



WISHING YOU A HAPPY HOLIDAY SEASON!

UPCOMING EVENTS

Jeffrey F. Gibraltar, CPA/ABV/CFF, CFE will be speaking on Wednesday January 30, 2013 at the Queens County Bar Association. The topic is: "Business Valuation Basics".

Klein Liebman & Gresen, LLC Website Redesign - look for the launch of the new KLG website... coming January 2013

MATRIMONIAL CASE OF INTEREST

CMS v. WTS (Supreme Court, Monroe County) - In this particular matrimonial matter, several items were in contention including the parties retirement accounts as well as their enhanced earnings capacity. Both parties obtained advanced degrees during the marriage and each party likely contributed to their respective retirement and deferred compensation accounts during the marriage as it had a duration of 28 years. However, in regards to the advanced degrees for the parties, neither offered an expert's report on the matter and due to this lack of proof, the court declined to award either party any share of the enhanced earnings. As of the retirement/deferred compensation account, neither party met their burden of proof as no documents were admitted at trial to show the natures or the values of the accounts at any time. As such, the court also declined to provide any determination as to the proper distribution of such assets.

[LINK TO DECISION](#)

ENHANCED EARNINGS CASE OF INTEREST

Bluth v. Bluth (Appellate Division, Second Department) - The husband appealed the Supreme Court's appointment of a neutral appraiser to value his enhanced earnings capacity due to his medical license, certifications, and additional training. The Appellate Court agrees that the Supreme Court acted properly in seeking this appraisal as there was potentially residual economic value to the husband's enhanced earnings independent of the value of his medical practice. Furthermore, the court determined that there was no merit to the contention by the husband that the doctrine of law of the case barred the Supreme Court from appointing an appraiser to value his enhanced earnings and as such, the decisions of the Supreme Court was affirmed.

[LINK TO DECISION](#)

ESTATE TAX CASE OF INTEREST

Estate of Sylvia Bates v. Commissioner (U.S. Tax Court) - Sylvia Bates in her final years of life obtained much of her daily care needs from a trusted friend, Mr. Lopez. Upon her passing, there was a contest between Mr. Lopez and the decedent's grandchildren as to the validity of the two wills which had been executed by decedent. A settlement was finally reached in which Mr. Lopez was paid a sum of money in return for ceasing any future claims on the estate and any future lawsuits against the grandchildren. A subsequent estate tax return was filed for the estate of decedent and a deduction from the estate of administration expenses totaling \$498,113 for 'funds paid to Reggie Lopez' was deemed to be non deductible. The estate contends that the settlement payment to Mr. Lopez is in fact deductible because Mr. Lopez was not a family member. However, the Court determined that while settlement payments to family members is indeed non deductible, Mr. Lopez had a longstanding and close relationship with Mr. Lopez and his interest in the estate assets were memorialized in the decedent's first and second trust and so, Mr. Lopez' claim did in fact represent a beneficiary's claim to a share of an estate rather than that of a creditor's claim.

[LINK TO DECISION](#)



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COMPUTER FORENSIC & eDISCOVERY ARTICLES OF INTEREST

Use of a Hammer and of Wiping Software to Destroy Evidence Results in Dismissal of Plaintiff's Claims - "In this case, the Magistrate Judge found that dismissal of Plaintiff's claims was warranted for his "egregious" discovery conduct, including physically destroying a relevant computer with a hammer and using both Evidence Eliminator and CCleaner to erase potentially relevant evidence. The court also recommended that Plaintiff pay Defendant's reasonable attorney's fees and costs incurred as a result of the spoliation. On appeal, the recommendations were adopted by the District Court."

[LINK TO ARTICLE](#)

(NOTE: Copies of the Magistrate Judge's report and recommendation and the District Court's order are linked to on the website.)

Ex-Employee Converted Social Media/Website Passwords by Keeping Them From Her Employer - "Nenkivell worked for CYC as a "video and social media producer." Her work included producing videos, "websites, blogs, and social media pages" for CYC and the other two plaintiffs, which were founded by Jordan Finger. . . In 2010, Finger and Nenkivell developed a service called "whatsinurs," which the court described as a "social media website for cosmetic products." Ardis applied for a trademark in Whatsinurs and registered the copyright for the website. Finger sent Nenkivell an agreement for the organization and ownership of the new site, which Nenkivell never signed. Nenkivell was restless and looked around for alternate employment. Plaintiffs were unhappy about this and fired Nenkivell in June 2011. After the termination, Finger requested the laptop, which plaintiffs had provided her, and the access information for the various websites. She declined to provide this.

Plaintiffs sued and sought injunctive relief. . . The court says that it's "uncontested that plaintiffs own the rights to the Access Information," and as a result, Nenkivell's retention of this information can form the basis of a conversion claim. The court also says that plaintiffs' inability to access and update their site ("to react to online trends" and effect a new initiative to participate in "'daily deal' promotions") constitutes irreparable harm. The court orders the information turned over to plaintiffs pending resolution of the dispute."

[LINK TO ARTICLE](#)

(NOTE: A copy of the memorandum and order in this case is linked to on the website.)

For Failure to Preserve, Court Orders Production of Privileged Documents and Work-Product

- "The Relator in this case initially filed the action in April of 2005 and the Government filed its Notice of Intervention in February 2009. At that time, the Government also issued its first litigation hold. Two more holds were subsequently issued, one in March and one in June. In their motion for sanctions, Defendants alleged that the Government's litigation holds were untimely and inadequate and resulted in prejudice to the defendants. . . Summarizing its own findings, the court reasoned that "[t]he failure to issue a timely hold, the failure to identify key witnesses, the failure to take measures to suspend routine deletion of ESI, the failure to put in place an adequate litigation hold, the failure to ensure that proper procedures were being followed, and the failure to monitor the litigation hold all indicate that it is more probable than not that relevant evidence was destroyed." In short, the court found that sanctions were warranted. . . As a sanction, the court ordered the production of certain documents withheld under claims of privilege or work-product immunity, including all emails from or to the at-issue key employees; that Defendants were entitled to recover their attorneys fees and costs; and that Defendants must show cause why additional searching of certain shared drives should not be required."

[LINK TO ARTICLE](#)

(NOTE: Copies of the opinions of both the Magistrate Judge and the District Court are linked to on the website.)

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