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MEMORANDUM

TO : Clients

FROM : Coto Malley & Tamargo, LLP

RE : Premises Liability Revisited by the Puerto Rico
Supreme Court

In Santiago Colón et al. v. Supermercados Grande, et al., 2006 JTS 21 (January 24, 2006), the Supreme Court of Puerto Rico had an opportunity to revisit premises liability arising from a criminal action (carjacking) at the parking lot of a Supermarket. The Court ruled that the Supermarket owed a duty of care to the clients and visitors in the parking lot area. The Court then determined that the Supermarket had failed to provide an adequate and reasonable degree of security in the parking area and found the Supermarket liable for the damages caused to plaintiff arising from a failed carjacking incident. Plaintiff, who was waiting for his girlfriend to come out of the Supermarket, received a blow to the head and several bullet impacts. He was admitted to a district hospital in critical condition. Plaintiff suffered a fractured femur, head trauma, and had to be surgically intervened to remove one bullet.

The Supermarket had control of the parking lot area and did not have any security guards assigned to its surveillance. The Court did not distinguish between the duty owed to a customer of the Supermarket and a mere visitor or transient, implying that the Supermarket owes both the same duty of care.

The Court ratified the long standing rule that a commercial establishment is not an insurer of all risks. In order to find liability under these circumstances, the Court must evaluate the adequateness and reasonability of the security measures established by the owner of the commercial establishment. In this case, liability was found because there were no security services in place and the Court ruled that the damages could have been avoided if some security measures would have been provided. How much security is needed is left to be determined on a case by case basis taking into account the applicable particular facts of each circumstance.

Should you have any questions regarding this memorandum or any other premises or product liability issues, kindly call or e-mail any of the partners of Coto Malley & Tamargo, LLP:

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