

**March 2012**

### **MATRIMONIAL CASE OF INTEREST**

**Schwaber v. Schwaber (Appellate Division, Second Department)** – The husband’s motion for downward modification of child support and maintenance obligations was *denied without a hearing and affirmed* on the grounds that the husband failed to show substantial financial difficulty due to his loss of employment and he failed to seek new employment that was equivalent to his earnings capacity. Additionally, the net worth statements showed that despite his loss of employment, he had sufficient means to provide child support.

[\(Link to decision\)](#)

### **ENHANCED EARNINGS CASE OF INTEREST**

**Haspel v. Haspel (Appellate Division, Second Department)** – The court determined that the *enhanced earnings determined by the Supreme Court was calculated in error*. Upon review of the facts, it was determined that the wife was entitled to 25% rather than 50% of the husband’s enhanced earnings, therefore it was sent back to the Supreme Court because up to an additional 25% of the income not distributed was available for maintenance without double dipping. The court also determined that the Supreme Court’s use of \$75,000 as the total enhanced earnings subject to equitable distribution was not properly calculated to include the net present value of the 15 subsequent years of enhanced earnings preceding the age of 65.

[\(Link to decision\)](#)

### **ESTATE & GIFT TAX CASE OF INTEREST**

**Estate of Adler v. Commissioner (U.S. Tax Court)** – The primary issue for decision was whether the value of the gross estate of the decedent should include the undiscounted value of a fee simple interest in the Rancho Aguila property or the value of several fractional interests in the property which should be valued with appropriate fractional interest discounts. The property was granted, in equal portions, to the decedent’s five children prior to his death, yet it granted the decedent express control and use of the property for the remainder of his life. The tax court determined that this grant constituted a life estate for which transfer of the

property only occurred after Adler's death. Thus, applying a discount in this situation would not be appropriate and the value of the entire property is to be included in the gross estate. [\(Link to decision\)](#)

### **PERSONAL INJURY CASE OF INTEREST**

**Toledo v. Iglesia Ni Christo (Court of Appeals)** – The court determined, in favor of the appellant - defendant, that the plaintiff's usage of a 9% interest growth on future wrongful death damages due was incorrect and in excess of the 4.36% discount rate used to calculate the present value of damages from the date of death to date of verdict. The court states that the plaintiff provided no reasonable argument supporting discounting the future damages with a lower interest rate, and then adding back interest at a higher rate. [\(Link to decision\)](#)

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**Speedy Corrective Action and Forensic Recovery Averts Spoliation Sanctions** – This case exemplifies the appropriate steps that should be taken when a litigant discovers that one of their agents may have destroyed or altered evidence. In such a case, you should hire a computer forensic expert to undo any possible damage, report the issue to the court and to your opposition and document all efforts made to comply with discovery and repair any possible spoliation.

[\(Link to decision\)](#)

**Constraints on Forensic Computer Examinations When Acting as an Attorney's Agent** – This article highlights many issues that both computer forensics experts and attorneys should know before working together. Specifically, it addresses (1) what judicial safeguards exist to prevent material from being discoverable and when these safeguards do not apply, (2) the limitations of a forensic computer examination, (3) dealing with sensitive pieces of evidence, and (4) special rules applicable to criminal trials. It is very important that attorneys understand what requests are appropriate to make of a computer forensic expert and how to maintain control of the evidence they ultimately discover. [\(Link to article – Part 1\)](#) [\(Link to article – Part 2\)](#)

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