



BEST WISHES FOR A HAPPY NEW YEAR!!!

UPCOMING EVENTS

Jeffrey F. Gibraltar, CPA/ABV/CFF, CFE will be speaking on Wednesday January 30, 2013 at the Queens County Bar Association. The topic is: "Business Valuation Basics".

Klein Liebman & Gresen WEBSITE REDESIGN - look for the launch of the new KLG website... coming soon...

MATRIMONIAL CASE OF INTEREST

Shah v. Shah (Appellate Division, Second Department) - The plaintiff-husband appeals the judgment of the Suffolk County Supreme Court which awards the defendant-wife 30% of his interest in Hi-Tech Trading, Inc., a company which was started by the plaintiff and a partner during the marriage. Plaintiff's interest was subsequently transferred to his partner shortly before the commencement of this action for no consideration. The appellate court determined that the plaintiff's appeal failed to adequately show that he invested in Hi-Tech with his separate property and thus, his interest, which was property acquired during the marriage, is presumed to be marital property and is subject to equitable distribution.

[LINK TO DECISION](#)

ENHANCED EARNINGS CASE OF INTEREST

Sotnik v. Zavilyansky (Appellate Division, Second Department) - The Supreme Court of Kings County failed to award the husband a portion of the wife's enhanced earnings capacity from her medical license which she attained during the marriage. Upon reviewing the appeal and the circumstances of the case, the appellate court determined that the husband's contribution to the wife's attainment of her license was minimal and that the Supreme Court was correct in determining that the husband was not entitled to any distributive share of the plaintiff's enhanced earnings capacity, citing the conclusion of law in *Esposito-Shea v. Shea* regarding enhanced earnings, which was featured in our June 2012 Newsletter.

[LINK TO DECISION](#)

[SUMMARY OF ESPOSITO-SHEA v. SHEA](#)

BUSINESS VALUATION CASE OF INTEREST

Gaiimo v. Vitale (Appellate Division, First Department) -The parties both appeal the decision of the Supreme Court, which agreed with the special referee that in the valuation of a corporation which held 19 apartment buildings, that no discount for lack of marketability (DLOM) as the application of DLOM would improperly assign Robert's interest an "illiquid minority interest value" instead of his proportionate share of a financial control level of value." The appellate court determined that while the Supreme Court erred in assessing that the marketability of the corporation's real property assets was the same as the marketability of the corporation's shares as there are added risks and costs of the corporate ownership of real estate not present had the real estate been owned outright. As such, the appellate court adopted a 16% DLOM against the assets of the corporation.

Furthermore, the appellate court addressed the issue of embedded capital gains taxes which would be realized and payable when the properties were sold. Rather than accepting a 0% discount or 100% discount as set forth by the parties, the Supreme Court adopted the methodology approved in Matter of Murphy which calculated the taxes due upon the hypothetical sale in ten years (the assumed holding period) of the properties and applying a present value discount to present day value. The appellate court concurs with the decision of the Supreme Court.

[LINK TO DECISION](#)



KLG COMPUTER FORENSICS, LLC

COMPUTER FORENSICS · DIGITAL EVIDENCE · eDISCOVERY · DATA RECOVERY

COMPUTER FORENSIC & eDISCOVERY ARTICLES OF INTEREST

The 2012 E-Discovery Case Law Awards - "This article is a look back at the E-Discovery Beat's most notable E-Discovery Rulings for 2012. The articles discussed cover issues including: spoliation of evidence, predictive coding, the attorney-client privilege and limitations on waiver, addressing proportionality when shifting the costs of e-discovery, and even the adversarial nature of e-discovery itself. In almost all the cited cases, the main problems could have been avoided by a good faith effort by both attorneys to come up with a protocol for e-discovery and documenting all e-discovery measures taken

[LINK TO ARTICLE](#)

Twitter Sunk Woman's Award After Car Crash - "Carefree Twitter messages about traveling and partying held down damages awarded by a Gwinnett County State Court jury to a woman who was injured in a car accident, said attorneys in the case. The jury returned a \$237,000 verdict-apportioned down to \$142,000-to plaintiff Omiesha Daniels, far less than the \$1.1 million she had sought. The Twitter messages talked about an 'epic weekend' in New Orleans and showed pictures of herself with friends at a beach for spring break, Cruser said. The Twitter posts gave the jury the impression that Daniels wasn't really injured, said

her attorney, Michael Goldberg of Fried Rogers Goldberg. 'There was nothing she posted that was different from what she said she could do, but with the jury we had, there was some concern that if they gave this girl a large reward, she was going to go out and party later. It's not a hard argument to make to a very conservative jury,' Goldberg said."

[LINK TO ARTICLE](#)

Ex-Employee Keeps Twitter Work Following, But Social Media Ownership Issue Lingers -

PhoneDog and its former employee, Noah Kravitz, who continued using a company Twitter profile when he left to join a competitor, have settled a San Francisco federal case over who is entitled to the account's followers. Kravitz will maintain sole custody of the Twitter profile. Other terms of the settlement were kept confidential. Social media has created a vexing business environment where employees often use social media accounts for company and personal purposes. "Good contracts and specific work agreements are important, and the responsibility for constructing them lies with both parties," said Kravitz. "[Kravitz] had the keys to the company gold," Hyman, the attorney, said of Kravitz's large Twitter following. "But the company didn't have anything on paper, so when he left, they were headed down the road to litigation. Organizations need to have something in writing," he added. "They should have protocols in place for what to do when an employee leaves."

[LINK TO ARTICLE](#)

Klein Liebman & Gresen, LLC - 6800 Jericho Turnpike, Suite 206E - Syosset, NY 11791

Phone (516) 364-3232 || Fax (516) 364-3186
New York City (212) 505-5770 || White Plains (914) 831-1555

Visit Klein Liebman & Gresen, LLC at www.goKLG.com

DISCLAIMER

Our primary purpose in sending this update is to provide information about developments in your industry; however, this email may constitute a commercial electronic mail message under the CAN-SPAM Act of 2003. This email does not contain a complete legal analysis or constitute an opinion of Klein Liebman & Gresen, LLC or any member of the firm or its employees on the issues herein described. This email contains information that may be modified or rendered incorrect by future legislative or judicial developments.

[Forward this email](#)



Try it FREE today.

This email was sent to jeff@goklg.com by jeff@goklg.com |
Instant removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).

Klein Liebman & Gresen, LLC | 6800 Jericho Turnpike, Suite 206E | Syosset | NY | 11791