

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	PCB No. 13-035
v.)	PCB No. 13-036
)	(Enforcement – Air)
THE BOARD OF TRUSTEES OF THE)	(Consolidated)
UNIVERSITY OF ILLINOIS, a body)	
corporate and politic,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

TO:

John Therriault, Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph Street, Suite 11-500
 Chicago, IL 60601

Stephen Sylvester
 Assistant Attorney General
 Environmental Bureau
 Illinois Attorney General's Office
 69 W. Washington Street, Suite 1800
 Chicago, IL 60602

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, Respondent's **NOTICE OF ELECTRONIC FILING, FOURTH JOINT STATUS REPORT AND MOTION TO EXTEND STAY** and **CERTIFICATE OF SERVICE**, copies of which are attached herewith served upon you.

Respectfully submitted,

ICE MILLER, LLP

By: /s/ Nicholas A. Casto
 One of its Attorneys

Date: August 14, 2013

Thomas W. Dimond

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FOURTH JOINT STATUS REPORT AND MOTION TO EXTEND STAY

Pursuant to the April 18, 2013 Order of the Illinois Pollution Control Board (“Board”), Complainant, People of the State of Illinois (“State”), and Respondent, The Board of Trustees of the University of Illinois (“University”), by their respective attorneys, hereby provide this Fourth Joint Status Report and Motion to Extend Stay, and respectfully request that this Board extend the stay of proceedings in this matter until September 19, 2013.

1. The Board’s April 18, 2013 Order granted a stay of this matter and required the parties to file separate status reports every 30 days. Counsel for the parties have conferred and agreed upon this Fourth Joint Status Report and Motion to Extend Stay.

2. On January 3, 2013, the University initiated suit in the Circuit Court of Cook County, *The Board of Trustees of the University of Illinois v. Illinois Environmental Protection Agency, et al.*, No. 13-CH-162. The University’s action in the Circuit Court seeks a declaratory judgment that jurisdiction over the State’s claims against the University rests solely with the Illinois Court of Claims.

3. The State filed a motion to dismiss the University's complaint for declaratory relief in the Circuit Court on February 4, 2013 on both Section 2-615(a) and Section 2-619 grounds. A briefing schedule and hearing were established, and the motion was fully briefed.

4. Prior to the April 15, 2013 hearing on its motion, the State withdrew the portion of its motion to dismiss based on Section 2-619.

5. At the April 15, 2013 hearing on the State's motion, Judge Sophia H. Hall of the Circuit Court of Cook County declined to rule on the State's Section 2-615(a) motion to dismiss. Instead, Judge Hall ordered the State to file a motion for judgment on the pleadings pursuant to Section 2-615(e), and granted the University leave to file its own Section 2-615(e) motion. Judge Hall set the following briefing schedule:

- The State has until May 1, 2013 to file a motion for judgment on the pleadings and brief in support.
- The University has until May 22, 2013 to respond and to file a cross-motion for judgment on the pleadings.
- The State has until June 11, 2013 to reply and to respond to any cross-motion.
- The University has until July 5, 2013 to reply.
- A hearing on the State's motion and any cross-motion was set for July 15, 2013.

6. On May 1, 2013, the State filed its Motion for Judgment on the Pleadings and supporting brief.

7. On May 22, 2013, the University filed its Motion for Judgment on the Pleadings, along with its Combined Brief in Support of Its Cross-Motion and Response to Defendants' Motion.

8. On June 11, 2013, the State filed its Reply in Support of Its Motion for Judgment on the Pleadings and Response in Opposition to the University's Cross-Motion for Judgment on the Pleadings.

9. On July 3, 2013, the University filed its Reply in Support of Its Cross-Motion for Judgment on the Pleadings.

10. On July 15, 2013, the parties argued their motions before Judge Hall. Judge Hall took the matter under advisement, and set the motions for decision on September 13, 2013 at 11:00 a.m.

11. At the July 15 hearing, counsel for the State and the University informed Judge Hall that the Board had entered a temporary stay that expires August 19, 2013. Judge Hall asked if the stay of the Board cases could be extended slightly until after her decision and the parties agreed that would be appropriate. *See Hear'g Tr. 23-24, July 15, 2013, attached as Exhibit A.*

12. Accordingly, the parties jointly request that the Board extend the stay on proceedings in the consolidated enforcement action before the Board until September 19, 2013, with further status reports to be filed September 18, 2013.

FOR THE FOREGOING REASONS, the People of the State of Illinois and the Board of Trustees of the University of Illinois respectfully request that the Board grant their Joint Motion to Extend Stay.

Date: August 14, 2013

Respectfully Submitted,

**THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS**

By: /s/ Nicholas A. Casto
One of Its Attorneys

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PEOPLE OF THE STATE OF ILLINOIS,
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of the State of Illinois

MATTHEW J. DUNN, Chief
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By: /s/ Stephen Sylvester
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Board of Trustees of the University of Illinois vs. Illinois Environmental

13 CH 162

Court Proceeding

Taken on: July 15, 2013

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

THE BOARD OF TRUSTEES OF THE)
UNIVERSITY OF ILLINOIS, a)
body corporate and public,)
)
Plaintiff,)

vs.) No. 13 CH 162

THE ILLINOIS ENVIRONMENTAL) Hon. Sophia Hall
PROTECTION AGENCY, et al.,)
)
Defendants.)

Report of proceedings had at the motion in
the above-entitled cause before the HONORABLE SOPHIA
HALL, Judge of said Court, commencing at 11:03 a.m.
on the 15th of July, A.D., 2013.

APPEARANCES:

ICE MILLER LLP, by
MR. THOMAS W. DIMOND
On behalf of the Plaintiff;

ILLINOIS ATTORNEY GENERAL, by
MR. SUNIL BHAVE
MS. JENNIFER VAN WIE
On behalf of the Defendant.

1 MR. BHAVE: Good morning, your Honor. Sunil Bhave,
2 S U N I L, B H A V E, here on behalf of Defendants.

3 MR. DIMOND: Good morning, your Honor. Tom Dimond,
4 from Ice Miller, on behalf of Plaintiff, The Board of
5 Trustees of the University of Illinois.

6 THE COURT: Okay.

7 I'm sorry. How -- Could you spell your name
8 again --

9 MR. BHAVE: Sure.

10 THE COURT: -- for me.

11 MR. BHAVE: S U N I L, last name B H A- --

12 THE COURT: Wait. S U ...

13 MR. BHAVE: N I L.

14 THE COURT: All right.

15 MR. BHAVE: And the last name is B H A V, in
16 Victor, E.

17 THE COURT: B H A V ...

18 MR. BHAVE: E.

19 THE COURT: E.

20 MR. BHAVE: Sorry.

21 THE COURT: All right. And you pronounce that how?

22 MR. BHAVE: It's actually pronounced Bhave
23 [Ba-way], so nothing like it's spelled.

24 THE COURT: Bhave.

1 MR. BHAVE: Yeah.

2 THE COURT: All right.

3 Okay. I've read the briefs. You may argue.

4 MR. DIMOND: I believe they filed their motion
5 first, so ...

6 THE COURT: It's Defendant's motion.

7 MR. BHAVE: Sure, your Honor.

8 These are cross-motions for judgment on the
9 pleadings that are presently before the Court. Right
10 now, there is an administrative action filed by People
11 against University of Illinois pending in front of the
12 Illinois Pollution Control Board that has been stayed,
13 and the sole legal issue in this case is whether that
14 administrative review -- I'm sorry -- that
15 administrative action is barred by the principle of
16 sovereign immunity.

17 Now, the appellate court, in a published
18 decision in 2012, has already ruled on this issue as to
19 whether sovereign immunity applies in administrative
20 proceedings, and the court in Lynch vs. Illinois
21 Department of Transportation has held that sovereign
22 immunity does not apply in administrative review --
23 sorry -- administrative proceedings. And, in fact, that
24 ruling is completely consistent with the State Lawsuit

1 Immunity Act. And the State Lawsuit Immunity Act is an
2 act from which sovereign immunity derives after the 1970
3 Illinois Constitution, not the Court of Claims Act that
4 the plaintiff alleges.

5 The appellate court has held, in a 2006
6 decision called Brandon vs. Bonell, that there's sort of
7 a two-step process that you apply in determining whether
8 sovereign immunity applies: You look at the State
9 Lawsuit Immunity Act first. If sovereign immunity does
10 not apply in that act, then the inquiry is over. But if
11 it does apply, then and only then do you go to the Court
12 of Claims Act to determine whether the Court of Claims
13 has proper jurisdiction for the case.

14 And under the plain terms of the State Lawsuit
15 Immunity Act, that statute states that the State may not
16 be made a party or defendant -- and here's the critical
17 terminology -- in any court. This, your Honor, is a
18 court. The Pollution Control Board is not a court.
19 That's an administrative agency falling within the
20 purview of the Executive Department, not the Judicial
21 Department. And, in fact, the IEPA -- the act itself
22 recognizes that an administrative action can be brought
23 against a state entity in front of the Pollution Control
24 Board. For example, in Section 3.315 of the act, the

1 act defines persons including state entities and state
2 agencies. And under Section 31, which is the statute
3 that we've relied on in the -- in front of the Pollution
4 Control Board for this enforcement action, The A.G. may
5 bring an action against any person in front of the board
6 for purposes of a hearing.

7 So the Act itself actually recognizes that a
8 pollution control board has jurisdiction to consider
9 this administrative proceeding. And, indeed,
10 administrative agencies routinely hear actions involving
11 the state. We think about the Illinois Civil Service
12 Commission. State employers can be brought in front of
13 the Civil Service Commission when a merit employee is
14 challenging their termination or any discipline, or the
15 Department of Employment Security State employees can
16 challenge termination decisions by state employers in
17 front of the Department of Employment Security for
18 purposes of receiving unemployment insurance benefits.
19 And all of that is the case because it's a clear lack of
20 the law that administrative actions are not subject to
21 the principles of sovereign immunity.

22 THE COURT: All right.

23 MR. DIMOND: Thank you, your Honor.

24 This case is not primarily about sovereign

1 immunity. We have addressed sovereign immunity in our
2 cross-motion for summary judgment -- or I'm sorry -- for
3 judgment on the pleadings, but it is not primarily about
4 sovereign immunity. It is primarily about jurisdiction.
5 We have two administrative bodies that think they might
6 have jurisdiction over this, or that the police
7 departments here think that they might have jurisdiction
8 over this. And we contend that it is the Court of
9 Claims, not the Pollution Control Board, that has
10 jurisdiction, based on the terms of the two statutes
11 when interpreted harmoniously together.

12 So from a -- on a jurisdictional issue, this
13 requires a resolution of which forum, the Court of
14 Claims or the Pollution Control Board, has power to hear
15 claims under the Environmental Act that would result in
16 penalties and/or injunctive style relief against a state
17 actor. Here the state actor is the University, but it
18 could be any state actor. So that requires an
19 interpretation of the Court of Claims Act and the
20 Environmental Act together. And while it was in
21 somewhat of a different context, that exercise has
22 already been done by the appellate court in the case
23 Excavating & Lowboy Services. And what the appellate
24 court found was that the Environmental Act does not

1 expressly address jurisdiction, particularly not as to
2 claims against state actors. It does not limit or
3 create exceptions to the Court of Claims Act or to other
4 jurisdictional statutes.

5 The appellate court recognized that state
6 agencies were included in the Environmental Act's
7 definition of person in Section 3.315 of the
8 Environmental Act and were generally required to comply
9 with the Environmental Act, but that didn't change the
10 fact that the Lowboy court held that that general
11 language was not sufficient to grant jurisdiction to the
12 Pollution Control Board over state agencies or in the --
13 I'm sorry -- in the case of Excavating & Lowboy to the
14 circuit court.

15 In contrast, Section 8(a) of the Court of
16 Claims Act expressly grants, quote, exclusive
17 jurisdiction, end quote, to the Court of Claims over,
18 quote, all claims against the state founded upon any,
19 end quote, law or regulation of the state.

20 The Environmental Act is most clearly a law of
21 the state of Illinois. The regulations that the
22 Attorney General's Office cites in its two complaints
23 that have been filed with the Pollution Control Board
24 are clearly regulations of the state of Illinois. Those

1 matters are clearly within the jurisdiction of the Court
2 of Claims, and not just within its jurisdiction; within
3 its exclusive jurisdiction. And that exclusive
4 jurisdiction has existed uninterrupted since the Court
5 of Claims Act was amended, I believe in 1945, when that
6 jurisdiction was added to the Court of Claims. And
7 Lowboy found that those two statutes could be
8 interpreted in harmony and reach a result that was
9 consistent with both acts, and that jurisdiction over
10 Environmental Act matters was in the Court of Claims.

11 Now, we recognized in our briefing that there
12 are some differences between the Lowboy case and our
13 case. There's principally two differences. The Lowboy
14 case was brought under Section 45 of the Environmental
15 Act. In contrast, the State's action against the
16 University is really brought under Section 42 of the
17 Environmental Act. It is Section 42 that authorizes the
18 Attorney General to bring cases for enforcement and to
19 receive penalties and to obtain injunctive relief, and
20 Section 42 essentially places coextensive jurisdiction
21 or, quote, allows coextensive proceedings between the
22 circuit court and the Pollution Control Board.

23 They now say that it's under Section 31, but
24 Section 31 is not a jurisdictional provision.

1 Section 31 is a pre-enforcement settlement provision
2 that provides for notice to the alleged violator, and it
3 provides for a process to resolve matters before they
4 result in formal enforcement before either the circuit
5 court or a quasi judicial tribunal. Section 31 doesn't
6 allow for penalties. It says nothing about penalties.
7 And if Section 31 was really jurisdictional, this -- the
8 Attorney General could not bring enforcement actions in
9 the circuit court because Section 30- -- the provision
10 of Section 31 that they quote in their reply briefs only
11 talks about bringing matters before the Board. It
12 doesn't talk about bringing matters before the circuit
13 court. That points out that: One, Section 31 is just
14 descriptive when it talks about bringing matters before
15 the Board. It's not jurisdictional; and that Section 42
16 is really the basis for the State's actions before the
17 Pollution Control Board.

18 If you look at their prayer for relief, what
19 they say they want in the Pollution Control Board,
20 they're asking for penalties of up to \$50,000 and
21 \$10,000 a day. That language comes directly out of
22 Section 42 of the Environmental Act.

23 The other primary distinction between Lowboy
24 and this case is that, in Lowboy, the case was brought

1 into circuit court. Here, the A.G. wants to bring cases
2 before the Pollution Control Board. But, as I said,
3 under the Environmental Act, the circuit courts and the
4 Pollution Control Board have basically coextensive
5 authority to hear claims. So the Lowboy court's
6 determination that the Environmental Act did not use
7 specific enough language to grant the circuit court
8 jurisdiction against state actors equally applies to the
9 Pollution Control Board.

10 Now, as to sovereign immunity, if the Court
11 does view this as a sovereign immunity case, there are
12 three elements to sovereign immunity: First, the
13 defendant must be an arm of the state. The Attorney
14 General has not disputed that the University of Illinois
15 is an arm of the state; and, indeed, there is at least
16 appellate court and, I believe, Illinois Supreme Court
17 precedent on that point.

18 The second element is that there must be a
19 present claim that would control the actions of the
20 state actor subjected to liability. Here, now that
21 they've actually -- At the time we filed the complaint,
22 they had not filed the Pollution Control Board actions.
23 Now, they have. Clearly, they're seeking penalties.
24 That would subject the University to liability. They've

1 said that they want injunctive style relief against the
2 University. They want to require it to do certain
3 things. Those are present claims against the
4 University.

5 And the third element of a sovereign immunity
6 defense is that you must be able to show that there are
7 no exceptions to sovereign immunity. There are none.
8 The Lowboy court said that the Environmental Act adopts
9 no exception to sovereign immunity. And, indeed, in
10 either the original brief or the reply brief that the
11 Attorney General filed, they recognized -- they quoted
12 Lowboy, and they said, We recognize that the
13 Environmental Act has no exceptions to sovereign
14 immunity. So all those elements of sovereign immunity
15 are satisfied here.

16 As to the matters that the state argued in
17 their argument regarding the Lynch case, the Lynch
18 case's discussion of whether or not sovereign immunity
19 could apply to administrative agency is clearly obiter
20 dicta. That case involved a case that was filed in
21 circuit court. So why -- there's nothing that the Lynch
22 court could say about the potential application of
23 sovereign immunity to matters before an administrative
24 action that would be necessary to deciding that case.

1 It wasn't filed before the Illinois Human Rights
2 Commission; it was filed in circuit court. So there was
3 no need for the court to do that, and its discussion --
4 and, moreover, its discussion wasn't about the version
5 of the Illinois Human Rights Act that was in existence
6 at the time the case was decided. It was about a
7 previous version that wasn't even at issue.

8 And what the plaintiff was arguing there was,
9 Well, the definition of employer meant that they should
10 have waived sovereign immunity in the original version.
11 Well, the definition of employer was the same in the
12 amended version, too. They could have made the same
13 argument based on the statute that existed then. The
14 court in Lynch did not need to decide, and, in fact,
15 could not have decided, whether or not sovereign
16 immunity applies to administrative actions because that
17 wasn't at issue in the case.

18 As to the Brandon case -- the Brandon vs.
19 Bonell case, that was a case in which prisoners at a --
20 I believe it was the Dickson Correctional Facility
21 brought a suit against state employees of the Illinois
22 Department of Corrections, alleging a breach of certain
23 duties. The court ended up deciding that sovereign
24 immunity applied to bar that action because, even though

1 the State Lawsuit Immunity Act and the Court of Claims
2 Act don't expressly bar claims against state employees,
3 it's a longstanding doctrine of sovereign immunity law
4 that where an action against a state employee is, in
5 reality, an action against the state, sovereign immunity
6 applies.

7 And this brings out two points. One is that
8 sovereign immunity law is not just a matter of reading
9 the statutes that are on the books and what the words in
10 those statutes say. The State Lawsuit Immunity Act was
11 enacted in 1972 against the backdrop of a century of
12 sovereign immunity law. And I don't think you can just
13 look at the words in the statute and necessarily
14 understand what they mean and -- just by, you know,
15 ordinary, common sense meaning because it was enacted
16 against this backdrop of a century of sovereign immunity
17 law.

18 And second, if you think about it, there are
19 exemptions to sovereign immunity that are in the Court
20 of Claims Act, not in the sovereign law -- not in the
21 State Lawsuit Immunity Act. The workers' comp
22 exemption, that's in the Court of Claims Act. It's not
23 in the State Lawsuit Immunity Act. That indicates that
24 you don't treat the State Lawsuit Immunity Act as the

1 trigger for everything and the Court of Claims Act is
2 subservient to it. The two acts work together. The
3 fact that they don't -- that the Court of Claims Act is
4 not subservient to the State Lawsuit Immunity Act is
5 also obvious because the Court of Claims Act existed for
6 about 70 years before the State Lawsuit Immunity Act was
7 adopted.

8 Furthermore, as to sovereign immunity and the
9 fact that the State Lawsuit Immunity Act uses the word
10 "courts," in 1972, it was rather uncommon for
11 administrative tribunals to have the authority to issue
12 penalties, to order effectively injunctive style relief
13 against private parties, generally state actors. And so
14 it's sort of, I think, natural that the General Assembly
15 would have used the word "court" in the State Lawsuit
16 Immunity Act. But it doesn't mean that they meant to
17 stunt the growth or the further development of sovereign
18 immunity law.

19 And, as the Supreme Court of the United States
20 recognized, when they considered this specific issue in
21 the Federal Maritime Commission's decision, even though
22 they held that, historically -- or even though the
23 Supreme Court of the United States recognized that,
24 historically, sovereign immunity had not applied to

1 administrative actions, they held in that specific case
2 that, in fact, state bodies could not be hauled in front
3 of federal administrative agencies because of the
4 Eleventh Amendment sovereign immunity. And, by the same
5 token, in interpreting the State Lawsuit Immunity Act,
6 the word "court" in that act should not be interpreted
7 to be limited to constitutional courts. It should apply
8 to any body -- any quasi judicial or administrative body
9 that can do the same things to a state actor that a
10 court can do.

11 And the Pollution Control Board essentially
12 has all the same powers of the circuit court when it
13 comes to matters under the Environmental Act. It can
14 issue subpoenas to compel testimony. It can hold
15 hearings. It can issue penalties that have to be paid.
16 It can issue orders requiring state actors that would be
17 before it, if, indeed, it has jurisdiction, to do
18 certain things. It's all the same things that a court
19 could do. And all the same reasons that -- for applying
20 sovereign immunity to courts equally applied to the
21 Pollution Control Board and administrative bodies.

22 In their reply brief, the State raises an
23 argument based on Section 31. I think I've already
24 addressed that; that, in essence, its use of the word

1 "person" is the same as the use of the word "person" in
2 Section 45 that was ruled on in Lowboy. Section 31
3 cannot be a jurisdictional statute because, if it is,
4 they can't actually bring cases before the circuit
5 courts, but they do it all the time. So they can't even
6 believe the argu- -- they can't even truly believe the
7 argument they've made on that one.

8 And, finally -- This is not all the arguments
9 that they raised in their briefs, but we'll stand on our
10 briefs on the rest of them. Counsel for the State
11 raised certain arguments about matters before the Civil
12 Service Commission and the Department of Employment
13 Security. None of those were raised in their briefs. I
14 don't know what kinds of procedures those bodies apply.
15 I have not had an opportunity to research whether or not
16 there are exceptions for those in the State Lawsuit
17 Immunity Act or the Court of Claims Act that would take
18 those outside of the Court of Claims' exclusive
19 jurisdiction.

20 I don't think that it would be appropriate for
21 the Court to consider those arguments in ruling on the
22 cross-motions that are before it now, given that
23 those -- given that those matters were not raised in the
24 briefs. So I believe that that's a fair summary of the

1 arguments that we have, and I stand on that.

2 THE COURT: Yes. I did notice that the opening
3 brief by the State and the reply brief by the State
4 seemed to take a little different tact in entering the
5 arguments.

6 Go ahead.

7 MR. BHAVE: Judge, if I can just start by saying
8 this case is entirely about sovereign immunity. In
9 fact, Plaintiff's entire argument is that we belong in
10 the Court of Claims. The Court of Claims is a forum
11 that exists for purposes of hearing disputes against the
12 State when sovereign immunity applies. And as far as
13 ignoring the common sense meaning of terms, well, that
14 flies directly in the face of the first principle rule
15 of statutory construction.

16 The Sovereign Immunity Act says the State may
17 not be made a party or defendant in a court. The
18 Administrative Procedures Act defines an agency as
19 something different than a court, as the Supreme Court
20 of Illinois has also recognized. Now, Plaintiff relies
21 on the Lowboy cases and other cases in his brief, none
22 of which involve actions filed in administrative
23 proceedings. Every one of the cases that Plaintiff
24 relies on is an action filed in circuit court; and that

1 is when sovereign immunity applies, is when we're in
2 front of a court.

3 So if the appellate court discussed sovereign
4 immunity for purposes of the Environmental Protection
5 Act in the Lowboy case, it was only because that case
6 involved an action filed in circuit court, not in front
7 of an administrative body. And this is exactly what the
8 Lynch court was discussing in the 2012 decision. The
9 Lynch court said that sovereign immunity does not apply
10 in administrative proceedings. That's not merely obiter
11 dicta.

12 One of the issues that the Lynch court had
13 been called to answer upon was whether the pre-amended
14 2000- -- Sorry -- the pre-amended Illinois Human Rights
15 Act prior to 2008 contained an explicit waiver of
16 sovereign immunity. And in its discussion on that
17 issue, the court held that there would be no reason for
18 the legislature to explicitly waive sovereign immunity
19 because sovereign immunity does not apply in
20 administrative proceedings. And that's exactly what we
21 have in this case. We're in front of an administrative
22 agency, not in front of the circuit court.

23 As far as Plaintiff's discussion regarding the
24 history of the Court of Claims Act, that's all well and

1 good in an academic sense, but we have to look at the
2 statutes because we're bound by what the legislature
3 said by its plain terms. And the appellate court has
4 stated you look at the State Lawsuit Immunity Act before
5 jumping to the Court of Claims Act. The Court of Claims
6 Act does not provide for any exceptions to sovereign
7 immunity. That's an incorrect statement of law. The
8 exceptions provided in the Court of Claims Act is to the
9 jurisdiction of the Court of Claims.

10 So there are some cases, such as in a worker's
11 compensation context, where an action filed against the
12 State for tort, say in a workers' compensation injury,
13 is barred by sovereign immunity, but that action cannot
14 be brought in front of the Court of Claims because the
15 Court of Claims Act says the Court of Claims has no
16 jurisdiction to hear a workers' compensation case. That
17 has to be brought directly in front of the workers'
18 compensation commission.

19 So there is -- there are no exceptions to
20 sovereign immunity provided in the Court of Claims Act,
21 and the reason for that is sovereign immunity does not
22 derive from the Court of Claims Act; it derives from the
23 State Lawsuit Immunity Act. The 1970 Illinois
24 Constitution abolished sovereign immunity, and, in

1 response to that, the legislature enacted the State
2 Lawsuit Immunity Act. So we have to look at the State
3 Lawsuit Immunity Act.

4 Ultimately, it's this Court's ult- -- The
5 ultimate issue is going to be for this Court to decide
6 whether the Pollution Control Board is a court as this
7 is a court, or whether it's an administrative agency
8 that falls within the purview of the Executive
9 Department. Our argument is that the Pollution Control
10 Board is not a court; and if it's not a court, sovereign
11 immunity does not apply. And, therefore, the action
12 pending in front of the Pollution Control Board cannot
13 be barred on jurisdiction grounds.

14 MR. DIMOND: If I may respond to a couple of
15 things.

16 THE COURT: Go ahead. All right. Now, we're
17 having a conversation, but it sounds like a very
18 interesting issue. Needless to say, I'm going to decide
19 it right now.

20 MR. DIMOND: As in Barrett, the Attorney General
21 seems to want to be the attorneys for the University of
22 Illinois, but Barrett held that they were not. This
23 case is not just about sovereign immunity; it's about
24 jurisdiction. You can have jurisdictional arguments

1 about which administrative body has jurisdiction over
2 certain matters, and, here, that's what this case is
3 about. Both the Court of Claims and the Pollution
4 Control Board are, you know, for some purposes, defined
5 as administrative bodies, and the question is which one
6 has jurisdiction.

7 The Court of Claims Act says it has exclusive
8 jurisdiction over claims based on statutes of the state.
9 When the State read -- sees the word "claims" there,
10 they say, Oh, well, it doesn't mean just any claim. It
11 has to mean only state's claims in state lawsuits.

12 They want to insert words that aren't there.
13 We are making a straightforward argument that the word
14 "court" in the State Lawsuit Immunity Act should not be
15 restricted to words. We're not arguing that the
16 Pollution Control Board is a court; we're arguing that
17 the State Lawsuit Immunity Act should have a different
18 interpretation if, in fact, you apply sovereign immunity
19 law here. But we do not agree that this case is just
20 about sovereign immunity.

21 As to the fact that we didn't cite any cases
22 that involved underlying administrative proceedings,
23 well, they don't, either. That's because there aren't
24 any of these cases, and because --

1 THE COURT: And this is going to be the first one?

2 MR. DIMOND: -- this is going to be the first one.

3 The only previous ones have either been vacated or
4 weren't well considered and did not -- were not issued
5 by tribunals that considered the Court of Claims Act in
6 addition to the Environmental Act.

7 THE COURT: That's why you're here.

8 MR. DIMOND: And that's why we're here.

9 So with -- I think that really summarizes our
10 argument.

11 THE COURT: So interesting. Even more bottom line,
12 I usually find that the first question that the Court
13 has to answer is: What is the question? So we will
14 journey along with that.

15 Well done. I do want a copy of this argument.

16 MR. DIMOND: Yes.

17 THE COURT: I think that will be very helpful. So
18 if you can supply that to me, that will be great.

19 MR. DIMOND: All right.

20 THE COURT: I am going to give myself some time.
21 I've got some other heavy things here that I need to
22 address, so I tell you what. I am going to take this to
23 August. I usually try to get them done in 60 to 90, but
24 I might give myself a little extra time because I know

1 I'm going to have write on this one.

2 All right. I'm going to set this for a
3 decision on September 13. And if I have any problem
4 with that, I will let you know.

5 MR. DIMOND: I'm sorry. Did you say --

6 THE COURT: That's September 13.

7 MR. DIMOND: September 13th?

8 THE COURT: Correct. At 11:00 o'clock.

9 MR. DIMOND: Okay.

10 MR. BHAVE: Thank you.

11 MS. VAN WIE: Your Honor.

12 THE COURT: Yes?

13 MS. VAN WIE: If I may, Jennifer Van Wie, with the
14 Attorney General's Office.

15 THE COURT: Yes.

16 MS. VAN WIE: I'm representing the Environmental
17 Bureau in Board cases.

18 THE COURT: Uh-huh.

19 MS. VAN WIE: Just to inform you that the Board
20 matter is currently stayed --

21 THE COURT: Good.

22 MS. VAN WIE: -- pending your ruling --

23 THE COURT: Great.

24 MS. VAN WIE: -- until, I believe, August.

1 MR. BHAVE: I want to say it's August 19th.

2 MS. VAN WIE: August 19th. I -- In fact, I
3 think -- Yeah, that sounds about right. We've been
4 giving them updates.

5 THE COURT: Is there any problem with staying it a
6 little further?

7 MS. VAN WIE: Not -- Not, your Honor, if, yeah, it
8 really will come in September. I think that's
9 appropriate.

10 THE COURT: Oh, okay. Fine. Good. Just so long
11 as something doesn't go awry in the ground. I know it's
12 a pollution case, so ...

13 MS. VAN WIE: It's an air case.

14 THE COURT: Pardon me?

15 MS. VAN WIE: It's an air case.

16 THE COURT: Air case. All right. Well, good. In
17 the air.

18 Thank you very much. Prepare an order, and
19 I'll see you September 13.

20 MR. DIMOND: All right. Thank you.

21 MR. BHAVE: Thank you.

22 (Which were all the proceedings had
23 in the above-entitled cause.)

24

1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS.
3)

4 Kathleene A. Tanksley, being first duly sworn,
5 on oath says that she is a Certified Shorthand Reporter
6 and Registered Professional Reporter, and Notary Public
7 doing business in the City of Chicago, County of Cook
8 and the State of Illinois;

9 That she reported in shorthand the proceedings
10 had at the foregoing motion;

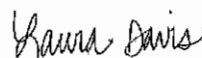
11 And that the foregoing is a true and correct
12 transcript of her shorthand notes so taken as aforesaid
13 and contains all the proceedings had at the said motion.

14
15 
16

17 KATHLEENE A. TANKSLEY, CSR, RPR

18
19 CSR No. 084-004774

20
21 SUBSCRIBED AND SWORN TO
22 before me this 22nd day of
23 July, A.D., 2013.

24 



NOTARY PUBLIC

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on August 14, 2013, true and accurate copies of the foregoing were served upon the following counsel, at the address indicated below, by e-mail and/or U.S. Mail:

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/s/ Nicholas A. Casto
One of Its Attorneys