SPECTOR GADON & ROSEN, P.C.
Attorneys at Law

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Legal alert

Volume 3 • www.lawsgr.com • Fall 2006

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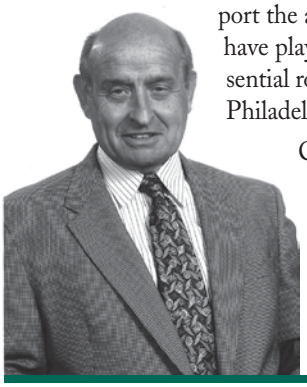
Win Churchill Joins Spector Gadon & Rosen Foundation

Win Churchill has been named to the board of directors of the Spector Gadon & Rosen Foundation. The SGRF supports the arts in the Greater Philadelphia region on a twice-yearly grant cycle. "We are delighted to welcome Win to our board," said Paul Rosen, director. "He is a lawyer and an investor, a gentleman and a scholar."

Churchill is founder and managing general partner of SCP Partners, and has more than 25 years of experience in private equity investing. From 1967 to 1983, he practiced at the Philadelphia law firm of Saul, Ewing, Remick & Saul. Said Mr. Churchill, "I am pleased to play a small role in the efforts by SGRF to support the arts. The performing and visual arts have played and will continue to play an essential role in the resurgence of Center City Philadelphia."



Churchill was awarded a B.S. in Physics, *summa cum laude*, from Fordham University, followed by an M.A. in Economics from Oxford University, where he studied as a Rhodes Scholar. He earned his J.D. from Yale Law School.

Spector Gadon & Rosen Foundation

Additional Grants Announced

The Spector Gadon & Rosen Foundation supports the arts by awarding grants to organizations in the greater Philadelphia region. At its June meeting, the Foundation's board of directors approved grants to the following arts organizations:

Astral Artistic Services – performance opportunities for developing musicians

Center for Emerging Visual Artists – business skills support for young artists

Samuel S. Fleisher Art Memorial – making arts accessible to all

Koresh Dance Company – dance instruction and performance

Philadelphia Young Playwrights – play writing competition among school children

Taller Puertoriqueno – preservation, development and promotion of Puerto Rican artistic and cultural traditions

Rapid Growth Fuels Spector Gadon & Rosen Expansion

Prompted by a rapid growth that has witnessed an increase from five to 14 attorneys over the past year, the Jersey office of Spector Gadon & Rosen, P.C. is doubling its space at 1000 Lenola Road in Moorestown to 10,000 square feet.

George Vinci Jr., who heads the Firm's New Jersey office, said, "This move reflects our growing presence in South Jersey as well as our commitment to being one of the preeminent law firms in the area."

In This Issue

Asset Protection in Estate Planning

Protecting one's assets or an inheritance from creditors and predators has universal appeal. At times, asset protection plays a more important role in estate planning than tax planning. As it becomes easier to avoid paying federal estate tax, asset protection will probably be the more important theme of estate planning for many clients. Among the most important assets to protect is one's personal residence – the family "homestead."

A recent case in Florida discussed the application of Florida's "homestead protection law" in bankruptcy. In Florida, one's homestead is protected from creditors, even if one files bankruptcy. There has been concern for many years that transferring title to one's homestead into a Revocable Living Trust to avoid probate could result in loss of the homestead exemption. However, in a recent Florida bankruptcy case, In Re: Merry Alexander, the Bankruptcy court held that the homestead exemption is not lost if one transfers title to one's homestead into a Revocable Living Trust. This is a great relief for anyone who wants to avoid probate in Florida, a very high cost state for probating an estate.

Protecting one's homestead is important to residents of every state, not just Florida. For example, Pennsylvania offers protection from the claims of one spouse's creditors (as opposed to a claim of a joint creditor) by permitting spouses to own property as tenants-by-the-entirety. But asset protection is not limited to protecting the homestead. There are a variety of methods to protect one's assets. Among the tools available to protect assets are trusts, life insurance, annuities, retirement plans, and certain forms of joint ownership.

If you would like to learn more about protecting your assets or the inheritance you plan to leave to your children and grandchildren from creditors, divorce problems or other important reasons, please call Alan Mittelman at 215-241-8912 or email at amitt@lawsgr.com.

More Good News on Retirement Plans

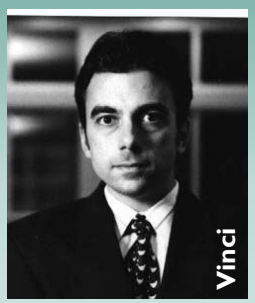
All beneficiaries of employer sponsored retirement plans are now able to roll over the death proceeds to an "inherited IRA account" and take distributions over their life expectancy. Until now, only surviving spouses had this option available and other beneficiaries often had to take the death benefit as a taxable lump sum distribution. This change can and will reduce income taxes of beneficiaries significantly. The change is effective January 1, 2007.

Honors & Appointments


Baskin


Hampton


Klein


Vinci


von Mehren

Leslie Beth Baskin and **George Vinci, Jr.** have been named co-chairs of the Firm's marketing committee. *Leslie Beth Baskin: 215-241-8925 or lbaskin@lawsgr.com, George Vinci, Jr.: 215-241-8840 or gvinci@lawsgr.com*

Alan Epstein, Chair of the Employment Law Group, was selected by Lawdragon as one of the top 500 litigators in the United States. Mr. Epstein has also been selected by his peers to be included in the 2007 edition of *The Best Lawyers in America* in the specialties of Labor and Employment Law. He is one of a distinguished group of attorneys who have been listed in *Best Lawyers* for ten years or longer. *Alan Epstein: 215-241-8832 or aepstein@lawsgr.com*

Jennifer Ward Hampton has been appointed to the Labor and Employment Law and Young Lawyers' committees of the Camden County Bar Association. *Jennifer Ward Hampton: 856-778-8100 or jhampton@lawsgr.com*

Richard Klein has been appointed to the Family Law and Bench-Bar committees of the Burlington County Bar Association. At the Camden County Bar Association, he has been appointed to the Family Law, Professionalism, and Civil Practice committees. *Richard Klein: 856-778-8100 or rklein@lawsgr.com*

Peter A. von Mehren has been selected as the editor of the New Jersey and Pennsylvania sections of the Defense Research Institute's *Compendium of the Law of Insurance Bad Faith*, scheduled to be published later this year. *Peter von Mehren: 215-241-8903 or pvonmehren@lawsgr.com*

The Tyranny of Technology

Benjamin Franklin once gave timeless advice on the importance of getting the details correct: "For want of a nail the shoe was lost; for want of a shoe the horse was lost; and for want of a horse the rider was lost."

In today's world of technology, do periods and spaces matter? When a routine Google search can quickly, effortlessly and cheaply locate business information, such as a name or address, many have stopped worrying about details. Search engines can routinely find every variation of the search term, so what does a space or period matter?

Yet as a recent Utah case showed, a period can make the difference between collecting on a loan, and standing in line with other unpaid creditors. Host America Corporation v. Coastline Financial, Inc., decided in May, 2006, involved a dispute over a loan to K.W.M. Electronics Corporation. That company's "official" name on file with the Secretary of State's office had no spaces in the first part of the name, but periods after each letter. A lender filed its UCC-1 Financing Statement to put other creditors on notice of its lien with the incorrect name "K W M Electronics Corporation" – with spaces, but no periods.

When K. W. M. 's landlord seized its property for unpaid rent, the lender objected - and lost. Even though the lender should have won because it had filed notice of its lien before the landlord's action, its mistake in K. W. M. 's name made its filing "seriously misleading." Under the commercial laws adopted in most states, the name on a lien filing must exactly match the "official" name. If the name is wrong, it must at least be included in the search results using whatever technology the filing office uses. Under Utah's search rules, the lender's incorrect filing was not listed. For lack of three periods, the loan was lost – the foreclosing landlord was not put on proper notice of the earlier filing, because it could not "officially" be found by a standard search.

...even the best programs still suffer from GIGO – "garbage in, garbage out"...

Certainly, Google, or any of the many online phone books such as www.switchboard.com, would have found the name used in the earlier filing. Even a human filing clerk like many courthouses had until recently would have found it. But none of those results count. The law relies upon the search technology that the filing office has chosen, and the lender lost its money because it omitted the periods that proved critical when using that technology.

This "tyranny of the technology" is the unintended consequence of our society's increasing dependence on electronics to provide convenience and cost savings to business and individuals alike. While a computerized, searchable database certainly costs less to maintain and operate than a human-staffed file room, that database is only as accurate and reliable as the decisions made in programming it. The court's opinion doesn't mention who made the search software, but even the best programs still suffer from GIGO – "garbage in, garbage out."

Of course, the lender could have spent a little more time and money to protect itself. It could have ordered an official certificate of its borrower's name, double checked its filing against that certificate, and even run its own search after the filing was complete to be certain that it had been properly indexed. It could also have raised its loan pricing above the charges of its competitors to cover all those costs – wiping out any efficiencies from technology, if not the firm itself as it had to charge more than its rivals.

For businesses today that must rely on technology, both their own and that of critical third parties, the case offers several simple lessons. Most narrowly, learn the rules of the technology that directly affects your business, and play by them. If the lender had checked its borrower's legal name, the accuracy of the filing office's search software would never have been an issue – provided that it had copied that name correctly onto its lien filing. Businesses have heard this rule incessantly since the nationwide reform of basic commercial laws became effective in 2001.

More generally, however, businesses must be prudently skeptical about information they obtain online. Simply because something appears on a web page doesn't make it worthwhile or accurate. (On its own website, the borrower doesn't even have the periods in its name that were critical to the court's opinion. http://www.kwm.com/about.html)

For businesses, online resources can certainly provide a quick answer to start a project, or begin due diligence. Links to government filing offices such as http://www.nass.org/sos/sosflags.html or http://www.brbpub.com/pubrecsites.asp can be great timesavers to verify corporate information and check liens.

But readily available online information should be confirmed from verifiable sources. Critical business decisions should be based on information from the most accurate and reliable sources as are prudent for the situation – or at least from ones which have an insurance policy for when their database software fails, as they all will inevitably do. After all, the net doesn't have a hall monitor checking everything that appears online or in an email – as proven by the profusion of hoax reporting sites such as www.snopes.com or the US government's own site at http://hoaxbusters.ciac.org/. Also, in many databases, an inquiry must be properly phrased to get the desired result – an art that may not be apparent to those accustomed to typical scattershot online searches.

Here, for want of three periods, an entire loan was lost. Even in an age of technology, your business or deal should at least be worth three periods of care.

Stanley P. Jaskiewicz, Esquire: 215-241-8866 or sjaskiewicz@lawsgr.com

Supreme Court In Review *by Nancy Abrams*

During the last term, the United States Supreme Court decided a number of cases that may affect employers. Those cases address issues ranging from the scope of actions that can result in a claim of retaliation to the types of activities which precede or follow an employee's actual work duties that are compensable under the Fair Labor Standards Act.

Scope of Retaliation Claims Expanded

In Burlington N. & S. F. R. Co. v. White, an employee claimed she was retaliated against after filing an internal sexual harassment complaint against her supervisor. After investigating the complaint, Burlington disciplined the supervisor and reassigned White to another position that had the same pay and benefits. White claimed that the reassignment was to a less desirable position and that, after her reassignment, she came under excessive scrutiny by her new supervisor. That scrutiny led to White being suspended without pay for thirty-seven days. When she complained about the suspension, White was reinstated with full back pay. White then filed a claim of retaliation with the EEOC and, after exhausting her administrative remedies, filed suit in federal court.

A jury awarded White compensatory damages. In affirming, the Sixth Circuit applied the same standard for retaliation that it applies to a substantive discrimination offense, holding that a retaliation plaintiff must show an "adverse employment action," defined as a "materially adverse change in the terms and conditions" of employment. Because the various courts have required differing amounts of actual harm to an employee who alleges an "adverse employment action," the Supreme Court granted *certiorari*. In a unanimous opinion, the Supreme Court affirmed and, in doing so, expanded the traditional view of the amount of harm an employee must show to establish that he or she has been the victim of an "adverse employment action."

Burlington argued that, because White's pay and benefits remained the same after her transfer to another position, that transfer could not constitute an "adverse employment action." It also asserted that, because she had received full back pay for her suspension, that suspension could not constitute an "adverse employment action." The Supreme Court rejected both of these contentions.

As to the transfer, the Court recognized that all positions include some job duties which are less desirable or more strenuous or onerous than other job duties. Based on that recognition, the Court held that a transfer to another position, even within the same job description could constitute an "adverse employment action" if the challenged action well might have dissuaded a reasonable worker from making or supporting a charge of discrimination. Addressing the suspension, the Court noted that a reasonable employee could easily view a month without pay as a serious hardship. In addition, White had produced evidence that, as a result of her suspension, she sought medical treatment for emotional distress. Based on these factors, the Court found that the jury's conclusion that the suspension was adverse was reasonable.

The Supreme Court's ruling in Burlington materially expands the scope of actions upon which an employee can base a claim of retaliation. While many court's previously required a showing of some type of monetary loss, the Burlington holding will permit a retaliation claim where no monetary loss is suffered if a reasonable employee would find that the challenged action could dissuade him or her from exercising his or her rights under the anti-discrimination statutes.

Pretext Based On Superior Qualifications

In Ash v. Tyson Foods, the Supreme Court addressed the issue of what type of evidence is sufficient to show pretext when an employee claims that he or she was more qualified than the individual selected for a position over the employee. In the underlying case, the Eleventh Circuit Court of Appeals found, "Pretext can be established through comparing qualifications only when 'the disparity in qualifications is so apparent as virtually to jump off the page and slap you in the face.'" The Supreme Court rejected this contention, finding that it imposed too great a hurdle to the employee seeking to show pretext. While it declined to enunciate an exact standard, the Supreme Court quoted with favor standards utilized by the Eleventh Circuit ("disparity in qualifications must be of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff for the job in question"); the Ninth Circuit (qualifications evidence standing alone may establish pretext where the plaintiff's qualifications are "clearly superior" to those of the selected job applicant); and the D.C. Circuit (a factfinder may infer pretext if "a reasonable employer would have found the plaintiff to be significantly better qualified for the job").

While this decision rejected the extremely stringent standard enunciated by the Eleventh Circuit, it still leaves a considerable hurdle for discrimination claimants seeking to prove pretext by showing they were more qualified for the position than the individual selected. It should also be noted that the Court's decision found that the lower courts erred in finding that a supervisor's repeated use of the term "boy" when referring to the plaintiffs was not evidence of racial animus.

Scope of "Preliminary" and "Postliminary" Activities Under the Fair Labor Standards Act

In IBP, Inc. v. Alvarez, the Supreme Court further clarified what types of activities are non-compensable under the Fair Labor Standards Act as "preliminary or postliminary" to an employee's "principal activity or activities." The employees in question worked in a meat processing facility and were required to wear certain protective gear. The employees filed a claim under the FLSA seeking compensation for the time they spent putting on and taking off the required protective gear as well as the time they spent walking between the locker room and their work stations and any attendant waiting time. While IBP recognized that wearing required protective gear was clearly a compensable activity it claimed that, because the putting on and taking off were not the employee's "principal activity," the time walking between the locker room and the work station was excluded from "compensable time" under the Portal to Portal Act.

The Supreme Court rejected this contention finding that, because protective gear is "integral and indispensable" to the employees' "principal activity," the time spent walking between the locker room and the

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SEC Overhauls Executive Compensation Disclosures

On August 11, 2006, the SEC finally released its new rules regarding the disclosure of executive compensation by reporting companies. The new rules represent the most significant overhaul of the executive compensation disclosure rules since 1992. The rules are complex and detailed – the SEC's adopting release is over 400 pages long – and issuers need to start thinking sooner, rather than later, about the numerous compliance issues presented by the new rules.

As adopted, the rules require new disclosures surrounding the amounts and rationale behind executive compensation in all forms, as well as additional disclosures regarding items such as related party transactions, director compensation, corporate governance and director independence matters and stock ownership by directors and officers.

One of the more significant changes is the new "Compensation Discussion and Analysis" ("CD&A") narrative. The CD&A requires a more detailed discussion of executive compensation than that currently provided in the Compensation Committee Report. The CD&A must cover all material elements of compensation, discuss the objectives of the overall compensation program, address what the compensation program is designed to reward, and discuss how the amount of each element of the program is determined and how each compensation element and the company's decisions regarding that element fit into the company's overall compensation objectives and affect decisions regarding other elements of compensation.

The SEC has provided a non-exhaustive list of fifteen potential issues that it expects companies to address in the CD&A. In addition, the SEC requires the CD&A to address the company's practices regarding the timing of stock option grants and their pricing, as well as additional tabular and narrative disclosure regarding stock option and other equity-based compensation awards.

One of the more notable changes requires tabular disclosure of an "all-in" total compensation figure for the named executive officers. This tally-sheet approach will likely result in increased scrutiny of CEO compensation packages, with a focus on the aggregate number reflected in the table. The new table is more comprehensive than the one it replaces. For example, under the new regime, changes in the actuarial present value of accumulated pension benefits and any above-market earnings on certain non-qualified deferred compensation plans will be included in the compensation table. The SEC also now requires more detailed itemization and disclosure of perquisites.

Other highlights include: more detailed tabular and narrative disclosure of equity compensation awards, pension benefits and non-qualified deferred compensation; expanded disclosure of post-employment compensation, including severance benefits and change-in-control arrangements; a new table disclosing director compensation (cash, equity, pension and other compensation); and disclosure of the amount of any stock pledged as security by executive officers and directors.

Companies are required to comply with the new disclosure rules in Form 10-K and Form 10-KSB annual reports for fiscal years ending on or after December 15, 2006 and in proxy statements and registration statements requiring executive compensation disclosure for fiscal years ending on or after such date. We are recommending that calendar year clients use the time between now and the end of the year to identify the additional data that is required to be disclosed to ensure that the year-end financial reporting process captures those items and makes them readily available to those charged with preparing the company's SEC filings after the close of the fiscal year.

If you would like to learn more about the new executive compensation disclosure regime or have other questions regarding the securities laws, please call Peter Cripps at 215-241-8884 or email him at pcripps@lawsgr.com

Pennsylvania Raises Minimum Wage

Heralding it as a bill that "provides a fairer wage for more than 420,000 hard-working Pennsylvanians who deserve a raise," Governor Ed Rendell signed Senate Bill 1090 increasing the minimum wage in Pennsylvania for the first time since 1997. The law, which implements its first increases on January 1, 2007, provides a longer implementation schedule for "small employers" which are defined as those employers who employ the equivalent of ten (10) or fewer full time (40 hours per week) employees. It also provides for a lower "training" wage for the initial sixty (60) days of employment for the training of employees who are under the age of 20.

For employers who have the equivalent of eleven (11) or more full time employees, the minimum wage increases from the current $5.15 per hour as follows:

- $6.25 per hour beginning on January 1, 2007
- $7.15 per hour beginning on July 1, 2007

For employers who have the equivalent of ten (10) or fewer full time employees, the minimum wage will increase from the current $5.15 per hour as follows:

- $5.65 per hour beginning on January 1, 2007
- $6.65 per hour beginning on July 1, 2007
- $7.15 per hour beginning on July 1, 2008

The "training wage" exemptions permits all employers to pay employees who are less than twenty (20) years old an hourly wage of not less than the current minimum wage ($5.15 per hour) for the first sixty (60) days of employment. Employees who are hired under this "training wage" must be informed of the training wage when they are hired and must also be informed of their right to receive the full Pennsylvania minimum wage after sixty (60) days of employment. Employers are specifically prohibited from displacing existing employees with employees paid at the "training wage."

Nancy Abrams: 215-241-8894 or nabrams@lawsgr.com.

SGR Welcomes New Attorneys

Donald N. Elsas has joined the Moorestown office as Counsel to the Firm's Family Law practice. Formerly, he was the managing shareholder of Elsas and Casel, P.C. in Willingboro, NJ In addition to his specialty in Family Law, Mr. Elsas has also concentrated on matters involving bankruptcy, real estate and land use law.

Mr. Elsas received his undergraduate and law degrees from Rutgers University. He is admitted to practice in NJ and PA and before the Supreme Court of both states. In addition, he is admitted to practice before the US District Courts of NJ, the Third Circuit Court of Appeals, and the United States Supreme Court.

Mr. Elsas is presently Chair of the Supreme Court of NJ District Fee Arbitration Committee and has served as a member of the Burlington County Early Matrimonial Settlement Program.

Donald Elsas: 856-914-4915 or delsas@lawsgr.com

Donald J. Kilfin, a litigation associate in the Firm's St. Petersburg's office, was previously an Assistant State Attorney for the sixth Judicial Circuit (Florida). He was primarily responsible for all stages of criminal prosecution and conducted over 60 jury trials. In addition, he was an adjunct instructor at the Police Academy at St. Petersburg College.

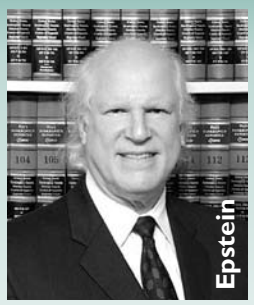
As a litigator in the Florida office Mr. Kilfin will be responsible for employment matters, defense of medical malpractice and general health care law.

Mr. Kilfin was born in Toronto, Canada and graduated from Trent University in Peterborough, Ontario with a concentration on International Relations Theory. Having visited St. Petersburg, FL for many years, he applied to Stetson University College of Law, was accepted, and concentrated his law studies on Criminal Law, Evidence and Trial Practice, knowing always that he wanted to be a litigator. He received his J.D. in 2000.

Donald Kilfin: 727-490-4212 or dkilfin@lawsgr.com

The Firm was once again a sponsor of the **Legal Clinic for the Disabled, Inc.**'s annual **Stroll & Roll** to support legal services for children and adults with physical disabilities in the Philadelphia area. At the starting line on Boathouse Row in late September were SGR member Stanley Jaskiewicz, son Peter, and wife Judy. Support from staff and professionals made SGR the leading individual fundraiser.

At the Podium



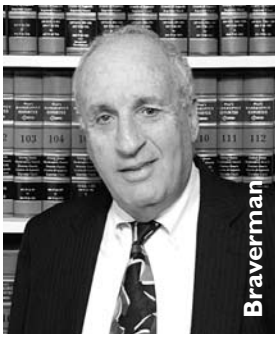
Renee Berger was a presenter for Lorman in Allentown, Philadelphia, and Wilmington on the topic of electronic discovery and document retention issues. She was a guest speaker at the Information Systems Security Association's quarterly meeting in September. *Renee Berger: 215-825-8941 or rberger@lawsgr.com*

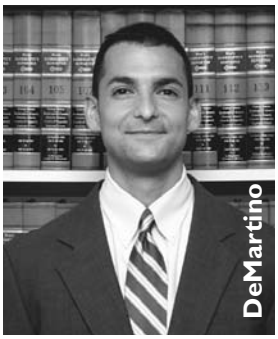
Alan Epstein, Chair of the Employment Law Group, recently spoke on the subject of employee appearance standards and image discrimination at the Carl A. Warns Jr. Labor and Employment Law Institute sponsored by the University of Louisville's Louis D. Brandeis School of Law in Louisville, KY. *Alan Epstein: 215-241-8832 or aepstein@lawsgr.com*

Richard C. Klein was a guest speaker at the retirement dinner of Superior Court Judge, Hon. Marie White Bell, JSC. *Richard Klein: 856-778-8100 or rklein@lawsgr.com*

Tim Szuhaj, Chair of the Intellectual Property Group, presented a seminar entitled "Copyright and Trademark Law – The Basics" at the Pennsylvania Bar Institute Tech Law Forum in Philadelphia. *Tim Szuhaj: 856-778-8100 or tszuhaj@lawsgr.com*

IRS Less Cheerful about Charitable Deductions





The Pension Protection Act of 2006, which was recently signed into law by President Bush on August 17, 2006, represents the most comprehensive revision to the laws governing retirement plans since the enactment of the Employee Retirement Income Security Act of 1974 ("ERISA").

While the majority of the Act's provisions are aimed at defined benefit pension plans, several smaller and largely unrelated provisions buried among the pages of amendments create additional traps certain to catch the unwary taxpayer.

To curtail charitable deduction abuses, one such provision amends the recordkeeping requirements for certain charitable deductions permitted under Section 170 of the Internal Revenue Code. Specifically, charitable deductions for any contributions in cash or by check made on or after August 18, 2006 will be allowed only where the donor maintains a bank record or other "written communication" (e.g., a cancelled check or a receipt) from the donee, evidencing the name of the donee as well as the date and amount of the contribution. This amendment effectively negates the historical exemption from such substantiation rules for each *de minimis* cash donation under $250.00.

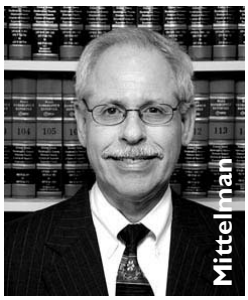
...several smaller and largely unrelated provisions buried among the pages of amendments create additional traps certain to catch the unwary taxpayer.

We realize, of course, that it is not always feasible to donate by check or to obtain a receipt from the donee. Thus, this change may disadvantage taxpayers who make numerous smaller donations at movie theaters, churches, sporting events, and even on street corners and as a result, discourage such charitable giving.

Practically speaking, however, taxpayers who make such smaller charitable contributions in cash are likely motivated by their charitable intent, rather than by the deductibility of their contributions. Yet, by ensuring, whenever possible, that (1) your donations are made by check, rather than in cash, or (2) you receive a receipt for your donations, you can achieve your philanthropic goals while preserving your deduction – a win-win !

If you have any questions regarding any issues raised by this article, please contact Elliott K. Braverman at 215-241-8853 or Scott P. DeMartino at 215-241-8904 or e-mail Mr. Braverman at ebraverman@lawsgr.com or Mr. DeMartino at sdemartino@lawsgr.com.

Super Lawyer



The Summer issue of Legal Alert mistakenly omitted Alan Mittelman from the list of SGR SuperLawyers. He has been named a SuperLawyer every year since the listing began. We apologize for the error.

As Chair of the Income Tax & Wealth Preservation Planning Group and a Shareholder, Alan J. Mittelman practices in the firm's Pennsylvania offices in Philadelphia and Jenkintown, and the firm's Florida office. He is admitted to the State Bars in Pennsylvania and Florida.

Mr. Mittelman has spoken at the American Bar Association Real Property & Probate Section Annual Estate Planning Symposium and the ABA Tax Section Annual Spring Meeting. Also, he has spoken at the Million Dollar Round Table Annual Meeting, the American Society of CLU & ChFC "Keeping Current Clinic", The Association for Advanced Life Underwriting Annual Meeting, and the American Society of CLU & ChFC Annual Meeting on life insurance, partnerships and estate planning for family business owners. He was a faculty member of the joint videoteleconference of the American Society of CLU & ChFC and National Estate Planning Councils on "How to Plan a Business Owner's Estate" and was a faculty member of the Pennsylvania Bar Institute Programs: "Estate Planning for a Family Business Owner", "Elder Law Institute" and "Estate Law Institute". He is a frequent faculty member on advanced education seminars conducted by the American College and the Society of Financial Service Professionals for life insurance companies, and is a contributing editor of "Keeping Current", a publication of the Society of Financial Service Professionals.

Among his publications are the following: "Limited Liability Company Buy Sell Agreements and Life Insurance" (Estate Planning Journal), "Using Trusts in Buy-Sell Agreements" (Tax Management Journal), "Determining the Best Exit Strategy from a Split-Dollar Plan" (Estate Planning Journal), "Total Return Trusts: The Opportunity, The Challenge" (Journal of the Society of Financial Service Professionals),"S Corporation Buy Sell Agreements After the Tax Reform Act of 1986" (Journal of the American Society of CLU and ChFC), "Irrevocable Life Insurance Trusts and the Generation Skipping Transfer Tax" (Journal of the American Society of CLU and ChFC), and "Partnerships and Life Insurance" (Journal of the American Society of CLU and ChFC).

Mr. Mittelman is a cum laude graduate of Temple Law School. He received an M.B.A. degree from New York University and a B.S. from Pennsylvania State University.

He has taught Trusts and Estates at Temple Law School as an adjunct professor. He is a Past President of the Greater Philadelphia Chapter of the Society of Financial Service Professionals (formerly the American Society of CLU and ChFC).

Alan Mittelman: 215-241-8912 or amitt@lawsgr.com

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Supreme Court *continued from page 4*

work station was also compensable, as was time spent waiting to take off the protective gear. However, the Court found that putting on the first piece of protective gear was the beginning of the continuous work day, any time waiting to put on the protective gear was two steps removed from the productive activity on the assembly line and, therefore, excludable as "preliminary activity."

This ruling clarifies that, once an employee's work day begins for purposes of the FLSA, all time within that work day (excepting breaks otherwise excluded from "working time") is compensable time.

Numerical Employee Threshold Not Jurisdictional

The Supreme Court also clarified that the numerical employee threshold enunciated in the various discrimination statutes is not a jurisdictional standard, but is a substantive factor in an employee's claim for relief. In Arbaugh v. Y&H Corporation, Arbaugh filed a claim for sex harassment under Title VII and pendant claims of discrimination under state law. After the jury found in Arbaugh's favor, Y&H for the first time, raised the defense that it was not an "employer" as defined in Title VII because it did not have the required fifteen employees. Finding that the fifteen employee threshold was jurisdictional, the trial court dismissed the case. The Supreme Court disagreed with this finding, holding that the numerical employee requirement was merely an element in the employee's claim. It based this conclusion on the fact that the numerosity requirement appeared in the "definition" section of Title VII, not in the section which provides for federal court jurisdiction. Because it concluded that the fifteen employee threshold was not jurisdictional, the Court found that Y&H in effect waived that defense by failing to raise it before the close of trial on the merits and reinstated the jury's verdict in Arbaugh's favor.

Relief Under §1981 Limited To Party To Contract

In Domino's Pizza, Inc. v. McDonald, the owner of a business filed a claim under §1981 against Domino's claiming that Domino's breached its contracts with his business, a corporation, because of his race. The Supreme Court reversed a finding by the Ninth Circuit that, while a shareholder could not bring a §1981 action for an injury suffered only by the corporation, a non-party could maintain an action under §1981 for injuries distinct from those of the corporation.

The Supreme Court disagreed, holding that §1981 by its clear terms only protects an individuals right to "make and enforce" contracts without regard to race. It does not extend to the "insignificant right" to act as an agent for someone else's contracting. In reaching this conclusion, the Supreme Court rejected McDonald's proposed new standard whereby any person may sue if he is an "actual target" of discrimination and loses some benefit that would otherwise have inured to him had a contract not been impaired.

Public Employee Speech Required By His Job Not Protected

A sharply divided Court limited the types of public employee speech that is considered to be "protected" for purposes of the First Amendment. In Garcetti v. Ceballos, a supervising deputy district attorney was disciplined after he wrote a memorandum which concluded that an affidavit police used to obtain a critical search warrant contained serious misrepresentations and recommended that the underlying case be dismissed. The Supreme Court found that, because the memorandum was created by the employee as part of his official duties, his speech was not that of a citizen speaking on a matter of public concern and was, therefore, not "protected speech." Because the employee's expressions were made pursuant to his official responsibilities, the Court found that the First Amendment did not prohibit discipline based on that speech. In reaching this conclusion, the Supreme Court noted that public employees had available to them various measures to protect them and to protect checks on supervisors who would order unlawful or otherwise inappropriate actions, including federal and state whistle-blower laws and labor codes.

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