

## **MEMORANDUM TO CLIENTS AND FRIENDS**

**November 2, 2006**

On October 4, 2006, the Supreme Court of Puerto Rico in López v. Porrata Doria, 2006 T.S.P.R. 149, issued an important opinion that directly affects all commercial establishments engaged in the business of selling alcoholic beverages to the public.

Effective October 4, 2006, commercial establishments engaged in said business may violate Puerto Rico's general tort statute (Article 1802 of the Civil Code, P.R. Laws Annot. Tit. 31 §5141) if, under certain circumstances, they sell alcoholic beverages to a person who then drives a motor vehicle and has an accident. Liability is triggered if the commercial establishment had actual or constructive knowledge that the person was visibly intoxicated while consuming alcoholic beverages. In that case, the commercial establishment has a duty to foresee that such a person may cause an accident while driving a motor vehicle. Accordingly, the commercial establishment should stop selling alcoholic beverages to that person and take precautionary measures to avoid having the person drive a motor vehicle. The Supreme Court urged the Puerto Rico Legislature to enact laws specifically addressing this new standard of care.

Some commercial establishments already have taken precautionary measures, such as not selling more than two alcoholic beverages to a single person or calling a taxi to take a visibly intoxicated customer to his home.

The foregoing rule does not apply to individuals who host a social event and who do not sell alcoholic beverages.

According to the opinion in López v. Porrata Doria, commercial establishments should be aware of the following:

1. Although Puerto Rico law prohibits a person older than eighteen years from driving a motor vehicle if he has an alcohol level of .08% or higher, the Supreme Court ruled that such legal prohibition is insufficient, by itself, to impose liability upon a commercial establishment. Nonetheless, the person's alcohol level may be a relevant factor in determining whether or not the establishment is liable for the damages resulting from the accident.
2. Symptoms of intoxication vary with each person and by other circumstances. Symptoms will depend on the type and quantity of alcohol consumed, rhythm of consumption, metabolism of individual and other factors.

3. Obvious signs of intoxication such as nausea, vomiting, diarrheas, stomach ache, aggressiveness, loss of memory, etc., should alert the commercial establishment that the consumer is visibly intoxicated.

If you have any questions or comments, or wish additional information regarding this matter, please contact Francisco G. Bruno, Director of our Litigation Department at (787) 250-5608 or via electronic mail at [fgb@mcvpr.com](mailto:fgb@mcvpr.com). The contact information of our Litigation Department attorneys is available at our website: [www.mcvpr.com](http://www.mcvpr.com).

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