

Having trouble viewing this email? [Click here](#)



KLEIN LIEBMAN & GRESEN, LLC

BUSINESS VALUATION · FORENSIC ACCOUNTING · LITIGATION SUPPORT · CONSULTING

FEBRUARY 2013 NEWSLETTER

Klein Liebman & Gresen is excited to announce the launch of our new website! Please visit us at www.goKLG.com

UPCOMING EVENTS

David L. Gresen, CPA/ABV/CFF, CFE along with a distinguished panel will be speaking on Monday March 18, 2013 at the Suffolk County Bar Association. The Topic is "Direct & Cross of a Forensic Accountant."

[Register Here](#)

Peter Theobald and Christopher Kelley will be speaking on Tuesday March 12, 2013 at 6:00pm at the New York City Bar Association. The topic is "Online Evidence for Matrimonial Attorneys: Ensuring What You See is What You Get."

[Register Here](#)

MATRIMONIAL CASE OF INTEREST

Gaetano D. v. Antoinette D. (Supreme Court, Westchester County) - In determining annual income, the defendant-wife, a secretary and a realtor earned a combined \$45,000/year and her plaintiff-husband's construction business earned \$28,000/year with a net profit of \$8,000. Claims of unreported income and cash from the husbands business were made by the wife and a lack of supporting documents and the husband's claim of supplementing living expenses with profits from the sale of a spec house. Since the Court has been provided with insufficient evidence to determine income, temporary maintenance was awarded based upon defendant's needs.

[LINK TO DECISION](#)

ENHANCED EARNINGS CASE OF INTEREST

Rodriguez v. Rodriguez (Appellate Division, Second Department) - Initially, the Supreme Court awarded the wife 30% of the husband's enhanced earnings derived from his medical license on the testimony of the wife that she cared for the parties children, provided economic support, and sacrificed her education for the husband to pursue his medical degree. However, the Supreme Court erred in failing to apply an appropriate coverture fraction in the valuation of the medical education completed before the marriage. The wife received a medical degree in Spain from a combined undergraduate/graduate medical

program and contrary to the Supreme Court's findings, the work completed prior to the marriage in this program would not have only been equivalent to an undergraduate degree in the U.S., as such, the coverture was determined to be 50% completed prior to marriage and the matter remitted to the Supreme Court so that the EEC award could be recalculated.

[LINK TO DECISION](#)

ESTATE CASE OF INTEREST

Estate of George H. Wimmer v. Commissioner of Internal (U.S. Tax Court) - The parties disagree as to whether the limited partnership interest what were gifted from 1996 through 2000 were qualified under the annual gift tax exclusion. In this instance, the Court is concerned with an ownership interest in a limited partnership entity and in order to qualify for the exclusion from the annual gift tax, the donees receiving the interest must demonstrate that they had a present interest. The partnership was determined to have received and was able to expect quarterly dividends and the partners had full power to manage, control, administer, and operate the Partnership's affairs and as such, these interests qualifies for the annual gift tax exclusion.

[LINK TO DECISION](#)



KLG COMPUTER FORENSICS, LLC

COMPUTER FORENSICS · DIGITAL EVIDENCE · eDISCOVERY · DATA RECOVERY

COMPUTER FORENSIC & eDISCOVERY ARTICLES OF INTEREST

Technology: Preventing Employee Emails from Becoming "Smoking Guns" - "In many respects, email has taken the place of in-person meetings and phone calls as the primary means of conveying information. As a result, there are now digital records or transcripts of communications that, prior to the onset of the digital age, would have been memorialized only in handwritten notes or only in the participants' memories. Given the focus on emails (and e-discovery generally) in litigation today, it is important to implement appropriate policies and procedures to educate employees to avoid providing competitors with ammunition."

[LINK TO ARTICLE](#)

Sanctions Issued Because Key Documents Produced in Non-Native Format and Inadequate Search - "In one of the Rothstein Ponzi-scheme cases, *Coquina Investments v. Rothstein*, No. 10-60786 (S.D. Fla. Aug. 3, 2012), the court entered post-trial Rule 37 sanctions against a defendant bank and its outside counsel for several discovery failures, including e-discovery deficiencies. The court cited two primary e-discovery problems. First, the bank produced a key electronic database file in a "non-native" format (a black and white ".tiff" file), which caused important information in the file to be rendered illegible in the version produced to the plaintiff. . . Second, the bank and its lawyers made several incorrect representations that

a certain document did not exist, but they never searched their own document-review platform for the document. . . As a sanction, the court held that certain factual issues the bank contested at trial that were affected by the discovery failures would be "taken as established" against the bank, which would negatively impact the bank's post-trial motions and possibly its appeal."

[LINK TO ARTICLE](#)

[LINK TO JUDICIAL ORDER](#)

502(d) Order Provides Right to Claw Back "No Matter What the Circumstances" that Resulted in Production - "Upon receipt of 'dueling letters' concerning the inadvertent production of privileged information (which had been redacted but could be viewed in the metadata), the court noted that such an event emphasized 'the need for counsel for a producing party to keep a watchful eye over their e-discovery vendors,' but found that privilege was not waived because a Rule 502(d) order had been entered. Indeed, the court identified the 'one decretal paragraph' that stated that 'Defendants' production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by Defendants of any privilege applicable to those documents, including the attorney-client privilege' and concluded that, '[a]ccordingly, [Defendant] ha[d] the right to claw back the minutes, *no matter what the circumstances giving rise to their production were.*' (Emphasis added.)"

[LINK TO ARTICLE](#)

[LINK TO JUDICIAL OPINION](#)

Peter J. Theobald and Christopher J. Kelley will be speaking on Tuesday March 12, 2013 at 6:00 pm at the New York City Bar Association. The topic is "Online Evidence for Matrimonial Attorneys: Ensuring What You See is What You Get."

This program covers three main topics: (1) the ease with which emails can be faked and how to validate emails used as evidence, (2) preserving web pages, and (3) minimizing costs and eliminating obstacles when subpoenaing an internet company. This seminar includes invaluable resources such as judicial orders, legal articles, statutes and case law, and sample documents for use in practice.

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](#)



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