

August 21, 2008

**VIA FACSIMILE
AND FIRST CLASS MAIL**

LETTER ORDER

Michael J. Simpson
Julius & Simpson LLP
PO Box 8025
Rapid City, SD 57709

J. G. Shultz
Woods, Fuller, Shultz, & Smith, P.C.
PO Box 5027
Sioux Falls, SD 57117-5027

Charles A. Larson
Boyce, Greenfield, Pashby, & Welk, L.L.P.
PO Box 5015
Sioux Falls, SD 57117-5015

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 has considered Employer Safeway, Inc. and Insurer Safeway, Inc.'s (Safeway) Motion to Rename Third Party Complaint and request for reconsideration of the Department's Letter Order dated August 7, 2008. The only question remaining regarding Employer Kmart Corporation and Insurer Cambridge Integrated Services Group, Inc.'s (Kmart) involvement in the above-referenced matter is to what extent Kmart would be liable to Safeway for contribution under a third party theory of liability. The Department of Labor does not have jurisdiction over this question. 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. The Department has considered the case of Kassube v. Dakota Logging, et al, 2005 SD 102, 705 NW2d 461, and finds it unpersuasive. Kassube dealt with the application of the last injurious exposure rule, SDCL 62-1-18, and the apportionment

statute found at SDCL 62-4-29. In the above-referenced matter, the subsequent employer has settled all disputes with the claimant. The court's ruling in Kassube does not preclude the subsequent employer or insurer from settling the claim. Kmart has settled its responsibility to Claimant, regardless of what the Department of Labor determines under the last injurious exposure rule. Under Kermmoade, Kmart's liability to Safeway under any theory is not for the Department of Labor to decide.

This letter shall constitute the Department's Order.

Sincerely,

Heather E. Covey
Administrative Law Judge