



SEPTEMBER 2013 NEWSLETTER

VALUATION CASE OF INTEREST

A.C. v. J.O (Supreme Court, Kings County) - Relying on the value of defendant's business Tribal Blues, Inc. of \$124,000, the Court denies any claim by the plaintiff for the defendant's business as she did not make any contributions towards it and because it was not so much a business as it was a conduit for receiving payments for defendant's work as an assistant director.

The plaintiff's enhanced earnings capacity from her dental degree was determined to be zero. Plaintiff left her position as an equity partner of a law firm to attend dental school with the husband's consent. Because her earnings capacity as an equity partner exceeded her current earnings as a dentist, the court concluded that there were no enhanced earnings.

[LINK TO DECISION](#)

SEPARATE PROPERTY CASE OF INTEREST

PATETE v. RODRIGUEZ (Appellate Division, Second Department) - Plaintiff-husband, on appeal, claims that the Court failed to award him separate property credit with respect to the 64th Street marital Property. In 1981, the parties' first divorce settlement required the defendant-wife to convey her interest in a 68th Street Property to the plaintiff. When the parties remarried in 1985, the 68th Street Property remained under the husband's sole ownership. The 68th Street Property was subsequently sold in 1987 and \$125,000 of the proceeds was used to purchase the 64th Street marital Property in question here. Appellate Court determined that the Supreme Court erred in not recognizing the \$125,000 as husband's separate property and providing him a proper credit. Subsequent to the first divorce, the 68th Street Property became the husband's property and even when the parties remarried in 1985, it remained the husband's separate property; therefore any proceeds used from the sale of that property would create a valid separate property claim.

[LINK TO DECISION](#)

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COMPUTER FORENSIC & eDISCOVERY ARTICLES OF INTEREST

Willful or Grossly Negligent Destruction of ESI Allows Presumption of Prejudice - "Previously in this case, the Magistrate Judge declined to impose spoliation sanctions for Plaintiff's deletion of emails and other ESI belonging to two important custodians absent a showing that the defendants were prejudiced by the destruction. Upon Defendants' objections, the district court reversed the denial of sanctions and imposed an adverse inference and monetary sanctions. In doing so, the Court reasoned that prejudice was presumed because the evidence was destroyed intentionally and explained that no showing of malice was required."

[LINK TO ARTICLE](#)

Proving the Negative in Discovery Productions - "A requesting party has a very difficult problem when a producing party has made a very small production that the requesting party believes is deficient. This situation quickly turns into the requesting party trying to prove a negative to the Court that a production is inadequate, without any evidence to support the argument. However, just because a requesting party cannot prove a production is inadequate, does not mean the production is adequate. A Court was faced with this issue in *Am. Home Assur. Co. v. Greater Omaha Packing Co* [and created] a good alternative to forcing a requesting party to prove a negative."

[LINK TO ARTICLE](#)

A Good Cause Metadata Nursery Rhyme - "A Plaintiff sought the production of metadata of a Word document that was created after the commencement of the lawsuit. The Word document was the Chinese translation of hours the Plaintiff, a nanny and housekeeper, worked for the Defendants. . . The Court held the Plaintiff to make a showing of good cause, because the 'handwritten notes are controlling as to any discrepancy, and no question that the Word document Bates-stamped J00001 - J00101 was created after commencement of this action, production of the requested metadata would appear to be unnecessary.' Generally speaking, parties are able to make a good cause showing for metadata associated with native files. This case was different because the native file was a post-litigation translation of handwritten Chinese. There was not an issue with the original document, thus any differences between the native file and the handwritten record would favor the original document."

[LINK TO ARTICLE](#)

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