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July 28, 2005

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since June 30, 2005

In Gerety v. Atlantic City Hilton Casino, __ N.J. __ (7/25/05), the New Jersey Supreme Court held, by a 4-3 vote, that the employer casino did not violate the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -42, when it terminated an employee whose difficult pregnancy caused her to exceed the maximum of 26 weeks leave in a year. The employer had a strict, no exceptions standard requiring the termination of any employee who exceeded the 26 weeks of leave. Such employees were eligible for re-hire, but without seniority. The majority held, in an opinion by Justice LaVecchia, that the employer's policy did not violate the LAD because it was applied non-discriminatorily and without exception. The minority would have held, in an opinion by Chief Justice Poritz, that an employer must reasonably accommodate the women in its workforce by extending leave for pregnancy when such leave is necessary for health reasons, unless the employer can demonstrate that business necessity prevents that accommodation.

In Ciaglia v. Hudson Cty., App. Div. Dkt. No. A-6757-03T5 (5/27/05), the Court held that the County could cap the payments due non-union employees for unused sick leave upon their retirement or death, even if employees had already accumulated unused days beyond the cap. It thus granted summary judgment to the County in a suit brought by the estate of the Hudson County Tax Administrator. The County's handbook did not confer a contractual right upon employees to receive payment for unused days.