

is primarily liable to pay that compensation. AIG contends, in part, the circuit court lacked subject-matter jurisdiction over plaintiff's claims, which arose under the Workers' Compensation Act (Compensation Act) (820 ILCS 305/1 *et seq.* (West 2000)). More specifically, AIG argues because Aber's claim against it did not originate with the Illinois Industrial Commission (Commission), the court had no authority to decide her claims. We affirm.

¶ 3

I. BACKGROUND

¶ 4

In 2000, Aber worked for Metal Transportation Systems. Aber sought benefits pursuant to the Compensation Act for injuries she sustained in August 2000, during her employment. In case No. 01-WC-66251, a hearing before an arbitrator was scheduled for February 2002. When Metal Transportation Systems failed to appear, the hearing was continued until March 5, 2002. Metal Transportation Systems again failed to appear. A hearing before the arbitrator was held *ex parte*. The arbitrator noted Aber's testimony she was injured while attempting to pull a tarp over the trailer she was pulling. Metal Transportation Systems paid benefits to Aber through November 2000. The arbitrator ordered Metal Transportation Systems to pay Aber \$22,765 in temporary total disability (TTD), \$6,064.56 in medical expenses, as well as penalties and fees.

¶ 5

By letter dated April 2002, Aber notified Metal Transportation Systems of the arbitrator's decision. As of May 15, 2002, Aber believed Metal Transportation Systems was self-insured and applied for entry of judgment with the circuit court to enforce the award under section 19(b) of the Compensation Act (820

ILCS 305/19(b) (West 2000)).

¶ 6 After judgment was entered in the circuit court against Metal Transportation Systems, Aber learned the chief financial officer and the main office for Metal Transportation Systems were located in Utah. Aber served her employer in Utah. Then, Metal Transportation Systems informed Aber the company was preparing to file for bankruptcy and it was insured by AIG.

¶ 7 After learning AIG insured Metal Transportation Systems, Aber filed with the arbitrator a motion to add AIG as a defendant in her workers' compensation case against Metal Transportation Systems, case No. 01-WC-66251. The arbitrator denied Aber's motion, and the Commission affirmed. Aber appealed to the circuit court, which ruled against Aber. Citing *McAnally v. Butzinger Builders*, 263 Ill. App. 3d 504, 636 N.E.2d 19 (1994), our court concluded due process would not permit a workers' compensation claimant to enforce an award against the insurance carrier without first filing a separate action and affirmed. *Aber v. Industrial Comm'n*, No. 4-05-0550WC, slip order at 6 (May 2, 2006) (unpublished under Supreme Court Rule 23). In so ruling, we noted AIG did not have the opportunity to defend the action, investigate the case before the hearing, obtain an independent medical examination, or cross-examine Aber. *Aber*, No. 4-05-0550WC, slip order at 4.

¶ 8 While Aber attempted to add AIG to her workers' compensation case, AIG filed a declaratory judgment action in Utah, seeking a determination it had no duty to defend or indemnify Metal Transportation Systems in Aber's workers'

compensation claim. Metal Transportation Systems also instituted bankruptcy proceedings. At some point, Metal Transportation Systems and AIG entered into a settlement agreement as part of these proceedings. This settlement set forth a schedule of payments Metal Transportation Systems would make to AIG for insurance coverage. By agreement of the parties, the declaratory-judgment action was dismissed without prejudice.

¶ 9 In the meantime, in case No. 01-WC-66251, plaintiff sought additional benefits under section 19(b) following Metal Transportation Systems' bankruptcy. Notice of the action was provided to both AIG, who was not a party, and Metal Transportation Systems. A hearing was held in April 2007. Neither Metal Transportation Systems nor AIG participated. After the *ex parte* hearing, the arbitrator ruled in Aber's favor. The arbitrator concluded Aber was entitled to TTD payments of \$350.82 per week from October 25, 2002, through April 13, 2007, and payments of \$351 per week until Aber is released to return to work or reaches maximum medical improvement. In her pleadings, Aber asserts as of the filing of her amended complaint in January 2008, she was owed \$112,763.20, plus court costs and interest. Also in her pleadings, Aber contends she has received \$4,879.36 from the bankruptcy estate of Metal Transportation Systems.

¶ 10 Meanwhile, in February 2007, Aber, calling it a "separate action," filed the original complaint in this cause of action against AIG seeking payment of the 2002 workers' compensation award in the circuit court. She filed her third amended complaint in October 2010. In her third amended complaint, Aber set

forth five counts against AIG: "820 ILCS 305/4(g)," breach of insurance contract, breach of bankruptcy stipulation, unjust enrichment, and waiver. In each of these counts, Aber seeks the amounts awarded to her in the arbitrator's 2002 and 2007 judgments against Metal Transportation Systems.

¶ 11 In November 2010, AIG moved to dismiss Aber's third amended complaint pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)). AIG alleged, in part, Aber's claims failed to state a cause of action and the circuit court lacked subject-matter jurisdiction to hear Aber's claims. In February 2011, the court dismissed Aber's third amended complaint with prejudice. The court recognized the hardship placed upon Aber and the fact the failure of Aber's claims resulted from no fault of her own, but also AIG had not been guilty of wrongdoing.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 AIG's motion to dismiss was filed under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)). Section 2-619.1 motions encompass both claims the complaint fails to state a claim under section 2-615 (735 ILCS 5/2-615 (West 2010)) or is subject to dismissal based upon certain defects or defenses under section 2-619 (735 ILCS 5/2-619 (West 2010)). Regarding AIG's claims based on section 2-619, AIG effectively argues, in part, the dismissal was proper for lack of subject-matter jurisdiction and as barred by *res judicata* and collateral-estoppel doctrines.

¶ 15

In reviewing a circuit court's ruling on a section 2-619(a) motion to dismiss for lack of subject-matter jurisdiction or on the basis an affirmative matter bars the action, we review the matter *de novo*, meaning we use the same analysis the circuit court was expected to perform and give no deference to the circuit court's decision. *Khan v. BDO Seidman, LLP*, 404 Ill. App. 3d 892, 908, 935 N.E.2d 1174, 1188 (2010). When considering the defendant's motion, we deem admitted the well-pleaded facts and legal sufficiency of the complaint and interpret the pleadings and supporting documents in a light most favorable to the plaintiff. *Khan*, 404 Ill. App. 3d at 908-09, 935 N.E.2d at 1188-89. The circuit court did not fully resolve the subject-matter-jurisdiction issue when addressing AIG's motion to dismiss. We, however, may affirm on any basis appearing in the record. See *Jandeska v. Prairie Int'l Trucks, Inc.*, 383 Ill. Ap. 3d 396, 398, 893 N.E.2d 673, 675 (2008).

¶ 16

Although Aber received two awards of workers' compensation against her employer, Metal Transportation Systems, Aber seeks payment of these awards from Metal Transportation System's insurer, AIG. The legal basis for such a claim is section 4(g) of the Compensation Act, which states an insurer becomes primarily liable to pay the work-ers' com-pensati

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ployee:

"In the event the employer does not pay the compensation for which he or she is liable, then an insurance company, association or insurer which may have insured such employer against such liability *shall become primarily liable* to pay to the employee, his or her personal representative or beneficiary the compensation required by the provisions of this Act to be paid by such employer. The insurance carrier may be made a party to the proceedings in which the employer is a party and an award may be entered jointly against the employer and the insurance carrier." 820 ILCS 305/4(g) (West 2000). (Emphasis added.)

¶ 17

Aber's third amended complaint asserts not only a claim based on section 4(g), but also claims of "breach of insurance contract," "breach of bankruptcy stipulation," unjust enrichment, and waiver. In the section 4(g) count, Aber cites the section and quotes the language that states "an insurance company *** shall become primarily liable" (820 ILCS 305/4(g) (West 2000)). Each count in Aber's third amended complaint, by the act of adopting allegations in previous counts, cites section 4(g).

¶ 18 Aber's case against AIG is thus, by nature, a workers' compensation case. All of Aber's claims against AIG stem from workers' compensation awards against Aber's employer. All claims seek damages equal to the awards against Aber's employer. All claims for liability are based on section 4(g).

¶ 19 Because Aber's claims arise under the Act, AIG contends the circuit court lacked subject-matter jurisdiction over Aber's claims. AIG maintains circuit courts gain jurisdiction over actions pursuant to the Compensation Act in only two ways: under sections 19(f) and 19(g). Section 19(f) provides the procedure for starting an appeal of the Commission's decision to the circuit court. *Esquivel v. Illinois Workers' Compensation Comm'n*, 402 Ill. App. 3d 156, 159, 930 N.E.2d 553, 555 (2010) (citing 820 ILCS 305/19(f) (West 2006)). Section 19(g) governs the procedure for seeking a circuit-court order that enforces the award given by the Commission. 820 ILCS 305/19(g) (West 2002).

¶ 20 In her reply brief, Aber responds by simply stating she "is not aware of any authority that states that Plaintiff cannot file this action against AIG, and AIG has not provided the Court with any either." Aber further disagrees with AIG's statement she cannot bring her claim now because it did not start with the Commission. Aber refers to the two awards in 2002 and 2007 issued against Metal Transportation Systems. Aber provides no authority permitting her to file these claims against AIG in the circuit court.

¶ 21 The Compensation Act does not provide a blanket authorization for circuit courts to hear workers' compensation claims. See generally *Esquivel v.*

Illinois Workers' Compensation Comm'n, 402 Ill. App. 3d at 159, 930 N.E.2d at 555 (2010) ("While circuit courts are courts of general jurisdiction and enjoy the presumption of subject-matter jurisdiction, this presumption does not apply in workers' compensation proceedings, where the court exercises special statutory jurisdiction."). Workers' compensation claims must be filed pursuant to the Compensation Act. With certain exceptions, section 5(a) states the Compensation Act is the exclusive means for an employee to recover damages from his or her employer for his or her on-the-job injuries:

"No common law or statutory right to recover damages from the employer, his insurer *** for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act ***." 820 ILCS 305/5(a) (West 1996).

To avoid the exclusive-remedy provisions of section 5(a), a plaintiff must prove his or her injury "(1) was not accidental, (2) did not arise from his or her employment, (3) was not received during the course of employment, or (4) was noncompensable under the Act." *Copass v. Illinois Power Co.*, 211 Ill. App. 3d 205, 210, 569 N.E.2d 1211, 1214 (1991).

¶ 22 In addition to the exclusive-remedy provision, section 18 of the Compensation Act provides questions arising from the Compensation Act must be decided by the Commission: "All 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." 820 ILCS 305/18 (West 2010). Under section 19, the process for resolving disputed questions of law or fact in workers' compensation cases begins with the Commission's designation of an arbitrator to address the dispute: "It shall be the duty of the Commission upon notification that the parties have failed to reach an agreement, to designate an Arbitrator." 820 ILCS 305/19(a) (West 2002).

¶ 23 Circuit-court involvement in workers' compensation cases is authorized in only two circumstances. The first, under section 19(f), authorizes appeals directly from the Commission's findings of law and fact. 820 ILCS 305/19(f) (West 2002). The second, under section 19(g), authorizes orders enforcing the Commission's award. 820 ILCS 305/19(g) (West 2002).

¶ 24 The circuit court's involvement here is not authorized by either section 19(f) or 19(g). The third amended complaint does not seek a review of the 2002 or 2007 decisions under section 19(f), nor could it. The third amended complaint seeks damages from AIG, who was not a party in either of those decisions, and we held AIG could not be added to those actions. See *Aber*, No. 4-05-0550WC, slip order at 4, 6. The third amended complaint also does not, on its face, seek recovery under section 19(g).

¶ 25 Aber has not described and we fail to see how the circuit court has subject-matter jurisdiction over an action against AIG that attempts to circumvent the Compensation Act and the Commission's involvement. Filing a "separate action" in the circuit court seeking an order mandating AIG pay awards against

Metal Transportation Systems does not comply with the terms of the Compensation Act or cure the fatal errors in the earlier attempt to add AIG to Aber's case against Metal Transportation Systems filed before the Commission. AIG would still have been denied the opportunity to defend Aber's action, perform an investigation of the case before the hearing, acquire an independent medical examination, or cross-examine Aber. *Aber*, No. 4-05-0550WC, slip order at 4.

¶ 26 Because Aber has not established the circuit court had jurisdiction over her workers' compensation-based claims, the motion to dismiss was properly granted.

¶ 27 III. CONCLUSION

¶ 28 For the stated reasons, we affirm the trial court's judgment.

¶ 29 Affirmed.

¶ 30 JUSTICE COOK, dissenting:

¶ 31 In the usual case where an injured party obtains a judgment against a tortfeasor, the injured party may enforce that judgment against the tortfeasor's insurer by a garnishment action. Generally, in garnishment proceedings, a judgment creditor may only collect from the insurance company if the insured could have enforced the insurance policy. An insured's breach of the insurance policy generally prohibits the judgment creditor from garnishing the insurance fund. *Reisman v. Delgado*, 117 Ill. App. 3d 331, 333-34, 453 N.E.2d 902, 904 (1983).

¶ 32 There must be a judgment in circuit court in order to commence a garnishment proceeding. Section 19(g) of the Compensation Act (820 ILCS 305/19(g) (West 2000)) allows the circuit court to enter a judgment when a certified copy of a final workers' compensation decision is presented to it. Such a judgment shall "have the same effect as though duly entered in an action duly tried and determined by the court." 820 ILCS 305/19(g) (West 2000). Garnishment proceedings may then be commenced against any asset of the employer, including bank accounts and insurance policies providing indemnity.

¶ 33 In the present case, the arbitrator entered an award in 2002. Aber then obtained a section 19(g) judgment in circuit court. Aber then learned that the employer was insured by AIG and attempted to add AIG to the workers' compensation case. The arbitrator denied the motion and we affirmed. That decision was appropriate; AIG had no opportunity to defend the workers' compensation action.

¶ 34

In *McAnally v. Butzinger Builders*, 263 Ill. App. 3d 504, 636 N.E.2d 19 (1994), the employee went a different route. The employee attempted to add the insurer at the time he presented his workers' compensation decision to the circuit court for the entry of a section 19(g) judgment. The Fifth District refused to allow the addition. Again, the decision was appropriate; the insurer had no opportunity to defend the action, as the only matter before the circuit court under section 19(g) is the certified copy of the workers' compensation decision. The circuit court has no power to review the decision under section 19(g) except to add costs and attorney fees. 820 ILCS 305/19(g) (West 2000) ("the court shall enter a judgment in accordance therewith").

¶ 35

Aber did not attempt to add AIG at the section 19(g) stage, as was done in *McAnally*. Aber describes the present litigation in the circuit court as a "separate action." That seems to be an accurate description. The present action seems to be in the nature of a garnishment action, during which AIG will have the opportunity to argue that it is not liable because its insured breached the policy. *McAnally* recognized that its decision was not the end of the matter: "where the workers' compensation claimant foregoes naming the insurance carrier at the outset, the claimant may not enforce the workers' compensation award against the carrier without filing a separate action." *McAnally*, 263 Ill. App. 3d at 510, 636 N.E.2d at 23. That is what we have here, a separate action. *McAnally* recognized that section 4(g) of the Compensation Act does not mandate that the insurance carrier be made a party to the workers' compensation proceedings, although "the insur-

ance carrier *may* be made a party" under section 4(g). (Emphasis added.) 820 ILCS 305/4(g) (West 2000).

¶ 36

It is not clear that AIG will prevail in its argument that its insured's failure to give notice barred any claim against it. Not every breach of a policy condition by the insured will allow the insurer to avoid payment under the policy. The law is also concerned with the rights of the public, especially where the insurance coverage is mandated by statute. *Johnson v. R & D Enterprises*, 106 Ill. App. 3d 496, 501, 435 N.E.2d 1233, 1236 (1982); *Reisman*, 117 Ill. App. 3d at 334, 453 N.E.2d at 904. The Compensation Act requires employers who desire to be self-insurers to obtain the permission of the Commission. If the employer's financial statement "does not satisfy the Commission," the employer must obtain insurance and "[a]ny provisions in any policy, or in any endorsement attached thereto, attempting to limit or modify in any way, the liability of the insurance carriers issuing the same except as otherwise provided herein shall be wholly void." 820 ILCS 305/4(a)(3) (West 2000). AIG's own policy recognizes that it may be required to pay a claim even if its insured has not given it notice: "where required by law *** (1.) As between an injured worker and us (meaning the insurer), we have notice of the injury when you (meaning the employer) have notice." Illinois' concern for claimants is also found in the Insurance Code, which mandates that insolvency or bankruptcy of the insured shall not release the insurer from payment to the injured party. 215 ILCS 5/388 (West 2000).

¶ 37

After the cause of action has accrued to an injured person, the parties to

the insurance contract cannot by any release, agreement, or collusion destroy the right of the injured person to indemnity. *State Farm v. Perez*, 387 Ill. App. 3d 549, 552, 899 N.E.2d 1231, 1234 (2008). It is interesting that AIG filed suit in Utah seeking a determination that it had no duty to indemnify Aber's claim, and then entered into a "settlement agreement" with the employer and dismissed the suit. Is it really true that the employer never gave any notice to AIG, or was it in both parties' best interest not to recognize notice? Was the employer's goal here to cancel the policy and not pay premiums?

¶ 38

We should reverse the trial court's judgment dismissing this action, and remand so that AIG may present its argument that it may deny coverage because its insured did not give it notice.