Interview: Eduardo Negrón-Navas – Attorney at Law, Fiddler, González & Rodríguez P.S.C., Puerto Rico



06.11.2015

Tags: Pharma, Pharmaceuticals, Puerto Rico, USA, Law, Government Relations, Interview, Insight, Regulatory Reform, PPP, Public Private Partnership,

Eduardo Negr

ón-Navas, attorney-at-law, for the Puerto Rican law firm Fiddler, González & Rodríguez, discusses the firm's long-standing service to the *pharmaceutical industry and the need for both government and industry to reinvent a business model better defined for the new realities of the 21st* century*.*

What is your evaluation of the healthcare landscape in Puerto Rico today?

I began working as local counsel for pharmaceutical industry companies in the late 1970s. At that time, the life science industry was just starting to expand and establish new operations in Puerto Rico. Most of the plant managers back then were expatriates. As the industry grew between the 1970s and 1990s, many Puerto Ricans benefited from the new job market opportunities created by the industry. Engineers were in high demand, and many got the opportunity to hold managerial positions, including plant manager.

From 2000 onwards circumstances changed, and there have been consolidations, divestitures and some closures. But the industry refocused, reinvented and is adapting to the new circumstances. Government is refocusing but still needs to do more.

We are still transitioning, and more so because of Puerto Rico's current economic problems. But challenges present opportunities and Puerto Rico still presents a good investment opportunity for

the business. We have tax incentives, expertise, human capital and industrial infrastructure. As such, the industry can and should be a material component of Puerto Rico's economic recovery.

How important is the pharmaceutical industry to the island?

As of 2012, the pharmaceutical industry generated 26 percent of the island's total employment in manufacturing, as well as thousands of indirect and induced jobs in the rest of the economy. That year, the pharmaceutical industry represented 26.5 percent of the island's GDP, and the exports represented about 57 percent of all exported commodities.

The pharmaceutical industry provides a major market for other island industries, small businesses and professional organizations that provide an ample range of goods and services. This industry provides an important base to support the service industry that is so important for the local economy.

Are recent investments from companies like Neolpharma, CooperVision, Lufthansa and Honeywell a positive indication that Puerto Rico has not been forgotten?

The fact that these companies are investing here shows that Puerto Rico has not been forgotten. It is a positive sign that there is still potential to export products and services. It shows that the current tax structure, the human capital and the infrastructure still make Puerto Rico an attractive place to do business.

Can you explain to us Puerto Rico's current tax structure?

The current tax structure for manufacturing activities has a local and a federal component, P.R. Act 73 of 2008 and U.S. Internal Revenue Code ("IRC") Section 901. Act 73 provides economic incentives, tax exemptions and tax credits to businesses engaged in eligible activities in Puerto Rico. IRC Section 901 provides for the U.S. tax deferral of income earned in Puerto Rico, which is considered as a foreign tax jurisdiction under the IRC. The combination of these two economic incentives makes Puerto Rico an attractive place to site manufacturing facilities.

The prior tax structure, from 1976 and 1996, relied on IRC Section 936, which exempted income, including dividend income, earned by U.S. firms operating in U.S. possessions. IRC Section 936, in combination with the local economic incentives, triggered a significant growth of the pharmaceutical industry during those years.

An area of current concern involves a scenario in which Congress moves to eliminate the tax deferral currently available to foreign earnings generated by a foreign corporation, including

conducting business in Puerto Rico, or to subject this income to a minimum tax. In addition, there is concern related to the future of a Puerto Rico temporary legislation which imposes, until 2017, an excise tax of 4% on inter-company purchases, in lieu of an income tax on the non-Puerto Rico entity.

Fiddler, González and Rodríguez's clients include a number of players within the life sciences ecosystem. What tend to be the biggest challenges your clients face today?

Today, many pharmaceutical companies face similar challenges: expiring patents, concern over tax incentive scenarios, high operational costs due to electricity and water costs, and the regulatory landscape. The expiring patent issue has generally been addressed with a strategy of consolidations, and mergers and acquisitions. The tax incentives issue has been addressed with proactive participation in legislative and regulatory public processes. Cogeneration, green energy and water conservation strategies are being promoted to address both cost and environmental responsibility.

Puerto Rico, like other states, is subject to both federal and local environmental laws and regulations. FGR focuses on deciphering the current state of affairs in order to propose the most efficient and cost effective course of action. The firm continuously monitors governmental activity as well as community-based actions affecting the industry in order to provide recommendations as to when the industry should take action, insert itself in the discourse or actively recommend policy changes. Whenever appropriate, FGR has worked with governmental and industry leaders in the development of the island's environmental policy. FGR maintains its clients informed by email alerts on the latest developments as well as through publications and seminars. We published three editions of the Puerto Rico Environmental Law Handbook, issued a rider with updates, and currently publish EnviroNews, a web-based newsletter.

It is important to understand that companies need solutions that address both legal and business issues. Sometimes attorneys focus solely on legal issues and overlook practical consequences. Sometimes you need to analyze problems as a business person with a legal background!

Are there any particular highlight cases of yours that illustrate what you just described?

I will highlight two basic strategies that we have successfully implemented in many cases. First, a regulatory problem should be analyzed to determine if it can be broken into component parts. We have had cases in which the initial reaction of the government agencies is negative, we break down the problem into individual components and address each, one at a time. By the time we

successfully address 50 percent or more of the components, the case flows smoothly towards resolution, or for all practical purposes becomes moot. Second, we have been very creative in identifying and successfully tackling issues before they become a bigger problem. We have had cases were we proactively pursue early negotiations, for example, approaching the agency: before answering a complaint filed by the agency; before the agency actually files a complaint we know is pending; and sometimes even before the agency knows that there is a regulatory issue.

These strategies benefit the clients in many ways, for example: better settlement terms; better relations with the agency and sometimes with the community; and avoidance of costly administrative or judicial litigation.

What makes Fiddler, González and Rodríguez the legal partner of choice for the industry?

We have worked closely with pharmaceutical companies for over 40 years. I have been counsel and ex officio member of the Board of Directors of the Pharmaceutical Industry Association for over 17 years. We know the industry and know the nuances of local government affairs.

An example of FGR's historical and creative collaboration with the industry, is the lead role it played representing a group of pharmaceutical companies negotiate the first public-private partnership (PPP) of Puerto Rico. A Facility Agreement was entered among AFICA, a group of pharmaceutical companies, their respective parent companies and PRASA. The Facility Agreement provided for the financing, design, construction and start-up of the Barceloneta Secondary Wastewater Treatment Plant. AFICA provided the structure to issue pollution control facilities revenue bonds. PRASA provided the land for construction of the facility and provided for its operation. The companies acquired flow and BOD capacity entitlements and assumed responsibility for debt service charge and usage charge. Some companies purchased bonds. The parent companies guaranteed payment of the debt service charge. Today, residents, commerce and industry in three municipalities benefit of this initiative.

How do you see the industry evolving in the coming years?

We must take a close look at the operations we have today, and understand how those operations evolved and adapted to the new circumstances. We must also take a close look at the recent investments, and understand how they were rationalized to the current circumstances. This could serve as the base for a business model upon which to build the industry in the coming years. I believe that we can maintain and secure what we have today, and that we can build and grow upon it.

Puerto Rico is going through a major economic challenge which impacts all of its people and businesses. All solutions to the current situation require innovation that will bring opportunities for growth and development to Puerto Rico.

FGR has been in business for over 80 years, 40 of which have been working in close collaboration with the pharmaceutical industry. FGR is fully committed to continue working with the Pharmaceutical Industry Association and the pharmaceutical industry. FGR has developed the knowledge, commercial pragmatism and expertise in the strategic management of legal issues to help the industry thrive as a major engine for the economic recovery of Puerto Rico.

What is FGR’s growth strategy for the future?

FGR’s growth strategy is founded on the premise that by providing added value to our clients, we will ensure a fruitful and mutually beneficial relationship for the firm and its existing and new clients. We purport to achieve this through practical and innovative legal solutions that help our clients succeed in each aspect of their business. Delivering consistent and reliable service across in all matters we undertake is key to our growth. FGR is continuously looking to identify and promote business opportunities for local, continental and foreign investors.

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