



## NEWS & EVENTS

**David Gralnick, CPA/ABV** will be speaking on Thursday July 25, 2013 from 7:30p.m. to 9:15p.m. at Long Island University Post Campus. The topic is: "Forensic Accounting".

## MATRIMONIAL & ENHANCED EARNINGS CASE OF INTEREST

**OWENS v. OWENS (Appellate Division, Third Department)** - The Supreme Court adjudged that the NYC rental property and marital residence to be separate property of the husband and awarded him a 30% share of the wife's enhanced earnings as a nurse. The wife appeals such decision contending that, amongst other things, that the equitable distribution was inadequate

The NYC rental property in question was purchased in 1978, seven years prior to the marriage (in 1985) for \$130,000 and sold for \$6 million in September 2007 ultimately receiving \$4.6 million from the sale. The husband used an absentee management system and wife never had any involvement in managing the property. The rental income was treated as marital income, but proceeds from the sale were wired into a bank account in the husband's name only. The Appellate Court supports Supreme Court's conclusion that this property constituted separate property.

Additionally, the Supreme Court also properly concluded the marital residence was husband's separate property but that the wife was entitled to a share of the appreciation in value of the residence.

After the birth of the parties' first son in 1987, husband gave up his photography business and parties lived off income from the NYC rental property. In 1998, the wife earned a Bachelors degree in nursing and became licensed as a registered nurse. During the marriage, aside from brief employment periods, wife was not employed as a nurse or otherwise. The Appellate Court declines to modify the Supreme Court's award to the husband of 30% of enhanced earnings attributable to the wife's nursing degree as he was the primary caregiver for the children while she pursued her degree full time.

[LINK TO DECISION](#)

## SHAREHOLDER DISPUTE CASE OF INTEREST

**COLE v. MACKLOWE (Appellate Division, First Department)** - The Supreme Court issued a judgment on January 24, 2012 awarding plaintiff damages with respect to his interest in a

property investment. The plaintiff's expert used an investment valuation analysis because he determined that there was no market for the property on 76th Street, a conclusion the Supreme Court agreed with. However, the Court then mistakenly found the plaintiff failing to meet his burden of proof because of a prior order requiring a market value analysis even when no such market existed. Additionally, the Court also dismissed defendants arguments that the amounts awarded to plaintiff should have been discounted.

[LINK TO DECISION](#)

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

**What is Native Production for Email?** - Any time ESI is requested during litigation, the attorneys must inherently face the issue of producing ESI in either its native format or a predetermined format. Generally, this means either producing the files as is or processing them all into TIFF files. When requesting native format files, a curious issue will quickly come to light: what is the native format for email messages? This article discusses how obtaining the native format of emails is much more involved than one would assume. Luckily, there is usually no need to have emails produced in their native format and alternate forms of production can still provide all of the underlying information an attorney could want.

[LINK TO ARTICLE](#)

**Conducting "Traditional Relevance Analysis," Court Denies Full Access to Plaintiff's Social Networking Accounts** - "In this case, the Court conducted a "traditional relevance analysis" to assess Defendant's request for broad access to Plaintiff's social networking accounts and concluded that only limited discovery was appropriate. Specifically, the court concluded that 'unfettered access to Plaintiff's social networking history will not be permitted simply because Plaintiff has a claim for emotional distress damages.' Thus, the Court ordered Plaintiff's counsel to review Plaintiff's postings and to produce those determined to be relevant, 'keeping in mind the broad scope of discovery contemplated under Rule 26.'"

[LINK TO ARTICLE](#)

**Warning: Emails with Attorney Transmitted in Violation of Employer "No Personal Use" Policy will NOT be Protected by Attorney-Client Privilege or Work Product Privilege** - "In an employment contract dispute, the plaintiff employee-doctor made a motion for a protective order regarding all e-mail correspondence between the employee and his attorney pursuant

to the attorney-client privilege, CPLR 4503, and the work product doctrine, CPLR 3101(c). The defendant employer-medical center made a motion for a protective order as to discovery concerning a governmental or regulatory investigation. The Court ultimately granted defendant's motion, but denied plaintiff's motion because it found that he waived attorney-client privilege as well as the work product privilege. Given the facts of the case, and specifically the employer's "no personal use" policy, this result was not surprising."

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