



UPCOMING EVENTS

[David Gresen](#) will be speaking at the Central Islip Courthouse Central Jury Room on Thursday April 12, 2018 at 12:15 p.m. The program is titled "Thursdays at the Courthouse - Understanding Schedule C Income"

[David Gralnick](#) and [Josh Sechter](#) will be speaking at the New York State Society of CPA's 2018 Business Valuation Conference in New York City on Monday May 21, 2018. The program is titled "Lost Profits for Shareholder Disputes"

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MATRIMONIAL CASES OF INTEREST

Beata Culen v. Matthew Culen (App Div., 2nd Dep't)

Plaintiff (hereafter "the wife") and the defendant (hereafter "the husband") were married in August 1992. During the parties' marriage, the husband owned and operated a diving services company called Hudson Marine, Inc. (hereafter "Hudson"). The wife was a full-time mother and homemaker. In January 2009, the wife commenced this action for divorce.

In September 2012, the parties stipulated to the value of Hudson of \$421,000. Subsequently, a trial was held during which the Supreme Court awarded a credit to the wife with respect to Hudson of \$105,250, or 25% equitable distribution. The Supreme Court also awarded the wife maintenance for eight years in the amount of \$2,200 per month for the first five years and \$1,000 per month for the last three years.

The determination of the amount and duration of maintenance is based on the unique factors of every case and is decided at the discretion of the trial court. Such factors include the standard of living of the parties during the marriage, the distribution of marital property, the duration of the marriage, the health and present and future earnings capacity of the parties, the availability of the party seeking maintenance to become self-supporting and the reduced or lost lifetime earning capacity of the party seeking maintenance.

The determination of equitable distribution is also based on the factors and circumstances specific to the case. Such factors include the income and property of each party at the time of marriage and at the time of commencement of the divorce action; the duration of the marriage; the age and health of the parties; the loss of

inheritance and pension rights; any award of maintenance; any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of marital property by the party not having title; and any other factor which the court shall expressly find to be just and proper.

The husband contended that the Supreme Court erred in awarding the plaintiff a distributive share of Hudson in addition to maintenance. According to the Appellate Court, the Supreme Court did not err as Hudson is a tangible income-producing asset.

[LINK TO DECISION](#)

Hesham Taha v. Abier Elzemity (App Div., 2nd Dep't)

Plaintiff (hereafter "the husband") and the defendant (hereafter "the wife") were married in 2007. Prior to the marriage, the parties' entered into a prenuptial agreement which provided that in the event of separation or divorce each party waived the right to the other's separate property, including property acquired from the proceeds of separate property acquired during the marriage; each party would keep separate bank accounts; and the husband's maintenance obligation would be limited to a lump sum payment of \$20,000. The husband has been practicing medicine since 1987 and earns approximately \$300,000 per year. The wife did not work outside the home during the marriage and dedicated herself to the care of the household and the parties' children.

In 2013, the husband commenced a divorce action. The wife moved to set aside the prenuptial agreement on the grounds that it is unconscionable. The Supreme Court denied the wife's motion that the prenuptial agreement is unconscionable and the wife appealed.

Despite the Supreme Court's determination, the wife established that the prenuptial agreement was unconscionable. The defendant, who is unemployed, largely without assets, and the primary caregiver for the parties' young children, would, under the prenuptial agreement, receive only \$20,000, in full satisfaction of all claims, even though the plaintiff earns approximately \$300,000 annually as a physician. Accordingly, the defendant's motion to set aside the prenuptial agreement should have been granted.

[LINK TO DECISION](#)

CORPORATE CASE OF INTEREST

Mecca v. Buffalo Niagara Convention Ctr. Mgt. Corp. (App Div., 4th Dep't)

Paige Mecca (hereafter "plaintiff") commenced this action to recover damages suffered when an employee of Buffalo Niagara Convention Center Management Corporation (hereafter "defendant") dropped a tray of dishes on her. At trial, the jury found defendant liable and awarded damages to plaintiff for past and future

pain and suffering, future lost wages and business profits and future medical expenses. Pursuant to CPLR 4404, Plaintiff moved to set aside the damages awarded and sought a new trial citing that the damages awarded under those categories were against the weight of the evidence and deviated materially from what would be reasonable compensation. Supreme Court granted plaintiff's motion and the defendant appealed.

In cases where there is evidence which could support a conclusion different from that of a jury, its verdict will still be accorded great deference and respect so long as there is credible evidence to support its interpretation. In this case, the defense created a case, through cross-examination and the presentation of evidence that the injured plaintiff had exaggerated her injuries and that the injuries she complained of may have been preexisting. The plaintiffs were unable to proffer any objective evidence (i.e. MRI reports, CT scans, and EEGs), to prove the nature of the injuries that plaintiff sustained as a result of the accident. Consequently, the jury's determination to award lesser amounts of damages than plaintiffs sought for plaintiff's injuries with respect to the categories of past and future pain and suffering was fairly based upon the interpretation of the evidence.

With respect to the awards of damages for future lost wages and business profits, a jury may reject an expert's opinion regarding valuation in the calculation of damages even when, as is the case here, the expert's opinion was uncontradicted at trial. Defendant submitted evidence that established that plaintiff's business would not suffer the severe losses claimed by plaintiffs, and that plaintiff's ability to work was not as severely impacted as she claimed. Consequently, the jury's award in this regard did not deviate materially from what would be reasonable compensation.

In addition, defendant submitted evidence that called into question whether plaintiff would need the future medical treatment for which she sought damages. Accordingly, the court abused its discretion in setting aside the verdicts with respect to all of the aforementioned damages awards.

[LINK TO DECISION](#)

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KLEIN LIEBMAN & GRESSEN, LLC

Long Island	6800 Jericho Turnpike, Suite 206E, Syosset, NY 11791 Tel (516) 364-3232
New York City	60 East 42nd Street, Suite 1600, New York, NY 10165 Tel (212) 505-5770
Westchester	120 Bloomingdale Road, Suite 100, White Plains, NY 10605 Tel (914) 831-1555
Connecticut	2777 Summer Street, Suite 401, Stamford, CT 06905 Tel (203) 344-3200

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

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