

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

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DECLARATORY RULING

SDCL 1-26-15

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This matter comes before the Department on a motion for declaratory judgment per ARSD 47:01:01:04. A hearing was conducted telephonically on May 20, 1996, by James E. Marsh, Director of the Division of Labor and Management, acting on behalf of Craig Johnson, Secretary of the Department. Notice of the hearing was given at least ten (10) days before the hearing was conducted. The matters addressed by the ruling were not, in Secretary Johnson's discretion, considered to have such widespread impact as to justify providing such notice to newspapers of general circulation. Presenting testimony or argument at the hearing were A. P. Fuller of Lead, South Dakota, and Marcia Whiting of Rapid City, South Dakota

The facts represented in the petition were these: that a claimant sustained an injury from his work for a self-insured employer; that the claimant was then part of a lawsuit against the employer; that the claimant signed a release pertaining to that lawsuit which provided that the plaintiffs released the employer "from any and all claims, charges, demands, judgments, or causes of action whether known or unknown,

whether asserted or unasserted, arising from acts or omissions of (employer) occurring any time before execution of this Agreement ...".

The Department was provided a copy of the agreement, and notes that this lawsuit involved claims of employment discrimination, disparate impact, and negligent infliction of emotional distress; that the agreement recites that it settles "claimed, but disputed, tort and tort-related personal injury damages"; that the agreement does not specifically release workers' compensation claims; and that the agreement does not affect any payments "in addition to anything of value to which (Plaintiffs) are already entitled to receive from (employer)". The facts stated are taken as true for the purpose of the ruling, but no other purpose.


Employer asks the Department to determine that the agreement releases it from any workers' compensation claims that could be made by Claimant. The petition does not specify which statutory provision, rule or order made by the department is to be applied, which would require the dismissal of the petition. The Department would note that, in any case, the agreement does not act to foreclose claimant's workers' compensation claims in any way.

SDCL 62-3-18 states that: "No contract or agreement, express or implied, no rule, regulation, or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this title except as

herein provided." The Department is mindful that this statute may not be used to permit double recovery. Caldwell v. John Morrell & Co., 489 N.W.2d 353 (S.D. 1992). Nor is the fact of having filed or failed to file the agreement controlling. Novak v. C.J Grossenburg & Son., 89 S.D. 308, 232 N.W.2d 463 (1975). (The Supreme Court described such a distinction as "specious.") Nonetheless, the agreement deals with "tort and tort-related" claims, it could have dealt with workers' compensation claims, but did not, and no agreement may act to bar a claim for unanticipated or unforeseen consequences of a workers' compensation injury. Id. The Department rules that an agreement with the language specified would not foreclose a claimant with a contemporaneous workers' compensation claim from claiming workers' compensation benefits. It is beyond the scope of this ruling to determine whether the claimant in this matter has obtained a double recovery which could be offset.

Dated this 10 day of July, 1996.

SOUTH DAKOTA DEPARTMENT OF LABOR



Craig W. Johnson, Secretary
Division of Labor and Management