



## WISHING YOU A HAPPY THANKSGIVING!

### UPCOMING SPEAKING ENGAGEMENTS

**Ronald J. Klein, CPA/ABV/CFF** will be lecturing on November 29, 2012 at Columbia Law School. The topic is: "Business Valuations, Enhanced Earning Capacity and Double Dipping - In Matrimonial Matters to Assist in Negotiations and Trial."

### MATRIMONIAL CASE OF INTEREST

**Greisman v. Greisman (Appellate Division, Second Department)** - The Supreme Court awarded the defendant-wife 1/3 of the value of the husband's enhanced earnings capacity and 1/3 of the value of the husband's accounting practice. The husband contends that the Supreme Court double counted with respect to the maintenance award. However, the Appellate Court determined that even though a portion of the value of the enhanced earning was distributed as marital asset, the maintenance award was correct as it was not based upon his excess income. Additionally, the opinion of the neutral expert who valued the husband's business and license was not contested and the Supreme court rightfully utilized these values as they were proper calculations.

[LINK TO DECISION](#)

### ENHANCED EARNINGS CASE OF INTEREST

**McAuliffe v. McAuliffe (Appellate Division, Third Department)** - The wife challenged the Supreme Court's decision that of the wife's enhanced earnings of \$149,000, 15% was awarded to the husband. The appellate court determined that the husband did not, in fact, meet his burden of proof to show that her degrees resulted from anything other than the wife's own hard work and ability as she was working full time and going to school at night and weekends and that her employer was reimbursing her for her expenses such as tuition and books. Additionally, the court also determined that there was no record to even support the finding that the degrees enhanced her income after 1993 and as such the Supreme Court erred in awarding a percentage of the wife's enhanced earnings to the husband.

[LINK TO DECISION](#)

### BUSINESS VALUATION CASE OF INTEREST

**Quick v. Quick (Appellate Division, Second Department)** - The plaintiff appeals on the

grounds that a valuation of the partnership's business and its gold inventory utilized fair market value, when it should have used the book value of such inventory. The court determined that this claim is without merit as the book value of the gold as advanced by the plaintiff is based on historical costs which do not accurately reflect the increased market value of gold. However, the Supreme Court erred in adjusting the book value of the machinery and equipment by an additional \$700,000 when plaintiff's expert did in fact have a detailed and documented analysis that shows that the maximum value of the equipment totaled approximately \$300,000 and thereby lowering the value of the business.

[LINK TO DECISION](#)



COMPUTER FORENSICS · DIGITAL EVIDENCE · eDISCOVERY · DATA RECOVERY

### **COMPUTER FORENSICS & eDISCOVERY ARTICLES OF INTEREST**

**How to Preserve Data When You Can't Trust Your Adversary** - "All parties to a lawsuit are supposed to preserve documents and data once they reasonably anticipate litigation. We all know that does not always happen. Hackers and data thieves try to cover their tracks, intentionally destroying relevant data. But sometimes it's a crime of negligence, allowing valuable data to be written over in the ordinary course of business operations. When evidence is in genuine danger of being lost, you cannot wait until a Rule 26 conference to discuss how data was - or more likely was not - preserved. Unfortunately discovery often begins months, or even years, after a complaint is filed. There is a better way. Steps can be taken to preserve data, prior to the start of discovery, and even prior to the commencement of litigation."

[LINK TO ARTICLE](#)

**Analyzing Civil Claims Under the Computer Fraud and Abuse Act** - "The Computer Fraud and Abuse Act (CFAA), 18 U.S.C. §1030, is primarily a criminal statute aimed at computer hacking, but the law also creates a private cause of action in certain narrowly defined circumstances. With the prospect of additional legal remedies and an entrée into federal court, companies are asserting CFAA claims against disloyal employees who have misappropriated company data to use in a competing venture. In recent years, courts have been split about the reach of the CFAA: Is it intended only to cover computer hackers and electronic trespassers, or does it also apply to employees who abuse computer access privileges and misuse company information? While Congress is debating several bills that would clarify the scope of the CFAA, the U.S. Supreme Court has yet to consider the issue, so for now, companies will plead broad CFAA claims against disloyal employees, and trial courts are left to wrestle with the issue.

This article will discuss the CFAA generally and the definition of "unauthorized access" under the statute as it relates to employee misappropriation, as well as the use of novel CFAA theories to seek redress from the transmission of unwanted data to mobile phones and communication systems."

[LINK TO ARTICLE](#)

**For Discovery Violations, Court Orders Retention of Outside Vendor to Collect Responsive Documents, Investigate Possible Spoliation** - "In this case, the court concluded that Defendant failed to comply with its discovery obligations by 1) failing to conduct a reasonably diligent search, 2) improperly withholding responsive documents, and 3) failing to take adequate steps to ensure preservation. . . The court then ordered that Defendant would be required to retain a mutually agreed upon vendor who would be allowed access to Defendant's information systems, including those administered by the relevant customer, to search for and collect ESI "within the scope of plaintiffs' discovery requests and the Court's discovery order." While Defendant would be allowed to review the documents for privilege and confidentiality, no documents identified by the vendor could be withheld on grounds of relevance. At the same time, the vendor would also conduct a search to determine if any potentially responsive documents had been permanently deleted. The court also ordered that relevant video tapes be produced."

[LINK TO ARTICLE](#)

[LINK TO DECISION](#)

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