

**STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE**

IN RE: )  
 )  
KMART CORPORATION )  
WORKERS' COMPENSATION ) ORDER  
SELF-INSURANCE AUTHORITY )  
 )  
DOCKET NO. INS 02-0502 )

**INTRODUCTION**

This matter came before the Superintendent of Insurance ("Superintendent") on the Maine Bureau of Insurance Advocacy Panel's Motion to Dismiss the adjudicatory hearing scheduled for March 14, 2002 in the above-captioned case. The relevant facts are as follows.

On March 1, 2002, the Superintendent issued a notice of a hearing to be held on March 14, 2002 to determine whether to revoke or suspend Kmart's authority to self-insure its workers' compensation obligations in the State of Maine pursuant to the provisions of 39-A M.R.S.A. § 403(13) and Maine Bureau of Insurance Rule, Chapter 250 § 2(N)(4). On March 7, 2002, the Maine Bureau of Insurance Advocacy Panel (Advocacy Panel) filed a Motion to Dismiss the hearing on the basis that Kmart had voluntarily terminated its authority to self-insure, thereby rendering moot the scheduled proceeding. In support of its motion, the Advocacy Panel referenced, and subsequently submitted, a letter from L.A. Casto, Kmart's Director of Workers' Compensation, stating that Kmart had secured employer's liability insurance effective March 4, 2002 and requesting termination of Kmart's self-insurance authority.

On March 12, 2002, the Superintendent held a pre-hearing conference regarding the scheduled hearing and the pending Motion to Dismiss. At the conference, held telephonically, Assistant Attorney General Thomas E. Sturtevant, Jr. represented the Advocacy Panel and James Hunt, Esquire, represented Kmart Corporation.

**DISCUSSION**

The primary issue addressed at the conference was whether to proceed with the hearing scheduled for March 14, 2002 given Kmart's expressed desire to terminate its self-insurance plan voluntarily. Although the Advocacy Panel characterized Kmart's self-insurer status as moot, Kmart has not yet submitted the written termination plan required of an employer electing to terminate its self-insurance program. See Maine Bureau of Insurance Rule, Chapter 250 § II (N)(1). While the Superintendent has the authority to order the terms and conditions of a termination in the event that an employer fails in its obligation to submit an acceptable plan, in this case Kmart represented that it recognizes its obligation to submit a written termination plan

and has agreed to do so on or before April 16, 2002. Because Kmart is electing to proceed with its decision to voluntarily terminate its self-insurance program and has agreed to file a written termination plan on or before April, 16, 2002, the Superintendent agrees with the parties that the hearing scheduled for March 14, 2002 may be dismissed.

### **ORDER**

The Advocacy Panel's Motion to Dismiss the adjudicatory hearing is **GRANTED** on the basis that Kmart has agreed to submit a written termination plan as required under Chapter 250, § II (N)(1). The Superintendent further orders, without objection by the parties, that Kmart shall submit a written termination plan on or before **April 16, 2002**.

### **NOTICE OF APPEAL RIGHTS**

Any party to this proceeding may seek judicial review of this decision in conformity with the provisions set forth in the Maine Administrative Procedure Act, Title 5, Chapter 375, Subchapter VII, within 30 days after receipt of this notice. Any other person aggrieved by this decision may seek judicial review in conformity with the provisions set forth in the Maine Administrative Procedure Act, Title 5, Chapter 375, Sub-chapter VII, within 40 days from the date of this decision.

Dated: \_\_\_\_\_

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ALESSANDRO A. IUPPA  
Superintendent of Insurance