctrine, and its judgment should be reversed.

II. The Stay of the IWCC Proceedings Preserves the Court's Jurisdiction to Decide the Coverage Issue and the Insurer's Right to Have the Coverage Issue Decided By the Court

A. The Circuit Court's Stay of IWCC Proceedings Preserves the Circuit Court's Jurisdiction to Decide the Coverage Issue

In *Kellerman,* this Court stated, "When an agency's technical expertise is not likely to be helpful, or there is no need for uniform administrative standards, courts should not relinquish their authority over a matter to the agency." *Kellerman,* 112 Ill.2d at 445. *People v. N L Industries,* 152 Ill.2d 82 (1992) and *Skilling* are instances where this Court reversed the dismissal of a complaint in reliance on the primary jurisdiction doctrine, because the circuit courts there should not have relinquished their authority to decide the case. In *Hastings Mutual*, the appellate court reversed the circuit court's dismissal of the declaratory judgment complaint

for the same reason. In these cases, the courts recognized that the circuit court should not have surrendered their authority since the circuit court, not the agency, was the proper forum for deciding the issue. In *Knox County*, the court rejected the insured's argument that the insurer's declaratory judgment complaint should have been dismissed because the circuit court not the IWCC had primary jurisdiction to decide the coverage case. In both *Hastings Mutual* and *Knox County*, the courts were following this Court's admonition in *Kellerman* that the courts should not relinquish their authority over a matter if it does not fall within the administrative agency's area of expertise.

Although the Appellate Court agreed that the Circuit Court had primary jurisdiction, it nevertheless suggested that WEST BEND should have brought the coverage issue in the IWCC. (App. at A22, ¶ 32). If the Appellate Court's suggestion is followed, and an insurer brings the coverage issue in the IWCC, there is a risk that the court's authority to decide the issue will be circumvented depending upon the deference owed by the circuit court to the IWCC's decision. The stay also avoids thorny questions concerning the enforcement of Commission orders relating to the insurer's liability to pay benefits or penalties. Section 4(g) of the Workers Compensation Act allows the insurer to be named a Respondent in the employee's IWCC case, and be found jointly liable with the employer for any benefits awarded by the Commission. 820 ILCS 305/4(g). The question then arises whether the Commission's liability findings are enforceable against the insurer if the circuit court has yet to decide the coverage issue, or has decided there is no coverage. The stay order ensures that the coverage issue is decided

by the court before any liability findings are made against the insurer by the Commission. The stay, therefore, promotes the proper relationship between the court and the IWCC, and preserves the circuit court's authority to decide the coverage issue.

B. Bringing the Coverage Issue in the IWCC is Not a Suitable Alternative for an Insurer

The Circuit Court recognized that WEST BEND would be prejudiced if BERNARDINO's IWCC case was allowed to proceed before the Court decided the coverage issue. (R. 44-48). The Appellate Court was unsympathetic, stating that any prejudice was of WEST BEND's own making and could have been avoided if WEST BEND brought the coverage issue in the IWCC proceeding. (App. at A22, ¶ 32).

However, WEST BEND has good reasons for wanting the Circuit Court to decide the coverage issue. As has already been shown, the Circuit Court is well versed in deciding late notice coverage issues. This Court, and the lower courts have issued numerous opinions dealing with insurance coverage generally and late notice cases specifically. See, e.g., *Country Mutual Insurance Co. v. Livorsi Marine, Inc.,* 222 Ill.2d 303 (2006); *INA v. City of Chicago,* 62 Ill.App.3d 80 (1st Dist. 1978); *Illinois Valley Minerals Corp. v. Royal-Globe Insurance Co.,* 70 Ill.App.3d 296 (3rd Dist. 1979); *Twin City Fire Insurance v. Old World Trading,* 266 Ill.App.3d 1 (1st Dist. 1994); *Northbrook Property & Casualty Co. v. Applied Systems, Inc.,* 313 Ill.App.3d 457 (1st Dist. 2000); *Northern Insurance Co. v. City of Chicago,* 325 Ill.App.3d 1086 (1st Dist. 2001); *AMCO Insurance Co. v. Erie Insurance Exchange,* 2016 IL App 1st 142660. The specialized knowledge and expertise of the IWCC,

which principally involves questions of entitlement to benefits under the Workers Compensation Act, does not come into play when determining whether an insured provided reasonable notice of an injury or suit in compliance with a policy's notice provision. Therefore, WEST BEND should not be criticized for exercising its right to have the coverage case decided in the forum best suited to decide the case.

Additionally, if WEST BEND or another insurer were to follow the Appellate Court's directive and bring the coverage issue in the IWCC, the insurer is adding to the time, effort and expense of obtaining a resolution of the issue. Presenting the late notice coverage issue in the circuit court results in a decision by the court, in most cases on summary judgment, with the judge applying well-established standards for determining whether the insured complied with the notice provision of the policy. One appeal of the circuit court decision is guaranteed, a second appeal to this Court, far from certain.[3]

If the coverage issue goes to the IWCC, which is the Appellate Court's desired route, § 19 of the Workers Compensation Act, 820 ILCS 305/19, sets forth the procedures for deciding disputed questions of law and fact. Section 19(a) provides for a decision of the issue by an arbitrator. Section 19(b) provides for the review of the arbitrator's decision by the Commission. The Commission's decision can then be reviewed by the circuit court, pursuant to § 19(f). Section 19(f) also provides for appellate review of the circuit court decision, pursuant to Illinois Supreme Court Rule 22. Rule 22 provides for a Workers Compensation Division

[3] The Annual Report of the Illinois Courts' Statistical Survey for 2017 shows that this Court allowed 4.1% of the Petitions for Leave to Appeal filed in criminal and civil cases in 2017, and the five-year average of Petitions for Leave to Appeal which were allowed is 4.2%.

in the Appellate Court which is made up of a five-judge panel of the Appellate Court. Finally, § 19(f) and Illinois Supreme Court Rule 315(a) provide for review by this Court if a petition for leave to appeal is allowed. However, the petition must contain a statement from at least two of the Appellate Court Justices that the case involves a substantial question which warrants Supreme Court consideration.

Thus, following the Appellate Court adds two extra steps before the late notice issue reaches the court; presentation of the issue to an arbitrator and a review of the arbitrator's decision by the Commission. Also, starting in the IWCC potentially limits the circuit court's consideration of the issue since it sits as a court of review[4], and makes obtaining review in this Court, which statistics show is no easy task, more difficult by requiring "certification" by the Appellate Court.

Considering the added time, effort and cost of bringing the coverage case initially in the IWCC, it cannot be wondered why the insurer would decide to bring the issue to the Circuit Court, which, based on primary jurisdiction, is the proper forum to decide the case. The stay order ensures that this decision does not cause potential prejudice and conflicting outcomes, if the insured employer or the employee tries to have the issue decided in the IWCC or seeks orders in the IWCC which would impose liability on the insurer, before the Court decided the coverage issue. Therefore, in addition to promoting the proper relationship between the

[4] A Court's review of the Commission's conclusions of law is *de novo*, *Beelman Trucking v. Illinois Workers Compensation Commission,* 233 Ill.2d 364 (2009); on questions of fact or inferences to be drawn from undisputed facts, a court will give deference to the Commission's findings and apply a manifest weight of the evidence standard. *Brady v. Louis Ruffolo & Sons Const. Co.,* 143 Ill.2d 542 (1991).

courts and administrative agencies, the stay preserves the insurer's right to have the coverage issue decided by the Court.

CONCLUSION

The Circuit Court's order staying BERNARDINO's IWCC case to allow it to decide WEST BEND's declaratory judgment case was in accord with the primary jurisdiction doctrine. For the reasons set forth herein, Plaintiff-Appellant, WEST BEND MUTUAL INSURANCE COMPANY, requests that the Appellate Court opinion below reversing the Circuit Court order staying the IWCC proceedings be reversed and the Circuit Court's order be affirmed.

Respectfully submitted,

By:

/s/ Thomas F. Lucas
One of the Attorneys for
Plaintiff-Appellant, WEST BEND
MUTUAL INSURANCE COMPANY

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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 22 pages.

/s/ Thomas F. Lucas
Thomas F. Lucas

APPENDIX

E-FILED
6/26/2019 10:32 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

TABLE OF CONTENTS TO THE APPENDIX

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

#25

69607 SCANNED

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 18 MR 798

☐ Jury ☒ Non-Jury

West Bend Mutual Ins Co.
Plaintiff,

vs.

TRS Corp et al
Defendant,

FILED
McHenry County, Illinois
OCT 12 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 10/12/18

Plaintiff's Attorney McVicar

Defendant's Attorney

ORDER

This cause coming to be heard on West Bend Mutual Ins. Co's Emergency Motion to Stay the trial Before the Illinois Workers Compensation Commission in the matter of Gary Bernardino v. TRS Corp et al, 18 WC 009583, set for trial on Nov. 19, 2018, the Court having been fully advised;

1. The Motion for Stay of the Workers Compensation trial set for Nov. 19, 2018 is granted;

2. This case is set for Status on Oct. 26, 2018 at 9:00am. in Room 201.

Prepared by: Kristin Tamas | McVicar Shorey

Attorney for: Plaintiff

Attorney Registration No.: 6211004

Judge:

A1

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 18 MR 798

☐ Jury ☒ Non-Jury

West Bend vs. TRRS Corp. Commercial Twp Bernardino

Date: _____ Plaintiff's Attorney McKenna Storer Defendant's Attorney Robert Eberz

ORDER

This cause coming to be heard on Gary Bernardino's Emergency Motion to Vacate Court order of Oct. 12, 2018 and stay further action, due notice having been given, and ~~the parties having fully briefed the issue~~;

It is hereby ordered by the Court,

1. This matter is entered and continued for hearing on the Motion to December 1, 2018 at 10:00.

2. Defendant Gary Bernardino is granted leave to file a Reply to West Bend's Response to Emergency Motion, which shall be due on Oct 30, 2018, a courtesy copy to be submitted to the Court on Oct. 30, 2018 and by email to opposing counsel on Oct. 30, 2018

3. The attorney for TRRS Corp. + Commercial Twp have to file an appearance.

Mckenna Storer

Prepared by: Kristin Thomas

Attorney for: West Bend

Attorney Registration No.: 6216004 Judge: _____

A2

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

GEN. NO. 18 MR 798

☐ Jury ☒ Non-Jury

FILED McHenry County, Illinois NOV - 1 2018 KATHERINE M KEEFE Clerk of the Circuit Court

West Bend vs. TRRS, Corp.

Date: Nov 1, 2018 Plaintiff's Attorney Treas Defendant's Attorney Edan

ORDER

This cause coming to be heard on Defn. Bernardino's Motion to Vacate Stay, due notice having been given, the parties having briefed the issue and the Court having heard arguments, It is hereby ordered;

1. The Motion to Vacate the stay entered on Oct. 12, 2018 is granted;
2. The Court enters West Bend's Motion to Stay the Workers Compensation trial set for Nov 19, 2018, determining that the Declaratory Judgment action involves the legal issue of late notice and therefore the court has primary jurisdiction; over Defendant Bernardino's objection;
3. TSSR Corp. and Commercial Tire Services is given leave to appear in Matter;
4. All parties must file answers to the Pleadings in 14 days from today.
5. All parties are to answer written discovery in 14 days from today.
6. This case is set for status on completion of written discovery and setting of depositions on Jan 7, 2019 at 9:00 am.
7. West Bend will file a certified copy of the policy within 14 days of today.
8. The January 2, 2019 date is stricken.

Prepared by: Kristin Treas/McKenna

Attorney for: ~~[illegible]~~ West Bend

Attorney Registration No.: 6216024

Judge: [signature]

2019 IL App (2d) 180934
Nos. 2-18-0934 & 2-18-1009 cons.
Opinion filed March 1, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WEST BEND MUTUAL INSURANCE COMPANY, Plaintiff-Appellee, v. TRRS CORPORATION, COMMERCIAL TIRE SERVICES, INC., and GARY BERNARDINO, Defendants (Gary Bernardino, Defendant-Appellant).	)	Appeal from the Circuit Court of McHenry County. No. 18-MR-798 Honorable Thomas A. Meyer, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court, with opinion.
Justices Schostok and Spence concurred in the judgment and opinion.

OPINION

¶ 1 This consolidated interlocutory appeal concerns the propriety of a circuit court's order staying the proceedings on a claim filed before the Illinois Workers' Compensation Commission (IWCC). Plaintiff, West Bend Mutual Insurance Company (West Bend), filed a declaratory judgment action in the circuit court of McHenry County, seeking a ruling that it had no duty to defend or indemnify defendants TRRS Corporation (TRRS) and Commercial Tire Services, Inc. (Commercial Tire), against an IWCC claim filed by defendant Gary Bernardino. Shortly thereafter, West Bend filed an emergency motion in the circuit court, requesting a stay of the

IWCC proceedings pending the resolution of the declaratory judgment action. Relying on the doctrine of primary jurisdiction, and over Bernardino's objection, the circuit court granted West Bend's motion and entered an order staying the IWCC proceedings. Pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), Bernardino filed an interlocutory appeal in case No. 2-18-0934. Bernardino subsequently filed a motion to vacate the circuit court's stay order. When the circuit court continued the hearing on the motion, Bernardino filed another Rule 307(a)(1) interlocutory appeal in case No. 2-18-1009. We granted Bernardino's motion to consolidate the two appeals. We now reverse the circuit court's stay order in appeal No. 2-18-0934, and we dismiss appeal No. 2-18-1009 for lack of jurisdiction.[1]

¶ 2 I. BACKGROUND

¶ 3 The record reflects that Bernardino sustained an injury from a forklift accident in April 2017, during the course of his employment with TRRS and Commercial Tire (collectively the employers), which required him to undergo rotator cuff surgery. The accident occurred at the employers' facility located in Lake in the Hills, one of several such facilities that the employers operated throughout the state. According to West Bend, the employers chose to cover Bernardino's lost wages and medical expenses relating to his surgery without ever reporting the injury to West Bend. However, Bernardino later learned that he needed a follow-up surgery, prompting him to file an "Application for Adjustment of Claim" in the IWCC on March 29, 2018. More than five months later, on September 12, 2018, Bernardino filed a petition before the IWCC for an immediate hearing under section 19(b) of the Workers' Compensation Act

[1] We note that, although TRRS and Commercial Tire have both filed appearances in this consolidated appeal, neither party has filed a brief.

(Act) (820 ILCS 305/19(b) (West 2016)) and for penalties for unreasonable and vexatious delay under sections 16 and 19(k) of the Act (*id.* §§ 16, 19(k)).

¶ 4 On October 2, 2018, West Bend filed a complaint for declaratory judgment in the circuit court of McHenry County. The employers and Bernardino were each named as defendants. West Bend alleged that it had written a workers' compensation insurance policy for the employers that would have covered Bernardino's IWCC claim if the employers had not violated the terms of the policy. West Bend alleged that, by failing to provide proper notice of Bernardino's injury and paying for the expenses related to the first surgery, the employers voluntarily decided to forgo coverage. Accordingly, West Bend sought a declaration that it had no duty to defend or indemnify the employers in connection with Bernardino's IWCC claim.

¶ 5 On October 5, 2018, the IWCC scheduled a hearing on Bernardino's petition, to take place on November 19, 2018. However, on October 9, 2018, West Bend filed an emergency motion in the circuit court to stay the IWCC proceedings until the declaratory judgment action was resolved. On October 12, 2018, before Bernardino filed a response and apparently without Bernardino's counsel present, the circuit court granted West Bend's emergency motion to stay the IWCC proceedings.

¶ 6 On October 25, 2018, Bernardino filed an emergency motion in the circuit court to vacate the stay order, arguing that the IWCC was the proper venue for a ruling on the coverage issue raised in West Bend's declaratory judgment action. West Bend filed a response relying largely on *Employers Mutual Cos. v. Skilling*, 163 Ill. 2d 284 (1994), and *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751. West Bend argued that, pursuant to *Skilling*, the circuit court had primary jurisdiction to rule on the legal issues raised in the declaratory judgment action. Furthermore, West Bend argued, *Ultimate Backyard* established

that the circuit court should stay the IWCC proceedings until such a ruling was entered. In his reply, Bernardino asserted for the first time that West Bend's declaratory judgment action might be rendered moot, as he had reason to believe that the policy in question did not provide any coverage for the employers' Lake in the Hills location.

¶ 7 On November 1, 2018, the circuit court conducted a hearing and explained at the outset that it was vacating the stay order for the purpose of considering the arguments raised by Bernardino and West Bend. The court rejected Bernardino's argument that the IWCC was the proper venue for West Bend's insurance coverage dispute. Thus, the court ruled as follows:

> "I'm vacating the original order staying so that we could proceed with this hearing and I am—because I wanted to proceed on the merits. I thought procedurally that was appropriate, and—but I am now reinstating the stay after hearing the argument because I believe that this is ultimately a question of law and more appropriately brought before the court than the workers' compensation commission, and that this court has primary jurisdiction over the issue regarding the coverage following the clam of late notice."

The court proceeded to enter an order granting West Bend's emergency motion to stay the IWCC proceedings and scheduling a hearing for January 7, 2019, for status on the completion of written discovery.

¶ 8 On November 6, 2018, Bernardino filed a motion in the circuit court to vacate the stay order dated November 1, 2018. Aside from arguing that the stay was altogether improper, Bernardino stressed his theory that the late notice issue raised by West Bend was moot because the disputed policy did not cover the employers' Lake in the Hills location. Bernardino observed that, although the policy covered the employers' other Illinois locations, it did not specifically list the Lake in the Hills location. Bernardino argued that, at the very least, the stay

should be "limited to the issue of determination of coverage based on notice, specifically [authorizing] the IWCC to make threshold determinations regarding the existence of coverage, but not to make findings of fact regarding notice being given to [West Bend]."

¶ 9 On November 8, 2018, Bernardino filed his notice of a Rule 307(a)(1) interlocutory appeal from the stay order dated November 1, 2018, in appellate case No. 2-18-0934.

¶ 10 Also on November 8, 2018, the circuit court conducted a hearing on Bernardino's motion to vacate the stay order dated November 1, 2018. West Bend refuted Bernardino's theory and maintained that, but for the late notice, coverage would indeed apply based on the "Locations" provision in the policy, which established that it applied to each of the employers' locations in Illinois. Undeterred, Bernardino asserted that he anticipated obtaining a certificate from the National Council on Compensation Insurance (NCCI), stating that its database contained no record of insurance being provided for the work site where he was injured. Bernardino argued that this would violate certain technical requirements under the Act for establishing the existence of insurance coverage and asserted that the issue should be decided by the IWCC. The court noted the conundrum of West Bend contesting an opponent's argument that furthered West Bend's own interests. The court indicated that, even if Bernardino obtained the aforementioned certificate, greater weight would likely be given to West Bend's position; *i.e.*, if West Bend did not prevail on its argument regarding the late notice, then coverage would indeed apply. The court was also reluctant to limit the terms of the stay, per Bernardino's alternative request, reasoning that West Bend would be placed "in limbo" if the IWCC proceedings continued before there was a ruling on the issue of coverage. The court decided that it was appropriate to continue Bernardino's motion to vacate the stay order dated November 1, 2018, stating as follows:

> "Where we're at right now, I think we have too many variables for us to do anything significant today other than to continue your motion to January 7th. We'll wait to see what reports you get, but I've told you the problems I have with relying on them."

¶ 11 On December 10, 2018, Bernardino filed his notice of a Rule 307(a)(1) interlocutory appeal from the continuance order dated November 8, 2018, in appellate case No. 2-18-1009. On December 12, 2018, Bernardino filed a motion to consolidate the two appeals, which we granted.

¶ 12 II. ANALYSIS

¶ 13 We begin with our independent duty to examine our own jurisdiction. *State Farm Mutual Automobile Insurance Co. v. Hayek*, 349 Ill. App. 3d 890, 892 (2004). Rule 307(a)(1) provides that an appeal may be taken from an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Nov. 1, 2017). Our supreme court has held that the issuance of a stay of an administrative order pending judicial review constitutes an injunction for purposes of appeal under Rule 307(a)(1). *Marsh v. Illinois Racing Board*, 179 Ill. 2d 488, 496-97 (1997); see also *Rogers v. Tyson Foods, Inc.*, 385 Ill. App. 3d 287, 288 (2008) ("A stay is considered injunctive in nature, and thus an order granting or denying a stay fits squarely within Rule 307(a)."); *Lundy v. Farmers Group, Inc.*, 322 Ill. App. 3d 214, 216 (2001) ("Courts have treated the denial of a motion to stay as a denial of a request for a preliminary injunction.").

¶ 14 Here, the trial court's stay order dated November 1, 2018, is reviewable under Rule 307(a)(1), and Bernardino perfected his appeal in case No. 2-18-0934 by filing a notice of an interlocutory appeal within 30 days of the entry of the order. See Ill. S. Ct. R. 307 (eff. Nov. 1,

2017). We note that Bernardino's notice of an interlocutory appeal in case No. 2-18-1009 would also have been timely, despite being filed 32 days after the continuance order dated November 8, 2018, as the thirtieth day after the entry of the order fell on a Saturday. See *Shatku v. Wal-Mart Stores, Inc.*, 2013 IL App (2d) 120412, ¶ 9. However, the continuance of a hearing on a motion to vacate a stay is not equivalent to the denial of the motion. *Oscar George Electric Co. v. Metropolitan Fair & Exposition Authority*, 104 Ill. App. 3d 957, 962 (1982). On November 8, 2018, the circuit court was clear that it was continuing, rather than denying, Bernardino's motion to vacate the stay order dated November 1, 2018, so that Bernardino could gather the anticipated materials from the NCCI. Accordingly, the order dated November 8, 2018, states only that Bernardino's motion was "entered and continued to January 7, 2018, at 9:00 a.m." Because the order did not grant, modify, refuse, dissolve, or refuse to dissolve or modify an injunction, it is not reviewable under Rule 307(a)(1). Case No. 2-18-1009 is therefore dismissed for lack of jurisdiction.

¶ 15 We now turn to the stay order dated November 1, 2018, in case No. 2-18-0934.[2] Ordinarily a circuit court's decision to grant or deny a motion to stay will not be overturned on appeal absent an abuse of discretion. *Sentry Insurance v. Continental Casualty Co.*, 2017 IL App (1st) 161785, ¶ 65; *TIG Insurance Co. v. Canel*, 389 Ill. App. 3d 366, 372 (2009). Under this standard, we consider whether the circuit court acted "arbitrarily without the employment of conscientious judgment or, in light of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." *Allianz Insurance*

[2] We note that we granted West Bend's motion to strike certain portions of Bernardino's reply brief for raising new arguments in violation of Illinois Supreme Court Rule 341(j) (eff. Nov. 1, 2017).

Co. v. Guidant Corp., 355 Ill. App. 3d 721, 730 (2005). Bernardino notes, however, that the circuit court made no factual findings in this case and instead determined that the stay was appropriate as a matter of law pursuant to the doctrine of primary jurisdiction. He thus requests *de novo* review. See *Continental Western Insurance Co. v. Knox County EMS, Inc.*, 2016 IL App (1st) 143083, ¶ 15 (reviewing *de novo* the issue of whether the circuit court properly applied the doctrine of primary jurisdiction).

¶ 16 We agree with Bernardino that our standard of review is *de novo*. Our supreme court has explained that the scope of review in an interlocutory appeal is normally limited to an examination of whether there was an abuse of discretion in granting or refusing the requested relief. *In re Lawrence M.*, 172 Ill. 2d 523, 526 (1996).

> "However, where the question presented is one of law, a reviewing court determines it independently of the trial court's judgment. [Citation.] Moreover, to the extent necessary, a reviewing court may consider substantive issues in order to determine whether the trial court acted within its authority." *Id.*

¶ 17 The circumstances contemplated by *Lawrence M.* are present here. As we will explain, we agree with West Bend that, as a matter of law, the circuit court is the proper venue for its declaratory judgment action. However, by staying the IWCC proceedings, the circuit court erroneously applied the doctrine of primary jurisdiction. In doing so, the circuit court did not make any factual findings but, rather, followed the First District Appellate Court's holding in *Ultimate Backyard*, which we now decline to follow. Specifically, we disagree with the First District's holding that the doctrine of primary jurisdiction authorizes a circuit court to stay administrative proceedings. To the contrary, we interpret the doctrine to stand only for the proposition that a circuit court may, in certain circumstances, stay its own *judicial proceedings*

pending the referral of a controversy to an administrative agency having specialized expertise over the disputed subject matter. Accord *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 68 (2007) (noting that a circuit court has the inherent authority to stay its own proceedings, based on factors such as the orderly administration of justice and judicial economy).

¶ 18 In *United States v. Western Pacific R.R. Co.*, 352 U.S. 59 (1956), the United States Supreme Court provided a detailed explanation of the principles underlying the doctrine of primary jurisdiction.

> "The doctrine of primary jurisdiction, like the rule requiring exhaustion of administrative remedies, is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties. 'Exhaustion' applies where a claim is cognizable in the first instance by an administrative agency alone; judicial interference is withheld until the administrative process has run its course. 'Primary jurisdiction,' on the other hand, 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*." (Emphasis added.) *Id.* at 63-64.

¶ 19 In keeping with these principles, our supreme court has consistently held that, "[u]nder the doctrine of primary jurisdiction, when a court has jurisdiction over a matter, it should, on some occasions, *stay the judicial proceedings* pending referral of the controversy, or a portion of it, to an administrative agency having expertise in the area." (Emphasis added.) *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 43; see also *Segers v. Industrial Comm'n*,

191 Ill. 2d 421, 427 (2000); *People v. NL Industries*, 152 Ill. 2d 82, 95 (1992); *Board of Education of Warren Township High School District 121 v. Warren Township High School Federation of Teachers, Local 504*, 128 Ill. 2d 155, 162-63 (1989); *Kellerman v. MCI Telecommunications Corp.*, 112 Ill. 2d 428, 444 (1986) (each stating that the doctrine of primary jurisdiction allows for a stay of judicial proceedings pending referral of a controversy to an administrative agency). But here, the circuit court turned the doctrine of primary jurisdiction on its head by staying *administrative* proceedings pending the resolution of a legal issue in the circuit court. This inverse application might seem a logical and practical extension of the doctrine, but it conflicts with the underlying principles established in *Western Pacific*, as well as those that have since been articulated by Illinois courts.

¶ 20 "The doctrine of primary jurisdiction is a judicially created doctrine that is not technically a question of jurisdiction, but a matter of self-restraint and relations between the courts and administrative agencies." *Bradley v. City of Marion, Illinois*, 2015 IL App (5th) 140267, ¶ 35. "No fixed formula exists for applying the doctrine of primary jurisdiction; rather, in every case the question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation." *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847, 853 (2004). In considering whether the doctrine applies, courts must first determine whether the legislature has vested "exclusive original jurisdiction" over the disputed subject matter in an administrative agency. *Skilling*, 163 Ill. 2d at 287. If it cannot be shown that the legislature intended to deprive the circuit court of its jurisdiction over the disputed subject matter, then the circuit court shares concurrent jurisdiction with the administrative agency. *NL Industries*, 152 Ill. 2d at 99. The question then becomes whether the circuit court should "stay the judicial proceedings pending referral of a controversy, or some

portion of it, to an administrative agency having expertise in the area." *Skilling*, 163 Ill. 2d at 288. "Thus, under the doctrine a matter should be referred to an administrative agency when it has a specialized or technical expertise that would help resolve the controversy, or when there is a need for uniform administrative standards." *Kellerman*, 112 Ill. 2d at 445. "Conversely, when an agency's technical expertise is not likely to be helpful, or there is no need for uniform administrative standards, courts should not relinquish their authority over a matter to the agency." *Id.*

¶ 21 Here, the circuit court relied on *Skilling* in determining that it had primary jurisdiction over West Bend's declaratory judgment action. Although *Skilling* did not involve a request for a stay, the facts were otherwise similar to this case. After the employee filed his workers' compensation claims, the insurance provider filed a declaratory judgment action in the circuit court, asserting that it had no obligation to defend or indemnify the employer. The insurance provider argued that the policy did not apply, because it provided coverage for injuries occurring only in Wisconsin and the employee's injury had occurred in Illinois. The employee moved to dismiss the declaratory judgment action, arguing that the circuit court was not the proper venue to resolve the coverage dispute. The circuit court dismissed the declaratory judgment action and the insurance provider appealed. *Skilling*, 163 Ill. 2d at 285-86.

¶ 22 Our supreme court in *Skilling* first considered whether jurisdiction was exclusive with the administrative agency or whether it was concurrent with that of the circuit court. If there was concurrent jurisdiction, then the issue became which forum's jurisdiction was "paramount." *Id.* at 286. The court observed that section 18 of the Act states: " '[a]ll questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Commission.' " *Id.* (quoting 820 ILCS 305/18 (West 1992)); see

also 820 ILCS 305/1(c) (West 2016) ("Commission" means the IWCC). The court held that, because there was no language specifically divesting the circuit court of its jurisdiction over the subject matter of the declaratory judgment action (the interpretation of an insurance policy), the circuit court and the IWCC shared concurrent jurisdiction. The question then became whether the doctrine of primary jurisdiction dictated that the circuit court, rather than the IWCC, was the proper venue for hearing the declaratory judgment action. *Skilling*, 163 Ill. 2d at 287. After discussing the principles underlying the doctrine of primary jurisdiction, the court ruled that the circuit court had erred in dismissing the declaratory judgment action, as the coverage dispute involved a question of law that was precisely within the scope of the declaratory judgment statute (see 735 ILCS 5/2-701 (West 1992)). *Skilling*, 163 Ill. 2d at 289. Thus, although the IWCC had concurrent jurisdiction to hear the dispute, "when the question of law was presented to the circuit court in the declaratory judgment suit, the jurisdiction of the circuit court became paramount." *Id.* at 290. Notably, the *Skilling* court said nothing about staying the proceedings before the IWCC pending the resolution of the declaratory judgment action in the circuit court.

¶ 23 In another case dealing with a similar issue, *Knox County*, after the employee's guardian filed a workers' compensation claim in Illinois, the insurance provider filed a declaratory judgment action in the circuit court, seeking a ruling that it had no duty to defend or indemnify the employer for claims filed outside Indiana. *Knox County*, 2016 IL App (1st) 143083, ¶ 6. The circuit court granted summary judgment in favor of the insurance provider and against the employer, determining that the policy did not comply with certain provisions of the Act and, thus, did not provide coverage for Illinois claims. *Id.* ¶¶ 9-10. The employer appealed, arguing that the circuit court's ruling should be vacated because the disputed provisions of the Act "should be

originally interpreted by the [IWCC]," not by the circuit court. *Id.* ¶ 13. The appellate court followed *Skilling* in affirming the circuit court's ruling, stating:

> "As in *Skilling*, the declaratory judgment action at bar solely concerns the scope of coverage afforded in a workers' compensation insurance policy. The construction of [the] insurance policy is not a determination of the factual issues related to a determination of workers' compensation benefits, such as the nature or extent of the injury or the potential defenses to the workers' compensation claim. If it was, the circuit court would have no original jurisdiction in the case and the [IWCC] would have exclusive jurisdiction as it would be in a better position to draw on its special expertise to answer these questions." *Id.* ¶ 19.

¶ 24 Here, Bernardino does not argue that the circuit court lacks primary jurisdiction over the late notice issue raised by West Bend. He argues, however, that the issue he raised as to whether the West Bend policy covered the employers' Lake in the Hills location distinguishes this case from *Skilling* and *Knox County*. Bernardino maintains that, absent a certificate from the NCCI establishing the existence of coverage for the Lake in the Hills location, the IWCC's specialized expertise is needed to determine whether there were violations of the technical requirements under the Act for establishing the existence of coverage. We disagree. In the circuit court, West Bend acknowledged that there was no certificate from the NCCI establishing the existence of coverage for the Lake in the Hills location, but argued that this "inadvertent failure to report the location to [the] NCCI does not negate the existence or the legal effect of the West Bend policy." West Bend takes that same position in this appeal, arguing that the Lake in the Hills location was (but for the late notice issue) covered, based on the "Locations" provision in the policy, and that "[t]he fact that the location is not shown in the NCCI database does not

negate the coverage." Thus, it is apparent that there are no disputed questions of fact with respect to the issue raised by Bernardino, but only a legal dispute as to whether a lack of compliance with the Act's technical requirements for certification with the NCCI serves to negate coverage that would otherwise apply. Following *Skilling* and *Knox County*, we hold that the circuit court was correct in determining that it had both concurrent *and* primary jurisdiction over the subject matter of West Bend's declaratory judgment action.

¶ 25 Having resolved that the circuit court shares concurrent jurisdiction with the IWCC, and that the jurisdiction of the circuit court is "paramount" (see *Skilling*, 163 Ill. 2d at 290), the issue now squarely before us is the propriety of the stay order dated November 1, 2018. As discussed, the circuit court agreed with West Bend that it should stay the IWCC proceedings, based on the First District's holding in *Ultimate Backyard*. We cannot fault the circuit court for following *Ultimate Backyard*, as it appears to be the only Illinois case that has considered whether, under the doctrine of primary jurisdiction, a circuit court may stay administrative proceedings pending the resolution of a legal dispute in the circuit court. See *State Farm Fire & Casualty Co. v. Yapejian*, 152 Ill. 2d 533, 539 (1992) ("A decision of the appellate court, though not binding on other appellate districts, is binding on the circuit courts throughout the State."). However, because we decline to follow *Ultimate Backyard*, we nonetheless hold that the circuit court erred as a matter of law in staying the IWCC proceedings.

¶ 26 The reasoning in *Ultimate Backyard* was based largely on the holding in *Casualty Insurance Co. v. Kendall Enterprises, Inc.*, 295 Ill. App. 3d 582 (1998). In *Kendall*, an arbitrator from the IWCC issued a decision in favor of the employee after ruling that, because the insurance provider did not properly cancel its workers' compensation policy, it remained liable for benefits to the employee. However, within the 30-day period for filing a petition for review in the

IWCC, the insurance provider filed a declaratory judgment action in the circuit court, claiming that it was not liable for any benefits to the employee, because it had canceled the policy. *Id.* at 583-84. The employee filed a motion to dismiss the declaratory judgment action, conceding that the circuit court had primary jurisdiction over the disputed legal question but arguing that the doctrine should not be applied, because of the rulings that were already made by the IWCC. The circuit court granted the employee's motion to dismiss and the insurance provider appealed. *Id.* at 585-86.

¶ 27 The *Kendall* court noted that, pursuant to *Skilling*, "[t]he circuit court and the [IWCC] had concurrent jurisdiction over questions arising under the Act." *Id.* at 586. Next, the court rejected the insurance provider's contention that its declaratory judgment action presented a question of law and did not raise a question of fact, noting the insurance provider's assertion that it had canceled the employee's policy by mailing notifications of the cancellation to the employee, the employee's insurance agent, and the NCCI. The court observed that this disputed factual issue had already "been decided against [the insurance provider] by the [IWCC's] arbitrator following a hearing at which [the insurance provider] presented evidence and attempted to defend its position." *Id.* "In effect," the court reasoned, the insurance provider was "actually contesting the administrative findings of fact" that had already been made by the IWCC. *Id.* The court concluded:

> "This case is procedurally distinct from *Skilling*, where the [IWCC] had not made factual findings regarding the issue and, unlike plaintiff in our case, the insurance company contested the authority or jurisdiction of the [IWCC] to hear the case. [Citation.] Here, plaintiff's complaint contained assertions of fact regarding whether it had effectively cancelled [the employer's] insurance policy. The [IWCC] had held a hearing over several

> days, heard evidence and issued findings of fact contrary to plaintiff's position. In addition, the cause was still pending on review before the [IWCC] when plaintiff filed its complaint. Thus, we find no error in the court's dismissal of [the insurance provider's] complaint for declaratory judgment." *Id.* at 587.

¶ 28 In *Ultimate Backyard*, after the employees filed a claim with the IWCC, the insurance provider filed (1) a declaratory judgment action in the circuit court, asserting that it had no duty to defend or indemnify the employer in the IWCC proceedings, and (2) a motion in the circuit court to stay the IWCC proceedings. In its declaratory judgment action, the insurance provider argued that it had canceled the employer's policy in compliance with the relevant provisions of the Act. *Ultimate Backyard*, 2012 IL App (1st) 101751, ¶¶ 3-4. However, the circuit court granted the employees' motions to dismiss based on the doctrine of primary jurisdiction, concluding that certain factual questions would be more appropriately determined before the IWCC. *Id.* ¶ 8. The appellate court reversed, finding the facts of *Skilling* to be "most analogous" and noting that the circuit court was simply asked to interpret the relevant sections of the Act in determining whether the insurance provider had canceled the policy. *Id.* ¶ 32. The court noted that the interpretation of a statute "is a question of law, which is best answered by the circuit court and one that does not require the specialized expertise of the IWCC." *Id.* The court concluded in pertinent part:

> "Therefore, the IWCC does not have primary jurisdiction, and as stated in *Kendall*, when there is a ruling on a question of law that could foreclose needless litigation, it is best addressed by the circuit court. *Kendall*, 295 Ill[.] App. 3d at 586. We find that this is the exact situation present before us.

> For the above-mentioned reasons, we find that the lower court abused its discretion in granting appellees' motions to dismiss and denying [the insurance provider's] motion to stay. We, therefore, reverse and remand. *We direct the lower court to stay the proceedings before the IWCC on the underlying workers' compensation claim* until it determines if the notice of cancellation that [the insurance provider] submitted to the NCCI met the statutory requirements of section 4(b) of [the Act], relying on the undisputed fact that the NCCI logged and date stamped the notice of cancellation prior to its rejection." (Emphasis added.) *Id.* ¶¶ 32-33.

¶ 29 Unlike the other cases discussed above, *Ultimate Backyard* is procedurally analogous to this case in that the insurance provider sought to stay the IWCC proceedings pending the resolution of a declaratory judgment action in the circuit court. However, to the extent that *Ultimate Backyard* relied on the doctrine of primary jurisdiction to stay the administrative proceedings, the case stands out as an anomaly. As can be seen, the *Ultimate Backyard* court directed the circuit court to enter the stay without recognizing that it was doing so based on the inverse application of the doctrine. Furthermore, we disagree with the *Ultimate Backyard* court that it was facing "the exact situation" that was faced by the *Kendall* court. See *id.* ¶ 32. The *Kendall* court simply affirmed the circuit court's dismissal of the insurance provider's declaratory judgment action. In distinguishing *Skilling*, the *Kendall* court noted that the insurance provider was not challenging the IWCC's jurisdiction to consider the disputed factual question; rather, the insurance provider was seeking to relitigate the factual dispute that the IWCC's arbitrator had already ruled upon in finding that the insurance provider was liable for benefits to the employee. The *Kendall* court further implied that, even if the arbitrator had not already ruled on it, the disputed factual question would have warranted a referral to the

administrative agency. *Kendall*, 295 Ill. App. 3d at 586-87. Hence, by affirming the circuit court's dismissal of the declaratory judgment action, the *Kendall* court effectively prohibited the insurance provider from using the doctrine of primary jurisdiction as a mechanism for circumventing the administrative process. Certainly nothing in *Kendall*, or in any other case that we know of, implies that the doctrine authorizes a circuit court to stay the proceedings before an administrative body pending the resolution of a legal dispute in the circuit court.

¶ 30 We acknowledge that Bernardino has not challenged *Ultimate Backyard* on the grounds that we have identified as our basis for reversal. A reviewing court normally should not search the record for unargued and unbriefed reasons to reverse the circuit court's judgment, especially when it would have the effect of transforming its role from jurist to advocate. *Marconi v. City of Joliet*, 2013 IL App (3d) 110865, ¶ 18. We have no such concerns here. We did not search the record for a reason to reverse the circuit court. To the contrary, we noticed an error on the face of the order dated November 1, 2018, in which the circuit court stayed the IWCC proceedings based on the doctrine of primary jurisdiction. " '[A] reviewing court does not lack authority to address unbriefed issues and may do so *** when a clear and obvious error exists in the trial court proceedings.' " *Mid-Century Insurance Co. v. Founders Insurance Co.*, 404 Ill. App. 3d 961, 966 (2010) (quoting *People v. Givens*, 237 Ill. 2d 311, 325 (2010)). Moreover, pursuant to Illinois Supreme Court Rule 366 (eff. Feb. 1, 1994), in exercising its responsibility for a just result, a reviewing court may decide a case on grounds not raised by the parties. *Gay v. Frey*, 388 Ill. App. 3d 827, 832 (2009).

¶ 31 We are not advocating for Bernardino in this case, but simply correcting a clear and obvious error in the circuit court proceedings that would otherwise produce a result that is contrary to well-established legal principles. The doctrine of primary jurisdiction establishes that, in cases

raising issues of fact that are within an agency's expert and specialized knowledge, the judiciary's role is best exercised by deferring to the agency charged with regulating the subject matter. *Western Pacific*, 352 U.S. at 64-65. Accordingly, when a court has jurisdiction over a matter, there are instances where it should "stay the judicial proceedings pending referral of the controversy, or a portion of it, to an administrative agency having expertise in the area." *Crossroads*, 2011 IL 111611, ¶ 43. There is no fixed formula for applying the doctrine of primary jurisdiction, as in every case "the question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation." *Village of Itasca*, 352 Ill. App. 3d at 853.

¶ 32 Here, the reasons for the existence of the doctrine of primary jurisdiction are not present, because there is no need to refer any specialized controversy to the IWCC. Furthermore, the purposes served by the doctrine will not be aided by its application in this case. The *Ultimate Backyard* ruling paves the way for insurance providers to rely on the doctrine to create procedural advantages for themselves. Here, West Bend has effectively relied upon *Ultimate Backyard* to stay the IWCC proceedings while it awaits a ruling from the circuit court as to whether it has an interest to defend before the IWCC. However, the doctrine of primary jurisdiction was not created for litigants to game the administrative system (see, *e.g.*, *Kendall*, 295 Ill. App. 3d at 586-87); it was created to promote "self-restraint and relations between the courts and administrative agencies" (*Bradley*, 2015 IL App (5th) 140267, ¶ 35). The circuit court reasoned that West Bend would be placed "in limbo" if the IWCC proceedings continued before there was a ruling on the issue of coverage. But if West Bend finds itself in limbo, it is by West Bend's own doing. Because the IWCC shares concurrent jurisdiction with the circuit court (see *supra* ¶ 25), West Bend could have argued the late notice issue before the IWCC and appealed to the

circuit court upon the entry of an adverse ruling. It chose instead to bring the issue straight to the circuit court. While the doctrine of primary jurisdiction requires the circuit court to consider the issue, it does not provide that the administrative proceedings should be stayed pending its resolution.

¶ 33 During oral argument, Bernardino suggested that West Bend must satisfy the ordinary requirements for a preliminary injunction before the circuit court can stay the IWCC proceedings. To obtain a preliminary injunction, a party must show (1) a clearly ascertained right in need of protection, (2) an irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case. *Clinton Landfill, Inc. v. Mahomet Valley Water Authority*, 406 Ill. App. 3d 374, 378 (2010). We observe that similar requirements are included in section 3-111(a)(1) of the Administrative Review Law (Law), which authorizes a circuit court, "upon notice to the agency and good cause shown, to stay the decision of the administrative agency in whole or in part pending the final disposition of the case." 735 ILCS 5/3-111(a)(1) (West 2016). For purposes of this subsection, "good cause" requires a showing that (1) an immediate stay is required in order to preserve the status quo without endangering the public, (2) it is not contrary to public policy, and (3) there exists a reasonable likelihood of success on the merits. *Id.* It is worth noting, however, that the Law applies to an administrative agency only "where the Act creating or conferring power on such agency, by express reference, adopts the provisions" of the Law. *Id.* § 3-102. Other courts have observed that the Act does not adopt the Law. *Dobbs Tire & Auto v. Illinois Workers' Compensation Comm'n*, 2018 IL App (5th) 160297WC, ¶ 17; *Farris v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130767WC, ¶ 46; *Wal-Mart Stores, Inc. v. Industrial Comm'n*, 324 Ill. App. 3d 961, 966 (2001).

¶ 34 Because these issues have not been fully briefed or argued by West Bend, we take no position as to what procedures, if any, are available to West Bend if it seeks to renew its motion in the circuit court to stay the IWCC proceedings. However, we agree with Bernardino's argument that the nature of his section 19(b) petition, which seeks to determine only whether he is entitled to receive medical services, militates against staying the proceedings in the IWCC. The primary purpose of the Act is to "provide prompt and equitable compensation for employees who are injured while working, regardless of fault." *In re Estate of Dierkes*, 191 Ill. 2d 326, 331 (2000). Relevant here,

> "[w]hether the employee is working or not, if the employee is not receiving or has not received medical, surgical, or hospital services or other services or compensation ***, the employee may at any time petition for an expedited hearing by an Arbitrator on the issue of whether or not he or she is entitled to receive payment of the services or compensation." 820 ILCS 305/19(b) (West 2016).

"Expedited hearings shall have priority over all other petitions and shall be heard by the Arbitrator and Commission with all convenient speed." *Id.* We agree with Bernardino that it would contradict our legislature's clear intent to provide an expedited process for employees awaiting medical services if the process could be suspended while the employer and insurance provider dispute the issue of coverage in the circuit court.

¶ 35 III. CONCLUSION

¶ 36 The order of the circuit court of McHenry County staying the IWCC proceedings is reversed, and the cause is remanded for further proceedings.

¶ 37 No. 2-18-0934, Reversed and remanded.

¶ 38 No. 2-18-1009, Appeal dismissed.

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NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

WEST BEND MUTUAL INSURANCE CO.,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 124690
	)	
GARY BERNARDINO,	)	
	)	
Defendant-Appellee,	)	
	)	
TRRS CORPORATION, et al.,	)	
	)	
Defendants.	)	

The undersigned, being first duly sworn, deposes and states that on June 26, 2019, there was electronically filed and served upon the Clerk of the above court the Brief of Plaintiff-Appellant West Bend Mutual Insurance Company. Service of the Brief will be accomplished by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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

/s/ Thomas F. Lucas
Thomas F. Lucas

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.

/s/ Thomas F. Lucas
Thomas F. Lucas

E-FILED
6/26/2019 10:32 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK