

THE NEW REGULATION OF THE UNIFORM SECURITIES ACT OF PUERTO RICO

On January 18, 2000, the Office of the Commissioner of Financial Institutions (the "OCFI") issued a new regulation, entitled "Regulation of the Uniform Securities Act" (the "Regulation"). The Regulation promulgated under the "Uniform Securities Act of Puerto Rico," Act Number 60 of June 18, 1963, as amended ("the Act"), establishes the rules and procedures applicable to the registration or the filing of notices of registration applicable to local or federally covered securities, broker-dealers, agents, investment advisers, investment adviser representatives, federally covered advisers and any other person or entity governed by the provisions of the Act, and delineates conduct constituting fraudulent and/or unethical practices with respect to the securities business.

The Regulation repealed regulations 1007 and 3217 and several prior circular letters to conform the existent regulatory scheme to the recent amendments to the Act. The Act was amended on July 26, 1999 (Act number 167) in response to the enactment in the United States in 1996 of the National Securities Markets Improvement Act ("NSMIA"). NSMIA divided the then prevailing regulatory scheme by providing that activities related to the sale, offering and marketing of certain securities, and the activities of certain investment advisers, reside exclusively with the United States Securities and Exchange Commission (the "SEC") while other activities are classified as falling under the purview and jurisdiction of local regulators. See Amendments to the Puerto Rico Uniform Securities Act, Puerto Rico Business Law Notes, Volume VII, Number 2 (Summer/Fall 1999).

notice filing applications to the extent that such information becomes inexact or incomplete in any material respect. In those cases, registrants and notice filers are required to file correction amendments to update the information previously provided in their applications.

Additionally, article 8 of the Regulation provides that every application for registration and notice filing are public documents subject to inspection by the general public.

Reports About the Prices of Certain Securities Originated in Puerto Rico

Article 23 of the Regulation provides for the OCFI, through the issuance of a Circular Letter, to provide for the establishment of a system of information regarding securities originated in Puerto Rico that are not traded on a national stock exchange for which there are no regular quotations available to the public. To date, the OCFI has not issued such letter.

Dishonest and Unethical Practices in the Securities Business

Article 25 of the Regulation sets at length practices that are deemed dishonest or/and unethical with regards to the securities business. These practices are sanctioned by the OCFI's denial, suspension, or revocation of the registration of the person or entity that violates the provisions of this article or by other sanctions available under the Act, including criminal penalties. Among the long list of sanctioned practices are: switching for the purpose of obtaining commissions or profits; carrying-out or inducing the execution of transactions in, or for the account of a customer, that result excessive in size or frequency, considering the financial resources, profile, nature and

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Registration and Notice Filing Requirements

The Regulation establishes certain initial registration, filing fees and exam requirements that apply to those activities, persons or securities subject to the jurisdiction of the OCFI. To those activities, persons and securities that fall within the jurisdiction of the federal regulatory scheme ("federally covered"), it imposes a requirement to file with the OCFI certain notices and pay notice filing fees.

The Regulation also sets further procedures to renew the registrations or notices filed with the OCFI. It also imposes agents and investment advisers representatives the payment of certain registration fees.

Akin to its federal counterpart, the Regulation imposes a continuing requirement upon registrants and notice filers to update information previously provided in their respective registration or

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LITIGATION

WALGREENS CHALLENGES THE CONSTITUTIONALITY OF THE CERTIFICATES OF NECESSITY AND CONVENIENCE ACT

On February 24, 2000, the firm filed on behalf of its client, Walgreens Company and the company's two Puerto Rico subsidiaries, Walgreens of San Patricio, Inc. and Walgreens of Puerto Rico, Inc., a complaint in the United States District Court for the District of Puerto Rico, challenging the regulatory scheme by which the Commonwealth of Puerto Rico controls the establishment and relocation of pharmacies. Since 1979, Puerto Rico has required the issuance of a Certificate of Necessity and Convenience by the Puerto Rico Health Department before any person can establish a new pharmacy or move an existing pharmacy to any location in the Commonwealth. 24 L.P.R.A. § 334 et seq. The complaint is based on the commerce clause and the due process clause of the United States Constitution.

Puerto Rico is the *only* U.S. jurisdiction to require such certificate for the establishment and relocation of pharmacies. Although in each of the fifty states, an applicant need only fill out a simple license application and pay a small fee in order to set up a pharmacy, in Puerto Rico, however, unconstitutional hurdles have been erected

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investment objectives of the customer ("churning"); recommending the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation would be suitable for the customer ("suitability"); etc.

Brokerage Services Offered from a Bank's Premises

The Regulation imposes various rules applicable to brokerage services offered to retail customers in or from the premises of a depository institution and resulting from a referral by a depository institution for which such institution receives a fee or other benefit for the referral.

effectively interfering with the interests of out-of-state pharmacy chains', such as Walgreens. The regulation delays or prevents the establishment of pharmacies in locations accessible to large numbers of citizens. It also provides an effective mechanism for domestic pharmacies to delay — and, often, to prevent outright — competition from national pharmacy chains.

In light of the contemporary prescription drug market, the regulation is anachronistic. Although the legality of sending prescription medications from pharmacies located out of Puerto Rico to residents of Puerto Rico is presently being debated, the reality is that mail order of medications is taking place and Puerto Rico consumers can now purchase prescription medications by mail not only from local providers but from providers located in the United States. In addition, beginning in February 1994, Puerto Rico has implemented a health reform in which the Government arranges with insurers to provide health care through HMOs. Through this health insurance, the medically indigent population can directly purchase prescription medications in private pharmacies in Puerto Rico, which has resulted in a dramatic increase of the

Rules on Clear and Simple Language for Prospectuses

The Regulation adopts rules on clear and simple language to be used in Prospectuses which include a requirement to present information in a clear, concise and understandable manner. At a minimum, it requires the Prospectuses' language to include the use of: short sentences; common, concrete and specific words; active voice; and lists of key points ("bullet lists") to present complex information. The Regulation discourages the use in Prospectuses of legalistic language or commercial or highly technical jargon and double negatives.

demand for prescription medications. Walgreens seeks to liberate the prescription drug market from government regulation and allow for a healthy competition amongst providers of prescribed medication.

Editorial Staff

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LITIGATION

THE CONSTITUTIONALITY OF THE EXTRATERRITORIAL APPLICATION OF LAW 75 REMAINS UNANSWERED

Puerto Rico's Dealers Act, commonly known as Law 75, 10 L.P.R.A. § 278

seq., regulates the contractual relations of all parties which distribute goods in Puerto Rico. Law 75 embodies the legislative intent to balance the bargaining power of principals or grantors and their local distributors. The law also offers distributors necessary protection from arbitrary terminations, as well as protection from untoward practices on the part of principals or grantors.

One of the main reasons for the enactment of Law 75 is Puerto Rico's long-standing policy of promoting the enforcement and continuation of established dealership agreements. 10 L.P.R.A. § 278b-1. In light of this policy, when resolving claims brought pursuant to Law 75, courts have been compelled to look at the parties' interests and the law's public policy objectives. The United States District Court for the District of Puerto Rico took no exception to this established judicial view when it recently decided the case of Twin County Grocers, Inc. v. Méndez and Co., Inc., et al., Civil No. 97-2052(DRD), decided on November 23, 1999.

In Twin County Grocers, Inc. ("Twin County"), the plaintiff, a New Jersey based warehouse wholesaler of supermarket merchandise purchased its merchandise from numerous national brand name suppliers (the "suppliers"), and sold the merchandise to several supermarket chains in Puerto Rico; the sales took place at Twin County's warehouses in New Jersey and New York. When defendant Méndez and Co., Inc. ("Méndez") discovered Twin County's sales to retailers with stores in Puerto Rico, it informed its suppliers that they had an exclusive distribution agreement with Méndez that they had to honor, and that to avoid a Law 75 violation, they had to require Twin County to stop selling the suppliers' products to Puerto Rico retailers. Méndez categorized Twin County's actions as a "diversion scheme" in violation of Méndez's rights as sole distributor of the suppliers' products in Puerto Rico.

In response to Méndez's demand on the suppliers, Twin County filed a complaint in the United States District Court for the District of Puerto Rico alleging that Méndez

was illegally interfering with Twin County's relationship with the suppliers because Law 75 does not require that suppliers prevent Twin County from reselling their products to Puerto Rico retailers when such sales takes place outside of Puerto Rico, in this instance at Twin County's warehouses in New Jersey and New York. Twin County also alleged that if Law 75 prohibited such sales, it was unconstitutional pursuant to the United States Constitution's Commerce Clause because the law affected the interstate commerce generated by the relationship between Twin County and Puerto Rico retailers for the selling of the suppliers' products. The Commerce Clause establishes limitations on the state's police powers. It precludes a state from regulating in a way that would materially burden, or discriminate against, interstate commerce. Méndez countered this attack by arguing that the agreement between Twin County and certain Puerto Rico retailers for the sale of the suppliers' products resulted in an impairment of Méndez's exclusive distribution agreement with the suppliers.

In the typical Law 75 violation case, a dealer alleges that the supplier or principal is violating the distribution agreement that exists between them by selling its products in Puerto Rico to a third-party, i.e., another distributor from Puerto Rico. In the Twin County case, however, strangers to the distribution agreement between the Puerto Rico distributor and the suppliers were alleged to have acted in violation of such agreement. In addition, the suppliers were not selling directly to another Puerto Rico distributor, but to a New Jersey distributor who in turn sold the suppliers' products to Puerto Rico distributors outside of Puerto Rico. Could Law 75 have such extraterritorial effect?

In denying a motion for summary judgment filed by Twin County, the District Court held that indeed Law 75 does not directly govern third parties outside the grantor-distributor relationship. Because Twin County was not a party to the contractual relationship that existed between Méndez and the suppliers, Law 75 could not govern Twin County's sale of goods to Puerto Rico distributors. On the other hand, the court held, the suppliers' obligation towards Méndez under Law 75 required them to alter their relationship with Twin

County. Law 75 could be asserted against the suppliers even if they had not sold directly to third parties that distribute in Puerto Rico.

The court found that the language of the Act and the intent of its drafters suggested that Law 75 was intended to prevent any situation where a principal undermines the established relationship with its distributor, including the parallel line of distribution established between Twin County and other Puerto Rico retailers when there is an exclusive distribution agreement between Méndez and the suppliers. According to the Court, the contrary would create a loophole by allowing suppliers to circumvent their obligations under the Act. The fact that the retailers purchased the goods outside of Puerto Rico does not lessen the impairment of Méndez' exclusive agreement. Thus, the suppliers could not sell their products to Twin County if the latter was going to resell these products to retailers distributing the products in Puerto Rico. This interpretation, the Court admits, does not address the constitutional controversy invoked by Twin County.

As to the constitutional violation raised by Twin County, the court reminded the parties that Law 75 had already survived several constitutional attacks and that Law 75 controversies generally are of a contractual, not constitutional, nature. What parties voluntarily bind themselves to do under a contract does not implicate constitutional concerns, the court reasoned. Be that as it may, the court withheld its holding on the constitutional issue because it was premature, since there was a contested issue as to whether the distribution contracts were exclusive and, if so, the extent of the exclusivity. In so doing, it stated that "... because there is still a question as to whether the contractual obligation of the national suppliers includes ensuring that stateside wholesalers do not sell to Puerto Rico retailers outside the Commonwealth, passing judgment on the constitutionality of the act at this time would be premature." Whether such a restriction violates the Commerce Clause and therefore, unconstitutional, is an issue that must wait for a controversy involving an exclusive distribution contract that compels the principal or supplier to enjoin third party transactions

of this type outside of Puerto Rico. AAMRG represented Twin County Grocers, Inc. in this case.

TELECOMMUNICATIONS LAW

TELECOMMUNICATIONS TOWERS SITING DISPUTE: ANY SOLUTIONS?

The Federal Telecommunications Act of 1996 ("Federal Act") and the Puerto Rico Telecommunications Act of 1996 ("Act 213") were enacted under a deregulatory framework to promote competition and deployment of technologies, seeking among others, fair competition and more choices for customers, with lower prices. After the opening of the market to competition, the demand for wireless personal communications has grown, which in turn requires expansion of the systems (e.g. erection of more antennae and/or towers).

In Puerto Rico, the siting and construction of cellular and PCS towers by wireless telecommunications providers has created a cross-fire between private and community interests. Due to complaints from residents having towers near their houses (e.g. "the towers are going to collapse in their backyards in case of an earthquake or hurricane"), the Planning Board recently adopted an "emergency regulation" regarding wireless towers siting and construction, which repeals Topic 15 of Planning Board Regulation Number 4. The emergency regulation was in effect until December 1999, when Regulation Number 6064 was adopted, which establishes almost the same requirements as the first one (together the "new regulation").

The adoption of this new emergency regulation has raised concerns among the wireless services providers ("providers") grounded on the Federal Act, which reserves zoning authority (e.g. placement, construction and modification) to local governments but places certain limitations on the exercise of that authority with respect to the regulation of personal wireless services. The Federal Act prohibits local governments from "unreasonably discriminating" among providers (e.g. cannot treat competitors of similar services differently without a legitimate basis for doing so) and, implements regulatory requirements which may result in prohibiting the provision of personal wireless services. In addition, local authorities are prohibited from implementing general bans or policies that would inhibit the ability of providers to offer a particular wireless service.

It is the position of a coalition of providers in Puerto Rico that the new emergency

regulation is too onerous and that it makes it virtually impossible for the industry to provide wireless services. For example, Topic 15 allowed the telecommunications towers to be built in any zoning district and regardless of the size of the lot. The regulation only required a 50 meter buffer zone from any school. The new regulation requires a tower with an altitude of 50 meters or less to be located at a distance equal to the sum of the tower's height plus 15 meters from any adjacent boundary. A tower with a height of more than 51 meters has to be located at a distance equal to the sum of the tower plus 25 meters from any adjacent boundary. In other words, the proponent of the construction of a tower in Puerto Rico would have to acquire approximately eight "cuerdas" of land. The costs of entry in the wireless services market in Puerto Rico will raise, with the eventual effect of hurting competition, which is contrary to the public policy stated in the Federal Act and Act 213. Also, the new regulation imposes a burden on providers by requiring mandatory hearings to grant permission for variances of any of the new regulatory requirements.

This issue needs to be resolved considering both community concerns and the intent of the Federal Act and Act 213 to open the telecommunications market to competition. The particular situation of the wireless telecommunications market and the availability of land in Puerto Rico should be taken into account. The wireless spectrum limits siting flexibility, the market is new and is evolving, which in turn attracts investors given the fact that a strong market potential exists.

Local regulations can become either incentive or disincentive for infrastructure investment in the telecommunications wireless services market. Therefore, it is important that local governments balance the communities' interests (security, aesthetics and safety) with the providers' interests and needs (of more towers, easy of entry) and, use their authority in a procedurally correct manner.

To decide whether or not to keep the new regulation, the Planning Board should evaluate how it would affect competition of wireless services in Puerto Rico and compliance feasibility. One alternative could be to officially grandfather all applications filed by September 22, 1999, which would

fairly protect consumers and at the same time marketplace competition. This would force the Regulations and Permit Administration ("ARPE") to evaluate pending applications for construction of telecommunications facilities under the prior regulation.

As it stands, before the emergency regulation was enacted, dozens of tower permits applicants received notices that their permits were issuance was compliance with certain minor requirements, such as paying municipal taxes. However, ARPE has taken the position that these permits will be reevaluate under the new regulation, thus delaying the development of wireless services in Puerto Rico, by discouraging new investors from spending time and effort in this market, given the fact that availability of necessary land, specially in the urban areas, is not feasible in the long term.

The Puerto Rico Legislative Assembly is considering a legislation proposal to govern construction of telecommunication towers. In the meantime, the Government has alternatives that would protect community interests and not burden providers. Community concerns could be handled by requiring compliance with various additional requirements, such as evidence of the structural integrity of any tower, e.g. that the tower or antenna to be constructed would resist any major "act of God".

In addition, the Government could promote the collocation of towers on existing structures such as electric transmission towers or water tanks; multiple antennas could be collocated together on a single structure or clustered together on a single parcel of land. The Government could also require a certification that other alternative sites have been discarded or could require all new towers to be camouflaged (e.g. look like trees, painted with neutral colors, etc.).

Thus, there are alternatives to the actual "crisis" regarding tower siting that could address the community concerns fairly. The parties should work together on a favorable solution to all. This is not the first time, and would not be the last, that an issue about tower siting has been raised in the United States. In all such situations, the parties involved were able to reach agreements; Puerto Rico should not be the exception.

ENVIRONMENTAL REVIEW LANDSCAPE UNCERTAIN

After various laws enacted by the Legislative Assembly and the promulgation by the Environmental Quality Board ("EQB") of an amended Environmental Impact Statements Regulation appeared to have paved the way for less burdensome environmental review procedures in Puerto Rico, two important events have brought uncertainty on this area. One of these laws (Law 324) have been declared unconstitutional by the Supreme Court of Puerto Rico as applied to the Route 66 Project and the EQB has withdrawn the amended Environmental Impact Statement Regulation after pressure from another agency lack of opportunity to comment it prior to promulgation.

In Law Number 323, approved on November 6, 1999, the Legislature clarified that decisions issued by the Environmental Quality Board on the adequacy of the environmental review process, including decisions on the adequacy of an Environmental Impact Statement (EIS), are not required to include findings of fact and conclusions of law.

In addition, Laws 323 and 324 (also approved on November 6, 1999) stipulate that administrative decisions are only revisable through a timely request for judicial review, and may not be reviewed by a court collaterally through an extraordinary proceeding such as an injunction or mandamus after the lapse of the statutory period for seeking judicial review.

To assist the development of major public infrastructure projects which are generally developed in stages, Law 324 specifically recognizes that the environmental review process for such projects may also be conducted in stages. This will preclude challenges to the environmental review process based on the proposition that all future potential developments associated with the initial stages of a process must be included in the environmental review proceedings related to such initial stages. It is important to point out that in the "Exposición de Motivos" of Law 324 the Legislative Assembly recognized the dangers associated with the illegal practice of "segmentation" in which projects are purposely divided into smaller stages to avoid compliance with environmental review requirements, particularly the preparation of an EIS, and refers to federal case law on the criteria that should be used by the courts to determine whether illegal segmentation has, in effect, taken place.

The amended EIS Regulation incorporates important pronouncements by the Supreme Court of Puerto Rico on the purpose of the environmental review process and on the role of the EQB and other government agencies in that process. To that effect, the amended Regulation indicates that the environmental review process is a planning tool aimed at ensuring that government agencies give due consideration to environmental impacts prior to taking decisions. Once the environmental review process

is completed by the proponent agency, the EQB is required to determine whether the process complies with regulatory requirements. If EQB determines that the environmental review process was adequately conducted, it is the proponent agency, not EQB, the agency that must decide whether the project should go forward. From a practical standpoint, this implies that after considering all pertinent facts, including information on environmental impacts, the proponent agency must determine whether the benefits of the project outweigh the environmental impacts, and should be approved.

Another innovative and important aspect of the amended regulation is that commenting agencies are required to issue comments to environmental documents within certain periods, and that failure to issue comments will not be interpreted as "no comment." If after receiving written orders from EQB requesting a written position on the environmental documents an agency continues to remain silent, EQB is authorized to impose a one time \$500 fine and a \$100 daily fine on the non-responding agency or seek a court order.

The foregoing developments are the culmination of years of efforts by the public and private sectors to responsibly clarify murky areas of the environmental review process which in the past have hindered important development efforts in Puerto Rico, while continuing to ensure consideration of environmental impacts in governmental decision making processes.

FILM INDUSTRY TAX INCENTIVES

The recently enacted Film Industry Development Act, Act No. 362 of December 24, 1999 (the "Act"), grants the film industry (broadly defined to include businesses dedicated to the production of film projects or creation of infrastructure projects) a 90% exemption from real and personal property taxes; and a 100% exemption from municipal license taxes, construction taxes, and excise taxes.

The Act also establishes that such businesses will be subject to a reduced income tax rate of 7%; and that the rent income attributable to property used by such businesses will also be subject to this reduced income tax rate. In addition, the dividends or benefits distributed to its shareholders or partners and the distributions in total liquidation will be 100% exempt from income taxes. Furthermore, the shares of stock or partnership interests in such businesses will be exempt from personal property tax; and will be considered property located in Puerto Rico for estate tax purposes.

In order to enjoy the tax benefits granted by this Act, the business must first obtain a license from the Commissioner of Financial Institutions of Puerto Rico certifying that the project complies with all the legal requirements established by the Act. In addition, the Puerto Rico Film Development Corporation must also endorse the project. When

applying for said license, the business should include a description of the project, the estimated amount to be invested in and out of Puerto Rico and any other pertinent information.

The eligible film projects include the production of: feature length motion pictures, short subjects, episode series, sale catalogs and original sound track recordings that comply with certain requirements established by the Act.

The eligible infrastructure projects include: (i) the initial construction or substantial expansion in Puerto Rico of studios, laboratories, facilities for the international transmission of television images, and any other permanent facility for the creation of film projects; and (ii) the acquisition of machinery and equipment to be used or installed in an infrastructure project.

Investors that acquire shares of stock or partnership interests in an eligible film project will be entitled to an income tax credit of 40% of the proceeds invested in Puerto Rico (as

defined in the Act.) However, the total credit can not exceed 50% of the cash contributed in exchange for shares of stock or partnership interest.

Investors that acquire shares of stock or partnership interests in an eligible infrastructure project will be entitled to an income tax credit of: (i) 40% of the cash contributed in exchange for shares of stock or partnership interest; or (ii) 20% of the investment in the infrastructure project; whichever is less.

In order to allow maximum flexibility, the credits may be sold to third parties who may use them to reduce their Puerto Rico income tax liabilities, without the seller of the credits incurring any tax liability as a result of the sale.

Puerto Rico has traditionally granted some of the world's most generous tax benefits to operations engaged in manufacturing, hotel, tourism, recycling, venture capital funds and agriculture. The tax benefits available under the Act for film businesses and their investors exceed all such other tax incentives. ■



LABOR LAW

PUERTO RICO SUPREME COURT EXPANDS SCOPE OF WHISTLE BLOWING AND ANTI-RETALLATION ACT

The Puerto Rico Supreme Court recently decided the case of Irizarry v. Johnson & Johnson Consumer Products Co., 2000 TSPR 15 (opinion of January 27, 2000), and expanded the scope of Puerto Rico law against reprisals. Law 115 of December 20, 1991 ("Law 115"), 29 L.P.R.A. § 194a.

Maritza Irizarry began to work for Johnson & Johnson Consumer Products Co. ("J&J") in August 1991, and still was under an extended probatory period after several negative performance evaluations motivated her dismissal on February 6, 1992. After developing a work-related condition due to the exposure to chemicals and acids in the workplace, Ms. Irizarry informed her supervisor that she would request the State Insurance Fund (the "Fund") leave and benefits. The Supervisor replied that if she did that, she could risk her employment. On February 6,

1992, while being absent from work, Ms. Irizarry's employment was terminated.

Ms. Irizarry filed a complaint in which she claimed, wrongful discharge, salaries owed, and that J&J discriminated against her violating Law 115, when she offered or tried to offer testimony before an administrative forum like the Fund. J&J claimed that an employee's request for the Fund leave and benefits under the Puerto Rico Law 45 of April 18, 1935 ("Law 45"), 11 L.P.R.A. § 1 et seq., is not within the "protected activity" of Law 115 because when requesting worker's compensation benefits, the employee is not offering testimony in an investigative proceeding.

The Puerto Rico Supreme Court held, however, that nothing in the text of Law 115 suggests that the intention of the legislature in enacting Law 115 was to protect only the testimony offered in investigative proceedings. The Court

concluded that pursuant to Law 115's Statement of Purposes, "a testimony offered before the Fund is obviously one given before an administrative forum," and that "going to the [State Insurance] Fund to obtain the benefits of Law No. 45 is a 'protected activity' under Law No. 115."

As a result of Johnson & Johnson, employers should be aware that if employees are terminated while enjoying or requesting benefits from the Fund, causes of action under Law 45 and Law 115 could be triggered. Employers should be extremely cautious in terminating employees who notify a work-related accident or illness, employees who inform that will report to the Fund, or employees who are enjoying the disability leave under Law 45. Terminations under this circumstances could give rise to reprisal claims under Law 115, even if the employees do not offer testimony in administrative investigative proceedings.

AMENDMENTS TO THE PUERTO RICO WORKING MOTHERS ACT

On March 10, 2000, the Puerto Rico legislature approved Law No. 54 of March 10, 2000 ("Law 54"), amending Articles 2, 3, 4, 6 and 7 of Law No. 3 of March 13, 1942, known as the Puerto Rico Working Mothers Act ("Law 3"). Law 54, which became effective immediately, extends to adoptive working mothers the benefits of the maternity leave to which working mothers are entitled in Puerto Rico.

Law 3 establishes that working women shall be entitled to a rest period of four weeks prior before and four weeks after birth. Law 54 declares that every working women that legally adopts a child five years old or younger who is not enrolled in an educational institution, is entitled to the same maternity leave benefits to which is entitled a working woman who gives birth to a child. In this case, maternity leave benefits shall begin from the date the child is received in the mother's household. The working woman must notify her employer of her intentions to adopt a child at least 30 days prior to taking the leave.

During the maternity leave period the employer must pay the adoptive working mother half the salary she was receiving for her work, which shall be made on the day the mother begins her maternity leave. Such payment shall be computed taking as base the average salary earned by the working mother during the six months prior to the commencement of the rest period or if it is not possible to apply the six month period, the salary that the adoptive working mother was receiving at the commencement of the leave period.

During the maternity leave the employer must keep the position open for the adoptive working mother. In addition, the employer cannot discharge an adoptive working mother without just cause. According to Law 54, an employer cannot refuse to reinstate the adoptive working mother to her position after the adoption takes place. Violation by any employer of this provision may result in double damages caused by such refusal. Said damages include mental sufferings and anguish.

ENVIRONMENTAL BRIEFS

NEW WASTEWATER PRETREATMENT REGULATION IN THE WORKS

The Water Company is expected to release for public comment, on July, a draft of a new wastewater pretreatment regulation.

The Chapter Five of the Puerto Rico Aqueduct and Sewer Authority's Rules and Regulations for the Supply of Water and Sewer Service, known as the Pretreatment Regulation, was promulgated in August 1985. The U.S. Environmental Protection Agency approved the local pretreatment program in October 1985 and the regulation became effective on May 1986. A 1993 proposal to amend the Pretreatment Regulation was never promulgated.

At present, the pretreatment program requires industrial users of a publicly-owned treatment works (POTW) (a public wastewater treatment plant) to treat their wastewater prior to discharge into the POTW. The Regulation is aimed at preventing that the pollutants in the industrial discharge damage the POTW or interfere with the operation of the POTW or pass through it and reach the receiving water body (the ocean or river) without receiving proper treatment.

The Water Company announced that the new draft regulation will broaden

the regulation's applicability from only industrial users to all non-domestic users. The change will be achieved by eliminating the regulation's defined term "industrial user" and replacing it with "non-domestic user." The latter would include discharges from other users including hospitals, photo developing businesses, and other sectors of commerce.

Currently the Pretreatment Regulation establishes maximum permissible levels (MPL), which are the maximum concentration levels of specified pollutants that may be present in the discharge. The draft regulation replaces the MPLs with generally applicable limits, and eliminates limits for several parameters such as aluminum, iron and biological oxygen demand. In addition, the draft regulation incorporates local limits, which have been included in pretreatment permits for certain POTWs for some time. Local limits, which vary according to the specific POTW that receives the user's discharges, are controversial in the regulated community as in some cases they are more stringent than the MPLs.

According to the Water Company, 13 of the 28 POTWs that receive discharges from significant

industrial users have local limits in effect. The local limits vary depending on the capacity of the plant, the type and quantity of a waste received and the POTW's compliance status with its federal discharge permit, known as the National Pollutant Discharge Elimination System.

The draft regulation also changes the imposition of surcharges, which are a type of sewer service fee for discharges in excess of the surcharge limits for 21 parameters. Surcharges will be levied only for the magnitude of the discharge (flow), biological oxygen demand and total suspended solids (concentration) above certain limits. Currently, surcharges are highly unpopular among the regulated community as they are based on complicated formulas of debatable scientific value. Industrial dischargers have complained that bills for surcharges are unreasonably high and received irregularly in groups of several accumulated months.

The draft regulation was being referred to the utility's governing board for approval, prior to issuance as a draft regulation and public comment period, including public hearings. ■

OFFICE NEWS

On November 3, 1999, Citibank, N.A. participated as trustee on the closing of the offering of the \$44,765,000 Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority ("AFICA"), Industrial Revenue Bonds, 1999 Series A (Doral Financial Center Project). *AAM&G* acted as counsel to the Trustee.

On November 8, 1999, *AAM&G* acted as lender's counsel representing Doral Bank in a credit facilities transaction for the construction of a 16 unit residential apartment condominium in San Juan, Puerto Rico.

On December 28, 1999, Citibank, N.A. and FirstBank Puerto Rico finalized the closing of a Purchase and Assumption Agreement in which Citibank sold to FirstBank four of its branches located at Mayagüez Playa, Ponce II, New Port and St. Thomas, and part of its business operations in St. Thomas. *AAM&G* acted as counsel to Citibank.

On February 29, 2000, Citibank, N.A. and Banco Bilbao Vizcaya Puerto Rico (BBV) finalized the closing of an Asset Purchase Agreement in which Citibank sold to BBV part of its Auto Loan Portfolio, for a total price exceeding \$480,000,000. *AAM&G* acted as counsel to Citibank.

On March 29, 2000, *AAM&G* acted as lender counsel representing Doral Bank in a \$3 million credit facilities transaction for the construction of 34 single detached residential units project called Olivia in Las Piedras, Puerto Rico.

On April 4, 2000, *AAM&G* acted as counsel representing Scotiabank de Puerto Rico in a \$17,128,798.00 credit facilities transaction to Mont Blanc, S.E. for the construction of 58 units residential condominium in San Juan, Puerto Rico. ■

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