

## **AUGUST 2012 NEWSLETTER**

### **RECENT PUBLICATIONS**

**Steven Cusumano** of Klein Liebman & Gresen, LLC has written an article titled "Hedge Fund Valuation in Connection with Equitable Distribution." This article was published in the July 2012 edition of the Matrimonial Strategist.

To view a copy of this article, please **CLICK HERE**.

### **MATRIMONIAL CASE OF INTEREST**

**Raynor v. Raynor (Appellate Division Second Department)** – The plaintiff (former wife) and defendant (former husband) was divorced by judgment on September 24, 2008 and entered into a comprehensive Qualified Domestic Relations Order. On January 2012, when defendant's employer, Alcatel-Lucent USA, Inc. distributed his early retirement package proceeds of \$185,588, the pension manager construed the QDRO as including any early retirement packages as marital property and subject to equitable distribution. Contrary to the defendant's contention, the court decided that his eligibility to receive the early retirement package, a form of deferred compensation in lieu of greater compensation during employment, was an enhancement of his pension, which was based on his employment during the marriage.

[LINK TO DECISION](#)

### **ENHANCED EARNINGS CASE OF INTEREST**

**Cheney v. Cheney (Appellate Division, Third Department)** – Plaintiff-wife contests that the Supreme Court should have granted her a determination of certain certifications that defendant acquired during the marriage as enhanced earnings assets. The husband did not obtain any Associate's or Bachelor's degrees. However, he did undergo training on specialized software that resulted in a teaching license but due to his lack of traditional academic degrees, his license use is extremely limited. Appellate Court agreed with Supreme Court that the information was insufficient to permit a determination as a matter of law whether defendant's certifications and teaching license constitute enhanced earnings.

[LINK TO DECISION](#)

### **ESTATE & GIFT TAX CASE OF INTEREST**

**Estate of Joanne Harrison Stone, et. al. v. Commissioner (U.S. Tax Court)** – Decedent and husband had decided to form a family limited partnership to hold the woodland parcels they had acquired on December 29, 1997 so that they could transfer it to their family. On December 31, 1997, decedent and husband gave portions of their limited interests in the Stone FLP to 21 family members. Throughout the years, the same was done and by the end of 2000, decedent and husband each owned a 1% general partnership interest and the remaining 98% interest was held by the children, children’s spouses, and grandchildren. The deficiency in federal estate tax for the Estate of Joanne Stone should not include the property transferred in the Stone FLP as it was deemed a bona fide transfer due to the fact that the decedent and husband did not rely on SFLP distributions, they actually did transfer the parcels correctly, and there was no comingling of personal and partnership funds.

[LINK TO DECISION](#)



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

**Ex-Spouse Hit With 20K in Damages for Email Eavesdropping – Klumb v. Goan** – “Klumb, described by the court as “a wealthy man,” met and married Crystal Goan, a law student who later became a lawyer. As the court describes it, the relationship was “fraught with concerns of fidelity from the very beginning.” Before the two were married, Goan purchased Spectorsoft’s eBlaster product. She surreptitiously installed copies of eBlaster on officer computers that Klumb regularly used. As the court notes, eBlaster is a software program “that can perform various spyware functions.” Goan used eBlaster to keep track of Klumb’s emails... As far as the legal issues, the court does not have any trouble finding that Goan’s interception of Klumb’s email violates the federal Wiretap Act and its Tennessee counterpart. Goan argued that the software did not intercept Klumb’s emails while they were in transit, but citing to [US v. Szymuszkiewicz](#) the court says that interception contemporaneous with receipt is interception just the same. The court rejects Goan’s defenses based on consent and based on the divorce settlement between the parties.”

[LINK TO ARTICLE](#)

## [LINK TO RELATED JUDICIAL MEMO](#)

**The Federal Judicial Center Releases Second Edition of *Managing Discovery of Electronic Information: A Pocket Guide for Judges*** – The Federal Judicial Center has published the second edition of its influential booklet, *Managing Discovery of Electronic Information: A Pocket Guide for Judges*. The publication updates the previous 2007 edition and can be downloaded from the center’s website (linked below). The publication is extremely valuable for practicing attorneys as it addresses questions such as: How should privilege and waiver issues be handled? How can the court promote the parties’ reasonable efforts to preserve ESI? What are the standards for finding spoliation and the criteria for imposing sanctions?

[LINK TO ARTICLE](#)

**Court Orders Production of Five Years of Content from Facebook, MySpace for Opposing Counsel’s Review** – “In this personal injury and product liability case, the court granted (in part) Defendant’s motion to compel production of the contents of Plaintiff’s Facebook and MySpace accounts from April 2007 through the present and ordered that the contents be uploaded to an external storage device and produced to defense counsel for review and identification of “discoverable” materials... [D]espite recognizing that “litigation does not permit a complete and open public display of Plaintiff’s life,” and that the court must “balance Plaintiff’s personal interests,” the court ordered Plaintiff to upload onto an external storage device, “*all* information from her Facebook and MySpace accounts from April 27, 2007, to the present” and to provide that information, with an “index of redacted social networking site communications,” to defense counsel to review for discoverable material not previously produced. Upon resolution of any disagreement regarding the discoverability of particular content, the Plaintiff was ordered to provide “formal discovery responses” and defense counsel was ordered to return the external storage device and its contents, without making copies.”

[LINK TO ARTICLE](#)