



COMMONWEALTH OF PUERTO RICO  
OFFICE OF THE COMMISSIONER OF INSURANCE

August 8, 2006

RULING LETTER NO.: N-L-8-74-2006

TO ALL GENERAL AGENTS, MANAGERS, INSURERS, PRODUCERS AND  
PRODUCERS APPOINTED AS AUTHORIZED REPRESENTATIVES

**DECISION REGARDING "COUNCIL OF INSURANCE AGENTS &  
BROKERS V. DORELISSE JUARBE-JIMENEZ, IN HER OFFICIAL CAPACITY  
AS THE PUERTO RICO COMMISSIONER OF INSURANCE"**

Dear Sirs and Madams:

On March 30, 2006, in Boston the United States Court of Appeals for the First Circuit affirmed the decision of the United States District Court for Puerto Rico, entered on March 30, in Council of Insurance Agents & Brokers v. Dorelisse Juarbe-Jiménez, in her official capacity as the Puerto Rico Commissioner of Insurance, Civil No. 04-1556 JAF). In this case, the plaintiff alleged that Sections 3.290 y 9.270 of the Puerto Rico Insurance Code<sup>1</sup> violated the Privileges and Immunities Clause and Equal Protection under the Law Clauses of the United States Constitution by granting resident agents and brokers unjustified competitive advantages over non-resident agents and brokers.<sup>2</sup> In the Judgment entered by the US District Court for the District of Puerto Rico, these sections were found to be unconstitutional, insofar as they deprive producers that are not

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<sup>1</sup> 26 P.R.L.A. secs. 329 y 927.

<sup>2</sup> Public Law No. 10 enacted on January 9, 2006, which entered into effect on May 20, 2006, amended Section 3.290, *supra*, to substitute the word *agent* with the phrase "*authorized representative*" and the word "*broker*" with the word "*producer*". Nevertheless, the rest of the language of the section remained unaltered. Likewise, Law No. 10 repealed Chapter 9 of the Puerto Rico Insurance Code, but Section 9.270, *supra* was not altered except that the words *agent and broker* were substituted with the word "*producer*".

residents of Puerto Rico of the same rights and privileges that are guaranteed for resident producers.

In view of this ruling on the unconstitutionality of Sections 3.290 and 9.270 of the Puerto Rico Insurance Code, *supra*, the Office of the Commissioner of Insurance (hereinafter, "the OCI"), considers that said ruling has the effect of eliminating the limitations imposed on producers who are not residents of Puerto Rico, in terms of placing insurance in Puerto Rico. Therefore, a non-resident producer may transact insurance business in Puerto Rico under the same conditions as a resident producer.

Likewise, the OCI notes that the repercussions of the ruling on the unconstitutionality of these sections of the Puerto Rico Insurance Code, do not alter the other requirements of Section 3.290, *supra*, arising from the judgment entered on March 30, 2005 by the United States Court for the District of Puerto Rico, and affirmed by the Court of Appeals for the First Circuit in Boston.

This is the case because the requirement set forth in Section 3.290, *supra*, regarding the prohibition preventing insurers from transacting insurance directly, other than through an authorized representative of the insurers, continues in full effect. This means that a non-resident producer that represents an insurer may only place insurance with an authorized insurer through the manager, general agent, or authorized representative of said insurer.

Very truly yours,

SIGNED

Dorelisse Juarbe-Jiménez  
Commissioner of Insurance