

No. 1-10-3123

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ILLINOIS STATE TOLL HIGHWAY AUTHORITY, )  
 ) Appeal from the  
 ) Circuit Court of  
 Plaintiff-Appellant, ) Cook County  
 )  
 v. ) No. 09 CH 42677  
 )  
 ANGELINE WINTERS; JOHN F. WINTERS, JR., )  
 independent Administrator of the Estate of John F. Winters, ) Honorable  
 Sr., deceased; and JOHN F. WINTERS JR., individually, ) Peter Flynn,  
 ) Judge Presiding.  
 Defendants-Appellees. )

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JUSTICE EPSTEIN delivered the judgment of the court.  
Presiding Justice Lavin concurred in the judgment.  
Justice Pucinski dissented.

**ORDER**

¶ 1 *Held:* Plaintiff's post-award claims were not within the exclusive jurisdiction of the Illinois Workers' Compensation Commission under section 18 of the Workers' Compensation Act. 820 ILCS 305/18 (West 1998). We reverse the trial court's order dismissing the verified complaint for lack of subject matter jurisdiction and remand this case for further proceedings.

¶ 2 Plaintiff Illinois State Toll Highway Authority (the Tollway) filed this appeal after the

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trial court dismissed, pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)), its verified complaint against defendants, Angeline Winters and John F. Winters, Jr., as Independent Administrator of the Estate of John F. Winters, Sr., deceased, and John F. Winters Jr., individually, for lack of subject matter jurisdiction.<sup>1</sup> For the reasons that follow, we reverse and remand.

¶ 3

### BACKGROUND

¶ 4 On April 3, 1997, decedent John F. Winters, Sr. (Winters, Sr.) was struck by a truck and injured while working as a toll collector for the Tollway. He died as a result of his injuries. His widow, defendant Angeline Winters (Mrs. Winters) filed an action before the Illinois Workers' Compensation Commission (the Commission) seeking benefits pursuant to the Illinois Workers' Compensation Act. 820 ILCS 305/1 *et seq.* (West 1996) (the Act). In December 1997, Mrs. Winters was awarded compensation benefits in the amount of \$376.83 per week until the sum of \$250,000 was paid or until 20 years had elapsed, whichever was greater. The Tollway began making payments in December 1997.

¶ 5 On April 5, 1999, Mrs. Winters, individually, and her son, John Winters, Jr., as Independent Administrator of the Estate of John F. Winters, Sr., decedent, (collectively, the Winters) filed a wrongful death and survival action, case no. 99 L 3786 (tort suit), against the truck driver, Jackie L. Kline, his employer, Wineguard Company,<sup>2</sup> which had rented the truck, and Ruan Leasing Company, the lessor of the truck (collectively, the trucking defendants). In

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<sup>1</sup> This case was recently reassigned by the court.

<sup>2</sup> The company is also referred to in the briefs as Winguard Company.

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November 1999, the trucking defendants in the tort suit filed a third-party complaint against the Tollway seeking contribution. On August 29, 2002, in exchange for the trucking defendants' dismissal of the third party action against the Tollway, it assigned 50% of its "lien rights" to the trucking defendants.<sup>3</sup> As a result, if the Winters were to recover damages from the trucking defendants in the tort suit, *both* the trucking defendants and the Tollway could seek reimbursement (50% each) from the Winters' tort recovery for the compensation benefits that the Tollway had already paid.

¶ 6 After the third-party complaint against the Tollway was dismissed, the tort suit between the Winters and the trucking defendants continued. We note that, on September 9, 2002, a jury entered a verdict in favor of the Winters and against the trucking defendants; however, in 2003, this court affirmed the circuit court's order granting a new trial. See *Winters v. Kline*, 344 Ill. App. 3d 919 (2003).

¶ 7 The Winters subsequently participated in settlement discussions with the trucking defendants. Over four years later, in January 2007, the Winters' attorney sought a waiver of the Tollway's remaining (50%) workers' compensation lien in order to effectuate a settlement of the tort suit with the trucking defendants. According to the Tollway's verified complaint, an oral

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<sup>3</sup> “[S]ection 5(b) of the Illinois Workers' Compensation Act, grants an employer a lien on an employee's recovery against a third party tortfeasor up to the amount of the workers' compensation benefits paid to the employee.” *Harder v. Kelly*, 369 Ill. App. 3d 937, 942 (2007); see 820 ILCS 305/5(b) (West 1996). As the Illinois Supreme Court has explained: “[B]ecause an employer may be required to pay compensation to an injured employee under the Act even though the employer was without fault, section 5(b) serves the important purpose of allowing both the employer and the employee an opportunity to reach the true offender while preventing the employee from obtaining a double recovery.” (Internal quotation marks omitted.) *Gallagher v. Lenart*, 226 Ill. 2d 208, 238 (2007).

agreement was thereafter reached between the Tollway and the Winters. The Tollway agreed to waive its lien (thereby allowing the Winters to keep more of any proceeds they received from the trucking defendants in the tort suit). In exchange, the Winters agreed to terminate the Tollway's duty to make future workers' compensation benefit payments to Mrs. Winters. This oral agreement was to be memorialized and effectuated by two documents: (1) a waiver by the Tollway of its remaining lien rights in the tort suit; and (2) an agreement by Mrs. Winters, subject to approval by the Commission, to accept one dollar in lieu of all future benefits payable to her under the workers' compensation award (which has also been referred to as the lump sum contract).

¶ 8 The Tollway states that, on April 26, 2007, the parties “exchanged” documents. The Winters' attorney, Thomas Power, sent the Tollway's counsel letter stating, in part: “Enclosed please find two (2) fully executed Settlement Contract Lump Sum Petitions and Orders. Please send me a copy of any further documentation entered by the Commission.”<sup>4</sup> On the same day, the Tollway's counsel, assistant attorney general Larry R. Wikoff executed and faxed a “Waiver of Lien” to the Winters' attorney. At some point, apparently in early 2007, the Winters settled their tort suit with the trucking defendants using the lien waiver that the Tollway had executed to obtain payment. The settlement provided an initial payment of \$180,000 plus additional monthly

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<sup>4</sup> We note that the record contains a copy of this letter and a standard Commission form labeled “Illinois Workers' Compensation Commission Settlement Contract Lump Sum Petition and Order.” The document was signed on February 9, 2009, by attorney Phillip J. Johnson (as attorney for respondent, the Tollway) and signed on April 17, 2007 by Winters, Jr. (as attorney for petitioner, Angeline Winters). The document does not contain petitioner Angeline Winters' signature.

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payments of \$2,250 to Mrs. Winters for life.

¶ 9 We note that the Winters present a different, and somewhat confusing, version of the events that next took place on April 26, 2007. The Winters also state: “Unhappy with the litigation strategy implemented by Mr. Wikoff, [the Tollway] seeks now to conjure up an [oral] agreement that never existed, was never anticipated by the parties and never documented in any way.”<sup>5</sup> The Tollway asserts that this assertion is improper because it “is not only based on supposed matters found nowhere in the record \*\*\* but also demonstrably false, bordering on an attempt to perpetrate a fraud on the Court.” We need not resolve that dispute because the merits of the underlying dispute are not before us. We need only determine if the trial court had subject matter jurisdiction.

¶ 10 The Winters apparently contend that, *after* attorney Wikoff faxed the executed “Waiver of Lien” to the Winters' attorney, attorney Phillip Johnson, on behalf of the Tollway, forwarded the “Settlement Contract Lump Sum Petition and Order” to attorney Power “representing only that completion of the document was necessary to permit him to close his file.” It is unclear what the Winters mean by “completion” since the Tollway has stated that attorney Power had already sent copies of “two (2) fully executed Settlement Contract Lump Sum Petitions and Orders,” the Winters state that “Mr. Power forwarded the 'closing file document' to [Winters, Jr.] for his

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<sup>5</sup> This argument is improperly included in the Winters' Statement of Facts part of their response brief which, though not required in an appellee brief (see Supreme Court Rule 341(i) (eff. Jul 1, 2008)), they chose to include. However, Rule 341 expressly provides, in relevant part, that the Statement of Facts “shall contain the facts necessary to an understanding of the case, stated accurately and fairly *without argument* or comment.” (Emphasis added.) Supreme Court Rule 341(h)(6).

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review and signature.” The Winters also state “Angeline Winters did not execute the Settlement Contract Lump Sum Petition and Order because “they had not agreed and never intended to agree to waive the future benefits due to Angeline Winters.” The Winters also state that “Mr. Winters retained the original [Settlement Contract] Lump Sum Petition and Order and returned a copy of the document to Mr. Power for his office file.”

¶ 11 The Winters supplemented their motion to dismiss with their attorney's affidavit dated May 10, 2010. According to the affidavit, the Tollway agreed to waive its lien but the Winters never agreed to waive Mrs. Winters future benefits. Instead, according to the affidavit, the Tollway agreed to waive its statutory lien because it “permitted [the Tollway] to resolve the third party claim against it at a cost of only 50% of the existing funds at risk.” However, in his affidavit, the Winters' attorney states: “If the Law Division case had proceeded to trial, the full amount of the existing [Tollway's] workers' compensation lien and future amounts paid would have been at risk.” This too is somewhat confusing since, according to the Tollway, the trucking defendants' third-party action against it had already been dismissed in August 2002.

¶ 12 In any event, at some point, the Tollway discovered the omission of Mrs. Winters' signature. According to the Tollway, “[a]fter discovering this omission, the Tollway made repeated requests that the Winters deliver a [Settlement Contract Lump Sum Petition and Order] signed by Mrs. Winters, but they failed and refused to do so.” The Tollway initially continued to make benefit payments to Mrs. Winters.

¶ 13 According to the Winters, in early May 2008, new counsel for the Tollway contacted the Winters' attorney, explained that its file in this matter had been lost and requested a copy of the

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settlement documents generated in the case. Thereafter, according to the Winters, “a copy of the incomplete and unsigned [Settlement Contract Lump Sum Petition and Order] was provided along with the other documents relevant to the settlement.” In June 2008, Mrs. Winters' monthly benefit payments stopped. In December 2008, Mrs. Winters filed a “Petition For Penalties Pursuant To Section 19(L), Section 19(K) And Attorney's Fees Pursuant to Section 16 Of The Worker[s'] Compensation Act.”

¶ 14 On October 30, 2009, the Tollway filed a six-count verified complaint in the circuit court of Cook County against the Winters. Count I sought a mandatory injunction; count II sought specific performance; count III alleged breach of contract; count IV alleged conversion; count V alleged fraud in the inducement; and count VI alleged unjust enrichment. On May 11, 2010, the Winters filed a motion to dismiss the action for lack of subject matter jurisdiction pursuant to section 2-619(a)(1) of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(1) (West 2008)). On July 7, 2010, the trial court granted the motion and on September 17, 2010, denied the Tollway's motion to reconsider. The Tollway appealed. For the reasons that follow, we reverse and remand.

¶ 15

#### ANALYSIS

¶ 16 Section 2-619 of the Code of Civil Procedure allows for the involuntary dismissal of a cause of action based on certain defects or defenses. 735 ILCS 5/2-619 (West 2008). This appeal arises from an order granting a motion to dismiss pursuant to section 2-619(a) which provides for dismissal of an action where the court lacks subject matter jurisdiction. Whether the trial court had subject matter jurisdiction is a question of law that we review *de novo*. *Crossroads Ford*

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*Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 26 (citing *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294 (2010); *Blount v. Stroud*, 232 Ill. 2d 302, 308 (2009)).

¶ 17 “Subject matter jurisdiction concerns the authority of the court to hear and determine cases of the general class to which the proceeding in question belongs.” (Internal quotation marks omitted.) *City of Kankakee v. Department of Revenue*, 2013 IL App (3d) 120599, ¶ 11 (quoting *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 27, in turn quoting *In re M.W.*, 232 Ill. 2d 408, 415 (2009)). “Generally speaking, a justiciable matter is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.” (Internal quotation marks omitted.) *In re Luis R.*, 239 Ill. 2d 295, 301 (2010). “[S]ubject matter jurisdiction has nothing to do with the legal sufficiency of the asserted claim.” *Id.* at 303.

¶ 18 “It is undisputed that the courts of Illinois have original jurisdiction over all justiciable matters.” *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751, ¶ 31 (citing Ill. Const. 1970, art. VI, § 9). The legislature, however, may vest exclusive original jurisdiction in an administrative agency “when it has explicitly enacted a comprehensive statutory administrative scheme.” *Id.* (citing *People v. NL Industries*, 152 Ill. 2d 82, 96–97 (1992)). The Illinois Supreme Court has explained that the circuit courts have no original jurisdiction in cases involving a *determination* of workers' compensation benefits. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142 (1992); see also *Hollywood Trucking, Inc. v. Watters*, 385 Ill. App. 3d 237 (2008). The Tollway acknowledges this principle but correctly notes the distinction

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between a “determination of benefits” (*e.g.*, whether an employee or his survivor is entitled to benefits, or whether an award should be modified due to a subsequent change in the employee's physical condition or ability to work) and a decision that “may affect” the payment of those benefits.

¶ 19 In their motion to dismiss, the Winters argued that the trial court lacked subject matter jurisdiction pursuant to section 18 of the Act. The trial court agreed. In its order denying the Tollway's motion to reconsider, the trial court concluded: “As all counts of the Tollway's Complaint ultimately involve a determination of compensation benefits, the Commission is the proper forum for this action. This Court lacks subject matter jurisdiction pursuant to the plain language of 820 ILCS 305/18.” We disagree.

¶ 20 Section 18 of the Act states: “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 2008). However, in *Employers Mutual Companies v. Skilling*, 163 Ill. 2d 284 (1994), the Illinois Supreme Court concluded that the language of section 18 of the Act did not sufficiently divest the circuit court of its original jurisdiction. In *Skilling*, a workers' compensation insurer filed a suit for a declaratory judgment that an employee's workers' compensation claims were not covered by its policy. The court rejected the employee's argument that section 18 of the Act deprived the circuit court of concurrent jurisdiction to resolve the issue before the court. *Id.* at 286-87. Although *Skilling* involved the interpretation of an insurance contract, and the allegations in the instant case concern an alleged oral contract, we believe *Skilling* is controlling. As the *Skilling* court concluded, the “Act's

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pronouncement that '[a]ll questions arising under this Act \*\*\* shall \*\*\* be determined by the Commission' \*\*\* [was] insufficient to divest the circuit courts of jurisdiction.” *Id.* at 287. The court explained that if a legislative enactment divests the courts of their original jurisdiction, “it must do so explicitly.” *Id.* We note that, after concluding that concurrent jurisdiction existed, the court additionally determined that the court retained primary jurisdiction.

¶ 21 The Winters, however, rely on *Hartlein* and *Hollywood* in support of their contention that the Commission has jurisdiction over this claim pursuant to section 18 of the Act and that the circuit court correctly dismissed the Tollway's verified complaint. We believe that those cases are inapposite because they involved a determination of benefits. See *Hartlein*, 151 Ill. 2d at 158 (“circuit courts have no original jurisdiction over workers' compensation proceedings, *wherein benefits are determined*, under the Act”) (Emphasis added.) In *Hartlein*, the issue involved an employee's right to the continuation of his temporary total disability (TTD) benefits. The *determination* of an employee's right to TTD benefits is within the exclusive jurisdiction of the Commission. See, e.g., *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004) (“A claimant is temporarily totally disabled from the time an injury incapacitates her from work until such time as she is as far recovered or restored as the permanent character of her injury will permit. \*\*\* The time during which a claimant is temporarily totally disabled presents a question of fact to be determined by the Commission.”). *Hartlein* involved an employee's separate action for retaliatory discharge and the Illinois Supreme Court held that, in that action, the circuit court could not enjoin the employer from terminating the employee's TTD benefits.

¶ 22 *Hollywood* is also inapposite. In *Hollywood*, the plaintiff alleged that a former employee

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had made fraudulent misrepresentations as to his physical condition and challenged the employee's entitlement to benefits. As the court in *Hollywood* stated: “In cases involving a *determination of an employee's entitlement to workers' compensation benefits* and the employer's defenses to the claim, the circuit court's role is appellate only.” *Hollywood Trucking, Inc.*, 385 Ill. App. 3d at 245.

¶ 23 The Tollway's complaint does not involve a “determination” of benefits, *i.e.*, the Winters' entitlement to workers' compensation. As the Tollway notes: “The Commission is charged by statute with determining, in particular, the existence of an employer-employee relationship, whether an injury occurred in the line of work, whether such an injury caused a physical impairment, and the extent and severity of the impairment, including whether it is temporary or permanent.” Such considerations were relevant to the Commission's 1997 decision. In the instant case, the Commission exercised its statutory authority to determine Mrs. Winters' entitlement to workers' compensation (survivor) benefits for the death of Winters, Sr. by entering the award in her favor in December 1997. The determination that the Winters were entitled to workers' compensation benefits was made in 1997 and is not being challenged. Contrary to the Winters' contention, and the trial court's conclusion, the relevant inquiry is not whether the resolution of the verified complaint might “affect” Mrs. Winters' benefits.

¶ 24 As the Tollway correctly notes, the allegations at issue in *Hollywood* were “factual issues regarding accident, causal connection, the nature and extent of the injury, and the employer's potential defenses, and these are proper subjects for the *Commission in the first instance.*” (Emphasis added.) *Id.* at 245. The present case is markedly different. Any characterization of

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the instant action as a mere “determination of workers' compensation benefits” misses the mark.

The factual issues regarding the present dispute have nothing whatsoever to do with the accident, the causal connection, the nature or extent of Winters, Sr.'s injury, or the Tollway's potential defenses to the workers' compensation claim.

¶ 25 Moreover, the allegations raised in the verified complaint, regardless of their merit, are uniquely within the purview of the circuit court. As the Illinois Supreme Court has explained, that responsibility for protecting an employer's reimbursement rights pursuant to a section 5(b) lien with the court and not the Commission. *Freer v. Hysan Corp.*, 108 Ill. 2d 421, 428 (1985); see also *Zuber v. Illinois Power Co.*, 158 Ill. App. 3d 353, 357 (1987). As the *Freer* court stated: “The statute does not envisage any role for the Industrial Commission in the protection of the employer's right of reimbursement.” *Freer*, 108 Ill. 2d at 426. Clearly, an order enforcing an employer's statutory lien rights would “affect” the payment of benefits under an existing award. Nonetheless, enforcing an employer's statutory lien rights would not be an improper modification of a workers' compensation award. *Freer*, 108 Ill. 2d at 426-27 (noting that “all such orders will affect the Commission's award”). Similarly here, an order enforcing (or not enforcing) the alleged oral contract regarding the Tollway's statutory lien, while it could “affect” the Winters' existing award, would not be an improper modification of the award.

¶ 26 As the Tollway also notes, in *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469 (1994), the Illinois Supreme Court held that common-law claims for restitution relating to an overpayment of workers' compensation benefits are within the jurisdiction of the courts, not the Commission. As the *Nickum* court explained: “Nothing in the Act indicates that the Commission is expected or

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authorized to adjudicate matters concerning restitution or repayment of benefits to employers.”

*Id.* at 482. As the court further noted: “There is an ample body of common law which already exists that will allow an employer to recover mistakenly made payments which are not voluntarily returned.” *Id.*; accord *Karastamatis v. Industrial Comm'n*, 306 Ill. App. 3d 206, 215 (1999) (where employer seeks recoupment, restitution, or reimbursement of compensation benefits, “the proper remedy would be to file suit in the circuit court based on common law principles”).

¶ 27 *Emery Worldwide Freight Corp. v. Snell*, 288 Ill. App. 3d 808 (1997) involved a settlement agreement between an employer and an employee, which the Commission approved, that provided for the employer to pay the employee \$60,000 in lieu of any workers' compensation benefits. After receiving that payment, the employee continued to press claims before the Commission. *Id.* at 809. A jurisdictional question arose when the employer filed a declaratory judgment action in the circuit court seeking enforcement of the settlement agreement of the workers' compensation claim. *Id.* Although the circuit court dismissed the suit, this court reversed and remanded the case. We concluded that the circuit court had jurisdiction where plaintiff requested only that the trial court interpret a specific provision in a settlement contract. *Id.* at 810-11.

¶ 28 Similarly, in *Fredericks v. Liberty Mutual Insurance Co.*, 255 Ill. App. 3d 1029 (1994), we held that the circuit court erred in deciding that it was without jurisdiction in a common-law action by an injured employee alleging willful breach of contractual agreement where the action was not barred by exclusive remedy provision of the Act. As we explained: “While defendants

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contend that plaintiff's complaint 'distilled to its lowest common denominator' concerns a dispute over worker's compensation benefits, defendants overlook the fact that plaintiff's complaint states an action for breach of contract.” *Fredericks*, 255 Ill. App. 3d at 1034. Thus, contrary to the trial court's determination, the Commission does not have exclusive jurisdiction over every dispute that may “affect” workers' compensation benefits.

¶ 29 As noted, the Tollway's six-count verified complaint sought a mandatory injunction and specific performance and alleged breach of contract, conversion, fraud in the inducement, and unjust enrichment. In this appeal, the Tollway notes it has now has abandoned “its contention below that the circuit court had jurisdiction over the claim in Count I of the complaint to enjoin the Winters from *filing* with the Commission a petition for statutory penalties under the Act.” (Emphasis in original.) As to the breach of contract claim, which is the basis of the Tollway's suit, the complaint alleges that the parties “reached” an “oral agreement” under which Winters would give up future benefits and the Tollway would give up its remaining lien rights in the Winters' tort suit. The complaint alleges that the Tollway kept its end of the bargain by delivering the lien waiver, but Winters breached the oral agreement by failing to deliver her executed agreement to give up future benefits. The Tollway's claims sounding in breach of contract, fraud, and unjust enrichment relate to the Winters' alleged attempt to obtain a double recovery of both workers' compensation benefits and all of the settlement proceeds of the tort suit by simultaneously using the lien waiver to reap the benefits of the alleged oral contract while repudiating the oral agreement to execute the Settlement Contract Lump Sum Petition and Order. The circuit court has original jurisdiction to resolve this dispute because the Commission does

not have exclusive jurisdiction.

¶ 30 We agree with the Tollway that its “complaint did not seek the adjudication of claims within the Commission's authority under the Act, but instead invoked the circuit court's separate jurisdiction over other matters.” Those matters did not involve the 1997 decision awarding Mrs. Winters' survivor benefits. Rather, it involved the parties' separate oral agreement, made years later in the context of a settlement involving the Tollway's statutory lien in the tort suit filed by the Winters against the trucking defendants. Although the parties dispute the nature of the oral agreement and present different versions of the facts, the merits of the underlying case are not before us. The sole issue is whether the circuit court had subject matter jurisdiction over the Tollway's verified complaint. We hold that it did.

¶ 31 The Winters, however, have also argued that the Commission has “primary” jurisdiction over this matter. “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.” (Emphasis added.) *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751, ¶ 31. “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.” *Id.* (citing *Skilling*, 163 Ill. 2d at 288-89).

¶ 32 The Tollway contends that this argument is premature. “Since primary jurisdiction only applies where a court has either original or concurrent jurisdiction, primary jurisdiction involves a question of timing, not of judicial competence to hear a particular case.” *Segers v. Industrial*

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*Comm'n*, 191 Ill. 2d 421, 427-28 (2000); see also *Peoples Energy Corp. v. Illinois Commerce Comm'n*, 142 Ill. App. 3d 917 (1986) (noting doctrine of primary jurisdiction is not technically a question of jurisdiction at all but rather a question of judicial self-restraint and relations between the courts and administrative agencies). Here, the trial court did not determine which forum had primary jurisdiction because it concluded that concurrent jurisdiction did not exist and that the trial court had *no* jurisdiction. Nonetheless, having now concluded that the trial court had subject matter jurisdiction over this action, we also conclude that it has primary jurisdiction. The legal theories asserted by the Tollway in its verified complaint, and the relief sought, all fall uniquely within the purview of the circuit court and any specialized or technical expertise on the part of the Commission is not required to help resolve the controversy in this case. The Winters' contention that "the present case involves questions that are uniquely suited to the expertise of the Commission" is meritless. Nothing in the complaint requires an actual "determination" contemplated by the Act. That determination has already been made. It was made in December 1997, when Mrs. Winters was awarded compensation benefits in the amount of \$376.83 per week until the sum of \$250,000 was paid or until 20 years had elapsed, whichever was greater. The determination made in December 1997 is not being challenged. Thus, despite the Winters' efforts to characterize this dispute as within the province of the Commission, there is simply no need for the Commission "to make factual determinations regarding the interpretation of the December 1997 Memorandum Decision and Award." And, as we have already explained, the fact that her compensation may be "affected" is not the determinative factor regarding the circuit court's jurisdiction over this action. The resolution of the allegations raised in the verified

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complaint regarding breach of contract, fraud and unjust enrichment, necessarily involves legal theories and legal analysis. The court, not the Commission, would have primary jurisdiction over this matter.

¶ 33 Having disposed of the issues raised on appeal, we believe it is important to comment on the dissent's analysis. The dissent contends that the complaint was properly dismissed for lack of subject matter jurisdiction, but for reasons never raised or argued by the parties in their briefs nor addressed by the trial court. The dissent notes that section 23 of the Act (850 ILCS 305/23 (West 2008)), requires that any settlement agreement with a decedent workers' beneficiaries be approved by the Commission. Slip op. at ¶¶ 40, 41. The dissent then concludes that the trial court lacked subject matter over the Tollway's action because the Tollway did not satisfy the statutory requirement of obtaining approval of the settlement agreement. Slip op. at ¶ 46.

¶ 34 The Tollway has not disputed the fact that the Settlement Contract Lump Sum Petition and Order, once fully executed by Mrs. Winters pursuant to the alleged agreement, would need the Commission's approval. In fact, in its complaint, the Tollway clearly alleged that the Settlement Contract Lump Sum Petition and Order was “to be filed at the Commission.” As the Tollway notes in its brief, regarding the oral agreement, with respect to Mrs. Winters' end of the bargain, *i.e.*, her agreement to accept the lump sum agreement in lieu of future benefits, her agreement was “subject to approval by the Worker's Compensation Commission \*\*\* which is routine in such cases.” We fail to see how this fact has anything to do with subject matter jurisdiction over the instant action. As the Tollway has noted, “[c]ount II of the complaint seeking specific performance to *execute* the Lump Sum Agreement does not encroach on the

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Commission's statutory authority to approve such agreements.” (Emphasis in original).

Moreover, the necessity for approval of a settlement agreement does not turn the Commission's approval of a settlement into a “determination” of benefits for which the Commission has exclusive jurisdiction, particularly under the facts of the present case where that determination was made in 1997 and is not being challenged. In sum, although section 23 may bar a party from attempting to enforce a settlement agreement when the agreement is unapproved by the Commission, section 23 does not deprive the circuit court of original jurisdiction. Further, the allegations in the Tollway's complaint are based on an alleged oral agreement, *i.e.*, that the parties orally agreed to take certain actions. The complaint alleges (and the Winters have conceded that the factual allegations in the complaint must be taken as true) that the Winters agreed to “execute” a settlement agreement, specifically the standard Commission form entitled “Illinois Workers' Compensation Commission Settlement Contract Lump Sum Petition and Order.” Interestingly, as we have noted, the record contains an April 26, 2007 letter from the Winters' attorney to the Tollway's attorney stating, in part: “Enclosed please find two (2) fully executed Settlement Contract Lump Sum Petitions and Orders. *Please send me a copy of any further documentation entered by the Commission.*” (Emphasis added.) Clearly, the alleged oral agreement contemplated approval of this Lump Sum Agreement. Assuming *arguendo* that section 23 is somehow relevant to the merits, section 23 has simply nothing to do with subject matter jurisdiction in the instant case.

¶ 35

#### CONCLUSION

¶ 36 In view of the foregoing, we hold that the trial court had subject matter jurisdiction over

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this action. Plaintiff's post-award claims are not within the exclusive jurisdiction of the Illinois Workers' Compensation Commission under section 18 of the Workers' Compensation Act merely because they may "affect" payments under an existing award where plaintiff was not challenging the initial entitlement to benefits or the correctness of the Commission's prior determination of the award, and was not seeking a modification due to a subsequent change in the employee's physical condition or ability to work. Therefore, we reverse the decision of the circuit court of Cook County granting the motion to dismiss the Tollway's verified complaint for lack of subject matter jurisdiction and remand this case for further proceedings.

¶ 37 Reversed and remanded.

¶ 38 JUSTICE PUCINSKI, dissenting:

¶ 39 The plain language of the Act makes clear that only the Commission properly has jurisdiction in this case. Section 18 provides: "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 2008).

¶ 40 The majority does not mention section 23 of the Act, which provides:

"No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder *except after approval by the Commission* and any employer, individually or by his agent, service company or insurance carrier who shall enter into any payment purporting to compromise or settle the compensation rights of an employee, personal representative or beneficiary

*without first obtaining the approval* of the Illinois Workers' Compensation Commission as aforesaid shall be barred from raising the defense of limitation in any proceedings subsequently brought by such employee, personal representative or beneficiary."

(Emphasis added.) 820 ILCS 305/23 (West 2008).

¶ 41 This statutory requirement is long-standing and has remained unchanged. See *Zurich General Acc. & Liability Ins. Co. v. Industrial Commission*, 325 Ill. 452, 456-57 (1927) ("The provisions of the [Workers' Compensation] act may not be ignored and a settlement made between an injured employee and his employer without the approval of the Industrial Commission."). The Illinois Supreme Court has made clear that the requirement in section 23 of approval by the Commission must be met, or such settlement agreement is completely ineffective: "The language in section 23 of the Act is clear in that it provides, in pertinent part, that no settlement purporting to settle the claims under the Act can be effective unless it is approved by the Commission." *Maxit, Inc. v. Van Cleve*, 231 Ill. 2d 229, 239 (2008).

¶ 42 Under section 23, the Winters did not even have the power to waive any of their rights under the Act in a settlement agreement until the Commission approved the settlement agreement, and the Tollway is barred from even raising the settlement agreement without having received approval from the Commission.

¶ 43 The majority finds *Skilling* controlling, despite the fact that it acknowledges that *Skilling* involved the interpretation of an insurance contract, and not a settlement agreement, and despite the fact that section 23 of the Act specifically pertains to settlement agreements. The instant case is also not a case involving "mistakenly made payments which are not voluntarily returned." See

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*Nickum*, 159 Ill. 2d at 482. Under the plain language of section 23, without prior approval from the Commission, there is no enforceable waiver of the Winters' right to payment. Thus, the payments made were in fact owed and were not "mistakenly made."

¶ 44 The majority cites to *Snell*, which is entirely distinguishable because in *Snell* the Commission had already previously exercised its jurisdiction and *approved* the settlement agreement which was at issue in the circuit court. The circuit court then had jurisdiction to interpret a provision of that settlement agreement. Had the Commission in this case exercised its jurisdiction to approve the settlement agreement, I would readily find jurisdiction appropriate in the circuit court.

¶ 45 The majority also cites to *Fredericks*, which is distinguishable because it involved jurisdiction of a common-law action for breach of contract. This case does not involve solely common-law claims. The claims in this case are all based on the alleged settlement agreement and waiver of rights by the Winters under the Act, which expressly requires exercise of jurisdiction by the Commission for approval under section 23. Calling the purported settlement agreement an "oral contract" rather than an oral settlement agreement or just plain settlement agreement does not remove it from the purview of section 23. Had there been any common-law claims that were not dependent on the settlement agreement, the circuit court could have exercised jurisdiction over those claims. However, in this case *all* of the claims in the complaint are based on the alleged settlement and waiver of rights to payment of benefits owed under the Act. Therefore, the Commission must approve the settlement agreement first before the circuit court may decide any claims based on that settlement agreement.

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¶ 46 The questions arising under the Act in this case were not "settled by agreement of the parties" under section 18 because they cannot be settled without approval of the Commission under section 23. The Tollway should have appropriately sought approval of the settlement from the Commission as required. Because there is no effective settlement agreement, the questions arising under the Act concerning the benefits in this case must be determined by the Commission in its exclusive jurisdiction. The majority entirely ignores section 23 and precedent and has not cited a single case finding that jurisdiction is appropriate in the circuit court to enforce a purported settlement agreement which waived rights to benefits under the Act where that settlement waiver has not *first* been submitted to the Commission for approval. I would affirm the circuit court's dismissal, as it correctly determined that it had no jurisdiction.