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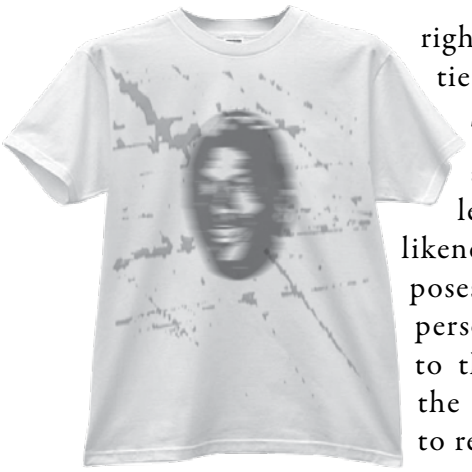
puerto rico Business Law Developments

WE ARE ALL MOVIE STARS: *Right of Publicity Act enacted in Puerto Rico*

PAUL A. FERRER
CORPORATE & BANKING LAW DEPARTMENT

Michael Jordan sank his last jump shot in the NBA well over seven years ago while playing with the Washington Wizards during his swan song season. (Editor's note: We thought about going with a signature Jordan dunk for this article, but at age 40 and at the twilight of his career, Michael "Air" Jordan didn't really live up to his nickname anymore.) Retirement notwithstanding, Michael Jordan is still raking in millions of dollars in endorsement deals at the age of 48 by pitching anything from Hanes Lay Flat Collar Shirts to Nike Air Basketball Shoes. Why? Because he is MICHAEL JORDAN!! In enacting the Right of Publicity Act, Act No. 139 of July 13, 2011, the Legislature of Puerto Rico has determined that everyone from the biggest movie star to the teacher living next door is entitled to determine if, when and where her name, signature, photograph, picture, or any other recognizable aspect of her persona (hereinafter collectively referred to as a person's "likeness") are used for commercial gain. That means that we all have the exclusive right to license the use of our own identities for commercial promotion.



The Right of Publicity Act has created a cause of action against any person or legal entity that uses an individual's likeness for commercial or marketing purposes without previously obtaining such person's consent. The remedies afforded to the individual under the Act include the right to seek an injunction as well as to recover damages.

The Act clarifies that the rights granted thereunder may be freely transferred and assigned as a whole or in part to any person or legal entity. However, any such assignment must be in writing.

It should be noted that the right to one's likeness is subject to certain exceptions. For example, if your face is barely discernable in a sea of thousands of people, you may not have a valid cause of action on your hands. The Act clearly states that the right to one's likeness does not apply to those who are defined as "accessory persons." Accessory persons are those who are not the focus of the communication; instead they merely form part of a group or figure in the background of the

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communication. The Act provides a list of other exceptions such as the use of a person's likeness as part of a news report or political expression and the use of a person's likeness as part of a parody when the use of such likeness is not principally intended for commercial or marketing purposes.

Finally, the Act adds that the owners and employees of any media company or business will not be personally liable for violations to the Act, unless they knew that the person's likeness was being used without her authorization.

That's the Right of Publicity Act in a nutshell. We are all movie stars; now let's get some endorsement deals! ✦

JOHANNA E. ESTRELLA
CORPORATE & BANKING LAW DEPARTMENT

Reverse Mortgage Loans

The Reverse Mortgage Consumer Protection Act, Act No. 164 of July 29, 2011, has been enacted to (1) establish additional protections and guarantees for reverse mortgage consumers; (2) establish the duties for financial institutions that provide this type of loan; (3) empower the Office of the Commissioner of Financial Institutions to supervise and execute the provisions of this proposed piece of legislation; and (4) establish penalties and fines which may also have criminal implications.

The Reverse Mortgage Consumer Protection Act imposes upon those financial institutions that recommend, originate, or sell reverse mortgage loans an additional set of strict rules and obligations prior, during, and after the application and origination of the loan, which are basically honest, good faith and fair dealing practices.

For example, among other requirements, financial institutions are now required to deliver the applicant a notice warning him of the complexities of a reverse mortgage loan and of the importance of receiving proper guidance from a qualified counselor prior to the origination of the loan. Also, during the application process, the financial officer must refrain from incurring in certain conduct and from verbalizing the phrases indicated in the Bill. In addition, the Bill proposes a cooling period of seven days during which the consumer, after agreeing in writing to the origination of the loan, cannot be compelled to proceed with the loan (as opposed to the three day cooling period established by the Federal Regulation Z). After the loan has been originated, the financial institution that wishes to assign the loan to another institution needs to ensure that the new institution has the capacity to produce the required annual information and customer service in the Spanish language.

With the approval of this Bill, the Office of the Commissioner of Financial Institutions and the Public Corporation for Supervision and Insurance of Puerto Rico Cooperatives have authority to supervise, regulate and impose fines and penalties over these financial institutions, which may include, among other penalties, the entire release of the mortgage lien and criminal implications. ✦

PAUL A. FERRER
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UNDER THE KNIFE AGAIN: *The Puerto Rico Trademark Act*

On December 16, 2009, a new Trademark Act was enacted by virtue of Act No. 169, which replaced the Trademark Act of 1991. The adoption of the 2009 Trademark Act was necessary in order to bring Puerto Rico's trademark legislation up to speed with current trademark practices and in order to include many elements of current federal trademark legislation. Less than two years later, the 2009 Trademark Act was amended by Act No. 124 of June 12, 2011, in order to clarify certain provisions of the 2009 Trademark Act; include certain provisions that where unintentionally left out (I'm looking at you Federal Trademark Deposits); and to further mold the local trademark legislation in the likeness of the Federal trademark legislation. Let's look at some of the most important changes to the 2009 Trademark Act from a trademark owner's perspective.

Marks Based on Intent to Use Applications:

An owner of a mark based on intent to use in commerce must now evidence his first use of the mark in Puerto Rico within three years of the filing date of the trademark or service mark application. Failure to certify (under penalty of perjury) and evidence the use of the mark within the aforesaid term will result in the cancellation of the trademark or service mark registration (the prior term was five years). Pursuant to this amendment, an owner of a mark based on intent to use must be quicker (by exactly two years) to commercialize his product or service in Puerto Rico or else face the cancellation of his mark. This three year term for the filing of the evidence of first use in commerce should not be confused with the continued use filing requirements imposed by the 2009 Act.

This can get tricky so let's try to clarify these two different filing requirements. Under the 2009 Act, as amended, an owner of a mark filed for registration in Puerto Rico, regardless of whether the mark was in use or not at the time of filing the application, must provide evidence to the Puerto Rico Trademark Office ("PRTO") that his mark is still in use in commerce between the fifth and sixth year since the filing of the trademark or service mark application with the PRTO. The reasoning behind this requirement is that if an owner is no longer using his mark, others should be free to adopt said mark as their own. The long-term reservation of a mark without use of the same is generally frowned upon in trademark law. In addition to this filing, an owner of a mark based on intent to use must file evidence that he has commenced use of the mark in Puerto Rico before the three-year anniversary of the filing date. Please note that these are not the only trademark maintenance requirements imposed on a trademark owner by the Trademark Act.

Deposit of a Federal Trademark:

By accident, the 2009 Act completely left out the provisions relating to the deposit with the PRTO of marks filed with the United States Patent and Trademark Office ("USPTO"). Under the prior incarnation of the Puerto Rico Trademark

Act, an owner of a mark registered with the USPTO could "deposit" his mark with the PRTO in order to give publicity of ownership of his mark to all third parties. While the deposit of a USPTO mark did not (and does not) grant any specific rights to the trademark owner under Puerto Rico law (it merely gives publicity of the USPTO registration), such "deposit" of a USPTO mark was (and is) convenient for a trademark owner when he could (or cannot) otherwise register his mark locally for any given reason. The current amendment of the 2009 Act has reinstated the federal deposit provisions to its full splendor.

Incontestability:

The legal doctrine of incontestability has been incorporated to the 2009 Act. Pursuant to this doctrine, an owner may convert the right to use his mark into an incontestable right by filing a statement under penalty of perjury with the PRTO in which the owner certifies that the mark has been in continuous and uninterrupted use for five years. It should be noted that the term "incontestable" should not be taken at its face value. Contrary to its name, "incontestability" does not shield a trademark registration from all types of attacks against it. In fact, "incontestability" has often been compared to such notable armor as "swiss cheese." It has also been nicknamed in certain circles as the "swiss cheese rule," most famously by the universally acclaimed trademark treatise writer, J. Thomas McCarthy. At the federal level, McCarthy has stated that "there may be as many as 21 possible exceptions to the status of an incontestable registration of a mark." J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, § 32:147 (vol. 10, 2011).

To this date, there is still much debate at the federal level as to the extent of protection afforded by an "incontestable" registration. Certainly (we hope), future local Supreme Court decisions will further mold and shape "incontestable registrations" in Puerto Rico. In the meantime, we note that the addition of "incontestable registrations" to the 2009 Act will have one very palpable consequence, to wit: registration of a mark is now paramount to all trademark owners and relying solely on common use rights over a mark is not sound practice. An owner of an incontestable registration as a junior user may now obtain certain rights over a senior user of an unregistered mark. That, however, is a discussion for another time, or better yet, another newsletter article. ✦

THAIS PASSERIEU
2011 SUMMER LAW CLERK

Brief respite for small and medium businesses

The 2011 Tax Reform approved this past January brought several important changes for individual and corporate taxpayers. Our February edition sought to give you a bird's eye view of those changes.

It should be noted, however, that Act No. 99 of June 20, 2011, recently amended the new Puerto Rico Internal Revenue Code. The Code had sparked some criticism from small and medium-sized businesses, which raised doubts and concerns about the applicability and implementation of the new measures. Act No. 99 was enacted as a response to the remarks and inquiries brought forth by those Puerto Rican businesses and merchants regarding how to carry through the new regulations and how they would affect them on their day-to-day operations.

The provisions regarding taxation of spirits and alcoholic beverages and corresponding licenses took effect on July 1, 2011, and not April 1, 2011 as the Code previously stipulated.

The Internal Revenue Code of 1994 is now applicable to taxable events that occur prior to July 1, 2011, giving taxpayers an additional three months to file under previous tax law provisions. This was done in order to allow citizens and businesses to adjust to the new measures by providing additional time for taxpayers to evaluate the technicalities regarding alcohol taxation and licenses. ✦

FRANCISCO J. DOX
CORPORATE & BANKING LAW DEPARTMENT

Protect Your Secrets NOW!

Puerto Rico's legal framework reached a milestone this summer with the passage of the Puerto Rico Trade and Industrial Secrets Protection Act. So-called 'trade secrets' encompass a wide array of assets, from recipes to industrial processes, to technological know-how. Oftentimes, trade secrets can confer an edge over other competitors by keeping vital information outside the public domain. Some companies go through great lengths to protect their secrets. For instance, one of the most storied trade secrets in the world, the formula for Coca-Cola, involves secret bank vaults and a very limited amount of people who would know the formula at any given time.

Even if general trade secrets owners are not required to invest in their trade secrets in the same fashion as multi-national companies, the Act definitely provides a new tool in defending intellectual property assets that might not be protected by patents, copyrights or trademarks. Unlike other forms of protection, such as patents and copyrights, there is no constitutional mandate in the United States' Constitution to enact legislation to protect trade secrets. And although there is a federal law that confers certain protections to trade secret owners, attaining redress in civil courts can be a complex matter.

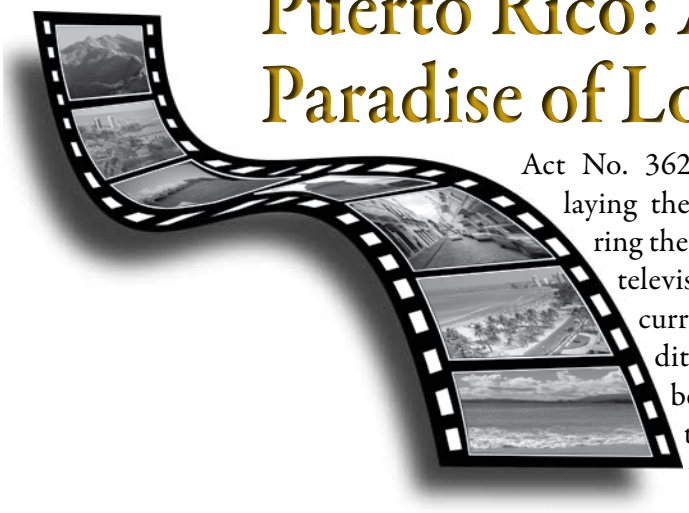
Previously, the best option for a trade secret owner to defend his assets from an alleged infringer would have been to file a lawsuit under Article 1802 of the Puerto Rico Civil Code which provides a general torts cause of action. In order to provide a legal compass to the judiciary regarding the management and protection of trade secrets, the Puerto Rico Legislature adopted the Act, which follows the draft model approved by the Uniform Law Commission.

This Act provides for an exclusive cause of action against trade secrets theft. It also codifies specific parameters that will help courts identify trade secrets from other forms of unprotected intellectual property, while providing guidelines as to what constitutes 'reasonable security measures' –a prerequisite for claiming trade secrets protection. The Act also provides for unique court rules and procedures in the event that a complaint alleging a trade secrets breach is filed, sets an increased margin of damages to be awarded by the courts, prescribes an extended time period in which to file a lawsuit under the Act when compared to general torts cases, and institutes confidentiality measures during trial in order to protect trade secrets.

We emphasize that the Act does not purport to substitute other types of intellectual property protection: patents are the exact opposite of trade secrets, requiring complete public disclosure; copyrights might be more in order when attempting to protect original works; and trademarks are generally meant to protect brands and the association a consumer will make with the product. Sometimes, some of the different categories of protection will overlap. However, regardless of the type of protection, the Act will definitely provide an additional line of defense to many a business owner. ✦

ANGEL D. MARRERO
TAX DEPARTMENT

Puerto Rico: A Paradise of Locations?



What does the TV show "Royal Pains," the movies "The Losers," "Fast Five," and "The Men Who Stare at Goats" have in common? They were all filmed at least in part in Puerto Rico. With that in mind, the Puerto Rico Film Industry Economic Incentive Act (Act No. 27 of March 4, 2011) was recently enacted which has two principal objectives: (1) to bring Puerto Rico's production cost structure in line with other leading jurisdictions through a competitive tax incentive programs, and; (2) to promote the development of infrastructure, especially high capacity production studios or soundstage facilities.

The Act broadens the existing 40% production tax credit to include TV programs and documentaries, and allows producers to claim a 20% tax credit for hiring non residents. Additionally, the new law raises the annual cap in tax credits and provides a 25% tax credit toward the development and expansion of studios, post-production houses and other services.

Act No. 362

In December 24, 1999, the Government of Puerto Rico enacted Act No. 362 which provided for incentives to promote the investment in film production and related infrastructure projects. Since the enactment of these incentives the film and television industries have shown continued growth, generating significant contributions to the Puerto Rican economy and creation of jobs.

Act No. 362 was instrumental in laying the foundation for spurring the growth of the film and television industries. The current competitive conditions required that the benefits granted to this type of industry be revised and expanded to cover new media and to bring Puerto Rico's cost structure in line with other leading jurisdictions.

Puerto Rico Film Industry Economic Incentive Act

In order to achieve the foregoing and to further develop Puerto Rico's film and television industry, the Act empowers the Department of Economic Development and Commerce, through the Puerto Rican Motion Picture Arts, Sciences, and Industry Development Corporation, to grant incentives for the development of a world class film and television industry and for the development, construction, and operation of state of the art production facilities of global importance in Puerto Rico.

By promoting its film industry through the development zone featuring a state of the art production facility, Puerto Rico will attract significant direct foreign investment which is expected to have a substantial economic impact on La Isla del Encanto.

For purposes of the Act, the following qualifying media projects are eligible for incentives and benefits:

- feature films;
- short films;
- documentaries;
- television programs;
- series in episodes;
- mini-series;
- music videos;
- national and international commercials;
- video games;
- recorded live performances; and
- original sound track recordings and dubbing.

The Benefits

The Act provides for the following incentives, credits and requirements, amongst others:

- 40% tax credit on all payments to P.R. Residents;
- 20% tax credit on all payment to Non-Resident Talents;
- $100,000 minimum requirement per project, or $50,000 for short films;
- There is no per project or individual wage caps;
- There is no cap on credits for payments to Non-Resident Talent ($50 million cap on credits for payments to P.R. Residents); and
- There is no principal photography requirement.

Furthermore, entities engaged in qualifying media and infrastructure projects as well as operators of studios and other purpose-built media facilities are eligible for the following preferential tax rates and exemptions:

- Fixed income tax rate of between 4% and 10%;
- 0% tax on dividend distributions;
- 90% exemption on real and personal property taxes; and
- 100% exemption on other municipal taxes.

Finally, the Act provides for a 25% tax credit on investments for the development or expansion of studios, laboratories, and facilities for the international transmission of television images or other media and related infrastructure, subject to a minimum investment of $5 million per project.

Conclusion

The development of a film development zone within Puerto Rico, along with the development and operation of a large-scale state-of-the-art motion picture and television studio, will provide Puerto Rico with the necessary platform to attract and accommodate local, national, and international filmmakers, as well as producers and artists. As a result, this should persuade filmmakers, producers and artists to film their projects and invest in infrastructure in Puerto Rico. ◆

BIBIANA SARRIERA
2011 SUMMER LAW CLERK

New legal measures and amendments to promote further development of the International Insurance Center

On September 22, 2004, the Puerto Rico Legislature adopted Act No. 399, the International Insurers and Reinsurers Act of Puerto Rico, to allow Puerto Rico to become an International Insurance Center, whereby local insurers and reinsurers could export and import insurance and related services to the insurance business solely in connection with international markets. Reinsurers were allowed to provide insurance and services in and out of Puerto Rico. Act No. 400 was enacted the same day to add various tax provisions to the Internal Revenue Code of Puerto Rico applicable to international insurers of Puerto Rico and their holding companies organized under Act No. 399.

In 2011 the Puerto Rico Legislature felt there was a need to amend said laws in order for such laws to fully compare with similar legislations in other jurisdictions and therefore promote the use of the International Insurance Center. Thus, Act No. 98 of June 20, 2011, was enacted to among other things:

- Provide that the capital stock of the international insurers and their holding companies will be deemed personal property located outside of Puerto Rico for purposes of Puerto Rico's hereditary laws.
- Clarify issues regarding the treatment of benefits payable under life insurance contracts or annuities issued by international insurers to non-resident individuals or foreign corporations and partnerships.
- Contractually guarantee the time during which the beneficial tax provisions of the law will apply to the international insurers.

These changes represent another of the Puerto Rico Legislature's attempt to stimulate the economic activity in the Island. ◆

FRANCISCO J. DOX
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Contracting with Government Entities: An Update

The process of entering and executing contracts with municipalities has produced a plethora of case law in an attempt to strike the right balance between property and contracts laws and the protection of public interests. Oftentimes, municipalities and private parties –for a myriad of reasons– have not followed the formalities involved in the proper execution of a contract, which lead in turn to years of prolonged litigation, and the inefficient use of time and money.

The Puerto Rico Supreme Court has established four requirements for any entity interested in entering into any contracts with a municipality:

(1) The contract must be reduced to writing.

(2) The municipality needs to keep an accurate record of said contract.

(3) A copy of the contract needs to be remitted to the Office of the Comptroller.

(4) Time certainty must be properly established.

In this note, we concern ourselves with the first requirement.

Contract law in Puerto Rico provides for the validity of verbal contracts between private parties, with some caveats. However, in the 1980's, the P.R. Supreme Court established the fundamental requirement that a contract with a municipality (or with a government entity, in general) has to be set in writing. This requirement is indispensable if the contract is to be valid. Any verbal contract between a municipality or other governmental entity and a private entity will be deemed to be null and void, and its provisions are non-enforceable. As such, even if the private entity had carried out its obligations under a verbal contract, it cannot pursue any payments from the municipality or other governmental entity.

Recently though, in *Municipio de Quebradillas v. Corporación de Salud de Lares*, (2011 TSPR 27), the Supreme Court had to deal with a reverse situation. In Corporación de Salud, the Lares Health Corporation allegedly owed more than a million dollars to the Municipality of Quebradillas after they had entered into a verbal contract with regards to the administration of one of the Municipality's hospitals. The Corporation attempted to use the fact that there was no written contract as a shield against the Municipality's claim in equity. In fact, both, the first instance and appellate courts had confirmed this view.

In an interesting turn of events, the P.R. Supreme Court overturned the lower courts and held that shielding the Corporation from the Municipality's claim would poorly serve the public interest in a fair and transparent administration. The Court interpreted that it had a vested duty to watch over public funds. The Court first underscored the particular distinction that in this case, the claimant was a Municipality and not a private entity. The Court then emphasized that the written contract requirement was created to protect the public interest from underhanded deals. Since the written contract requirement was made in order to protect municipalities, the Court held that in cases where a written contract was not entered amongst parties and a municipality is the aggrieved party, the municipality can still sue to collect any owed public funds.

In conclusion, if you are considering entering into a contract with a municipal-

ity –or any government agency– be advised that engaging in all proper contract formalities is of paramount importance to assure the enforceability of the contract. The written contract requirement is without question the basis of the four aforementioned requirements. This applies not only to any original agreements, but also to contract amendments and change orders. The best practice in any of these instances is to press for any and all contracts or amendments to be reduced and properly approved in writing, without regard of any assurances proffered by government agents, and duly filed at the Comptroller's Office. Note that you can verify the filing by the agency of the contract with the Comptroller's Office by visiting their offices or via http://contratos.ocpr.gov.pr/. ◆

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New case law on retaliation claims under Title VII

In the case of *Pérez Cordero v. Wal-mart Puerto Rico, Inc.*, Civil No. 09-2317 (August 26, 2011), plaintiff, who worked as a butcher, claimed that his supervisor, a woman, began stalking him, showing up to places he would go for lunch, sharing intimate details of her life, and constantly telling him comments of a romantic nature. Plaintiff rejected his supervisor's advances. According to the fact findings, when the supervisor realized that plaintiff did not share her interest his working conditions changed. He was supervised more strictly than other employees, was constantly scheduled to work the closing shift, and was yelled at in front of other employees, among others. On one occasion the supervisor grabbed plaintiff and forcefully sucked on his neck.

Plaintiff complained to management of his supervisor sexually harassing him. However, he was told by management that he could solve the harassment problem by going out with her and by taking advantage of said opportunity. Plaintiff also complained to the employer's human resources department and to the Department of Labor. Notwithstanding, the lower court found that plaintiff continued "to suffer from inequitable and retaliatory work assignments" from his supervisor.

The Appeals Court found in this case, among other things, that a reasonable jury could conclude that the alleged harassment was unwelcomed, that it was sufficiently severe and pervasive to alter the terms and conditions of the plaintiff's employment with defendant, that it was offensive, that there was basis to believe that the employer was liable for the alleged harasser's conduct, and that the plaintiff had been retaliated against after complaining of sexual harassment.

The Court also concluded: "There is admittedly some overlap between [Plaintiff's] discrimination claim, which depends on proof that the hostile work environment was because of sex and his retaliation claim, which seeks to characterize the same hostile work environment as cause by his protected activity... However, where, as here, the evidence can reasonably be viewed as demonstrating either discriminatory animus or retaliatory animus, we may consider the same evidence in assessing the sufficiency if both of the plaintiff's claims." Furthermore, the First Circuit found that the employer had not offered any legitimate, non-discriminatory explanation for the supervisor's disciplinary actions and scrutiny against plaintiff.

The First Circuit Court held in favor of plaintiff and remanded the case to the lower court for further proceedings. ◆

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Notice-posting requirements by NLRB soon to apply to private employers

The New Final Rule issued by the National Labor Relations Board ("NLRB") applies to all private-sector employers (specifically including unions) which are covered by the National Labor Relations Act ("NLRA"), regardless of whether or not a representation petition has been filed with the NLRB. The rule requires employers to post a notice describing certain employee rights under the NLRA, including the right to become unionized. This posting requirement applies to both unionized and non-unionized workplaces, except the United States Postal Service which is specifically exempt.

Besides including the right to unionize, bargain collectively with their employer or engage in other concerted activity, the Final Rule specifically provides that the notice shall include the right to refrain from doing so. The NLRB believes that most employees protected by the NLRA are unaware of their rights under that Act, and is seeking to increase knowledge of the NLRA and its rights and provisions through the notice that it now compels employers to post.

Employers are required to begin posting this notice on November 14, 2011. Copies of the notice are scheduled to be available for download on the NLRB website and on regional offices on November 1, 2011. If down-loaded, the 11-by-17 inch notice may be printed either in color or in black-and-white and posted in places in the workplace where similar notices are customarily posted. In workplaces where at least 20% of the employees speak English as a second language, employers must post translated versions of the notice, which will be available online and in the NLRB's regional offices. Employers which also post personnel rules and policies online must also post this notice on their Internet and/or Intranet site.

Failure to comply with the new Final Rule's posting requirement may be treated as an unfair labor practice under the NLRA. The NLRB may presume that, in most cases, employers who fail to comply with this requirement do so through unawareness of the Final Rule, and may choose not to pursue further action once the employer is in compliance and has posted both the required notice and a remedial notice. However, if an employer were to be found to have failed to post the notice willfully and knowingly, that non-compliance may be construed as evidence of unlawful motive in an unfair labor practice case involving other alleged violations of the NLRA. Failure to comply with the posting requirement may also affect pending or ongoing proceedings before the NLRB, including the possibility of having a failure to post be construed as having tolled the statute of limitation for an employee to file an unfair labor practice charge. It bears mentioning that the NLRB does not have the legal authority to levy fines.

Immediate training on this matter and on the NLRA and its requirements is encouraged, if not preferred outright. Any doubts or questions should be discussed with legal counsel as promptly and proactively as possible, given the fact that the notice-posting requirement goes into effect soon. ◆

GRETCHEN MÉNDEZ
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Environmental Law Update

The Puerto Rico Environmental Quality Board recently approved a general waiver which streamlines the regulatory requirements of certain materials regulated under the local Hazardous Waste Control Regulation. This waiver follows the footsteps of the amendments promulgated by U.S. Environmental Protection Agency relative to hazardous waste identification rule (the "Rule") of the Resource, Conservation and Recovery Act regulations ("RCRA"). The Rule, applicable since 2008, and EQB's recent decision are aimed at streamlining the hazardous secondary materials regulations to encourage recycling by reclamation and to help preserve resources. Through these measures, requirements for the following are streamlined:

- Materials which are generated and legitimately reclaimed under the control of the generator (i.e., generated/reclaimed on-site, by the same company, or under " tolling" agreements).
- Materials that are generated and transferred to another company for legitimate reclamation under given conditions.
- Materials that EPA or an authorized state determines to be non-wastes through a case-by-case petition process.

Other standards applicable to recycling activities and non-waste determinations are also addressed in the Rule.

EQB Resolution 11-11-1 establishes limited applicability of the Rule to persons who generate reclaimed materials in their manufacturing processes. Owners or operators seeking to make use of this waiver must meet the requirements contained in the Rule, RCRA and Rule I-909 of the Hazardous Waste Control Regulation. ◆

FRIENDLY REMINDER for Large Industrial Green House Gas (GHG) emitters (25,000 metric tons) or suppliers of products in the 28 industries affected by the EPA's GHG Reporting Program (40 CFR Part 98) – Please remember to submit your first GHG report with 2010 data by September 30, 2011. Registration of reporters was due on August 1, 2011.

MARIANGELY GONZÁLEZ
LAW CLERK, TAX DEPARTMENT

Changes to the Homestead Protection Act

Act No. 195 of September 13, 2011, has changed the manner in which Puerto Rico residents are protected with respect to their homes (hogar seguro). Previously, the law afforded a homeowner a $15,000 homestead protection. That is, if the property designated as his primary residence was taken for any reason (for example, mortgage foreclosure), the homeowner had a right of payment of $15,000.

Act No. 195 changed this. Now, a homeowner can designate a dwelling as his primary residence and such residence is protected against all embargoes, seizures and judgments and other forced sales for the payment of debts from the owner's creditors. Any agreement to waive the right to homestead is null.

Such right has its exceptions. The Act states that such right shall be deemed renounced if, among others, the property is mortgaged, for the payment of state and federal taxes, against debts to contractors who performed work on the property, and when the Bankruptcy Code applies.

If the property is sold, the owner has nine months from the time of sale, to invest the money received in another primary residence located in Puerto Rico. During this period, the money collected from selling the former property will be protected from creditors. Still, if the owner acquires a property of lower value, the difference in money will not be protected by the provisions of the Act. If the individual or family is required to temporarily relocate to another residence in or outside of Puerto Rico due to work, study, diplomatic or military service, or illness, the protection conferred by the right to homestead continues, provided that no other property is acquired as a primary residence in or out of Puerto Rico.

In case of married couples, the right to homestead subsists after the death of one spouse to benefit the surviving spouse while he/she continues to inhabit the residence. If both die, the right to homestead will benefit their children until the minor child reaches the age of majority. As part of the divorce proceedings, the court will provide for the residence according to Article 109-A of the Civil Code of Puerto Rico.

The Act provides the manner in which a homeowner can claim this right, including by recording the same in the Property Registry as part of a deed of purchase, and other considerations. Existing homeowners can execute a public deed to record their right to their principal residence.

If you are interested in properly recording your homestead in the Property Registry, you may contact Francisco J. Dox at fdox@gaclaw.com, info@gaclaw.com, or (787)759-4104. ◆

ALICIA LAMBOY
CORPORATE & BANKING LAW DEPARTMENT

New List of Categorical Exclusions

The Environmental Quality Board ("EQB") issued a resolution modifying the list of categorical exclusions adopted through Resolution R-10-45-5 of December 2010. The term "categorical exclusions" refers to such actions which implementation will not have a significant environmental impact, as well as actions involving remediation activities undertaken by private parties. The objective of listing categorical exclusions is to identify beforehand such actions which could be the subject of an automatic determination on its environmental impact in order to expedite the permitting process.

Among others, actions considered as categorical exclusions include the use of existing structures for storage of tools, equipment, finished products, raw materials and others, name change or change in corporate name, substitution of raw materials or components in manufacturing processes which does not result in an increase of emissions, generation of hazardous waste, discharges to bodies of water, etc. The new list excludes the installation and operation of emergency generators between ten (10) HP and three hundred (300) HP. It also excludes the construction of underground injection control systems for up to four residential units. The EQB added to the list other actions not previously considered as categorical exclusions such as segregation of lands, and building of structures for commercial, industrial, institutional, touristic or recreational use. These structures must not exceed five thousand square feet of gross floor area nor building footprint area.

The new list of categorical exclusions became effective on September 26, 2011. A petitioner must file an application before the Office of Permits Management or the EQB, depending on the particulars of the proposed action, in order for the action in question to be confirmed as a categorical exclusion. ◆

Energy News

Adding to the recent flurry of energy related legislation, the Puerto Rico Senate filed Senate Bill 2283 in September. The bill proposes an amendment to the Energy Conservation Act of 1997 which provides that government and municipalities should preferably acquire vehicles designed to use a number of alternative fuel sources. The bill proposes the insertion of natural gas to the list of alternative fuel sources in the Act. It also proposes the use of natural gas in the Metropolitan Bus Authority's mass transportation buses.

Also in the pipeline is Senate Bill 2290, which proposes the transfer of a monthly amount to the PR Electric Power Authority (PREPA). Funds would be obtained from a temporary tax over certain acquisitions paid by individuals, corporate entities or partnerships who are not residents of Puerto Rico. The main objective is to reduce the electric power bill of consumers. The Senate filed and approved this bill on September 27, 2011. It has already been sent to the House of Representatives. ◆

Did you KNOW...

• Act No. 86 of June 5, 2011, has reduced the amount of time needed for an eviction to take place. The Act states that the defendant has to make all of his/her allegations during the hearing and thereafter the court has a ten day maximum term to issue the judgment. If judgment is in favor of the plaintiff, the defendant has five days to appeal. Following judgment to evict, the eviction shall take place within 20 days of such judgment becoming final. Such 20 days cannot be extended.

• The Puerto Rico Transit and Motor Vehicles Act may soon require vehicle owners to notify the Puerto Rico Department of Transportation and Public Works, as well as the auto insurance company, of any change in the color or bodywork of the vehicle. Violations of the Act may subject the owner to a $250.00 fine! The owner will have 30 days to notify the Department of Transportation and Public Works with copy of a report from the workshop or mechanic that performed the work.

• Another proposed amendment to the Puerto Rico Transit and Motor Vehicles Act would allow, subject to certain exceptions, licensed drivers from any of the states or territories of the United States to obtain a Puerto Rico license without the need of other formalities or requirements than the payment of the corresponding fees and delivery of the U.S. driver's license.

• The Puerto Rico Supreme Court recently ruled in *Negrón Miró v. Vera Monroig*, 2011 TSPR 90, that although moral rights are born at the moment of creation, a work must be registered at the Puerto Rico Intellectual Property Registry before filing a lawsuit in order to claim certain moral rights, such as protection against mutilation or defacing. However, in its decision, the Court stated that registration does not need to occur prior to the act in which moral rights are infringed. The only exception to the rule is the moral right of attribution, which needs no registration.

• Act No. 194 of August 29, 2011, created the Puerto Rico Health Insurance Code. This comprehensive Act is meant to compliment and support its federal counterparts, the Patient Protection and Affordable Care Act, as well as the Health Care and Education Reconciliation Act. This new Code will be phased in through several stages. The current stage contains some general enactments, as well as chapters on auditing processes against health insurance providers, health insurance availability for small and medium sized businesses as well as rules related to internal provider complaint systems, amongst others.

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In June 2011, GAC hosted the annual conference of the Red Internacional de Especialistas en Legislación Ambiental (RIELA) at the Caribe Hilton Hotel. Specialists in environmental law from 13 countries of North, Central and South America met in this conference and delighted a sold out audience in lively comparative discussions of environmental laws, compliance strategies and enforcement trends. Presenters also included the Environmental Quality Board President, experienced US Environmental Protection Agency Regional Counsel and Criminal Investigations personnel, the U.S. Department of Justice district attorney assigned to environmental crimes, and EXXON counsel; all of whom added much value to the discussions and the conference.

Those attending received much insight as to how the participating government entities determine if there is criminal intent and strategies implemented by these in regards to administrative, civil and criminal enforcement. ◆