SGR
SPECTOR GADON & ROSEN, PC
*Practicing the art of law.*SM

LEGAL ALERT
Spring 2008

www.lawsgr.com
Philadelphia, PA
215-241-8888
Moorestown, NJ
856-778-8100
St. Petersburg, FL
727-896-4600

# Actor Robert Prosky Receives ATTY Award from Spector Gadon & Rosen Foundation

Actor Robert Prosky, a Manayunk native and Temple University graduate, recently received the ATTY Award from the Spector Gadon & Rosen Foundation. The Firm's foundation presents the award for positive depictions of attorneys in the arts. Prosky was recognized for his portrayal of *pro bono* lawyer Hilton Barber in the film *Dead Man Walking*. He is the second winner of the award; the first was Harper Lee in 2005 for the character Atticus Finch in her masterpiece *To Kill a Mockingbird*.

Firm Managing Director Steve Gadon welcomed Mr. Prosky, noting that, "SGR wanted to create an award that would counteract the many negative portrayals of lawyers in our culture." Chairman of the Board Paul R. Rosen followed this with an eloquent appreciation of Prosky's career.

Actor Robert Prosky, center, recently received the ATTY Award for positive depictions of attorneys in the arts from the Spector Gadon & Rosen Foundation. It was presented to him by Steven F. Gadon, left, and Paul R. Rosen in recognition of his portrayal of *pro bono* attorney Hilton Barber in the film *Dead Man Walking*.

Mr. Prosky also received a signed edition of *To Kill a Mockingbird* from the first ATTY Award winner, Harper Lee, and a $2500.00 contribution to the Actors' Fund, his favorite arts charity.

According to Mr. Rosen, "The ATTY Award was created as a way of underscoring the nobility and necessity of the law and the imperative of safeguarding Constitutional rights. As board members, we agreed that Robert Prosky's portrayal of attorney Hilton Barber in *Dead Man Walking* perfectly reflects the ideals on which this award is based. His character selflessly devoted vast amounts of time and energy to the case of a prisoner on death row, and tenaciously saw through a process of appeal that led all the way to the state Supreme Court and Governor's office."

Mr. Prosky was in Philadelphia performing in Arthur Miller's *The Price* at the Walnut Street Theatre. A beloved character actor, Mr. Prosky has worked in 38 feature films, in series TV, on Broadway, in regional theatres and on stages around the world. Credits include Robin Williams' boss in *Mrs. Doubtfire* and Sgt. Jablonsky on *Hill Street Blues*. He has had memorable roles in the film *The Natural* and on the TV shows *The Practice*, *ER* and *Cheers*.

Of his familiar face, Mr. Prosky says, "People often recognize me but since I am not Tom Cruise or Dustin Hoffman, they don't quite know why they recognize me. Upon revealing to one such person that I was an actor, he replied, 'Oh yeah, you know, you look like yourself.'"

A recent meeting of the SGR Foundation board of directors resulted in grant awards to: Astral Artistic Services, Curtis Institute of Music, Mann Music Center, Penn Presents, Philadelphia Sculptors, Village Humanities, and Young Playwrights.

## IN THIS ISSUE

## Buying or Selling Your Business?


*They focus on a few key sections...that help determine how much of that purchase price must actually be paid...*

### What do lawyers read first?

If you have ever bought or sold your business, you know that the agreements are long and complex – and necessarily so, to account for contingencies. But reading those tomes isn't a problem for most businesspersons (other than having to pay for them) – they typically turn first to the price section, and ignore boilerplate.

Yet lawyers look at these agreements quite differently. They focus on a few key sections, such as the indemnity section, that help determine how much of that purchase price must actually be paid (or that the seller can keep). In fact, deal attorneys have the benefit of annual surveys of these "Deal Points," which analyze publicly reported deals based on a relatively few key criteria. The results help them decide if a deal is "market" (or how much to reasonably ask for). The criteria include categories such as reps and warranties, deal protection measures, conditions to closing and a catch-all category (with several subcategories under each of them)

The studies are available to members of the Negotiated Acquisitions Section of the American Bar Association, and are broken down into subcategories (private targets, public targets with a private equity buyer, and public targets with a strategic buyer). However, if you are thinking seriously about the purchase or sale of a business, our business law attorneys would be glad to discuss these real world results with you, to help you enter negotiations with a realistic view of what to expect. A general discussion of these concerns may be found in "Which Business Sales Agreement Clauses to Read First," an article by Stanley Jaskiewicz of our Business Law Department on our website at http://www.lawsgr.com.

*If you would like to explore the sale of your business, or obtain a copy of one of these studies, please contact Stanley Jaskiewicz of our Corporate Group at 215-241-8866, or by email at sjaskiewicz@lawsgr.com*

## Securities: Amended SEC Rule 144


*The new rule shortens the holding period...from one year to six months.*

### Amended Rule 144 Provides More Liquidity For Holders of Restricted Securities

The SEC's recent amendments to Rule 144 took effect on February 15, 2008 and apply to any resale of restricted securities or securities held by an affiliate (i.e. control securities), whether acquired before or after such date. Securities acquired from an issuer or its affiliates in a transaction not involving a public offering, (e.g., privately placed securities) are restricted securities, and the applicable resale restrictions tend to decrease liquidity and increase valuation discounts.

The relaxed resale restrictions and shorter holding periods contained in new Rule 144 may reduce the valuation discounts often required by a public issuer to complete a private placement and may also reduce the scope of, or entirely eliminate, the need to grant registration rights to private placement investors.

The new rules shorten the holding period for restricted securities of SEC reporting companies from one year to six months. After six months, an affiliate of the issuer may resell restricted securities as long as the issuer is current with its SEC reports and the selling shareholder complies with the volume limitations and manner of sale requirements (for equity securities only) set forth in the Rule and files a Form 144. Non-affiliates of the issuer may engage in unlimited resales of restricted securities of SEC reporting companies after one year, without needing to comply with the volume limitation, manner of sale or filing requirements. Between six months and one year, a non-affiliate may make unlimited resales provided that the issuer is current with its SEC reports.

With respect to restricted securities of issuers that are not SEC reporting companies, the rules are slightly different. An affiliate may resell under Rule 144 after a one year holding period; subject to the limitations described in the preceding paragraph. Non-affiliates may engage in unlimited public resales under Rule 144 after meeting the

*continued on page 10*

# AT THE PODIUM





**Nancy Abrams**, an Associate in the Employment Law Group, was written up in the *Philadelphia Daily News* and *The Jewish Exponent* for her role in the one-woman show "Unsuspecting Susan" at Walnut Street Theatre's Studio Five. She recently presented Lorman seminars on Discipline and Discharge and on Record Retention in the Electronic Age.

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

**Bruce Bellingham**, an Associate in the Commercial Litigation Group, spoke on Artists and the Law at Temple University.

*Bruce Bellingham: 215-241-8916 or bbellingham@lawsgr.com.*

**Renee Berger**, an Associate in the Commercial Litigation and Antitrust Groups, and **Dominic P. Marco, Jr.**, an Associate in the Corporate and Financial Services Group, recently presented a Lorman Seminar on Record Retention in the Electronic Age.

*Renee Berger: 215-825-8941 or rberger@lawsgr.com*
*Dominic Marco: 215-241-8807 or dmarco@lawsgr.com*

**Heather Eichenbaum**, a Member in the Insurance Litigation Group, was a panelist in the Legal Roundtable Session at the International Association of Amusement Parks and Attractions.

*Heather Eichenbaum: 215-241-8856 or heichenbaum@lawsgr.com*

**Alan Epstein**, Chair of the Employment Law Group, appeared on the CN8 "Morning Show" as a guest commentator on celebrity litigation in the news.

*Alan Epstein: 215-241-8832 or aepstein@lawsgr.com*

**Stanley Jaskiewicz**, a Member in the Corporate Group, gave a presentation on Challenger Baseball (which provides participation in Little League for special-needs children) to the Horsham Rotary Club. He also spoke at a training session of the Archdiocese of Philadelphia's Catechetical Forum for religious education teachers at Archbishop Carroll High School in Radnor on "Religious Education and the Autistic Child: A Parent's Perspective."

*Stanley Jaskiewicz: 215-241-8866 or sjaskiewicz@lawsgr.com*

**Richard Swartz**, Of Counsel in the Employment Law and Commercial Litigation Groups, presented a Lorman Seminar in Cherry Hill, NJ on Preventing Harassment and Discrimination Claims in the Workplace, and Understanding the Administrative Agencies.

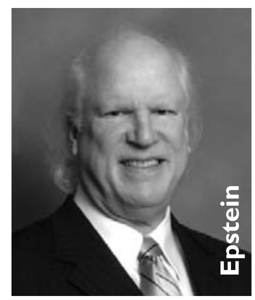
*Richard Swartz: 856-773-4695 or rswartz@lawsgr.com*

**Thomas Williams**, Associate in the Estates & Trusts, Tax Law, and Corporate Groups, gave a presentation on "Medical Deductions Beyond the Meds" to the Burlington County Senior Resource Alliance. He participated in a panel presentation on what to look for in and how to work with an estates attorney to a group of "Comfort Keepers" franchise owners. Mr Williams also gave two presentations on estate planning for Baby Boomers to residents of the Moorestown area, and twice presented information to the 15-member board of the PA Motorcycle Dealer Owners Association on Estate and Business Succession Planning in Harrisburg.

*Tom Williams: 215-241-8813 or twilliams@lawsgr.com*

*To book a speaker on these or other topics, please contact the attorneys directly.*






## Accounting for M&A Earnouts Under New FAS 141(R) Will Impact Buyer Earnings Post-Transaction

*New accounting rules will increase the volatility of the buyer's reported earnings when earnouts are a component of the deal consideration.*

Contingent payments or "earnouts" are often used by buyers and sellers to bridge valuation gaps in M&A transactions. In December 2007, the Financial Accounting Standards Board (FASB), released FAS 141(R) which revises the accounting rules applicable to contingent consideration in M&A transactions. The new rules apply to M&A transactions closing after the start of a buyer's first fiscal year beginning on or after December 15, 2008. For calendar year companies, the new rules will affect M&A deals closing after December 31, 2008.

In many M&A negotiations, the seller believes its business is worth considerably more than the amount the buyer is willing to pay for the business. For instance, the seller may project a material increase in earnings and cash flows two or three years down the road. While the prospect of such an uptick in the fortunes of the business may entice a buyer to do the deal, a buyer will typically not pay "full value" today for speculative projected earnings which are often based on the realization of various contingencies in the business that may – or may not – come to fruition. In order to bridge this valuation gap between the buyer's and seller's expectations regarding the business, the parties may agree that the buyer will pay a set price today for the business – but if the business meets certain performance targets after closing, then the seller will pay the buyer additional consideration that increases the overall purchase price for the deal. These performance targets may be financial (e.g., future revenue or earnings before interest, taxes, depreciation and amortization targets) or non-financial (e.g., regulatory actions or new product developments).

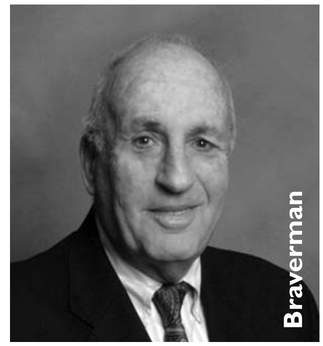
Under current FAS 141, the purchase price paid at closing is recorded on the balance sheet at closing and any earnout payments do not have an accounting impact until there is a reasonable assurance that the earnout payments will actually be made to the seller. Once there is a reasonable assurance that the buyer will have to make the earnout payment, the buyer typically records the amount of the earnout as additional goodwill on its balance sheet. Since goodwill is not amortized, the earnout does not have an annual dilutive impact on the buyer's earnings, although it remains subject to an impairment charge.

Under new FAS 141(R), the buyer must estimate the fair value of the earnout likely to be paid to the seller and recognize that amount on its balance sheet at closing. Once the actual amount of the earnout payment is determined, any extra actual payments in excess of the estimated fair value will hit the buyer's income statement as an expense. If the amount of the earnout actually paid is less than the amount estimated and recorded on the balance sheet at closing, then the difference will be recorded as a gain to the buyer's income statement.

The new rules will increase the volatility of a buyer's earnings, which may fluctuate from year-to-year depending on the relationship between the initial estimate of fair value of the earnout consideration at closing and the amount of earnout consideration actually paid in the future. The new rules may also have the effect of pushing buyers to "estimate high" on the fair value of contingent earnout payments when the transaction closes in order to avoid the problem of expensing future payments in excess of the estimate and the corresponding reduction in the buyer's current earnings. Buyers may also seek to shorten the length of earnout periods to mitigate the potential earnings volatility in future years that arises when actual payments diverge from estimated fair value of the earnout at closing. Borrowers and lenders will both need to take into account the effects of the new rules on loan covenants keyed to GAAP measures. For instance, lenders may seek to clarify that any FAS 141(R) gains are excluded from covenant calculations.

*For more information or questions about earnouts and other M&A matters, please call Peter D. Cripps, Chair of our Mergers & Acquisitions Group, at 215-241-8884, or email pcripps@lawsgr.com*

# Stimulating Business


The Economic Stimulus Act of 2008 (Act), which was signed into law on February 13, 2008, includes two business-friendly provisions: a temporary increase in amounts eligible for expensing on the purchase of certain depreciable business assets and a special additional depreciation allowance for the purchase of certain personal property.

## Temporary Increase in Amounts Eligible for Expensing of Certain Depreciable Business Assets

Subject to certain limitations, a taxpayer may elect under Internal Revenue Code (IRC) section 179 to deduct (or "expense") the cost of "qualifying property," rather than to recover such costs through depreciation deductions. (Additional section 179 incentives, not discussed herein, are provided with respect to qualified property meeting applicable requirements that is used by a business in an empowerment zone (IRC section 1397A), a renewal community (IRC section 1400J), or the Gulf Opportunity Zone (IRC section 1400N(e))).

For taxable years beginning in 2008, the Act provides that the maximum amount that a taxpayer may expense is $ 250,000 of the cost of qualifying property placed in service for the taxable year. The $250,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $800,000. The $250,000 and $800,000 amounts are significant increases over the $128,000 and $510,000 amounts applicable to 2008, pre-Act. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2011 is treated as qualifying property.

The amount eligible to be expensed for a taxable year may not exceed taxpayer's taxable income (determined without regard to this provision) for a taxable year that is derived from the active conduct of a trade or business. Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under IRC section 38 is allowed with respect to any amount for which a deduction is allowed under IRC section 179. For taxable years beginning in 2011 and thereafter, other rules apply.

The provision is effective for taxable years beginning after December 31, 2007.

## Special Depreciation Allowance for Certain Property

Under pre-Act law, a taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is generally determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, different types of property generally are assigned different applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property range from 3 to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the taxpayer's depreciation deduction would be maximized.

The Act permits an additional first-year depreciation deduction (Additional Depreciation) equal to fifty (50) percent of the adjusted basis of qualified property placed in service in 2008. There are no dollar limits. Significantly, (and helpful), the additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax (AMT) purposes for the taxable year in which the property is placed in service. The deduction is also subject to the general rules under section 162 regarding whether an item is deductible or, instead, must be capitalized under section 263 or section 263A.

The basis of the property and the depreciation allowances in the year the property is placed in service and later years are appropriately adjusted to reflect the Additional Depreciation deduction. In addition, there are no adjustments to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income (AMTI) with respect to property to which the provision applies. The amount of the Additional Depreciation deduction is not affected by a short taxable year. The taxpayer may elect out of Additional Depreciation for any class of property for any taxable year.

The interaction of the additional first-year depreciation allowance with the otherwise applicable depreciation allowance may be illustrated as follows.

Assume that in 2008, a taxpayer purchases new depreciable property and places it in service. Assume

*continued on page 6*

# Burger King's Rules a Royal Pain


*"The value menus might succeed in Manhattan, Kansas, but not in midtown Manhattan..."*

## SGR Attorney Challenges Burger King over Fairness of NYC Value Meals

In a case that may be trend-setting, a Burger King franchisee in New York City has sued Burger King in federal court in Miami. The franchisee, E-Z Eating Corporation, takes the position that Burger King's value menu made it impossible to operate in the Big Apple's high-rent midtown district, where it had two remaining restaurants. Burger King shut down E-Z's two midtown locations after the franchisee closed two other stores without its permission, thus violating the franchise contract.

"The value menus might succeed in Manhattan, Kansas, but not in midtown Manhattan," said Oliver Griffin, Esq. "If a Whopper costs $3.50 in New York City and a customer can buy two Whopper Juniors for $2 with a value meal, the operator eats that $1.50 difference."

Because rents are sky-high in airports and malls, Burger King exempts franchisees in these locations from having to offer its value meal. Manhattan locations, however, were expected to offer the value meal.

E-Z responded with a lawsuit after Burger King shut down its last two stores and argues that the chain interfered with its lease rights. Currently, trial is scheduled for May 2008.

*For more information on this matter, please contact Oliver Griffin of our Litigation Group at 215-241-8870, or by email at ogriffin@lawsgr.com*

---

**Stimulating Business** *continued from page 5*

that the property is not eligible for expensing under IRC section 179 (or that taxpayer has not elected to expense such property). The property's cost is $ 10,000, and it is classified as five-year property subject to the half-year convention. The amount of additional first-year depreciation allowed under the Act is $5,000. The remaining $5,000 of the cost of the property is deductible under the rules applicable to five-year property. Thus, 20 percent, or $1,000, is also allowed as a "normal" depreciation deduction in 2008. Thus, the total depreciation deduction with respect to the property for 2008 is $6,000. The remaining $4,000 cost of the property is recovered in subsequent years under otherwise applicable rules for computing depreciation.

In order for property to qualify for the additional first-year depreciation deduction it must meet all of the following requirements:

*First*, the property must be either (1) property to which MACRS applies and must have an applicable recovery period of 20 years or less, (2) water utility property (as defined in IRC section 168(e)(5)), (3) computer software other than computer software covered by IRC section 197, or (4) qualified leasehold improvement property (as defined in IRC section 168(k)(3)). *Second*, the original use of the property must commence with the taxpayer after December 31, 2007. *Third*, the taxpayer must purchase the property within the applicable time period (discussed below). *Finally*, the property must be placed in service after December 31, 2007, and before January 1, 2009. A one year extension of the placed-in-service date (i.e., to January 1, 2010) is provided for certain property with a recovery period of 10 years or longer and for certain transportation property. Transportation property is defined as tangible personal property used in the trade or business of transporting persons or property. Special rules, including a one year extension of the placed-in-service date (i.e., to January 1, 2010), also apply to certain aircraft.

The applicable time period for acquired property is (1) after December 31, 2007, and before January 1, 2009, but only if no binding written contract for the acquisition is in effect before January 1, 2008, or (2) pursuant to a binding written contract which was entered into after December 31, 2007, and before January 1, 2009. With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after December 31, 2007, and before January 1, 2009. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to commencement of manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer.

For property eligible for the extended placed in service date, a special rule limits the amount of costs eligible for the additional first year depreciation. With respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2009 ("progress expenditures") is eligible for the additional first-year depreciation.

The provision is effective for property placed in service after December 31, 2007.

*Please feel free to contact Michael S. Bookbinder at 215-241-8904 or mbookbinder@lawsgr.com or Elliott K. Braverman at 215-241-8853 or ebraverman@lawsgr.com to see how these changes may impact you.*

# PUBLICATIONS

Russell

Rosen

**Elliott Braverman**, Chair of the Tax Group, authored an article in *Tri State Real Estate Journal* on Section 1031.

*Elliott Braverman: 215-241-8853 or ebraverman@lawsgr.com*

**Paul R. Rosen**, Chair of the Litigation Group, received international press coverage for his representation of news anchor Alycia Lane in the matter of her termination from CBS3. He was profiled on the front page of the business section of *The Philadelphia Inquirer* on January 8, 2008, headlined "Lane's High-Profile Lawyer: Legal counsel for the CBS3 anchor is known for cases of repute."

*Paul R. Rosen: 215-241-8800 or prosen@lawsgr.com*

**Tim Russell**, Chair of the Securities Litigation Group and **Peter Cripps**, Chair of the Securities Regulation Group, co-authored a *Client Alert* called "Supreme Court Limits Third Party Liability for Securities Fraud." View it online at www.lawsgr.com.

*Tim Russell: 215-241-8917 or trussell@lawsgr.com*
*Peter Cripps: 215-241-8884 or pcripps@lawgr.com*

# A New Twist on AMT – Refundable Credit

The Tax Relief and Health Care Act of 2006, (enacted on December 20, 2006), added a special provision that was intended to ease the tax burden upon individuals who paid alternative minimum tax (AMT) on account of exercising incentive stock options ("ISO's") even while they continue to hold the stock acquired upon exercise.

The AMT is a parallel tax system that operates in tandem with the regular tax system, generally increasing the amount of income subject to current taxation. The AMT calculation starts with "regular" federal taxable income. Certain adjustments and preferences are added to and/or subtracted from "regular" federal taxable income to arrive at alternative minimum taxable income (AMTI). One of the many adjustments that are added to "regular" federal taxable income to arrive at AMTI is the "spread" between the exercise ("strike") price and the fair market value of the stock on the day that an ISO is exercised. For regular federal income tax purposes, assuming that certain holding period requirements are met, the exercise of an ISO is a non-event; the gain on the ultimate disposition of the stock is long-term capital gain.

From AMTI is subtracted the AMT exemption amount (for 2007, the exemption amounts for single taxpayers and mar-

*continued on page 10*

# HONORS & APPOINTMENTS

**Oliver Griffin** an Associate in the Commercial Litigation Group, has been named a Rising Star of Law. Those selected must be 40 years old or younger, practiced law 10 years or less, and made a significant impact on the profession.

*Oliver Griffin: 215-241-8870 or ogriffin@lawsgr.com*

Turet

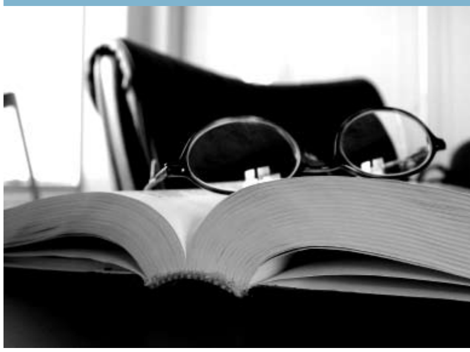
**Stanley Jaskiewicz**, a Member in the Corporate and Financial Services Group, has been named to the Board of Directors of Manna on Main Street, a food cupboard and emergency social services agency in Lansdale, PA.

*Stanley Jaskiewicz: 215-241-8866 or sjaskiewicz@lawsgr.com*

**Craig Turet**, a Member in the Commercial Litigation Group, has been named to the Board of Directors of the Southeastern Pennsylvania division of the March of Dimes.

*Craig Turet: 215-241-8821 or cturet@lawsgr.com*

# Regulation of Paralegals



What does regulation of paralegals really mean? The National Federation of Paralegal Associations, Inc. (NFPA) Statement on Issues Affecting the Paralegal Pro-fession states that regulation is a generic term that encompasses all means for granting authority for recognition to an individual or institution. There are four general types of regulation which range from a government-driven regulatory scheme to a self-regulatory system.

*...regulation would...provide consumers with confidence that paralegals performing substantive legal work are qualified to do so...*

Many professions are subject to government regulation. The primary objective in regulating a profession is to protect the welfare of consumers of professional services. Any regulatory scheme should relate directly to (a) public benefit objectives, (b) seek to promote the profession and (c) expand paralegal functions. In addition, regulation would clarify roles within a law firm, provide consumers with confidence that paralegals performing substantive legal work are qualified to do so, and restrict the use of the title "paralegal" to prevent those who are not quali-fied from using the title from doing so.

The definition of the term "paralegal" is well known. However, beyond that definition, regulation may include several specific areas. Among them are: entry qualifications into the profession, through education, training and/or experience; accreditation by an agency or organization which evaluates and recognizes a program of study or an institution; reservation of title of paralegal meaning that people who are not qualified may not use the particular title; registration by individuals either voluntary or mandatory; certification; licensure; limited licensure; restricted licensure; specialty licensure; disciplinary processes; professional indemnity insurance; and grandfather clauses.

There are a variety of forms of potential paralegal regula-tion. The first mechanism is "registration." This is a process by which individuals register their names and other pertinent information with an association or agency. This information would then be listed in some form of database maintained by that association or agency. There have been some attempts at registration of paralegals in New Jersey.

Accreditation is not in and of itself a form of regulation. It is, however, a process by which an entity is recognized as offering a program of study that meets predetermined qualifications or standards by the accrediting authority. A course of study by an "accredited" institution may or may not be part of a regulation scheme.

Another type of regulation is "certification." This is a process by which an entity grants recognition to an individual who has met certain predetermined qualifications specified by that agency or association. There is a difference between an individual being "certified" and an individual being "certificated." Generally, a certificated individual is one who has gone through a course of study and is awarded a "certificate" upon completion. Many paralegal programs offer certificates at the successful conclusion of the program, but do not provide certification to those individuals. A certificate from an accredited program may be part of the process to gain certification, but certainly is not the only criteria. The predetermined qualifications may or may not include testing.

Another form of regulation is "licensure." This is the process by which a governmental agency grants permission to persons meeting predetermined qualifications to engage in a given occupation and/or use a particular title. That permission is the license.

As with any regulatory scheme, there are pros and cons of each. With registration, there is simplicity to the system, which would allow many more paralegals to identify themselves as same. Potential employers would be able to identify and locate potential paralegal employees, and minimum standards could be set. Of course, there would be no independent verification of the accuracy of the statements made by registrants, and potential employers and/or clients may not know of or know how to access the database. The pros of accreditation are familiar to all. Persons completing a specific program of study from an accredited institution are generally recognized as having met certain minimal standards. However, there is no guaranty that the accredited institution has continued to meet the standards set by the accrediting authority, and there may be individuals who have attained equivalent or greater knowledge through other means, putting them at a disadvantage. With certification, persons who have com-pleted the certification process are generally recognized as having met and continue to meet certain minimal standards. Certification would also help protect the public from unknowingly engaging an untrained and unqualified person. As indicated above with the accreditation process, with certification, there may be individuals who have gained the equivalent or greater knowledge that would not be recognized, putting them at a disadvantage. The advantage gained through certification is only as good as the certifying authority. Finally, with licensure, attorneys are protected from hiring someone who is under trained or unqualified. Attorneys would be able to increase their client workload and be able to bill for paralegal time

*continued on page 9*

# SGR WELCOMES **NEW ATTORNEYS**


**Amy R. Brownstein** is an Associate in the Firm's Real Estate Group. Previously, she was counsel with Fidelity National Title Insurance Company and Charming Shoppes.

Ms. Brownstein has experience in all aspects of real estate transactions, including the purchase and sale of real property, retail and office leasing, loan documentation, and architectural and construction contracts. Ms. Brownstein received her B.A., cum laude, in History from Tufts University and her J.D., cum laude, Order of the Coif, from Loyola Law School in Los Angeles. She is admitted to practice in Pennsylvania, New Jersey and California.


**Everette L. Scott** has joined the Firm Of Counsel. Mr. Scott heads the Sports and Entertainment Group within the Employment Law Group. Previously, he was chairman and president of Sports and Entertainment Management Group, LLC. Mr. Scott has handled numerous marketing and sponsorship deals for professional athletes. He is a certified agent with the NFL and the NBA and is a member of the Sports Lawyers Association and the Black Entertainment Sports Lawyers Association. Mr. Scott has been a guest lecturer on Sports Law and Agency at the University of Pennsylvania, Howard University, Temple University and Widener University School of Law.

Active in the community, Scott founded the nonprofit organization Stars for a Cause, Inc. which uses celebrities to help local education initiatives. He is a board member of Urban Promise, Inc. in Camden, NJ. A third degree black belt, Mr. Scott is a certified karate instructor, teaching weekly classes to children and adults He received his J.D. from Widener University School of Law, which recently appointed him to the Law Dean's Minority Diversity Board. Mr. Scott earned an undergraduate degree from Howard University's School of Business and Public Administration.

**Paralegals** *continued from page 6*

while they are billing for their time. Courts are now beginning to delineate certain work as paralegal work and will only grant recovery of those fees if performed by a paralegal. However, higher salaries, licensing fees, continuing legal education costs, and malpractice insurance costs, may not make legal services more available and affordable. There are some who say that traditional paralegals are already regulated by the rules of professional conduct and ethics opinions governing attorneys' use of lay assistants and that further regulation is not necessary and may be counter-productive to the advancement of the profession. This opinion has been the norm in many jurisdictions. There is a claim as well that licensing would create just another bureaucracy. It is important to note, however, that all professions that are licensed have had to make concessions along the way.

The arguments for and against regulation have been ongoing for at least 20 years. At this point, however, the question may not be whether or not to regulate, but rather when is regulation coming to my jurisdiction and will regulation affect my job or my ability to obtain another job?

Since January 1999, SJPA has favored mandatory regulation, including required licensure or credentialing for all paralegals, a records retention policy on paralegals, with the Supreme Court initiating a rules approach to governing paralegals. NFPA has generally been in favor of regulation. -The National Association of Legal Assistants (NALA) as well as the ABA, and the N.J. Bar Association initially responded to the June 1998 Final Report of the Supreme Court Committee on Paralegal Education and Regulation indicating that they were not in favor of regulation by the N.J. Supreme Court. As of September, 2006, however, the Legal Assistants Association of New Jersey (LAANJ) which is now known as the Paralegal Association of New Jersey (PANJ), the New Jersey Chapter of NALA, has indicated that it would like to see a registration program adopted as proposed by the N.J. Supreme Committee on Paralegal Education and Regulation. The ABA, while not currently taking a stand on regulation, has stated in an article in Business Law Today, entitled "Getting Legal With Paralegals". An established certification or licensure system will be helpful for lawyers to ascertain paralegals' qualifications and their continuing education. As employers and consumers of paralegal services, lawyers have a strong voice in making changes in paralegal regulation.

For those of you sitting on the fence on this issue, it is hoped that this article will help you make a decision.



*Sharon Roth, paralegal: 856-778-8100 or sroth@lawsgr.com.*

*Richard Klein, Chair, Family Law Group: 856-778-8100 or rklein@lawsgr.com*

*Practicing the Art of Law℠*

**SPECTOR GADON & ROSEN, P.C.**

Seven Penn Center Plaza
1635 Market Street, 7th Floor
Philadelphia, PA 19103

**215.241.8888**
**fax 215.241.8844**

**Refundable Credit**

*continued from page 7*

ried taxpayers filing jointly are $44,350 and $66,250, respectively) to arrive at the "Taxable Excess." In general, the AMT tax rate is applied to the Taxable Excess to determine AMT liability. Taxpayer then pays the higher of AMT or his "regular" tax liability. AMT liability attributable to certain deferral adjustments (e.g., ISO's, depreciation differences between the two tax systems) creates a minimum tax credit that may be used against future "regular" tax liability in years in which the regular tax liability is greater than the AMT liability. Unused minimum tax credits may be carried forward indefinitely.

For tax years beginning after December 20, 2006 and ending before January 1, 2013 (i.e., for most taxpayers, tax years 2007 through 2012), the new provision permits individuals with a long-term unused AMT credit (discussed below) to receive a refundable credit in an amount equal to the greater of: (1) 20% of the long-term unused minimum tax credit; or (2) the lesser of: (a) $5,000 or (b) the long-term unused minimum tax credit. The long-term unused minimum tax credit is the amount of the minimum tax credit carryforward from 2003 (reduced by the amount of any minimum tax credits claimed for 2004, 2005 and 2006).

The AMT refundable credit amount is reduced if a taxpayer's adjusted gross income exceeds certain threshold amounts which are based on filing status.

For example, assume that an individual has an adjusted gross income below the threshold amount, a "regular" tax liability of $45,000, a tentative AMT tax of $40,000, and a minimum tax credit from prior years of $1.1 million of which $1 million is a long-term unused minimum tax credit. The AMT refundable credit amount is $200,000 (20% of the $1 million long-term unused minimum tax credit). The "minimum" tax credit allowable for the taxable year is $200,000 (the greater of the AMT refundable credit amount or the amount of the credit otherwise allowable). The $5,000 credit allowable without regard to this new provision is nonrefundable and the additional $195,000 of credit allowable by reason of this provision is treated as a refundable credit. Thus, the taxpayer has an overpayment of $155,000.

*To see how this new provision may impact you, please feel free to contact Michael S. Bookbinder at 215-241-8904 or mbookbinder@lawsgr.com, or Elliott K. Braverman at 215-241-8853 or ebraverman@lawsgr.com.*

**New SEC Rule**

*continued from page 2*

one year holding period, without needing to comply with the volume limitation, manner of sale or filing requirements.

While the filing of a Form 144 is still required for sales by affiliates, the filing needs to be made only if sales over a three month period exceed 5,000 shares or $50,000. Once a shareholder ceases to be an affiliate, there is a 90 day period before the shareholder can take advantage of the less restrictive resale regime applicable to non-affiliates.

*For more information or questions about Rule 144 or other securities matters, please call Peter D. Cripps, chair of the Securities Regulation Group, at 215-241-8884, or email pcripps@lawsgr.com*