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***THE EFFECT OF SPOUSAL CONTRIBUTIONS
ON THE DISTRIBUTION OF MARITAL ASSETS***

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Equitable Distribution Cases 2007-2014: Percentages/Contributions

I. Overall Division of Marital Assets

EQUAL

R. M., v. C. M., NYLJ, Pg.36, Vol. 251, No. 74, (Westchester Co. Sup. Ct. 4/18/14)

The parties were married on December 18, 2007 after a courtship lasting a mere 17 days. The marriage lasted 5 years and the parties had 2 children. The Court distributed the limited marital property 50/50, based upon the “the statutory factors, and the equities of the parties' circumstances.”

HUSBAND
50%

Morille-Hinds v Hinds, 42 Misc. 3d 1230(A) (Queens Co. Sup. Ct. 2014)

W, 54, a microbiologist and monied spouse, and H, 54, a handyman contractor, were married on August 28, 1993. The parties lived a shared economic partnership consisting of W working at her full time employment as a microbiologist and H taking care of the marital home, caring for the parties' child, finding and fixing real property for investment. He was a "fixer upper" involved with searching for buildings and renovating them for resale on the real estate market. The marital residence and all real property were acquired during the marriage. The properties were renovated and resold on the market by H. The marital residence was converted by H from a one level ranch home into a three level bungalow home with a rental unit. Marital residence and investment properties in St. Lucia WI equitably distributed 50/50; the bank and retirement accounts 50/50.

WIFE
Nil

R.B. v. M.S., 2014 N.Y. Misc. LEXIS 2167 (N.Y. Co. Sup. Ct 2014)

6 year marriage; one child born in 2005. The parties executed a prenuptial agreement prior to their marriage. The Sup. Ct. modified the Special Referee's report eliminating the award the W of 40% of property classified as marital. The Court found that the parties kept their financial assets separate to such an extent that the only marital property consisted of personalty, including certain furniture, jewelry, furnishings and items of Brioni clothing given to the Husband by the Wife. Given the prenuptial agreement, the Court did not address circumstances related to the equitable distribution factors.

EQUAL

Alleva v Alleva, 112 A.D.3d 567 (2d Dep't 2013)

The Supreme Court providently exercised its discretion in equally allocating responsibility for marital debt, including certain credit card debt incurred during the pendency of this action and dividing equally the proceeds of the sale of the marital home. The decision does not specify the length of the marriage, during which the parties' had two children.

EQUAL

Kessler v. Kessler, 111 A.D.3d 895 (2d Dep't2013)

Contrary to the defendant's contention, under the circumstances of this case, an award of 50% of the parties' marital property to each of them

constitutes an equitable distribution of that property. Further, the Supreme Court providently exercised its discretion in denying the defendant a credit for \$20,000 of marital funds used to pay a premarital debt of the plaintiff.

WIFE
50%

Alecca v. Alecca, 111 A.D.3d 1127 (3d Dep't 2013)

14 year marriage with two children (born in 1999 and 2004). The Court equitably distributed the assets 50/50, including ordering H to pay W \$91,750, representing half of the stipulated value of the marital residence, \$10,000, representing half of a 401(k) account, and \$8,500, representing half of a joint bank account. Supreme Court also ordered H to pay the W half of the amount in a deferred compensation account. There was no discussion of the relevant factors forming the basis of the equal distribution award.

WIFE
50%

Gilliam v Gilliam, 109 A.D.3d 871 (2d Dep't 2013)

19 year marriage; two children; in light of the length of the parties' marriage, the parties' respective roles in the marriage, the vast disparity in the parties' incomes, and the wife's age, health, education, and work history, 50% of the parties' marital assets.

WIFE
25% of EEC
50% of other assets

Hogle v Hogle, 40 Misc. 3d 1220(A) (Columbia Co. Sup. Ct. 2013)

The parties, who were both in their late-50s, were married for almost 32 years. They had two emancipated children. W was the primary homemaker and generated income through her "Longaberger" basket business. Her efforts as a homemaker were found to be as significant as H's contributions as the primary wage earner. Shortly after the parties were married, H enrolled in law school full time and earned his law degree in 1982. While H worked part-time and in the summer during law school, W provided the primary family support. The parties financed H's law school education through student loans which were eventually paid with marital funds. W awarded 25% of the EEC attributable to the H's law degree and associated license. With respect to W "Longaberger" basket business, the Court found that the business was not appropriately valued and directed the W to turn over 150 baskets. With respect to the remainder of the assets, "[g]iven the long term of this marriage, and the respective contributions of the parties to the marriage..." the Court awarded the remainder of the assets essentially 50/50.

WIFE
EQUAL

Halley-Boyce v. Boyce, 108 A.D.3d 503 (2d Dep't 2013)

W was awarded 50% of the proceeds from the sale of real property because it was purchased during the marriage. Appellate Division reversed the award to the W sole legal title to a property in Queens, "[u]nder the circumstances of this case, the defendant is entitled to 50% of the value of that real property as his equitable share." No discussion of the duration of the marriage or the number of children, although child support was awarded to the W.

WIFE
?

Musacchio v. Musacchio, 107 A.D.3d 1326 (3d Dep't 2013)

W was awarded a distributive award of \$143,000, which was slightly modified on appeal (increased to \$148,000). The Court did not specify the percentage of distribution of the various assets. 29 year marriage with three unemancipated children. Elements of the decision showed that the W had been out of the work force for a number of years, had sacrificed her own career development and made substantial noneconomic contributions to the household and the award was appropriate “considering that ‘marital property is distributed in light of the needs and circumstances of the parties’.”

EQUAL

Wei Jiang Sun v Yong Jian Li, 43 Misc. 3d 1205(A) (Queens Co. Sup. Ct. 2014)

The Parties (both Chinese) were married for 13 years and had two children. Both worked in the laundry business, which W was involved in prior to the marriage. During marriage H and W began acquiring laundromats and accumulated significant sums that were kept at different financial institutions, hidden in the business and in their home. Court held that W was the primary person responsible for the financial paper work and H took care of fixing the machines. In addition to the businesses, H and W owned two rental real properties located in Pennsylvania, which were titled in their individual names, and several investment accounts. The Court found that the parties did not present evidence on most of the property and denied equitable distribution as to those items (mostly bank accounts and various laundry businesses). The Court noted that the parties were married for 13 years, were both employed during the marriage, but “each party denies having full financial control over the marital businesses.” The Court held that they were joint enterprises.

WIFE
50%

Safi v. Safi, 94 A.D.3d 737 (2d Dep't 2012)

25 year marriage. W worked at H's business and contributed directly and indirectly to the marriage as a spouse and mother. Award of 50 percent of the marital property to W affirmed.

EQUAL

Caracciolo v. Chodkowski, 90 A.D.3d 801 (2d Dep't 2011)

3 yr childless marriage. Both parties had premarital property that was either improved during the marriage or the debt service reduced. An award of 50 percent of the value of the marital property, including the appreciation of a pre-marital home in Roslyn and a pre-marital property in Montauk.

WIFE
50%

Roberto v. Roberto, 90 A.D.3d 1373 (3d Dep't 2011)

28 yr marriage with 1 child. Both parties in their late 40s; each had been employed full time after the birth of their child and they shared child care responsibility by working different shifts. W consistently earned approximately 20k-30k but was fired twice during the marriage and obtained insurance broker's license; H had window and door installation business ("KJR"). W left insurance business and worked from home on KJR bookkeeping. The Court held that "[w]hile it is undisputed that H performed much of the physical labor in connection with the construction of the marital residence, the evidence also demonstrated that W provided substantial assistance in a variety of ways." The Court found that W made significant contributions to KJR and that the marriage "was a true economic partnership."

WIFE
50%

Keil v. Keil, 85 A.D.3d 1233 (3d Dep't 2011)

Given the length of the marriage (26 yr, childless) and the contributions of each of the parties to the marriage and to the family business holdings, Supreme Court generally distributed the marital property on a 50/50 basis including a "pool" company. Keeping in mind W's economic contributions towards the purchase of half of a farm, as well as her economic and noneconomic contributions towards improving the property, which H confirmed, 50% of the farm was marital property, of which W is entitled to one half and 50% of the appraised value of the business.

HUSBAND
HYBRID

Gifts from
W's parents
Considered

Popowich v. Korman, 73 A.D.3d 515 (1st Dep't 2010)

16 yr marriage; H awarded 15% of W's pre-marital brokerage account, which was commingled and transmuted into marital property, with over \$1 million, where the appreciation of the securities was due to passive economic forces, the substantial gifts during the marriage to W from her parents, the substantial sums from the account advanced directly to H's business and the evidence that, W "not only was the financial engine of this marriage, but ... was also the primary caretaker of the parties' son"; W awarded 40% of H's business. Decision mentions that H was awarded 30% of other marital assets, which were not specified in the decision.

WIFE
60%

Kelly v Kelly, 69 A.D.3d 577 (2d Dep't 2010)

W awarded 60% of marital assets; there was ample evidence of cruel and inhumane treatment, which included verbal and physical abuse of W. Award of 60% of the marital assets took into account the property held by each party at commencement of action, the length of the marriage, the limited maintenance award and the husband's more recent work experience and greater earning potential. Court did not specifically relate percentage to H's bad acts.

HUSBAND

Glassberg v. Glassberg, 2009 N.Y. Misc. LEXIS 2436 (N.Y. Sup. Ct. 2009)

35%	During the marriage W provided a substantial share of the financial and day-to-day support in maintaining the household, including working full time, being the primary care giver for the parties' son, and providing for the consistent and reliable income flow the family enjoyed. While H provided some support toward these efforts, the Court found it was "limited, sporadic, unreliable and inconsistent." The Court further found that H contributed sporadically and thus, infrequently to the expenses required for the upkeep of the marital residence, certainly after the first several years of the marriage, (and thus throughout the majority of the marriage). As such the Court, distributed the proceeds of sale of marital residence 65/35 to W, plus W receives \$75,000 in separate property credits and reimbursement of <i>pendente lite</i> arrears.
Lazy H Case. W did it all.	
WIFE 50%	<u>Steinberg v. Steinberg, 59 A.D.3d 702 (2d Dep't 2009)</u> Supreme Court providently exercised its discretion in dividing the marital assets [including a business asset] equally between the parties. "When both spouses equally contribute to a marriage of long duration (23 years), as here, the division of marital property should be as equal as possible."
WIFE 50% of Appr. of Mar. Res.; 100% of W's EEC; 0% of Liquid Assets	<u>Li v. Li, 2009 N.Y. Misc. LEXIS 2444 (Sup. Ct. Queens Co. 2009)</u> A deed conveying commercial real estate to W and H was executed by the H. The Court found that this created the W's marital interest in the property and made it joint property. H's claim that his execution and delivery of the deed were coerced by W contradicted his other version of events. The value of the property as of the date of trial was stipulated to be \$500,000. The appreciation of \$125,000 between conveyance as aforesaid and trial date constituted distributable marital property. There was no basis to award either of the parties less than a full 50 percent of the appreciation. The Court believed H and disbelieved W regarding her claim of a separate property contribution of \$ 50,000. The court found that the husband owed the wife \$62,500. There was no evidence that W's earning capacity had been or would be enhanced by her obtaining secretarial and accounting credentials in an evening school. The Court rejected both expert opinions as the W was not qualified to do anything more than she actually did professionally in China. As to the parties' bank accounts, the Court held that the parties had effectuated their own version of equitable distribution by elaborate schemes conceived and carried out one against the other, manipulation, retaliation, and out-and-out self-help and awarded each party their own accounts.
50%/50% (sort of)	<u>HA v. HA, 2008 N.Y. Misc. LEXIS 4573 (Sup. Ct. Kings Co. 2008)</u> Long term marriage (nearly 36 yrs before separating). Parties, who both worked during the marriage, were in their late 50s with two emancipated children. Court held that both parties made contributions to the operation of their home and the proceeds of any sale shall be shared equally, subject
Maintenance used to equalize ED	

to the various adjustment caused by the monies owed by one party to the other. The apportionment of the parties' pensions was to have been made pursuant to the *Majauskis* formula, 50/50. The Court found that the best way to divide the bank accounts, deferred compensation, IRAs, etc., was to allow each party to keep what they had in their own accounts, and also recognized that although H may end up with more than 50%, he had to pay maintenance.

WIFE
>50%

A house for a
business case.

Groesbeck v. Groesbeck, 51 A.D.3d 722 (2d Dep't 2008)

Supreme Court providently exercised its discretion when distributing more than 50% of the marital property (including H's home improvement contracting business) to W. W awarded title to the marital residence where she was residing at the time of trial with the parties' young children, while directing that the H retain his interest in his home improvement contracting business. Although the net equity in the marital residence exceeded the appraised value of H's interest in his business, "equitable distribution does not necessarily mean equal distribution."

WIFE
50% Business
50% Residence

Unclear if H
penalized for having
tried to cheat W.

Blay v. Blay, 51 A.D.3d 1189 (3d Dep't 2008)

13 yr marriage with 3 children. Date of marriage: June 1992. In 1978, H and his brother established a partnership which performed landscaping and snow removal services. The brothers each held a 50% interest in the partnership. In 1989, H and his brother purchased a 16-acre parcel of real estate. H renovated the house on the property. The house, although owned by business, became the marital residence and was further improved during the marriage through the addition of a basement bedroom and laundry room, new flooring and remodeling in the kitchen, installation of a hot tub and erection of an outdoor deck, presumably with marital funds. Also during the marriage, a karate studio was built on the property, from which the parties taught karate classes. As H was a half owner of the partnership, the mortgage was deemed paid with marital funds. The Court properly awarded W half the value of H's one-half interest in the property, after deducting the non-marital percentage attributable to mortgage payments made prior to the marriage. W awarded one half of H's 50% ownership of business as well. Court noted that H and his brother tried to deprive W of share in business by secretively reorganizing the business and transferring title out of H's name.

WIFE
10% Prof. P.
50% Accts.

Schwalb v. Schwalb, 50 A.D.3d 1206 (3d Dep't 2008)

12 yr childless marriage. H was licensed to practice medicine in 1990 and certified to practice internal medicine in 1991. W obtained a Master's degree in fine arts in 1991. Award to W of only 10% of value of H's interest in partnership was not abuse of discretion; where W had little to do with acquisition, maintenance or increase in value of property owned

by partnership. Court properly valued partnership as of date of commencement of matrimonial action based on its classification as an active asset, rather than a passive one. W was entitled to one half of funds in parties' joint account; H failed to demonstrate that account was established for convenience only; marital expenses were paid from the account and both parties deposited their earnings into the account. Court held that the limited record indicated that, while H may not have been completely happy with W's employment decisions, he acquiesced in those decisions. Furthermore, W established proof of her noneconomic contributions to the acquisition of marital property, generally, 50/50 distribution of parties' accounts.

WIFE
55% Overall

Costa v. Costa, 46 A.D.3d 495 (1st Dep't 2007)

Considered "W's
limited earnings
prospects"

The award to W of title to the marital residence and its furnishings was appropriate given her need for a home as the custodial parent of the parties' two minor children, the availability to H of other residences and his use of marital assets to purchase a Massapequa Park condominium. However, H should have been awarded a 100% interest in the condominium. W is entitled to a total of \$515,381.57 from the remaining non-residence assets, which include the individual retirement accounts of both spouses set forth in the order. This 55-45 distribution is equitable under the circumstances, taking into consideration W's contributions to the success of the husband's career and her limited earnings prospects.

WIFE
33%

Moldofsky v. Moldofsky, 43 A.D.3d 1011 (2d Dep't 2007)

19 yr marriage. The decision does not discuss the parties' respective contributions, but W awarded equitable distribution share of "one-third" of the marital assets, including H's pension.

HUSBAND
25%

Arrigo v. Arrigo, 38 A.D.3d 807 (2d Dep't 2007)

Award of 25% of marital assets to H, where the parties' marriage was of relatively short duration, both parties were relatively young and healthy, and there are no children of the marriage. H's financial contributions to the marriage were minimal.

II. Division of Business Interests

WIFE
25%

Hymowitz v. Hymowitz, 2014 N.Y. App. Div. LEXIS 5233 (2d Dep't 2014)

Parties were married for 20 years and had two emancipated children. Taking into consideration the circumstances of this case and of the respective parties, the Court found that the award to the W of a 25% share of the appreciation in value of the H's interest in Weinstein & Holtzman, a family owned hardware store, took into account the W's limited involvement in the H's business, while not ignoring the direct and indirect contributions she made as the primary caretaker of the parties' children, as a homemaker, and as a social companion to the plaintiff, while foregoing her career. The W also received 25% of the H's interest in BSH Park Row, LLC (hereinafter BSH), a holding company whose sole asset was the building located at 29 Park Row in lower Manhattan in which the hardware store was situated.

WIFE
50%

Turco v. Turco, 117 A.D.3d 719 (2d Dep't 2014)

Parties were married 15 years and had two children. Court awarded W 50% of the marital portion of the H's ownership interest in his commercial bakery business. No discussion of the relevant considerations that supported the App. Div. affirmance of the Supreme Court's award. The decision noted that the parties had led comfortable lifestyles.

WIFE
30%

Sykes v. Sykes, 43 Misc. 3d 1220(A) (N.Y. Sup. Ct.2014)

14 year marriage with one child. H was very successful financier, who owned hedge fund and was earning \$10 million per year, and the W was unemployed outside the home for pay. Because of W's assumption of the duties related to running the couple's household and caring for their child, H was free to devote his time and attention to his business responsibilities. The Court found that because of W's emotional support as a spouse and a confidante, H "was aided not only in coping with the "vicissitudes of life outside the home," but in making the decisions to change from one financial firm to another and then finally to go out on his own and start GS Gamma." W's contributions, which were strictly indirect and, though significant, "were not extraordinary, do not entitle her to the fifty percent she seeks." W received 30% percent of H's interest in GS Gamma.

WIFE
35%

Alexander v. Alexander, 116 A.D.3d 472 (1st Dep't 2014)

The Court properly exercised its discretion in determining that the W was entitled to 35% of the value of the H's corporate stock shares. The court properly considered the length of the marriage (nearly 25 years), the contribution by the W in running the household and raising their two sons throughout the marriage, and the fact that most of the increase in corporate revenues, which resulted in the increased share price, occurred in the same year as the commencement of this action; no discussion of children

WIFE
50%

Domino v. Domino, 115 A.D.3d 906 (2d Dep't 2014)

App. Div. affirmed the award of 50% of the parties' marital property, including the H's ambulette business and certain real property. The ambulette business and the real property constituted property acquired by the Parties during the marriage. The Sup. Ct. properly considered the value of these assets in determining the W's equitable share of marital property, notwithstanding the fact that the H was able to transfer title to these assets to a third party, the parties' son, during the pendency of this action.

WIFE
30%

V.M. v N.M., 43 Misc. 3d 1204(A) (Albany Co. Sup. Ct. 2014)

12 year marriage with two young children. The parties were in their late 30s. Prior to their marriage, H had been trained in his family's diamond business in India. Prior to the marriage the H incorporated Clear Light, a business involving the importing and wholesale distribution of diamonds. For her part, W was employed at Merrill Lynch at the time of the marriage and then became engaged in non-profit management work. During marriage W obtained an MBA from Duke University and a Gemological Institute of America (GIA) certification. W was actively engaged in both non-profit work and work at Clear Light until the parties first child was born in 2008. At that time, by mutual agreement, W became the primary caretaker for the family while reducing her work activities. Court held that this was a marriage of long duration and both parties made significant contributions to the marriage. Court awarded to W a 30% interest in Clear Light.

EQUAL

Wei Jiang Sun v Yong Jian Li, 43 Misc. 3d 1205(A) (Queens Co. Sup. Ct. 2014)

The Parties (Chinese) were married for 13 years and had two children. Both parties worked in the laundry business, which W was involved in pre-marriage. During the parties' marriage they acquired a number of laundromats and accumulated significant sums that were kept at different financial institutions, hidden in the business and in their home. W was the primary person responsible for the financial paper work. H took care of fixing the machines. In addition to the businesses, W and H owned two rental real properties located in Pennsylvania, which were titled in their individual names, and several investment accounts. W engaged in a series of covert actions that started during the marriage. The Court found that the parties did not present evidence on most of the marital property and denied equitable distribution as to those items (mostly bank accounts and various laundry business). The Court noted that the parties were married for 13 years, were both employed during the marriage, but "each party denies having full financial control over the marital businesses." The Court held that they were joint enterprises.

WIFE
20%

Gordon v Gordon, 113 A.D.3d 654 (2d Dep't 2014)

The trial court providently exercised its discretion in awarding W 20% of the H's interest in Floral Management Realty Corporation. The award of 20% "takes into account the W's minimal direct and indirect involvement in the H's company, while not ignoring her contributions as the primary caretaker for the parties' children, which allowed the H to focus on his business". No discussion of the length of the marriage.

WIFE
50%

Finch-Kaiser v. Kaiser, 104 A.D.3d 906 (2d Dep't 2013)

W awarded 50% of the value of H's real estate development company, Pro K Builders, Inc., based on a commencement date valuation. No discussion of the duration of the marriage or the parties' respective contribution. H choose to argue that the Sup. Ct. judge prejudged the case, that argument was rejected.

WIFE
33%

Benabu v Rienzo, 104 A.D.3d 714 (2d Dep't 2013)

Sup. Ct. providently exercised its discretion in awarding W one-third of the appreciation of the H's business interests in the subject real estate holding companies from the date of the marriage. However, the court incorrectly calculated the W's distributive share of the holding company that owned the property located at 279 Malcolm X Boulevard in Brooklyn. Correction of the court's arithmetical error results in the W's one-third share of the H's interest in this asset as \$5,555.56, not \$22,222. No discussion of the duration of the marriage, the existence of children or the factors forming the basis for the lower Ct's decision.

WIFE
25%

Elias v. Elias, 957 N.Y.S.2d 231 (2d Dep't 2012)

W awarded 25% of the value of H's interest in Ben Elias Industries. Appellate Division upheld 25% award as taking "into account [W]'s minimal direct and indirect involvement in [H]'s company, while not ignoring her contributions as the primary caretaker for the parties' children, which allowed [H] to focus on his business." Long duration marriage with two children.

WIFE
30%

Shah v. Shah, 954 N.Y.S.2d 129 (2d Dep't 2012)

H and a partner started the business (Hi-Tech) during the marriage, which was purportedly transferred by H to his partner shortly before commencement for no consideration. Court affirmed award of 30% to W. No discussion of the duration of marriage or the parties' respective contributions.

WIFE
30%

Golden v. Golden, 98 A.D.3d 647 (2d Dep't 2012)

W awarded 30% of appreciation in H's premarital business (type of business not specified); 10 yr marriage with 2 children, ages 12 and 13, at time of commencement. W was stay at home mother. Appellate Division

upheld 30% award as being “due in part to the indirect contributions or efforts of the other spouse as homemaker and parent.”

WIFE
15%

D'Ambra v D'Ambra, 94 A.D.3d 1532 (4d Dep't 2012)

The decision did not specify the length of marriage but the parties had 2 children. W was awarded 15% of value of H's business, given that W only made indirect contributions.

WIFE
50%

Nicodemus v Nicodemus, 98 A.D.3d 605 (2d Dep't 2012)

The Supreme Court improvidently awarded W only 30% of the marital property consisting of among other things an automobile restoration business finding “that an equal distribution of that marital property would be the more equitable disposition” given “the long duration of the marriage, the contribution of each spouse to the marriage and to the parties' automobile restoration business, and the probable future financial circumstances of each party[!]”

WIFE
20% of
one business;
50% of another;
10% of financial
accts.

Scher v Scher, 91 A.D.3d 842 (2d Dep't 2012)

W received 20% of the appreciated value of a business, which H incorporated three years prior to the parties' marriage. 2nd Dep't found that W made direct contributions to the business as its bookkeeper for seven years and indirect contributions as homemaker and occasional caretaker of one of H's children from a prior marriage, which enabled H to expand the business. Also, the Supreme Court's ruling that H's interest in another business was his separate property was modified and W received a 50% distributive share of the value of such business, which it found to be marital property because it was *acquired during the marriage*. W received 50% of appreciation in marital residence. (\$340,000) **BUT** the Appellate Division then affirmed the award of 10% of the value of the financial accounts “considering W's distributive award with respect to the marital residence and Home Companion Services and Green Fields, and in light of W's direct and indirect contributions.”

Decision is
inexplicable

INTERESTING – the Supreme Court excoriated the W – and held “[d]uring the course of this short, rocky relationship, nothing tied the W to the marital home. There is no rearing of children, maintaining the marital abode and/or active participation in fostering the growth of [H]'s enterprises. At the time the [W] took employment with her husband's companies, she abused her stature as the boss's wife. She came and went as she pleased and neglected accounts, costing the business dearly. She engaged in self-dealing by secretly siphoning money....On the home front, she allowed her sons from a prior marriage to run amok, damage, soil and show no respect for the husband's property. In short, to suggest any kind of symbiosis between the [W] and [H] is sheer fiction. The W's presence, as suggested by the record, was parasitic.”

WIFE
50%

Keil v. Keil, 85 A.D.3d 1233 (3d Dep't 2011)

26 yr marriage with no children. Parties were older at time of divorce; Given the length of the marriage and the contributions of each of the parties to the marriage and to the family business holdings, W awarded 50% of H's business, Keil's Pools (\$437,000), and the parties' Farm. Keeping in mind W's "economic contributions towards the purchase of half of the farm, as well as her economic and noneconomic contributions towards improving [and developing] the property" the Court held that 50% of the farm was marital property, of which W was entitled to one half.

WIFE
40%

Bergman v Bergman, 84 A.D.3d 537 (1st Dep't 2011)

14 yr marriage with one child, W awarded 40% of H's business valued at \$700,000 and 60% of her own business valued at \$10,000. There was no discussion of the duration of marriage or the parties' respective contributions.

WIFE
50%

Rich-Wolfe v. Wolfe, 83 A.D.3d 1359 (3d Dep't 2011)

W received 50% of the value of construction and demolition businesses given W's sizable contributions to the success of such businesses. W helped in operating them and eventually quit her job to work full time for the businesses. H admitted that she ran the office and was the bookkeeper; he stipulated that she made "substantial direct and indirect contributions" to the marital estate. 17 yr marriage and two children (age 16 and 7).

- Contribution pull out – the term “substantially contributed” – shows up frequently.

WIFE
25%

Massirman v. Massirman, 78 A.D.3d 1021 (2d Dep't 2010)

The Second Department affirmed the Supreme Court's award to the wife, who made only indirect contributions, of 25% of the value of H's business because she played a minimal role the husband's career while continuing her own career.

WIFE
52%

Wesche v Wesche, 77 A.D.3d 921 (2d Dep't 2010)

Long term, 20 yr marriage with two unemancipated children. H ran a funeral home business and there was evidence that H tried to conceal income. W awarded 52% (\$395,000) of the value of H's business (\$760,000). There was no discussion of the parties' respective contributions, except that the W operated a separate business which provided headstones, and she ran a small karaoke business – which was not valued nor distributed.

WIFE
HYBRID ~ 30%

P.D. v L.D., 28 Misc. 3d 1232(A) (Sup. Ct. Westchester Co. 2010)

H's 50% share of a hair salon was valued at \$106,000. W received a credit for one-half of the \$25,000 of the marital funds applied to start the business *plus* in consideration of both parties' indirect and direct contributions to the value of the business, 30% of the value remaining

after deducting the marital funds to start the business. In sum, W received \$36,800. 24 yr marriage with 2 children.

WIFE

10%

W pursued her own career distinguished from full time homemaker

Giokas v Giokas, 73 A.D.3d 688 (2d Dep't 2010)

33-year marriage. H did not commence his involvement in first of two businesses subject to equitable distribution until 21 years into marriage, which was at time when two sons were already teenagers; H's involvement with second of those businesses began six years after commencement of his involvement in first business, and only six years before he commenced the divorce action; further, during substantial portion of time in which H was involved in two businesses, W was employed outside home and parties' then-teenage children became emancipated. Since W made no direct contributions to H's businesses and made only modest, indirect contribution to them, she was awarded only 10% of their value. **IMPORTANTLY**, the Court held "[c]ontrary to the W's contentions, her circumstances are thus distinguishable from those of an untitled, full-time homemaker in a long-term marriage, whose spouse was involved in a business or practice for the entire duration of the marriage, during which time children were born and raised primarily by the untitled spouse."

WIFE

20%

"Primary Caretaker" of kids but "minimal" direct contributions to business

Baron v. Baron, 71 A.D.3d 807 (2d Dep't 2010)

Based upon W's minimal direct and indirect involvement in H's company, and her contributions as primary caretaker for the parties' children, W was awarded of the value of H's company. W's total distributive award was \$4,566,857.90, 20%, which "takes into account W's minimal direct and indirect involvement in H's company, while not ignoring her contributions as the primary caretaker for the parties' children, which allowed H to focus upon his business."

WIFE

35%

Kerrigan v. Kerrigan, 71 A.D.3d 737 (2d Dep't 2010)

35% of the value of the appreciation of H's business during the marriage was awarded to W (\$409,000). No specific reasons given for the appropriateness of the 35% award other than "under the circumstances of the case." While the 2nd Department decision did not identify the type of business, the Supreme Court decision (Kent, J.) described it as "a small company that sells industrial chemicals". The company had "minimal fixed assets" and "almost no inventory". There was no discuss about the duration of the marriage or there being children, except that child support was awarded.

WIFE

35% Business
50% Mar. Property
H had skills that

Wyser-Pratte v. Wyser-Pratte, 68 A.D.3d 624 (1st Dep't 2009)

H already possessed substantial business assets when the parties were married, as well as the skills that allowed him to earn the "extraordinary" income the parties enjoyed during the marriage. 1st Department noted that

drove his success
before the marriage

W contributed to the further development of the business by decorating and renovating the parties' residences, among other things, to create impressive surroundings in which to entertain H's clients and potential investors. 35% of H's business assets to the W; which included the couple's own trading accounts, invested with H's brokerage business and deferred incentive fees; W awarded 50% of other assets.

WIFE
40%
Remanded
For Review

Zaretsky v. Zaretsky, 66 A.D.3d 885 (2d Dep't 2009)

15 yr marriage; 3 children; Appellate Division reversed award of 40% in H's separate property business (M&H Property and its appreciated value); and remanded award of 40% of appreciated value of H's 1/3 interest in one of his business (Maxi-Aids). Although H and his father attempted to downplay the H's efforts, the record revealed that the appreciation of Maxi-Aids during the marriage was due, at least in part, to the H's active participation, which was facilitated by W's indirect contributions as a homemaker. The Supreme Court, however, failed to articulate fully its basis for awarding W 40% of the *total* appreciated value of H's interest in Maxi-Aids, as opposed to a portion thereof. Before making the distributive award, the Court should have considered the extent and significance of H's efforts in relation to the active efforts of others and any additional passive or active factors, and determined what percentage of the total appreciation constituted marital property subject to equitable distribution.

WIFE
50%

Bricker v Bricker, 69 A.D.3d 546 (2d Dep't 2010)

H's business (JCB Holdings) distributed 50/50 and 60/40 of corporate stock in Bricker's Inc. There was no discussion of the duration of marriage or the parties' respective contributions.

WIFE
50%

Stay at home
mother.
No articulated
direct contributions.

Wasserman v. Wasserman, 66 A.D.3d 880 (2d Dep't 2009)

DOM 1979; 24 yr marriage with 2 emancipated children. H was sole source of financial support for the family and the W was a stay at home mother prior to the commencement of the divorce action but graduated from SUNY purchase with a BA in 2002 and became a licensed real estate broker in 2003. Fact that H may have made greater economic contributions to the marriage than W does not necessarily mean that he was entitled to a greater percentage of the marital property. W awarded 50% of the value of H's businesses (nature of business not specified in decision).

WIFE
40%
(of 10% appreciation)

Smith v. Winter, 64 A.D.3d 1218 (4th Dep't 2009)

DOM 1996; 12 yr marriage with no children. Prior to the marriage H was sole shareholder, CEO and president of American Wire, which acquired PNA. H was found to be substantially responsible for day to day management and operations of American Wire but had no involvement in

the day-to-day operations of PNA. American Wire had no appreciation during the marriage while PNA appreciated by \$20 Million. 10% of the \$20 Million appreciation found to be marital property and W was entitled to 40% based on her “contribution as homemaker.” Court also distributed marital bank accounts 50/50.

WIFE
15%

Gering v. Tavano, 50 A.D.3d 299 (1st Dep't 2008)

Award was proper given W’s failure to contribute to the business, lack of cooperation with respect to discovery of her own assets, and receipt of temporary maintenance. There was also an adverse inference drawn against her for failure to disclose. The duration of this marriage with 2 children was not specified.

WIFE
35%
Housewife
abandoned career;
limited direct
contributions

Ciampa v. Ciampa, 2008 NY Slip Op 442 (2d Dep't 2008)

Long term marriage. Appellate division recognized accommodation between the W’s limited involvement in the business, while not ignoring the direct and contributions she made as the primary caretaker of the parties’ 4 children, as homemaker, and as social companion to her husband, while foregoing her career as an attorney. (nature of business not specified in decision)

WIFE
40%
Reduced from 50%
Housewife no
direct contributions

Schorr v. Schorr, 46 A.D.3d 351 (1st Dep't 2007)

Because W's contributions to H's business interests, which accounted for substantial portion of the marital assets, were “modest, and taking into account her contributions as a homemaker, the 1st Department reduced W's award from 50% to 40% of the value of H's business interests (nature of business unspecified in the Court's decision).

WIFE
40%

Meccariello v. Meccariello, 46 A.D.3d 640 (2d Dep't 2007)

The Supreme Court improvidently exercised its discretion in awarding W only 25% of the 30% portion of H's business that H acquired in 1997 (*see* Domestic Relations Law § 236 [B][5][d][6], [13]). Under the circumstances of this case, W should have been awarded 40% of the 30% portion. There was no discussion of the parties’ respective contributions and the duration of the marriage was not specified.

WIFE
50%

Direct contributions
Also primary
caretaker of children;
H nearly allowed
home to be

M.A. v. K.A., 2007 N.Y. Misc. LEXIS 8578 (Sup. Ct. Nassau Co. 2007)

28 yr marriage with two children. W was awarded 50 percent of H's share of the increase in the value of the H’s Jewelry business's during the marriage. The increase in value was due in large measure to W's direct contributions, for which she was not compensated by salary or commissions. She took many courses during the marriage, which provided her with skills in grading diamonds and gem stones and in designing jewelry, and testimony established that she accompanied

foreclosed

H on many business trips and worked at trade shows. She also made indirect contributions, providing for virtually all the care for the children and the marital residence, even functioning as the general contractor while it was being built. W was also awarded a greater share of the marital home. As a consequence of H's failure to obey a *pendente lite* order, a foreclosure action was commenced on the home, and initially it was only through the efforts of her parents that the family was not rendered homeless.

III. Professional Practice Interests

WIFE
15%

ML. S. v. MA. S., N.Y.L.J. Pg. 26, Vol. 251, No. 50, March 17, 2014

Parties, who were both in their early 40s at the time of trial, were married 15 years and 11 months and had two teenage children. W was not employed during the last 13 years of the marriage. W conceded that she did not cook or clean the home but rather "supervised" staff employed to maintain the home and assist in child-care. W testified she scheduled and drove the children to their daily activities and assisted them with homework. Her direct contributions toward H's business was limited to an annual holiday party, picnic and at times entertaining pharmaceutical representatives at the home prior to dining out. Court found such contributions to be minimal. The Court noted that the W's efforts were different than those of an untitled, full-time homemaker in a long-term marriage, whose spouse was involved in a business practice during the marriage, during which time the children were raised primarily by the untitled spouse. W awarded 15 percent of the H's interest in his medical practice, in Orlin & Cohen, the entity known as ASC LLP and the property known as OCOA.

HUSBAND
25%; 0% in
Bus. Corp.;
0% of W's
EEC

A.C. v J.O., 40 Misc. 3d 1226(A) (Kings Co. Sup Ct 2013)

Parties had 12 year marriage with two young children . The W owned a dental practice and the H worked as a first assistant director, primarily for television. He had also written screenplays and he made a full length film, which he both wrote and directed. In consideration of the H's minimal direct and indirect contributions toward the establishment of the W's business, but cognizant of his support of her for the four years she was in dental school, and of the parties' first child, who was born during the summer before she started her last year of dental school, the court awarded him as his equitable share of her dental practice, 25% percent of the value of Ada S. C D.D.S., P.C.. H also entitled to a credit for his one-half share of the HELOC funds used to purchase the client list acquired by the W as the "initial investment" in her business. The court awarded both H and W sole interest in his or her respective business corporations.

W's EEC from acquisition of her dental degree was determined to be zero. It was noted that the W left her position as an equity partner at a law firm and attended dental school with the full consent of her H, and that both parties understood this would allow her to earn a substantial salary, but was unlikely to enhance her earning capacity. If she was still an equity partner at a law firm, it is implied her earnings would be higher than they are now. Thus, regardless of whether H made non-monetary contributions to the achievement of the dental degree, there can be no distribution of any such value where the value of W's enhanced earning capacity is zero.

Wife 10% Indirect contributions only; W pursued own career	<u>Charap v. Willett, 84 A.D.3d 1000 (2d Dep't 2011)</u> W received 10% of the value of H's law practice, where she made only indirect contributions to his career and was employed herself as an attorney for most of the lengthy marriage.
WIFE 50%	<u>Henneberry v. Borstein, 87 A.D.3d 451 (1st Dep't 2011)</u> 1 st Department affirmed Judgment of Supreme Court, New York County (J. Gische, J.S.C.) awarding W 50% the appreciation on H's share of his law practice. Also awarded 50% of value of interest in farm. There was no discussion of the duration of marriage or the parties' respective contributions.
WIFE 20% Bus 60% Remainder	<u>Davis v O'Brien, 79 A.D.3d 695 (2d Dep't 2010)</u> W awarded 20% of value of H's law partnership (reduced from 50%) where W successfully embarked on her own full-time career and made only indirect contributions to H's career; HOWEVER, W awarded 60% of certain marital assets based on the significant decrease in H's contributions to the marriage as a financial, emotional, and supportive partner for more than four years. Court noted that this was a longer duration marriage, and also recognized equitable distribution is not only on financial contribution but also on "wide range of non-renumerated services to the joint enterprise, such as homemaking, raising children and providing the emotional and moral support necessary to sustain the other spouse in coping with the vicissitudes of life outside the home."
WIFE 35% Bus. 15% Other Bus. Minimal Direct Contributions=35% No Direct Contributions=15%	<u>Robert M. v. Christina M., 29 Misc. 3d 1209(A)(Sup. Ct. Rockland Co. 2010)</u> During the marriage, in 2001, H purchased a dental practice, including a building, with marital funds and a loan, which, to the extent it was repaid, marital funds were used. Taking into account that W had minimal direct involvement with the practice (which "did little to enhance the value of the property"), other than as a short term employee, plus the contribution of marital funds, 35% share of the value of the business, including the real estate, was awarded to her. Separately, in 2001, H received as a gift a one-half interest in a New York City dental practice. As no marital funds were spent by H in obtaining his interest and W had no direct involvement in the practice, she was entitled 15% of the appreciation of H's one-half interest.
WIFE 0%	<u>Albanese v. Albanese, 69 A.D.3d 1005 (3d Dep't 2010)</u> 18 yr marriage with two children. H graduated from law school in 1982 (5 yrs before DOM) and worked as a solo practitioner in his own firm throughout. H's practice was found to be separate property but no base line value established at the DOM. The 3d Dep't noted that while W's

role as homemaker and mother to the parties' children established that she was entitled to a share of any appreciation in the practice, because there was no evidence of appropriate value, the award to her of \$104,000 was reversed.

WIFE

15% Reduced from
40%; W pursued
own career

Peritore v Peritore, 66 A.D.3d 750 (2d Dep't 2009)

Appellate Division reduced the Supreme Court's award of 40% to 15% of the value of H's dental practice (\$233,000). W pursued her own career on a full-time basis and made only indirect contributions to H's dental practice. There were no children of this 6 yr marriage.

WIFE

25%
READ AND
SHAKE
YOUR HEAD

Mairs v. Mairs, 61 A.D.3d 1204 (3d Dep't 2009)

Appellate Division increased the Supreme Court's award to the wife of 15% to 25% of the value of H's medical practice and enhanced earning capacity from his medical license (ophthalmologist) (\$1,493,000). During this long-term marriage, W, who was a tenured math professor employed at Community College of Philadelphia, was the primary caretaker for their 7 children, managed the household, made economic contributions (at times, was the primary source) relocated the family from Utah to Philadelphia and then to New York "for the express purpose of allowing H to pursue his medical studies and obtain his medical license." During the marriage, H completed his undergraduate studies and earned his medical degree and completed both his internship and residency. Additionally, W made direct contributions to the medical practice including managing the practice and assuming responsibility for the preparation of all invoices and payment of all bills.

WIFE

30% Bus.
50% Mar. Property

Quinn v. Quinn, 61 A.D.3d 1067 (3d Dep't 2009)

No direct contribution
but W abandoned
career and moved to
support H

14 yr marriage with 2 children. 30% of the value of H's medical practice awarded to W due to her indirect contributions as a homemaker and parent. W made no direct contributions, financial or otherwise, to H's business. However, W agreed to forgo a career in retail when the parties decided to get married and relocate, and Court recognized her domestic and child rearing contributions to the marriage that allowed H to build his practice. H had obtained medical degree and license and established orthopedic surgeon prior to the marriage. Court went on to hold that the remainder of the overall marital assets be distributed equally.

WIFE

25% Practice;
10% EEC
W's overall
contributions;
No dir. contrib. and
H worked very hard

Fleischmann v. Fleischmann, 24 Misc.3d 1225(A) (Sup. Ct. Westchester Co. 2009)

29 yr marriage; 3 children; W received 10% of the martial component of H's law license and 25% of the value of H's law firm partnership interest because W's contributions were overall contributions to the marriage and H's attainment of his partnership interest was due to him "having worked long of hours with thousands billable hours leading to a steady rise to partner."

WIFE
35%
Indirect
contributions only

Petosa v. Petosa, 56 A.D.3d 1296 (4th Dep't 2008)

Wife awarded 35% of H's tax accounting business based on indirect contributions toward the business. There was no discussion of the duration of the marriage or whether there were any children.

WIFE
35%

W homemaker
No description
of direct
contributions;
W's bad conduct
hurt H's status

Schwartz v. Schwartz, 54 A.D.3d 400 (2d Dep't 2008)

30 yr marriage; 1 child. W awarded 35% of the value of H's law practice (at a mid-sized firm), which took into consideration the long term marriage (30 yrs), that W was the primary caretaker for the parties' child during the early part of H's career, which allowed H, at one time, to earn the 3rd highest share of profits at his law firm, but also her bad conduct toward the latter part of the marriage that harmed H's status at the law firm, reducing his salary and profits.

The decision specifically said that it took into account W's bad conduct- as if to suggest that it reduced her award accordingly

WIFE
30% of both
practice and EEC
W's contributions,
albeit limited, were
both dir. and indir.

Kaplan v. Kaplan, 51 A.D.3d 635 (2d Dep't 2008)

W received 30% of the value of H's dental practice and license. The award took into account the limits of W's involvement with the practice and the attainment of H's dental license while not ignoring her direct and indirect contributions.

WIFE
35%

W's involvement
in practice limited

Griggs v. Griggs, 44 A.D.3d 710 (2d Dep't 2007)

Long duration; 2 children. Taking into account W's limited involvement with the H's medical practice and her indirect contributions to it, she received 35% of the value of it. "Award takes into account the limits of W's involvements with the practice, while not ignoring the direct and indirect contribution that she did make."

IV. Division of Enhanced Earning Capacity

The spouse seeking the distributive award of the enhanced earning capacity or an interest in a business or professional practice must demonstrate that he/she made a substantial contribution to the title-holding spouse's acquisition of the license and/or degree or the business interest; it is not an overall contribution to the marriage analysis. See **Evans v. Evans, 55 A.D.3d 1079 (N.Y. App. Div. 3d Dep't 2008).**

W

30% EEC

50% of other assets

Kim v Schiller, 112 A.D.3d 671 (2d Dep't 2013)

App. Div. reversed Sup. Ct. award to the W of 50% of the H's EEC and reduced it to 30%. No discussion of the duration of the marriage; 2 unemancipated children. Award was appropriate given W's substantial indirect contributions to the attainment of a medical degree and license, including having been supportive and worked full-time throughout the marriage, except when she was on maternity leave. The W did not make direct financial contributions to the attainment of the degree. Award was reduced given H's "accommodations for the sake of the [W's] career and desire to remain near her family." Each party awarded 50% of retirement accounts and equity in the marital residence.

HUSBAND

25%; 0% in

Bus. Corp.;

0% of W's

EEC

A.C. v J.O., 40 Misc. 3d 1226(A) (Kings Co. Sup Ct 2013)

Parties had 12 year marriage with two young children . The W owned a dental practice and the H worked as a first assistant director, primarily for television. He had also written screenplays and he made a full length film, which he both wrote and directed. In consideration of the H's minimal direct and indirect contributions toward the establishment of the W's business, but cognizant of his support of her for the four years she was in dental school, and of the parties' first child, who was born during the summer before she started her last year of dental school, the court awarded him as his equitable share of her dental practice, 25% percent of the value of Ada S. C D.D.S., P.C.. H also entitled to a credit for his one-half share of the HELOC funds used to purchase the client list acquired by the W as the "initial investment" in her business. The court awarded both H and W sole interest in his or her respective business corporations.

W's EEC from acquisition of her dental degree was determined to be zero. It was noted that the W left her position an equity partner at a law firm and attended dental school with the full consent of her H, and that both parties understood this would allow her to earn a substantial salary, but was unlikely to enhance her earning capacity. If she was still an equity partner at a law firm, it is implied her earnings would be higher than they are now. Thus, regardless of whether H made non-monetary contributions to the achievement of the dental degree, there can be no distribution of any such value where the value of W's enhanced earning capacity is zero.

WIFE

25%

Other assets 50/50

Hogle v Hogle, 40 Misc. 3d 1220(A) (Columbia Co. Sup. Ct. 2013)

The parties, who were both in their late-50s, were married for almost 32 years. They had two emancipated children. W was the primary homemaker and generated income through her "Longaberger" basket business. Her efforts as a homemaker were found to be as significant as H's contributions as the primary wage earner. Shortly after the parties were married, H enrolled in law school full time and earned his law degree in 1982. While H worked part-time and in the summer during law school, W provided the primary family support. The parties financed H's law school education through student loans which were eventually paid with marital funds. W awarded 25% of the EEC attributable to the H's law degree and associated license. With respect to W "Longaberger" basket business, the Court found that the business was not appropriately valued and directed the W to turn over 150 baskets. With respect to the remainder of the assets, "[g]iven the long term of this marriage, and the respective contributions of the parties to the marriage..." the Court awarded the remainder of the assets essentially 50/50.

50% MR to W

30% EEC to H

Owens v Owens, 107 A.D.3d 1171(3d Dep't 2013)

W and H married for 24 years with 2 older children. Family lived off income generated from H's ownership in separate property, premarital Manhattan real estate. W earned a Bachelor's degree in nursing and obtained her license as a registered nurse. During the marriage, aside from very brief periods of employment, the W was not employed as a nurse or otherwise. In 2007, the H sold the NYC rental property for \$6 million and, thereafter, the family was supported by the proceeds. The App. Div. modified the award to the W of the appreciation of the value of marital residence from 40% to 50% "taking into account the parties' assets at the commencement of the action and the husband's economic fault." The App. Div. did not modify the award to the H of 30% of the enhanced earnings attributable to the wife's nursing degree, as he encouraged her to pursue her dream, financed her education and was the primary caregiver for the children while she pursued her degree full time. The net result was the W received approximately \$140,000.

WIFE

15%

McCaffrey v McCaffrey, 107 A.D.3d 1106 (3d Dep't 2013)

During the 12 year, childless marriage, the H (age 52) earned an Associate's degree in telecommunications and a Bachelor's degree in business administration with a minor in accounting. H received numerous promotions throughout the marriage, eventually holding the title of director of a department relevant to his degrees. There was testimony from two witnesses that H's degrees were not required for his promotions and that his promotions were mostly attributable to his superior job performance, however "neither witness testified that his degrees were not a factor in his promotions" and the Court rejected that argument. W (age 42) found to have made contributions including, rearranging her schedule

to transport H to and from classes, and assumed a greater share of the household responsibilities, and that part of the H's tuition was paid for by marital funds. However, H expended significant effort in obtaining his degrees; attended night classes while working full time, and occasionally at a part-time second job. Much of his professional success was attributable to his superior job performance. W awarded 15% of the enhanced earnings (totaling \$11,475).

W
TBD

Investment and
Retirement assets
50/50

Laizonis v Laizonis, 105 A.D.3d 1351 (4d Dep't 2013)

App. Div. reversed Sup. Ct. and held that W entitled to a portion of EEC from H's master's degree which he earned in part during the marriage. W made a "modest" contribution toward the H's attainment of a master's degree and thus that she was entitled to some portion of his enhanced earnings. Record demonstrated that the parties married shortly after the W graduated from college and that, at the time, the H was teaching high school and had five years in which to obtain his master's degree. Court found that W put her own master's degree "on hold" while the H pursued his degree. During that period, the W substitute taught, performed household duties, and assisted H with his course work and took over H's swim club, planning practices for the varsity swim teams he coached, and volunteering to coach those teams for him several times a week. W also worked part-time as the head coach of a university swim team and, when the parties' first child was born, she worked full-time as an elementary school teacher. In addition the Court affirmed the equal distribution of the joint investment account and marital portion of H's 403-b was divided 50/50.

HUSBAND
15% Practice
15% EEC

Vertucci v Vertucci, 2013 N.Y. App. Div. LEXIS 1120 (3d Dep't 2013)

19 yr marriage with 3 children. H awarded 15% of W's EEC as a lawyer and 15% of her law practice value. W was married to H during her entire third year of law school and her practice was started during the marriage. Conflicting testimony regarding the extent of H's involvement in matters that contributed to W obtaining her law degree and her subsequent starting a private law practice and the decision does not address their finding with respect to H's involvement other than to state that the Appellate Division deferred to Sup. Ct. determination.

HUSBAND
0% MED LIC.

Contributions
"de minimus"

Sotnik v. Zavilyansky, 956 N.Y.S.2d 514 (2d Dep't 2012)

Where H's contribution to W's attainment of her medical license was *de minimis*, the Supreme Court providently exercised its discretion in determining that H was not entitled to any distributive share of the W's enhanced earning capacity from her medical license. The duration of this marriage with one child was not specified.

HUSBAND
5% LIC.; 0% PHD

50% of accounts
Why does this guy
Get 50% of
anything?

Mojdeh M. v. Jamshid A., 36 Misc. 3d 1209A (Sup. Ct. Kings Co. 2012)

11 yr marriage, with one 11 yr old son; both parties had graduate degrees. Court determined that H did not make a substantial contribution toward W completing her license. He was not a homemaker, his contribution to raising the parties' child was minimal, taking the child for walks and watching television with the child. H did not perform many household duties and he cooked for himself and did his own laundry but did not do so for the wife. H provided no economic support, no maintenance to the marital home and did not sacrifice his education while W pursued her medical license. On the contrary, W testified that she repeatedly requested that H make use of his education and seek employment, but to no avail. He appeared to be more of an obstructionist and drain to the marital relationship as opposed to being an asset. W worked two jobs at times to enable the parties to pay their rent. In consideration of H's very limited contribution and efforts towards W attaining her license H is awarded 5% of the enhanced earning value. Equitable distribution of W's enhanced earning capacity related to her gastroenterology fellowship is denied, as H failed to proffer any evidence as to the value of this certificate. 50/50 on bank accounts and automobile.

HUSBAND
H 10% of W's EEC;
W 0% of H's J.D.

Esposito-Shea v. Shea, 94 A.D.3d 1215 (3d Dep't 2012)

15 yr marriage with 2 children. During the marriage H completed studies in psychology and earned PhD degree and W went to law school and earned degree. After DOC W passed bar exam and received her license to practice law. Appellate Division affirmed Sup. Ct. award of 10% of EEC of W's law degree. 3d Department held that H's contributions as the family's primary wage earner during the parties' marriage, and his willingness to arrange his work schedule so that he would care for the children while the W attended law school, were representative of "overall contributions to the marriage, rather than additional efforts to support W in obtaining her license." Further held that W's own efforts in obtaining her law degree cannot be minimized, because she worked in part time positions throughout the marriage and was employed during the summer months while attended law school, also earning merit scholarships and paid a significant part of her law school tuition with an inheritance she received during the marriage. W awarded 0% of value of H's PhD upon the ground that H had satisfied most of the requirements he needed to obtain his degree before the marriage and paid for it while providing financial support for his family. Court held that W's assistance was "simply not so significant or unique as to warrant awarding her a distributive share of its value."

HUSBAND
15% EEC

Gallagher v. Gallagher, 93 A.D.3d 1311 (4th Dep't 2012)

Long term marriage of over 25 yrs. Appellate Division awarded H 15% of the value of W's master's degree without discussing contributions, other

WIFE 45% of Farm H's contributions "modest"	than to state "where only modest contributions are made by the nontitled spouse toward the other spouse's attainment of a degree . . . and the attainment is more directly the result of the titled spouse's own ability, tenacity, perseverance and hard work, it is appropriate for courts to limit the distributed amount of that enhanced earning capacity." W awarded 45% of the value of the farm, where it proven that both parties operated the farm.
HUSBAND 5% Nursing 31.6% MR	<p><u>Nidositko v. Nidositko, 92 A.D.3d 653 (2d Dep't 2012)</u> 5 yr marriage. During the marriage, W attended college and received her nursing degree. H awarded 5% share of W enhanced earnings due to her attainment of a nursing degree and professional license (\$18,850). Court also found that W's residence was separate property obtained 5 yrs prior to the marriage. One year into the marriage, home was conveyed from W to W and H and refinanced. Parties used the refi to pay off \$30k of H's indebtedness and \$20k of W's indebtedness. Appellate Division held that Supreme Court grant of \$15k or 31.6% of marital portion of residence to H (<i>i.e.</i>, that amount of appreciation once it was transferred into joint names) was proper, but that because refinance was used to pay \$30k of H's debts and only \$20k of W's debt, W was entitled to \$10k credit. Therefore, H was only due \$5,000. The opinion contained no discussion about the parties' respective contributions or whether there were any children.</p>
WIFE 10%	<p><u>Pankoff v. Pankoff, 84 A.D.3d 690 (1st Dep't 2011)</u> 10% of H's enhanced earning capacity awarded to W, affirmed, because the record demonstrated her "economic and non-economic contributions" to the husband's license and career during the marriage (nature of license and career unspecified). The duration of this marriage with two children was not specified.</p>
WIFE 30% MBA "Substantial indirect contributions"	<p><u>Huffman v Huffman, 84 A.D.3d 875 (2d Dep't 2011)</u> W received a 30% share of H's enhanced earning capacity due to his MBA degree because she made substantial indirect contributions by supporting his educational endeavors, contributing her earnings to the family, being the primary caretaker of the parties' 3 children, cooking family meals and participating in housekeeping responsibilities. Not an actual prerequisite to H's employment. The duration of the marriage was not specified.</p> <ul style="list-style-type: none"> • Contribution pull out – substantial indirect contributions – SUPPORTIVE; Contributing earnings; primary caretaker; cooking family meals – BASICALLY she did everything!
WIFE 10% Med. Lic.	<p><u>Sadaghiani v Ghayoori, 83 A.D.3d 1309 (3d Dep't 2011)</u> 8 yr marriage. In 2001, the parties were married in Iran, where H was a licensed physician. Shortly after the marriage, W, pregnant with the</p>

HUSBAND
0% of W's Pension
and Def. Comp.

parties' only child, returned to the W's residence in Albany County. Subsequent to W's move, H arrived in New York to obtain licensure and pursue his medical career in New York City, and he sporadically returned to the marital residence in Albany County. The 2nd Department reduced W's award to 10% of the marital portion of H's medical licenses (from 30%) referencing that: (i) H obtained his medical degree prior to the marriage and, by the time he arrived in the U.S., he had already passed some of the examinations required to practice medicine here; (ii) the W and H cohabited for less than six months in New York; (iii) H's expenses while living in New York City were paid by his mother; (iv) there was no evidence that W interrupted her career or adjusted her lifestyle to support H and she obtained a Master's degree while maintaining full-time employment; and (v) W initially provided some support/assistance to H upon his arrival, plus maintained the marital residence in Albany County, to where he occasionally returned, and cared for their child. H awarded no portion of W's pension and deferred compensation plans as "there was no evidence of any direct or indirect contribution by H to W's acquisition of either of these assets."

WIFE
35% Med. Lic.

Bayer v. Bayer, 80 A.D.3d 492 (1st Dep't 2011)

W received 35% of H's enhanced earning capacity based on her economic and noneconomic contributions to his attainment of a medical license and subsequent lucrative career and her termination of her career and absence from the job market in order to maintain the marital household. Long duration marriage, with no discussion in the decision about whether there were any children.

WIFE
50 to 25%
Prof. Lic.

Haspel v. Haspel, 78 A.D.3d 887 (2d Dep't 2010)

23 yr marriage with two children. The Second Department modified the trial Court's award of 50% to 25% of H's enhanced earning capacity due to his attainment of "various professional licenses, including, inter alia, several securities dealer's licenses and a real estate broker's license." There was no discussion about the parties' respective contributions.

HUSBAND
0%

H made no
contribution beyond
"overall contribution
to the marriage"

McAuliffe v. McAuliffe, 70 A.D.3d 1129 (3d Dep't 2010)

29 yr marriage with 3 children. No evidence that H made any efforts to help W attain her academic degrees beyond his overall contributions to marriage; therefore, H not entitled to share W's enhanced earning capacity, if any. Both parties obtained degrees during the marriage: H had an engineering degree and was regularly employed since early in the marriage and W had an undergraduate degree and worked in administrative and sales positions before leaving full time work to care for the children in 1992. Thereafter, she worked part time as a self-employed consultant and trainer. W obtained both her degrees at night and weekend

courses while working full time for employers that reimbursed all of her expenses for tuition and books. There was no evidence that any unreimbursed marital funds were expended or that the husband made any efforts to assist the W in obtaining either degree that went beyond “overall contribution to the marriage.”

WIFE
10% of EEC
But all other assets
50/50

Schwartz v. Schwartz, 67 A.D.3d 989 (2d Dep't 2009)

H obtained securities licenses during the long duration marriage. The Appellate Division found that it was not error for the Supreme Court to award W only 10 percent of the value of H's enhanced earning capacity through those licenses. W made only modest contributions toward H's attainment of the licenses, which was more the directly result of H's own ability, tenacity, perseverance, and hard work. The Court then went on to award each party 50% of net proceeds from sale of the marital home. “Similar considerations lead to the conclusion that the Supreme Court providently exercised its discretion in dividing the personal property located within the marital residence equally between the parties... where both parties have made significant contributions during a marriage of long duration, a division of marital assets should be made as equal as possible.”

**Really Reflects
Different Standard**

“Modest contribution to EEC *but* significant overall”

WIFE
35% MBA

Jayaram v. Jayaram, 62 A.D.3d 951 (2d Dep't 2009)

DOM 1992. W received 35% of H's enhanced earning capacity (\$1,053,500) due to his MBA and NASD licenses because, although W did not make direct financial contributions to H's attainment of his MBA degree and NASD licenses, she made substantial indirect contributions by supporting H's education, working full-time and contributing earnings to the household, being the primary caretaker for their children, cooking family meals and participating in housekeeping responsibilities. 2 children. Prior to marriage H earned a Masters in Science degree from Georgia Institute of Technology and Ph.D. in mechanical and aerospace engineering from Princeton University. Earned his MBA during marriage.

No direct financial contributions to EEC *but* “substantial indirect contribution”

HUSBAND
5% Med. Lic.

Guha v. Guha, 61 A.D.3d 634 (2d Dep't 2009)

Court awarded only 5% of W's enhanced earning capacity to H because he made minimal financial contributions to the marriage, and he failed to satisfy his burden of demonstrating that he made substantial contributions to W's attainment of her medical license in the United States. W attended medical school in India before she met H, and after the parties were married, she passed the United States medical licensing exam, however, she did so based on her own ability and hard work.

“Minimal financial contributions” and no substantial indirect contributions

WIFE
10% Deg. and License

Kriftcher v. Kriftcher, 59 A.D.3d 392 (2d Dep't 2009)

Marriage of short duration and there was at least one child; W worked part-time as substitute teacher (\$10,000) and H earned \$500k. W received 10% (modified the Supreme Court's award of 40%) of H's enhanced

“minimal contributions”

earning capacity from his law degree and license, “where only modest contributions are made by the non-titled spouse toward the other spouse’s attainment of a degree or professional license, and the attainment is more directly the result of the titled spouse’s own ability, tenacity, perseverance and hard work, it is appropriate for court’s to limit the distributed amount of that EEC.” W made minimal contributions to the degree.

HUSBAND
10% MBA

Wiener v. Wiener, 57 A.D.3d 241 (1st Dep't 2008)

H received 10% of W's enhanced earning capacity due to her attainment of MBA degree. Decision did not discuss the parties’ respective contributions. Distributed appreciation of marital residence equally as well as marital portion of certain retirement accounts.

WIFE
0% Engin. Deg.

Evans v. Evans, 55 A.D.3d 1079 (3d Dep't 2008)

Failed to show
“meaningful contributions” *but*
there were overall
contributions to the
marriage

19 yr marriage with at least 2 children; W awarded zero, where the Appellate Division affirmed Supreme Court’s determination that the EEC conferred upon him by his engineering degree earned during the marriage was zero and even if there was a value, W failed to demonstrate that she made any meaningful contributions that assisted defendant in earning it. W’s contributions “can be seen more as overall contributions to the marriage rather than an additional effort to support [H] in obtaining his license.”

HUSBAND
0% Bach.
and Master

Higgins v. Higgins, 50 A.D.3d 852 (2d Dep't 2008)

Contributions not
“substantial”
although some
efforts to “help”

H was not entitled to a share of W's enhanced earning capacity due to her bachelor and master's degrees, where he did not demonstrate that his contributions were substantial. Despite making some efforts to help, there was no evidence that he made career sacrifices or assumed a disproportionate share of the household work as a consequence of W’s education. W worked full-time while attending school, paid for some of her educational costs and was the children's primary caregiver.

HUSBAND
MBA increase from
0% to 25%

Judge v. Judge, 48 A.D.3d 424 (2d Dep't 2008)

Appellate Division modified award to H of 0% to 25 % of W’s MBA. Long term, 26 yr marriage with 2 children. In 1989 W stopped working outside the home in order to take care of parties’ first child, she primarily stayed home and took care of the parties’ children until the fall of 1993, when she enrolled in a program for a MBA at a college where H was employed as professor. Since W’s MBA degree substantially increased her future earnings, H was entitled to equitable share of its value (\$141,250).

HUSBAND
50% reduced to 25%

Midy v. Midy, 45 A.D.3d 543 (2d Dep't 2007)

Reducing the Supreme Court's award of 50%, the Appellate Division

<p>Master's degree 50% Fla Pro.</p> <p>H did not "sacrifice"; although he did make indirect contributions</p>	<p>directed W to pay H 25% of her enhanced earning capacity as a result of her Master's degree in speech pathology. Marriage was at least 9 yrs with 1 child. There was no evidence that H sacrificed any career opportunities during the time W pursued her degree. W testified that H never looked after their child while she was studying for her master's degree, nor did he ever assist her in any way in her attainment of her master's degree. And while both parties agreed to hire a babysitter to care for the child while W was in school, H testified that, although he continued to work full time while W was in school, he cared for the parties' child during the time when he was not working, relieved W of her household chores so that she could study, maintain the household, took the child to school and activities, and assisted W with her studies, as he had a similar background in special education. There was no evidence that H sacrificed any career opportunities. Also, H awarded 50% of proceeds of sale of Florida Property, after credit to W.</p>
<p>WIFE 35% MBA</p> <p>W's efforts both economic and non-economic were "substantial"; may have awarded more if asked</p>	<p><u>K.J. v. M.J., 14 Misc. 3d 1235(A) (Sup. Ct. Westchester Co. 2007)</u> 11 yr marriage with 2 children. Court recognized H as driving force behind his effort to pursue MBA, W contributions to H's efforts, both economic and non-economic, were substantial. While H performed certain chores in the home, and at times, cared for the parties' children while W was engaged in other endeavors, beginning from the time W had just given birth to their first child, H insisted that W prepare elaborate Indian-style meals, ensure that the children were quiet so that his studies and his sleep were not interrupted, address the children's emotional and health problems and be the primary keeper of their home. W, in fact, did all of those things, while also working full-time hours, and even longer than ordinary work days, for her employer, and contributing her income to the family. Court also noted that W's efforts resulted in her earning a substantially lower salary and giving up potential for income growth. Court indicated that W only asked for 35% and therefore she could not be awarded more, as if to suggest that they would have done so.</p>

v. Division of Marital Residence

HUSBAND

50%

Myers v Myers, 989 N.Y.S.2d 537 (3d Dep't 2014)

Parties married 11 years. The Court distributed the marital residence 50/50, even though the property was the W's premarital separate property. During the marriage, the parties' jointly refinanced and the H's name was placed on the deed. The Court held "the overall picture is of the parties engaging generally in a financial partnership, of which the marital residence, and the loans thereupon, was simply one agreed-upon portion." The record reveals that the funds received from the mortgage, as well as the subsequent refinancing and home equity loan, enabled the W and the H to consolidate their debts, go on numerous family vacations, make improvements to the marital residence and, generally, live a lifestyle that may have been above their means. Notably, the W's individual debt was eliminated by the proceeds of a new, jointly-held debt which, in turn, was primarily paid from the H's income for a number of years. Children are not mentioned in the decision.

EQUAL

Lamparillo v. Lamparillo, 116 A.D.3d 924 (2d Dep't 2014)

The Court directed the sale of the marital residence and the equal division of the net proceeds between the parties after the payment of all marital debt, including credit card debt in the amount of \$22,648, and after payment of \$7,000 to the W for her one-half interest in the household furnishings and other items. The decision did not address the duration of the marriage, the age of the parties, whether the parties had any children or any other factors relevant to the equitable distribution analysis.

50% MR to W

30% EEC to H

Owens v Owens, 107 A.D.3d 1171 (3d Dep't 2013)

W and H married for 24 years with 2 older children. Family lived off income generated from H's ownership in separate property, premarital Manhattan real estate. W earned a Bachelor's degree in nursing and obtained her license as a registered nurse. During the marriage, aside from very brief periods of employment, the W was not employed as a nurse or otherwise. In 2007, the H sold the NYC rental property for \$6 million and, thereafter, the family was supported by the proceeds. The App. Div. modified the award to the W of the appreciation of the value of marital residence from 40% to 50% "taking into account the parties' assets at the commencement of the action and the husband's economic fault." The App. Div. did not modify the award to the H of 30% of the enhanced earnings attributable to the W's nursing degree, as he encouraged her to pursue her dream, financed her education and was the primary caregiver for the children while she pursued her degree full time. The net result was the W received approximately \$140,000.

HUSBAND
50%

Szewczuk v. Szewczuk, 107 A.D.3d 692 (2d Dep't 2013)

Marriage was of short duration with no children, and the parties generally kept their finances separate. While the marital residence was the W's separate property, the Sup. Ct. directed her to pay the H the sum of \$102,500 as a distributive award based on the appreciation in value of the marital residence that was attributable to the efforts of both parties in physically improving the property during the marriage. The App. Div. held that although the H's counsel noted at trial that the H's distributive award based on the appreciation of the marital residence should be reduced by the H's equitable share of the marital debt incurred in financing the improvements to the residence, the Sup. Ct. improperly failed to do so.

WIFE
100%

Henery v. Henery, 105 A.D.3d 903 (2d Dep't 2013)

W awarded 100% of the marital residence. The court noted that it was directing the H to convey his interest in the property in lieu of, *inter alia*, maintenance and an attorney's fee. The court also noted that the mortgage on the marital residence had been satisfied by the W's parents, and that the expenses paid by the W, her financial sacrifices, her waiver of an attorney's fee, and the loss of retirement benefits resulting from the H's discharge for cause from a school administrative position, exceeded the H's share in the equity of the marital residence. No discussion of the duration of the marriage or the parties' respective contribution. Based on decision, H choose to argue that the Sup. Ct. Judge prejudged the case, that argument was rejected.

WIFE
50% Mar .Residence
0% EEC MPA

Edyta B. v. Tomasz B, 7029/10; N.Y.L.J 2/1/13

Lots of contributions
But not related
directly to degree

12 yr marriage with one child, a special needs child who was under treatment for ADHD. The assets included a marital residence and W's EEC. The residence was purchased during the marriage with joint savings. Both parties were employed during the marriage with earnings deposited into joint bank account. The house was renovated by W's brother, father and the H. W's economic or intangible contributions, often exceed H's and found to enrich the marriage in a measure at least equal to those of H. W contributed her earnings; cared for H and their home; "shared the joys, and anxieties, and tears." Residence distributed 50/50. H awarded 0% of W's graduate MPA, where H not only did not provide sufficient evidence of value, but also due to H's disinterest in W's efforts. He rendered no help to her either in her job or in her making a home, or, for that matter, in aid and comfort to her other than efforts to remodel the marital domicile together and with W's brothers and father essentially to protect his investment.

WIFE 15% MR	<u>Biagiotti v. Biagiotti, 97 A.D.3d 941 (3d Dep't 2012)</u> 8 yr marriage. Supreme Court did not err in distributing the appreciation in value of the marital residence, which was H's separate property. Considering the parties' different levels of involvement, and that most of the appreciation was passive based on market forces rather than related to the improvements, the Court did not err in granting W 15% of the amount of the property's appreciation (\$15,825) and 50% of line credit as it was used for marital expenses. Based on the parties' disparate incomes, and the Court's lack of any explanation for the discrepancy in the percentages awarded for these similar assets, we modify by awarding each party 10% of the other's retirement plans. Whether there were children of the marriage was unspecified.
WIFE 10% Retirement Accounts	
WIFE 100%	<u>Ropiecki v. Ropiecki, 94 A.D.3d 734 (2d Dep't 2012)</u> Long term, 27 yr marriage. W received 100% of equity in marital residence, with the H being required to pay the remaining mortgage, in light of W's very limited earning potential, which was as a result of her staying home and taking care of the parties' four children, including their daughter who suffered from a disability; H acquired considerable earning potential and as such the determination was provident under the circumstances.
WIFE 40%	<u>Jones v Jones, 92 A.D.3d 845 (2d Dep't 2012)</u> Separate property farm on 129 acres, where during marriage the parties' built a horse barn and created pasture land for the purpose of establishing a horse farm on the property. W primarily ran the horse farm business. Appreciation was found to be due to joint efforts and W awarded 40% considering W's contributions to the subject property, including, inter alia, her work on the horse farm. The duration of this marriage and whether there were children were unspecified.
Why Not 50%?	
EQUAL	<u>C.R.Z. v. D.E.Z. 7/22/11 NYLJ 7/22/11</u> Equal distribution of marital residence. 9 yr marriage with 2 children. Both parties made significant contributions to the marriage of long duration. W's contributions were primarily, if not exclusively, other than financial. W was the primary care giver to the parties' children. She also assumed the major role in the family's social life and took the lead in the extensive remodeling of the former marital residence. The assumption of these and other responsibilities fostered an opportunity for H to develop his business and devote himself thereto.
HUSBAND 20%	<u>Marcellus-Montrose v. Montrose, 84 A.D.3d 752 (2d Dep't 2011)</u> Affirmed Supreme Court's finding that H's income was not as significant, compared to the monetary contributions of W and, further, that H's annual income was about 20% of the annual income of W. Second Department rejected H's claims that his non-monetary contribution to the marriage
If reversed do you Think W gets only	

20% - *see*
B.M. v. D.M. below

justified a higher award, consisting of claims that he cared for the 2 children while W was at work. It was established that the parties had a live-in babysitter who cared for children.

WIFE
50%/25%

Taub v Taub, 31 Misc. 3d 1216(A) (Sup. Ct. Kings Co. 2011)

H worked, first in the knitting business, and then in real estate. "A lot of money was earned, a lot of money was spent, and a lot of money was lost." For her part, W cared for the home and the 2 children and insured that H could entertain friends and neighbors lavishly and frequently, all of which allowed him the freedom and earned him the respect that enabled his success. Given these essentially equal contributions to the acquisitions of the 33 yr marriage, the Court determined that the properties (4) purchased during the marriage are marital properties that shall be sold and any net proceeds equally divided between them. As to the fifth property, contracted prior to the marriage, which closing was postponed, as a result of the parties' wedding, until ten days after the marriage, the Court held that it would be unfair to apportion the property equally, but since the building was renovated in 1986 with marital moneys, some portion of the appreciation must be awarded to the plaintiff, i.e., 25%.

WIFE
40%

**Really Reflects
Different Standard**

B.M. v D.M., 31 Misc. 3d 1211(A) (Sup. Ct. Richmond Co. 2011)

11 yr childless marriage; Court credited testimony that W made little, if any, financial contributions towards the mortgage on the marital residence from 1996 through 2002. The Court further credited H's testimony that from 1997 until the parties' separation in 2007, H did all of the cooking, cleaning, and laundry in addition to holding a full time job. H credibly testified that W worked only two years of this eleven year marriage. The Court credits H's testimony that W, who was a Reikki Master spiritual healer and a belly dancer (claimed to be able to channel god) slept all day or otherwise spent her day on the computer participating in internet blogs. Accordingly, H awarded sixty percent (60%) of the proceeds of the Marital Residence and W awarded forty percent (40%); H's pension distributed 50/50.

WIFE
0%

Involves appreciation
of pre-marital
residence

Alper v Alper, 77 A.D.3d 694 (2d Dep't 2010)

Although both parties worked throughout the 20 yr childless marriage, W contributed "little, if any financial support to the marriage," and did not contribute at all to the purchase, and only minimally to the maintenance of the marital residence. W denied entitlement to portion of the appreciation in marital residence and the H's country home. Conflicting testimony about W's direct contribution of time and labor toward the improvements made to those assets was resolved in favor of H.

HUSBAND
1% increased to
10%

H only made
“minimal” and
“menial”
contributions

Del Villar v. Del Villar, 73 A.D.3d 651 (1st Dep't 2010)

Unequal distribution of the marital apartment in favor of W was appropriate, but the 1st Department increased H's equitable distribution from 1% to 10% (of \$553,000), finding that although an unequal distribution of the marital apartment was appropriate after a 10 yr marriage, H did make some “minimal” contributions to the marriage, including performing some “menial tasks” in the various businesses operated by W. The decision noted that H failed to contribute to the apartment “after his 1991 incarceration” and that a significant increase in the value of the apartment was due to market forces.

HUSBAND
40% of appreciation
of pre-marital
residence

Bernholc v Bornstein, 72 A.D.3d 625 (2d Dep't 2010)

Almost 15 yr marriage with one child. H awarded 40% of appreciation of marital residence purchased prior to the marriage and 40% credit for mortgage pay-down. Evidence established that H performed some of the renovation work himself and contributed to paying off the home equity loans used to make renovations, which were with marital funds.

HUSBAND
30% reduced to
15%

Wansi v Wansi, 71 A.D.3d 599 (1st Dep't 2010)

Award to H of 30% of the value of the three-family residence deeded to the W was reduced to 15% of the value. H made “little, if any, contribution to the marital asset.” The decision did not discuss the duration of the marriage or whether there were any children.

WIFE
45%

Phillips v. Haralick, 70 A.D.3d 663 (2d Dep't 2010)

The Supreme Court providently exercised its discretion in equitably distributing 55% of the net proceeds from the sale of the marital home in Hewlett, New York, to the H, and 45% to the W. The duration of this marriage, contributions of the parties and whether there were children were unspecified.

WIFE
50% of appreciation
of pre-marital
residence

Mongelli v. Mongelli, 68 A.D.3d 1070 (2d Dep't 2009)

The Court properly determined that W is entitled to an equitable share of the appreciation in the value of the marital residence over the course of the at least 9 yr marriage, notwithstanding that the residence was the separate property of H until 1999, when the property was transferred into joint names. The record establishes that the appreciation in the value of the marital residence was attributable to the joint efforts of the parties, who had two children during the marriage. Thus, W was entitled to share equitably in that increased value. In addition, the Court's award of a separate property credit to H in the sum of only \$48,000 for the value of the marital residence at the time the parties were married was proper.

HUSBAND
15%

Evans v. Evans, 57 A.D.3d 718 (2d Dep't 2008)

In light of evidence that H contributed minimally to marriage, award to H of 15% of value of marital residence and 10% of W's pension was

provident exercise of discretion. The duration of this marriage and whether there were children were unspecified.

HUSBAND
50%

Kilkenny v. Kilkenny, 54 A.D.3d 816 (2d Dep't 2008)

Increase in value of separate property residence was marital property and H was entitled to 50% where appreciation attributable to joint effort of parties (2 children). *See Kost v. Kost*, 63 A.D.3d 798, (2d Dep't 2009) – same result. The duration of this marriage with two children was unspecified.

EQUAL

H. v. H., 2008 N.Y. Misc. LEXIS 2849 (Sup. Ct. Kings Co. 2008)

Long duration, 24 yr marriage with 2 children; W was homemaker for a time and H worked throughout marriage until he suffered a stroke. There was no dispute that marital residence was purchased during the marriage. The Court held the “long term marriage where both parties made contributions to the purchase and operation of the premises.” Proceeds of any sale shall be shared equally, subject to the various adjustment caused by each party owing money to the other. H entitled to 50% of W’s pension through the date of the commencement of the divorce action.

WIFE
25% of increase
in pre-marital home

Johnson v. Chapin, 49 A.D.3d 348 (1st Dep't 2008)

(Went up to the Court of Appeals and affirmed)

H owned property prior to the marriage. The property was extensively renovated and new parcels added, all funded with marital income. Market forces over the approximately 11 yr marriage accounted for some of the summer home’s increased value. Thus a 75/25 division of the home was found to be more equitable than 50/50.

HUSBAND
0% of increase in
pre-marital home

Embury v. Embury, 49 A.D.3d 802 (2d Dep't 2008)

The property, which was owned by W before the marriage, was not converted to marital property through H’s contributions and efforts toward its renovation. H failed to set forth proof that the property actually increased in value and, in any event, he did not demonstrate the manner in which his contributions resulted in any alleged appreciation. 2 children of the marriage – duration not specified.

WIFE
15%

Faello v. Faello, 43 A.D.3d 1102 (N.Y. App. Div. 2d Dep't 2007)

While the Florida residence, purchased in the parties' joint names, was marital property, H used proceeds from the sale of his separate property to purchase the residence as well as its furnishings and incidentals. Therefore, the direction that H receive the sum of \$200,000 from the net proceeds of the sale of the parties' residence in Florida, with 85% of the remaining balance distributed to the husband and 15% distributed to W was proper. The duration of this marriage and whether there were children were not addressed.

WIFE
50%

Dellafiora v. Dellafiora, 38 A.D.3d 825 (2d Dep't 2007)

Interest in two pieces of real property to be distributed equally between the parties. The duration of this marriage, respective contributions of the parties and whether there were children were not addressed.

WIFE
0%

Davidman v. Davidman, 97 A.D.3d 627 (2d Dep't 2012)

Duration of this marriage with 1 child was not specified. Residence was owned by H prior to the marriage. W failed to carry her burden establishing that the marital residence appreciated in value during the parties' marriage and, if so, that such appreciation was due in part to her efforts.

WIFE
33%

Dinoto v. Dinoto, 97 A.D.3d 529 (2d Dep't 2012)

W was responsible for causing damage to the former marital residence, the Court providently exercised its discretion by awarding her only one-third of the net proceeds from any sale of marital real property located in Whitestone, Queens, rather than one-half of the net proceeds from the sale. The duration of this marriage, respective contributions of the parties and whether there were children were unspecified.

HUSBAND
25% renovation
costs of pre-marital
home

Linda D. v Theo C., 96 A.D.3d 432 (1st Dep't 2012)

2 children; 10 year marriage; no findings that renovations had any effect on value property owned by W before the marriage. H failed to carry burden of how renovations had any effect on the value of the apartment. In any event, the Supreme Court adequately compensated H for his contributions by giving him a credit for one-quarter of the renovation costs.

VI. Division of Pensions and Others Assets

WIFE
50%

Zufall v. Zufall, 109 A.D.3d 1135 (4d Dep't 2013)

Parties were married for 21 years and had five children, one of whom was emancipated. During the marriage, W was primarily a homemaker, raising the parties' children while H worked as a correction officer. Shortly before action was commenced, H retired at the age of 50 after 25 years of service with the State of New York, leaving a job that paid him in excess of \$90,000 annually. He now receives pension benefits. Although able-bodied, H does not presently work. W, on the other hand, has been determined by the Social Security Administration to be 50% disabled, and she receives partial Social Security disability benefits plus workers' compensation benefits. She also works 20 hours per week as a bartender. Due to parties' prenuptial agreement, W did not receive any interest in H's pension or in the marital residence, which H obtained prior to the marriage, notwithstanding the fact that H paid the mortgage on that property during the marriage with marital funds. Court held that award to W of 50% of the H's deferred compensation account earned during marriage.

WIFE
50%

Bellizzi v Bellizzi, 107 A.D.3d 1361 (3d Dep't 2013)

The parties were married in 1969 and had three adult children. Husband commenced an action for divorce in 2008 that was dismissed following a trial in 2011. The Husband commenced a second action in 2011. Both parties were in their mid-60s, have had serious health issues, were retired and receiving Social Security. 50% of H's military pension. The Court held, "relative parity was appropriate "in light of the 40-plus years of marriage and no factors justifying an unequal distributive award."

HUSBAND
30%

Cornish v. Eraca-Cornish, 107 A.D.3d 1322 (3d Dep't 2013)

19 yr marriage. Parties had three children (born in 1991, 1994 and 1997). Parties' arrangement was for the H to take on the responsibilities of homemaker and primary caretaker of the children while the W provided financial support for the family, but it further reveals that the H's alcoholism interfered with his ability to contribute to the household and that his parents provided a substantial amount of the children's care. H did not find employment after children reached school age and despite the family's financial difficulties and reliance upon financial assistance from the H's mother. H awarded 30% of the W's pension in light of his "limited contribution to the economic partnership of this marriage".

WIFE
100%

Rubackin v Rubackin, 107 A.D.3d 872 (2d Dep't 2013)

The Court awarded the W 100% of her pension based "upon the W's role in recent years as the parties' primary wage earner and the primary caregiver to the parties' children." In addition, the Supreme Court properly

considered the H's receipt of a \$2 million inheritance in arriving at its pension determination. There was no discussion of the duration of the marriage.

WIFE
?

Williams v Williams, 99 A.D.3d 1094 (3d Dep't 2012)

The parties were married in 1981 and had two adult children. H left the marital residence in 2007, commenced an action for divorce in 2008 and discontinued it six months later; Wife--was 57 years old at the time of trial--would never acquire job skills permitting her to return to the comfortable upper-middle-class lifestyle that the parties enjoyed during the marriage.

WIFE
50%

DeGroat v. DeGroat, 84 A.D.3d 1012 (2d Dep't 2011)

Here, in light of, *inter alia*, the long duration of the marriage and the respective contributions of the parties, the Supreme Court did not improvidently exercise its discretion in awarding to W a sum equal to 50% of the value of the parties' nonretirement marital assets. Stock options granted to H during the marriage were marital property and distributed accordingly.

WIFE
50%

Shapiro v. Shapiro, 91 A.D.3d 1094 (3d Dep't 2012)

33yr marriage with 2 children. Initial action was commenced in 2000 but discontinued and recommenced by W in 2008. W left the workforce to care for the parties' children, she made substantial non-economic contributions to the parties' assets during the early years of the marriage and by continuing as primary caretaker for the children after the separation, she sacrificed career development and earned substantially less than the H at the time of trial. Husband's pension equally distributed.

WIFE
50%

Hughes v Hughes, 79 A.D.3d 473 (1st Dep't 2010)

Each party entitled to 50% of other's pensions. H's contention that W was not emotionally supportive during the marriage depended on statements made in his post-trial affidavit that the Supreme Court was free to disbelieve. There was no additional discussion of the parties' respective contributions.

WIFE
23%

Marino v. Marino, 52 A.D.3d 585 (2d Dep't 2008)

23% of H's pension. Although the decision did not discuss the parties' respective contributions, the non-durational award of maintenance noted the "long duration" of the marriage.

HUSBAND
35%
WIFE 50%

Glassberg v. Glassberg, 2009 N.Y. Misc. LEXIS 2436 (Sup. Ct. Suffolk Co. 2009)

During the marriage W provided a substantial share of the financial and day-to-day support in maintaining the household, including working full time, being the primary care giver for the parties son, and providing for the consistent and reliable income flow the family enjoyed. While H

W did way more

than H.
Pensions divided
accordingly

provided some support toward these efforts, the Court found it was "limited, sporadic, unreliable and inconsistent." Court found that the "economic partnership" between the parties was limited to the degree indicated and the W's Retirement accounts/pension are to be split with sixty-five percent (65 percent) to be received by W and thirty-five percent (35 percent) to be received by H and the marital portion of H's pension split evenly between the parties, fifty percent (50 percent) to W and fifty percent (50 percent) to the Husband.

HUSBAND
50% of W's
pension.
Accounts divided
equally.

S.A. v. K.F., 22 Misc. 3d 1115(A) (Sup. Ct. Kings Co. 2009)

31 yr marriage with no children in common with one another. Both parties claimed a myriad of health issues. There were issues of DV and W was awarded rental apartment. Based on these factors, as well as the parties' respective age, future economic circumstances, health, standard of living and the disparity of the non-economic contributions to the marriage and Court's order of maintenance payment to H by W, H should receive 50% of W's pension, which she earned as an employee of New York State, as valued from the date of commencement of this action; 50/50 on bank accounts.

VII. Division of Marital Stock and Investments

WIFE
65%

Pathak v. Shukla, 109 A.D.3d 891 (2d Dep't 2013)

The Supreme Court providently exercised its discretion in determining that the W was entitled to a money judgment in the sum of \$84,053.11, or 65% of the amounts in the parties' bank accounts. The record amply supported the Supreme Court's determination that the H secreted marital funds and failed to comply with his obligation to provide full financial disclosure. Contrary to the H's contention, the Supreme Court's decision reflected that, in determining equitable distribution of the parties' bank accounts, it properly considered the relevant statutory factors. The decision addressed child support so it can be inferred that there was a child of the marriage, but duration was not discussed.

WIFE
50%

Levitt v Levitt, 97 A.D.3d 543 (2d Dep't 2012)

"[T]he Supreme Court providently exercised its discretion in equally distributing [H's] stock, stock options, and interests in two limited partnerships[.]" including the long duration of the marriage, the extended absence of the wife from the work force.

WIFE
50%

Murray v Murray, 956 N.Y.S.2d 252 (3d Dep't 2012)

W had sacrificed
her career and had
limited financial
prospects

19 yr marriage with 4 children. Supreme Court did not err in ordering the liquidation and equal division of the parties' Verizon stock. While no discussion in the decision related to equitable distribution, in addressing the maintenance award, the Court recognized the "the wife's limited prospects for increased earnings, and the lost income, earning capacity and retirement savings that she incurred by remaining out of the paid work force to raise the parties' children for approximately 17 years during the marriage." In this regard, the court credited W's testimony that H demanded that she stay at home with the children. The Court went on to hold that in this long duration marriage, W had "been out of the work force for a number of years [and] has sacrificed her . . . own career development or has made substantial noneconomic contributions to the household or to the career of the payor." Whether there were children was not addressed in the decision.

WIFE
50%

Hendry v Pierik, 78 A.D.3d 784 (2d Dep't 2010)

H received the subject stock options during the marriage and exercised them eight months after the commencement of the action as a result of the termination of his employment. The Supreme Court did not improvidently exercise its discretion in distributing the proceeds equally between the parties. Given nondurational maintenance award, safe to assume long term marriage.

WIFE

Armstrong v. Armstrong, 72 A.D.3d 1409 (3d Dep't 2010)

70%

H keeps lots of
separate assets

11 yr marriage with one child. It was proven that H was extremely verbally abusive and was also convicted of unrelated federal crimes during the marriage and sentenced to 27 months during the marriage. At issue was stock and stock options that had resulted in defendant (and a trust he had established) receiving during the marriage a gross amount of close to \$10 million as part of his severance agreement with H's employer, Albany Molecular Research. Of the over 500,000 shares and options owned by H, the Court found a small portion to be marital property (14,137 shares). However, in light of H's "significant role in contributing to the success of the company during the pertinent years", the Court determined that 10% of the appreciation in value of the Albany flowed from H's direct efforts and, hence, constituted marital property. The Court calculated the appreciation of these stocks and treated 10% of such appreciation as marital property, which computed to \$565,579.29. Supreme Court then added the net value of the parties' various other marital properties, including, among other things, the residence, a lake home, vehicles and sundry bank accounts. This resulted in a total marital estate of \$1,141,683.34. The Court held that "after weighing the germane factors (*see* Domestic Relations Law § 236 [B] [5] [d]), and particularly noting defendant's wasteful dissipation of assets during the marriage," Supreme Court awarded W 70% of the marital estate."

WIFE
50%

Filiaci v Filiaci, 68 A.D.3d 1810 (4th Dep't 2009)

The parties had at least two unemancipated children. The duration of the marriage was not specified. The Court properly awarded W one half of the proceeds from the sale of certain stock and one half of the costs of the computer training programs purchased by H.