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**CLIENT ADVISORY**

**Judge Upholds \$1 Million Back Pay Award  
For Foreign Nurses**

On October 23, 2007, the United States District Court for the Northern District of Illinois ruled that, Alden Management Services Inc., a health services company, must pay more than \$1 Million in back pay and penalties to 119 nurses brought from the Philippines to the United States under the Immigration Nursing Relief Act ("INRA") to work in Chicago-area nursing homes. In Alden Mgmt. Servs. Inc. v. Chao, N.D. Ill., No. 06-1262 (2007), the court considered whether Alden must pay the foreign nurses at a rate applicable for registered nurses even if they were staffed as certified nurse aids (CNAs) and registered nurses license pending (RNLPs) who did not perform the work of registered nurses.

**Brief Overview of the INRA**

Congress enacted the INRA in 1989 as an amendment to the Immigration and Nationality Act. The H-1A program under the INRA permits qualified foreign registered nurses to work in the United States as nonimmigrant aliens for up to five years. The INRA imposes certain attestation conditions on employers. In this regard, each "facility" has to attest that employment of alien nurses cannot be used to undercut the wages and working conditions of registered nurses already working for the employer. In addition, employers are required to attest that they would pay alien nurses at the wage rate established for similarly situated registered nurses.

**Factual Summary**

Alden hired 119 nurses from the Philippines between 1992 and 1995 and filed the appropriate attestations under INRA. In response to a Department of State report that Alden had recruited the nurses using vague employment contracts and had paid them at rates inconsistent

with their filed attestations, the Department of Labor investigated and, in April, 1996, issued a determination letter finding that Alden's hiring, employment and compensation conduct under the H-1A program violated the INRA. The Department of Labor's Administrative Review Board ("ARB") later ruled that Alden was responsible for back pay, at a rate applicable for registered nurses, for the entire period during which the 119 nurses worked at the Chicago nursing homes. Alden sought judicial review and argued against the back pay finding because the foreign nurses did not perform the work of registered nurses.

### **The Decision**

The court affirmed the ARB's order finding that the INRA requires a facility to pay 'aliens employed by the facility (pursuant to H-1A attestations)' the wage rate for registered nurses even when they are staffed as CNAs and RNLPs who did not perform the work of registered nurses. Alden attested that it would pay the alien nurses the registered nurse wage rate and failed to do so. The court also found that the language, legislative history and purpose of the INRA all support the ARB's holding that Alden must pay back wages in order to make the foreign nurses whole.