

August 7, 2008

LETTER ORDER

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RE: HF No. 201, 2003/04 – Laval Paris v. Safeway and Kmart Corporation, et al.

Dear Mr. Simpson, Mr. Shultz, and Mr. Larson:

The Department is in receipt of a Settlement Agreement and an Amended Settlement Agreement entered into by Claimant and Kmart Corporation and Cambridge (Kmart). The Department is also in receipt of Safeway, Inc., and Safeway Inc., Risk Management's objections to the Settlement Agreement and the Amended Settlement Agreement. Safeway, Inc. and Safeway Inc., Risk Management (Safeway) also made a Motion to Allow Filing of Third Party Complaint. Kmart and Claimant were given opportunity to respond the Safeway's objections and the Motion. Claimant joined Kmart's response.

Safeway's objections to the Amended Settlement Agreement are overruled. The Department has approved the Amended Settlement Agreement. Enclosed please find a copy of the approved Amended Settlement Agreement.

Safeway's Motion to Allow Filing of Third Party Complaint is denied. The Department's authority to add parties is governed by ARSD 47:03:01:06, which allows "additional

parties”, not “third parties” as contemplated by SDCL 15-6-14(a). Additionally, SDCL 62-4-38 and SDCL 62-1-18 do not preclude Kmart from entering a settlement agreement with Claimant. Furthermore, allowing a third party complaint in this situation would create a jurisdictional question for the Department. See Medley v. Salvation Army, Rapid City Corps, 267 NW2d 201 (SD 1978); Kermmoade v. Quality Inn, 2008 SD 81, 612 NW2d 583; Truck Ins. Exchange v. Kubal, 1997 SD 37, 561 NW2d 674.

This letter shall constitute the Department’s Order.

Sincerely,

Heather E. Covey
Administrative Law Judge

Enclosure