

# Matrimonial Law

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## Trends in Distributing A Business Interest And Enhanced Earning Capacity

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One of the more difficult issues plaguing both judges and practitioners in New York divorce actions is the equitable distribution to a non-titled spouse of a marital asset consisting of a business interest, professional practice (Business Interest) and/or professional degree, license, or celebrity obtained during the marriage (EEC).

The ultimate percentage awarded, along with the appropriate calculation of spousal support, are complicated areas to understand and predict largely because of the dearth of published decisions at the trial level on these issues and the lack of factual recitations in appellate division decisions. As a result of this lack of information, there is less guidance for constructive settlement discussions and trial preparation. This article attempts to glean from recent available decisions what, if any, trends exist in distributing a Business Interest and EEC and how the distributive award and the court's calculation of spousal support intersect.

### Recent Trends in Awards

It is common knowledge at this point in time that, regardless of the efforts and role of a non-titled spouse during the marriage, cases in which a non-titled spouse is awarded 50 percent of a titled spouse's Business Interest or EEC "represent a distinct minority of the reported decisions and they generally involve situations where there were significant direct contributions made to the business by the non-titled spouse."<sup>1</sup> The Second Department has in fact confirmed that its general

practice is to "typically uphold[] awards between 25% and 35% to the non-titled spouse."<sup>2</sup> Although courts have on the rare occasion awarded a non-titled spouse half of the value of a Business Interest or EEC,<sup>3</sup> awards of between 10 percent<sup>4</sup> and 35 percent<sup>5</sup> are far more common. As further demonstrated in an accompanying chart detailing recently published decisions on this issue, the overwhelming majority of cases result in the distribution of a Business Interest or EEC to the non-titled spouse of less than 35 percent.<sup>6</sup>

In recent reported decisions, courts have tended to award a lower percentage of a Business Interest or EEC to a non-titled spouse where both parties shared domestic responsibilities<sup>7</sup> or the non-titled spouse worked outside the subject business,<sup>8</sup> and a higher percentage to a non-titled spouse who was the primary caregiver for the parties' children.<sup>9</sup> Although the number of published decisions on this issue is limited, it appears that there is a trend by the courts to give a greater award to a non-titled spouse whose primary responsibility in the marriage was to run the household and raise the children.

In two of the more recently published trial decisions on the issue of the percentage to be distributed to the non-titled spouse, the courts awarded the non-titled spouse 30 percent of the titled spouse's Business Interest, despite vast differences in the two roles of the non-titled spouses in the marriages. In *V.M. v. N.M.*, 43 Misc. 3d 1204(A), 2014 N.Y. Misc. LEXIS 1383 (Sup. Ct. Albany Co. 2014) (Lynch J.), during their 11-year marriage, the husband developed a successful diamond business in which the wife worked for four years. In awarding the wife 30 percent of the business, the court focused on two primary factors: (1) that the wife "was extensively engaged in the business during the 2004-2008 period" and "played an important role in the business" (id. at \*\*5-6), and (2) that "the parties mutually agreed in 2008 that the defendant would reduce her work efforts to become the primary caregiver of their



child." Id. at \*\*6. In justifying this award, the court noted that the wife's "contributions as homemaker are a significant factor in gauging [her] equitable interest" and that the husband was only able to dedicate his time and efforts to the development of the business due to the wife's "efforts in caring for the children." Id. The wife's dual role of contributing to the business and being the primary caretaker for the parties' children justified, in the court's eyes, an award of 30 percent of the Business Interest.

In another recent decision, *Sykes v. Sykes*, 24 Misc. 3d 1220(A), 2014 N.Y. Misc. LEXIS 2069 (Sup. Ct. N.Y. Co. 2014), the parties were married for 14 years, during which time the husband established a successful hedge fund. During the marriage, the wife initially worked part-time as an art appraiser and adjunct college instructor, but upon the birth of the parties' child, she "stopped working outside the home altogether." Id. at \*\*6. In assessing the wife's entitlement to a share of the Business Interest, the court noted the wife's failure to directly contribute to the business due to her lack of business expertise and her minimal duties as a "corporate spouse" due to the husband's reluctance to blend business and pleasure. The court's focus instead turned to the parties' understanding

and practice that the wife's role was to "be a homemaker and mother" while the husband was the "money-maker and a star in the financial world." *Id.* at \*\*18. Especially noteworthy for the practitioner should be the court's rejection of the husband's argument that the wife should receive a smaller percentage in the Business Interest because the parties employed personal assistants, cooks, and nannies to assist with the household chores: "[i]t is disingenuous to fault [the wife] for utilizing domestic help . . . [The wife] unquestionably ran the Sykes households in New York, East Hampton and Paris despite the presence of cooks, personal assistants and the person who unsheathed the dry cleaning." *Id.* at \*\*20. Based on her role as a spouse, mother, and homemaker, the court awarded the wife 30 percent of the Business Interest.

Although the reasons for such awards inevitably vary by case, recent published decisions have generally confirmed that the courts are rarely willing to exceed an award of 30 percent of a Business Interest or EEC to a non-titled spouse. However, the factual divergence of *V.M.* and *Sykes*, with the non-titled spouses each receiving a 30 percent interest in the Business Interest despite only one of them having actually worked in the business, highlights the problem with the scarcity of published decisions on this issue: How can it be that a primary caregiver/homemaker who played no role in the business receives the same percentage award as a primary caregiver/homemaker who was extensively engaged in the subject business for a period of years?

### Calculating Maintenance

Since courts are now routinely awarding less than 50 percent of the EEC and/or a Business Interest to the non-titled spouse, as indicated above and in the accompanying chart,<sup>10</sup> it should be relatively clear how these awards affect the calculation of maintenance awards. Unfortunately, despite the oft repeated principle stated by the Court of Appeals in *Grunfeld v. Grunfeld*, 94 N.Y.2d 696, 705, 709 N.Y.S.2d 486, 491 (2000) that "[o]nce a court converts a specific stream of income into an asset, that income may no longer be calculated into the maintenance formula and payout," the application of this principle is still unclear.

The "double dipping" problem of *Grunfeld* (i.e., using the same income stream in awarding both equitable distribution and maintenance) arises frequently in cases involving EEC and Business Interests because the titled spouse's income is often integral to determining the value of the EEC or Business Interest. To value a titled spouse's EEC, a financial expert will typically calculate the difference between the tax-impacted (i) average lifetime income of a non-degree/license holder, reduced to present

value (Baseline Earnings) and (ii) the average lifetime income of a degree/license holder (or, if the holder is experienced, the holder's actual remaining earning potential), reduced to present value (Topline Earnings).<sup>11</sup> Likewise, the capitalized earnings method, which is widely considered the appropriate method to use when valuing a professional practice or a business that trades on services and goodwill<sup>12</sup> (as opposed to tangible assets<sup>13</sup>), is based upon the titled spouse's average annualized earnings, reduced by a number of risk factors.

In *Grunfeld*, the Court of Appeals held that in order for double dipping to be avoided, a court must "reduce either the income available to make maintenance payments or the marital assets available for distribution, or some combination of the two." *Id.* In practice, this typically gives courts two options: (1) award 50 percent of the value of the EEC or Business Interest to the non-titled spouse and dollar-for-dollar reduce the titled spouse's earnings used in the valuation from the calculation of maintenance, or (2) award some amount less than 50 percent of the value of the EEC or Business Interest to the non-titled spouse and consider a lesser amount of the titled spouse's earnings when calculating maintenance, but not a dollar-for-dollar reduction.

Option (1) from *Grunfeld* is straightforward to calculate. An example of this approach is described in *N.K. v. M.K.*, 17 Misc. 3d 1123(A), 851 N.Y.S.2d 71, 2007 N.Y. Misc. LEXIS 7397 (Sup. Ct. Kings Co. 2007) (Sunshine, J.), wherein the court awarded the non-titled spouse 50 percent of the value of the titled spouse's dental license and dental practice, and then only used the titled spouse's Baseline Earnings (determined in the valuation of the license) and rental income (unrelated to the license or practice) for purposes of calculating maintenance. It should be noted here that any of the titled spouse's income that is not converted into a marital asset (i.e., EEC or a Business Interest) is fully available for purposes of calculating maintenance. This includes income totally unrelated to the titled spouse's earned income (such as investment income) and the portion of the titled spouse's earned income that is not converted into an asset. For example with EEC, the amount of income below and up to the Baseline Earnings and income above the Topline Earnings are available for determining maintenance,<sup>14</sup> to the extent such income is not also used to value a Business Interest.<sup>15</sup>

Option (2) from *Grunfeld*, which is used far more regularly by the courts in recent years, is not straightforward like Option (1) is. If a court awards a non-titled spouse some percentage of the EEC or Business Interest, it must reduce some amount of the titled spouse's income for purposes of calculating maintenance,<sup>16</sup> but the

appropriate amount for this reduction is rarely ever addressed in published decisions. In *Haspel v. Haspel*, 78 A.D.3d 887, 911 N.Y.S.2d 408 (2d Dep't 2010), the court determined that the value of the EEC was \$1,125,000 (based upon the Topline Earnings/Baseline Earnings differential of \$75,000 per year over a projected future work life of 15 years [ $\$75,000 * 15 = \$1,125,000$ ]) and awarded the non-titled spouse 25 percent of the titled spouse's EEC. To determine the amount of the titled spouse's income available to pay maintenance, the court first calculated 25 percent of the annual amount of the Topline Earnings/Baseline Earnings differential (25 percent \* \$75,000 = \$18,750), then reduced the titled spouse's imputed annual income of \$180,000 by \$18,750, and determined that only \$161,250 (\$180,000 minus \$18,750) of the titled spouse's income was available to pay maintenance. In the recent case of *V.M.*, 2014 N.Y. Misc. LEXIS 1383, the court likewise awarded 30 percent of the Business Interest to the non-titled spouse, then used 70 percent of the business income to calculate the titled spouse's maintenance obligation. In other words, in calculating maintenance, these courts only reduced the titled spouse's income by the percentage amount of the Business Interest that was awarded to the non-titled spouse. This analysis could easily lead to an inequitable result: On the one hand, the non-titled spouse is receiving, often at the time of the judgment, a lump sum value of his/her share of the EEC or Business Interest, while on the other hand, the titled spouse will only receive any value from the EEC or Business Interest over time, if, as and when the income used to value the EEC or Business Interest is earned. Further, if *Haspel* were to be followed (which no court in a published decision has done), any value of the EEC or Business Interest that is not distributed can be used for purposes of determining maintenance to be paid to the non-titled spouse.

Other courts have taken the entire amount of the titled spouse's income stream used in the valuation of the EEC and a Business Interest off the table for determining spousal support.<sup>17</sup> This analysis could also lead to an inequitable result: While the titled spouse's own "ability, tenacity, perseverance and hard work"<sup>18</sup> may justify a low distribution of the EEC or a Business Interest to the non-titled spouse, that same rationale does not justify denying the non-titled spouse an amount of maintenance necessary for him/her to maintain his/her standard of living and reasonable needs post-divorce.

Glenn Liebman of Klein, Liebman and Gresen, who regularly values EEC and Business Interests in matrimonial cases, suggests that a more equitable approach to avoid double dipping would be to: Step 1: Calculate the percentage of the EEC or Business Interest awarded to the non-titled

spouse; Step 2: Assume that an equal percentage of the EEC or Business Interest was awarded to the titled spouse; Step 3: Take the annual Topline Earnings/Baseline Earnings differential and multiply it by both the percentages in Steps 1 and 2; and Step 4: Reduce the titled spouse's annual income by the amount calculated in Step 3. By way of example, using *Haspel's* numbers, if a court awards the non-titled spouse 25 percent of the EEC, then to calculate support, the court would multiply 50 percent (or double the EEC award) by the \$75,000 (the annualized Topline Earnings/Baseline earnings differential), and reduce the titled spouse's annual income by \$37,500 (50 percent of \$75,000). Thus, while the court in *Haspel* concluded that \$161,250 (\$180,000 minus \$18,750) was available for maintenance, under this scenario, \$142,500 (\$180,000 minus \$37,500) would be available for maintenance.

Even if the arithmetic used to calculate the interplay between spousal support and distributive awards of EEC and Business Interests were clearly defined, the underlying figures used in the valuations of EEC and Business Interests, which figures are often speculative and always debatable, still make the court's decisions in these cases unpredictable. Justice Robert Ross in *F.M.C. v. F.A.C.*, 2006 N.Y. Slip Op. 51081 (June 07, 2006) expressed frustration at "the difficulties of enhanced earnings, [which] New York State Matrimonial trial courts are faced, on a daily basis, with vexing dilemmas regarding inappropriate discount rates, double dipping, double counting, child support machinations and, as in the case here, valuation dilemmas." The court in *F.M.C. v. F.A.C.* found the EEC impossible to value due to the titled spouse's recalcitrance and the lack of sufficient assets to award the non-titled spouse an equitable share. Faced with this dilemma, the court looked to Domestic Relations Law §236(B)(5)(16), which provides that the "contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party" shall be taken into consideration when awarding maintenance. Instead of distributing any value of the EEC to the non-titled spouse, which the court found inappropriate since no proper value was established, it awarded the non-titled spouse two-pronged maintenance: first, a durational maintenance award, based on the non-titled spouse's reasonable needs and ability to become self-supporting, and second, a non-durational maintenance award based on the all statutory factors, including the non-titled spouse's contributions to the titled spouse's career.

Ross, also in *F.M.C. v. F.A.C.*, praised the New York State Matrimonial Commission's Report to the Chief Judge, chaired by Judge Sondra Miller

(February 2006), which advocated for legislative changes to eliminate EEC as a marital asset, but would allow for "compensatory maintenance" awards that took into account the contributions of the non-titled spouse. Although the legislature has not adopted this Report, legislation has been introduced in both the New York State Senate (S7266-A) and Assembly (A9606-A) that would eliminate EEC as a marital asset: "The court shall not consider as marital property subject to distribution the value of a spouse's enhanced earning capacity arising from a license, degree, celebrity goodwill, or career enhancement." The proposed legislation, while eliminating EEC, would mandate that the court "in arriving at an equitable division of marital property ... [to] consider the direct or indirect contributions to the development during the marriage of the enhanced earning capacity of the other spouse." The proposed legislation would serve to rid the courts of the overly complicated and uncertain practice of awarding EEC and hopefully allow practitioners to more accurately predict the outcome of cases involving such issues.

In 'Grunfeld', the Court of Appeals held that **in order for double dipping to be avoided**, a court must "reduce either the income available to make maintenance payments or the marital assets available for distribution, or some combination of the two."

### Conclusion

The inherent complexity in distributing the values of EEC and Business Interests and calculating maintenance to properly account for these distributions is compounded by the lack of available case law and the lack of factual details in those available cases. This only serves to heighten the potential for inequity to both parties. It is the recommendation of these authors that, unless and until the legislature addresses these issues, to the extent decisions on these issues are available in the future, they be published so both the bench and the bar may develop consistency in their assessment of the percentage to be awarded of EEC and Business Interests and the appropriate calculation of corresponding maintenance awards.



1. *Sykes v. Sykes*, 24 Misc. 3d 1220(A), 2014 N.Y. Misc. LEXIS 2069, at \*13 (Sup. Ct. N.Y. Co. 2014); see *Arvantides v. Arvantides*, 64 N.Y.2d 1033, 489 N.Y.S.2d 58 (1995) ("there is no requirement that the distribution of each item of marital property be on an equal or 50-50 basis ...").

2. *P.D. v. L.D.*, 28 Misc. 3d 1232(A), 958 N.Y.S.2d 62, 2010 N.Y. Misc. LEXIS 4321, at \*\*\*22 (2d Dep't 2010).

3. See, e.g., *Turco v. Turco*, 985 N.Y.S.2d 261, 2014 N.Y. App.

Div. LEXIS 3182 (2d Dep't 2014) (awarding a wife 50 percent of the additional portion of the husband's business acquired during the marriage); *Rich-Wolfe v. Wolfe*, 83 A.D.3d 1359, 1360, 922 N.Y.S.2d 593, 595 (3d Dep't 2011) (awarding a wife 50 percent of the husband's businesses based on her role in "operating the businesses from their inception and eventually quit her job to labor full time for them").

4. See, e.g., *Esposito-Shea v. Shea*, 94 A.D.3d 1215, 941 N.Y.S.2d 793 (3d Dep't 2012) (affirming an EEC award of 10 percent to the husband where his efforts represented "overall contributions to the marriage rather than an additional effort to support [the wife] in obtaining her license") (internal citations omitted).

5. See, e.g., *Kim v. Schiller*, 112 A.D.3d 671, 978 N.Y.S.2d 229 (2d Dep't 2013) (30 percent of EEC to the non-titled spouse); *Greisman v. Greisman*, 98 A.D.3d 1079, 951 N.Y.S.2d 219 (2d Dep't 2012) (1/3 of EEC to the non-titled spouse); *Bayer v. Bayer*, 80 A.D.3d 492, 914 N.Y.S.2d 169 (1st Dep't 2011) (35 percent of EEC to the non-titled spouse).

6. See chart accompanying article, available at [www.newyorklawjournal.com/id=1202664174206](http://www.newyorklawjournal.com/id=1202664174206).

7. See, e.g., *Esposito-Shea*, 94 A.D.3d at 1217 (husband's contributions to wife attaining her law degree included being the family's primary wage earner and caring for the parties' children while the wife was in school).

8. See, e.g., *Vertucci v. Vertucci*, 103 A.D.3d 999, 962 N.Y.S.2d 382 (3d Dep't 2013) (affirming an award of 15 percent of the wife's law degree and law practice to the husband who owned and operated multiple businesses); *D'Ambra v. D'Ambra*, 94 A.D.3d 1532, 943 N.Y.S.2d 698 (4th Dep't 2012) (affirming an award to the wife of 15 percent of the husband's business given her indirect contributions thereto); *Gallagher v. Gallagher*, 93 A.D.3d 1311, 941 N.Y.S.2d 392 (4th Dep't 2012) (affirming an EEC award of 15 percent where the husband made only modest contributions to the wife's attainment of a master's degree).

9. See, e.g., *Golden v. Golden*, 98 A.D.3d 647, 949 N.Y.S.2d 753 (2d Dep't 2012) (affirming an award to the wife, who was the primary caregiver/homemaker during the marriage, of 30 percent of the marital appreciation of the husband's businesses); *Kim*, 112 A.D.3d at 674, 978 N.Y.S.2d at 233; *Bayer v. Bayer*, 80 A.D.3d 492, 914 N.Y.S.2d 169 (1st Dep't 2011) (affirming an EEC award of 35 percent based on, among other things, "the termination of her own career in order to maintain the marital household, and her absence from the job market during marriage") (internal citations omitted).

10. See chart accompanying article, available at [www.newyorklawjournal.com/id=1202664174206](http://www.newyorklawjournal.com/id=1202664174206).

11. *McSparrow v. McSparrow*, 87 N.Y.2d 275, 639 N.Y.S.2d 265 (1995).

12. See, e.g., *White v. White*, 204 A.D.2d 825, 611 N.Y.S.2d 951 (3d Dep't 1994).

13. As the Court of Appeals in *Keane v. Keane*, 8 N.Y.3d 115, 861 N.Y.S.2d 98 (2006) explained, for reasons beyond the scope of this article, the value of a business based on tangible assets does not have the same "double dipping" problem of a business based on intangibles.

14. See *Quarty v. Quarty*, 96 A.D.3d 1274, 948 N.Y.S.2d 130 (3d Dep't 2012) (holding that there was no double dipping where the trial court determined maintenance based on the titled spouse's pre-license income (i.e., Baseline Earnings) and the difference between "the \$70,000 topline earnings used in our determination of the value of the license and the \$92,000 annual income to which [the titled spouse] testified at trial").

15. If both EEC and a Business Interest are valued in a case, for example, a medical license and a medical practice, or a law degree and a law partnership, the financial expert using the capitalized earnings method to calculate the Business Interest must exclude the income used to calculate the EEC to avoid "double counting" the same income stream in valuing the two separate assets. See, e.g., *Miklos v. Miklos*, 9 A.D.3d 397, 780 N.Y.S.2d 622 (2d Dep't 2004).

16. See, e.g., *Rodriguez v. Rodriguez*, 70 A.D.3d 799, 894 N.Y.S.2d 147 (2d Dep't 2010) (reversing an award of maintenance based on the titled spouse's full income where 30 percent of the titled spouse's EEC and 25 percent of the titled spouse's medical practice had been distributed).

17. See *Quarty v. Quarty*, 96 A.D.3d 1274, 948 N.Y.S.2d 130 (3d Dep't 2012) (affirming an award of spousal support which eliminated from consideration the amount of the titled spouse's income used to calculate EEC, even though the non-titled spouse only received a 25 percent interest in that EEC); see also *Corasanti v. Corasanti*, 296 A.D.2d 831, 744 N.Y.S.2d 614 (4th Dep't 2002).

18. See *Farrell v. Cleary-Farrell*, 306 A.D.2d 597, 599 (3d Dep't 2003).

# Compilation of Cases by Department

This chart compiles cases in each of the four appellate departments in New York, as referenced in the article "Trends in Distributing a Business Interest and Enhanced Earning Capacity" by Judith L. Poller, Elizabeth S. Warner and Joshua H. Pike of Pryor Cashman.

Relevant Published Decisions	% Business Interest	% EEC	Notes
<b>First Department</b>			
<i>Ira S. v. Janice S.</i> , NYLJ 1202650165483 (Sup. Co. N. Y. Cty. 2014)	17%		Although the marriage was of long duration and the court emphasized the wife's indirect contributions citing her "care of the children" and her direct contributions through the entertainment of clients and "discussing law firm tactics" to assist the husband in making partner, it reduced her share due to the wife's multitude of articles presenting the husband to various websites," which the court concluded caused a decline in the husband's business.
<i>Sykes v. Sykes</i> , 4 Misc. 3d 1220(A), 2014 N.Y. Misc. LEXIS 2069 (Sup. Ct. N.Y. Co. 2014)	30%		Wife assumed duties related to household, child-caring, and emotional support of husband. No direct contributions to the business.
<i>Bayer v. Bayer</i> , 80 A.D.3d 492, 914 N.Y.S.2d 169 (1st Dep't 2011)		35%	Court noted the wife's economic and non-economic contributions to the husband's acquisition of his medical degree and career, including "the termination of her own career in order to maintain the marital household, and her absence from the job market during marriage." No further details provided.
<b>Second Department</b>			
<i>A.C. v. J.O.</i> , (Sup. Ct., Kings Co.) 40 Misc. 3d 1126(A), 975 N.Y.S.2d 707, 2013 N.Y. Misc. LEXIS 35248	25%		Award of Business Interest based on husband's minimal direct and indirect contributions toward the establishment of the wife's business, but cognizant of his support of her for the four years she was in dental school, and of the parties' first child. No EEC from wife's acquisition of dental degree as she left a lucrative career as a partner in a law firm to become a dentist.
<i>P.D. v. L.D.</i> , 28 Misc. 3d 1232(A), 958 N.Y.S.2d 62, 2010 N.Y. Misc. LEXIS 4321 (2d Dep't 2010)	30%		Long term marriage, where the non-titled spouse wife was the "primary caretaker of the children and the home," but the titled spouse "also contributed to the household by taking responsibility of the family's finances, doing laundry and going grocery shopping." Award to the wife of 1/2 the marital funds used to start the Business Interest and 30% of the value of the Business Interest.
<i>Turco v. Turco</i> , 985 N.Y.S.2d 261, 2014 N.Y. App. Div. LEXIS 3182 (2d Dep't 2014)	50%		Awarding a wife 50% of the marital appreciation of the husband's bakery business which was operational before the marriage, when the appreciation was attributable to capital contributions of marital funds
<i>Kim v. Schiller</i> , 112 A.D.3d 671, 978 N.Y.S.2d 229 (2d Dep't 2013)		30%	Wife made no direct financial contributions to the attainment of the husband's medical degree. Indirect contributions included financially supporting the family and primary caretaker of children.
<i>Shah v. Shah</i> , 100 A.D.3d 734, 954 N.Y.S.2d 129 (2d Dep't 2012)	30%		Business started by husband during the marriage and purportedly transferred to his business partner shortly before commencement. No details as to wife's contributions provided.
<i>Golden v. Golden</i> , 98 A.D.3d 647, 949 N.Y.S.2d 753 (2d Dep't 2012)	30% (of marital apprecia- tion)		Wife non-titled spouse was the primary caregiver/homemaker during the parties' 10 year marriage.
<i>Griesman v. Greisman</i> , 98 A.D.3d 1079, 951 N.Y.S.2d 219 (2d Dep't 2012)	1/3	1/3	No details as to wife non-titled spouse's contributions provided.
<i>Sotnik v. Zavilyansky</i> , 101 A.D.3d 1102, 956 N.Y.S.2d 514 (2d Dep't 2012)		0	Husband not entitled to share in wife's EEC from medical degree earned during the marriage as his contributions were "de minimis."
<i>Nidositko v. Nidositko</i> , 92 A.D.3d 653, 938 N.Y.S.2d 569 (2d Dep't 2012)		5%	5 year marriage during which time wife obtained an associates degree in nursing and her license as a registered nurse. No details of husband's contributions provided.

Relevant Published Decisions	% Business Interest	% EEC	Notes
<i>Scher v. Scher</i> , 91 A.D.3d 842, 844, 938 N.Y.S.2d 317, 320 (2d Dep't 2012)	20%		Awarding a wife 20% of the marital appreciation of the husband's business based on her "direct contributions to the business by serving as the company bookkeeper for approximately seven years .... [and] indirect contributions as homemaker and occasional caretaker of one of [the husband's] children from a prior marriage."
<i>Huffman v. Huffman</i> , 84 A.D.3d 875, 923 N.Y.S.2d 583 (2d Dep't 2011)		30%	EEC from husband's MBA awarded to wife based on her "substantial indirect contributions", including "working ... and contributing her earnings to the family, being the primary caretaker of the couple's children, cooking family meals, and participating in housekeeping responsibilities."
<b>Third Department</b>			
<i>V.M. v. N.M.</i> , 43 Misc. 3d 1204(A), 2014 N.Y. Misc. LEXIS 1383 (Sup. Ct. Albany Co. 2014) (Lynch J.)	30%		The wife non-titled spouse "was extensively engaged in the business during the 2004-2008 period", "played an important role in the business" and "the parties mutually agreed in 2008 that the defendant would reduce her work efforts to become the primary caregiver of their child."
<i>Owens v. Owens</i> , 107 A.D.3d 1171, 967 N.Y.S.2d 465 (3d Dep't 2013)		30%	Husband non-titled spouse encouraged wife to go to nursing school, "financed her education, and was primary caregiver for the children while she pursued her degree full time."
<i>McCaffrey v. McCaffrey</i> , 107 A.D.3d 1106, 967 N.Y.S.2d 162 (3d Dep't 2013)		15%	Husband's degree and success were the result of his significant effort, attending night school while working full time "and occasionally at a part-time second job. Moreover, much of his professional success was attributable to his superior job performance." Award of 15% appropriate despite wife rearranging her schedule, transporting husband to and from classes, and assuming greater share of the household responsibilities.
<i>Vertucci v. Vertucci</i> , 103 A.D.3d 999, 962 N.Y.S.2d 382 (3d Dep't 2013)	15%	15%	Wife was in third year of law school when married. "There was conflicting testimony regarding the extent of the husband's involvement in matters that contributed to the wife obtaining her law degree and her subsequent starting a private law practice."
<i>Quarty v. Quarty</i> , 96 A.D.3d 1274, 948 N.Y.S.2d 130 (3d Dep't 2012)		25%	While the wife obtained her degree and nurse practitioner's license, husband "was responsible for significant child-care responsibilities and household duties, including outdoor home maintenance. In addition, the husband used his Social Security disability funds to pay the mortgage on their home for some periods of time."
<i>Esposito-Shea v. Shea</i> , 94 A.D.3d 1215, 941 N.Y.S.2d 793 (3d Dep't 2012)		10%	Wife paid for bulk of law degree with inheritance and part-time work, but Husband contributed some money and was family's primary wage earner and took care of kids while the wife was in school. Husband's efforts represented "overall contributions to the marriage rather than an additional effort to support [the wife] in obtaining her license."
<i>Sadaghiani v. Ghayoori</i> , 83 A.D.3d 1309, 923 N.Y.S.2d 236 (3d Dep't 2011)		10%	"While plaintiff did provide support and assistance to defendant initially when he arrived in the United States, cared for the parties' child, and provided and maintained a residence for defendant to return to on weekends, her modest contributions support an award of no more than 10% of the marital portion of defendant's enhanced earnings." Parties lived apart for bulk of marriage.
<i>Hogle v. Hogle</i> , 40 Misc. 3d 1220(A), 977 N.Y.S.2d 667, 2013 N.Y. Misc. LEXIS 3270 (Sup. Ct. Columbia Co. 2013)		25%	Wife non-titled spouse provided primary financial support while husband attended law school. Husband's degree was paid for with marital funds.
<i>Rich-Wolfe v. Wolfe</i> , 83 A.D.3d 1359, 922 N.Y.S.2d 593 (3d Dep't 2011)	50%		Wife non-titled spouse helped in operating business from its inception and eventually quit her job to work full-time for the business. Husband admitted that wife made substantial direct and indirect contributions to business.
<b>Fourth Department</b>			
<i>Lauzonis v. Lauzonis</i> , 105 A.D.3d 1351, 964 N.Y.S.2d 796 (4th Dep't 2013)		Remitted to trial court	Trial court failed to award EEC to wife non-titled spouse. Remitted to trial court to award EEC based on wife's "modest" contribution toward the husband's attainment of a master's degree ...."
<i>Gallagher v. Gallagher</i> , 93 A.D.3d 1311, 941 N.Y.S.2d 392 (4th Dep't 2012).	45% to W	15% to H	No details provided as to wife's involvement in Business Interest or husband's contributions to Wife's EEC.
<i>D'Ambra v. D'Ambra</i> , 94 A.D.3d 1532, 943 N.Y.S.2d 698 (4th Dep't 2012)	15%		Wife made only indirect contributions to the husband's Business Interest. No further details provided.

SOURCE: Compiled by authors Judith L. Poller, Elizabeth S. Warner and Joshua H. Pike of Pryor Cashman.