# WAGE CALCULATION and WAGE RECONSTRUCTION HYPOTHETICALS

I. Wage Calculation Hypothetical Statement of Facts

The Petitioner, James Smith, met with a compensable accident on January 21, 2019. The parties stipulated that the permanency was 55% partial permanent disability subject to a 15% partial permanent disability *Abdullah* credit for the permanent residuals of his work-related injuries. Mr. Smith was employed as a union stagehand for approximately forty years. He is a member of Local 917, International Alliance of Theatrical Stage Employees. He is first in seniority with Local 917 for all audio-based work and maintains seniority in the top ten of all Local 917 members overall. His employment as a local stagehand has been his primary and exclusive source of income for approximately forty years. All the Atlantic City casinos are covered by the union contract. The casinos submit available positions to the Local 917 hiring hall which are then distributed to each individual member. Union positions are published on a Thursday evening via e-mail outlining work/jobs available for the upcoming week. Because of seniority, Petitioner is always called by a union representative at 10:00am sharp the following day (Friday) where the Petitioner outlines the work/jobs he has selected from the list circulated by Local 917. On average, the Petitioner would regularly select a total of between thirty-two and forty hours of work per week at various union contract casinos through the hiring hall. Throughout an average year, the Petitioner worked as many as sixty to sixty-five hours per week at the various casino jobs in Atlantic City. The job/position selected by the Petitioner in a given work week are not exclusively at one specific casino. In the same week, he could work at two or three different casinos. The Petitioner was paid directly by each casino. The Petitioner's hourly rate is set solely and exclusively through his union contract. The Petitioner's hourly rate for any and all union stagehand jobs at the time of the accident was $38.00 per hour. His job as Union Stagehand includes the following job duties: loading and unloading trucks, rolling gear onto the stage, unboxing and setting up gear, wiring gear, performing sound checks, rigging, lighting, and disassembling staging after performance. As a result of his compensable accident of January 21, 2019, the Petitioner suffered injury to both of his shoulders ultimately resulting in bilateral shoulder surgery and rotator cuff and labral repairs.

The accident of January 21, 2019 occurred at the Bally's Park Place Hotel and Casino. The Petitioner had accepted assignments at Bally's during the week of the accident for a total of sixteen hours on two separate days. When the accident occurred, he was only in the fifth hour of that week's assignment. During the week of January 21, 2019, he had already worked an eight-hour shift at Resorts International Hotel and Casino and would have worked another eight-hour shift two days after the accident at the Borgata Hotel and Casino.

The twenty-six week wage printout for the six months immediately preceding the accident revealed that the Petitioner worked an average of eleven hours per week at Bally's Park Place Hotel and Casino at the aforestated rate of $38.00 per hour.

1. How do we calculate the Petitioner's wage and rate for purposes of temporary disability?

2. How do we calculate the Petitioner's wage and rate for purposes of permanent partial disability?

II. Assume all of the facts as stated in the case of *John Smith v. Bally's Park Place Hotel and Casino* as stated above. In addition, consider the following facts. When the Petitioner returned to work as a stagehand after he was pronounced MMI following his second of the bilateral shoulder surgeries, he began taking audio-based positions only. That is because there were many jobs that he was unable to accept due to his bilateral shoulder condition. He was no longer able to take jobs that involved rigging a stage. He now had to be limited to audio and meeting room-based positions because less weight and lifting were involved. Since the accident in question, the Petitioner could not take the same positions that he previously did. He has difficulty working on larger shows which are typical and has difficulty loading and unloading trucks, setting up stages for large-scale concert shows, and could not in any way involve himself in heavy lifting and rolling of equipment. Prior to the accident in question, the Petitioner typically reported gross annual earnings between $65,000.00 and $75,000.00 per year as a result of his aggregate work as a stagehand at many casinos. The Petitioner is now only able to work approximately twenty to twenty-four hours per week. He has also had to call out of work many times since the accident because of his inability to perform duties. He no longer takes positions performing "load in" and "load out" at large-scale concerns. He no longer takes electric set-up jobs due to the heavy weight of the equipment which is between eighty-five and one hundred pounds. Mr. Smith has only returned to Bally's Park Place Hotel and Casino for five or six days of work since March 2020 for lighter positions such as breaking down meeting rooms. After the accident, the bulk of his work was performed at Tropicana Hotel and Casino in the audio department. The Petitioner no longer performs overtime work as he previously did.

1. Please calculate wage and rate.

WAGE RECONSTRUCTION HYPOS

1. Debbie Peters is a 71 year old merchandise assistant at Macy's for the past 20 years. She worked full time until 2000. During this time, she worked 40-50 hrs./week, usually 6 days/week. She was paid hourly. In 2000, her job title was deemed obsolete, however, because of her seniority, she was allowed to choose her own hours. Around the same time, her husband became ill. She chose to work 15 hrs./week, giving her time to care for her husband. She intended to return to full time employment upon her husband's recovery. However, on August 17, 2007, she slipped and fell on a highly waxed floor and suffered a fractured left patella. She was provided authorized medical treatment and temporary disability benefits were pai at a rate of $190.00/week. Respondent has offered a settlement of 35% of the statutory left leg at the rate of $98.48/week. This is based on an hourly wage of $11.45 for the 26 weeks prior to the injury. She suffers from left knee pain and stiffness that is daily and constant. She notes swelling and instability. Weather changes exacerbate her pain. Prolonged standing, walking, and driving, as well as stair climbing are difficult. She cannot kneel or stoop. She has a permanent limp. Her leg gives way and has caused her to fall. Is she entitled to reconstruction of her wage for purposes of permanent disability?

2. Jennifer Miller is a 21 year old college student studying artist management/music industry. She took a summer job at an amusement park as a stage technician. She was paid an hourly wage of $7.15 and worked 32 hrss./week (Sat. & Sun.). She also took college classes during the week. On May 19, 2001, she fell from the back of a truck and suffered a skull fracture, closed head injury, hearing loss and tinnitus, organic brain damage, post-concussion syndrome and depression. As a result of the injury, she was advised to avoid loud music. Therefore, she changed her major and graduated from college with a BBA in December 2002. In 2006, she received a provisional teaching certificate and her permanent certificate in 2007. She currently works full time as a teacher. Respondent offered a settlement of 45% ppt with ongoing psychiatric treatment and annual check-ups with an ENT. Is she entitled to reconstruction of her wage for purposes of permanent disability?

3. Patti Thompson is a 54 year old part-time sales associate at Chico's who was paid $10/hr. and worked 20-25 hrs./week. This was her second job. Her full-time employment was as a computer programmer, which required her to travel throughout the State of New Jersey. On May 9, 2008, while working at Chico's, a clothing rack fell from the wall landing on her neck and head. She missed approximately 3-4 weeks from her full-time job. She never returned to work at Chico's because she could not do the lifting required. She has difficulty with headaches, neck and back pain that limited her ability to lift or carry objects and made traveling difficult. He full time job ended in November 2009. She has been unable to obtain employment since that time. She has had difficulty finding work because of her injuries. She previously commuted to New York and traveled frequently but is unable to do that now because of the injury. She is currently looking for full time employment. Is she entitled to reconstruction of her wage for purposes of permanent disability?

4. Sandra Allen is a 61 year old waitress at ABC Diner. She is paid an hourly wage of $2.13, plus tips. Ms. Allen injured her back lifting trays of food on September 3, 2007. She underwent bilateral lumbar decompression at L4-5 on May 19, 2008, but due to unrelenting left leg pain, she underwent a revision decompression and fusion. Due to mal-positioned pedicle screw, she was returned to the operating room on December 17, 2008 with removal of rod and RL5 pedicle screw with reposition of pedicle screw. She was out of work from May 19, 2008-July 9, 2008 and from September 19, 2008-May 13, 2009. The 26-week wage statement shows she averaged 21.5 hours. The maximum was 36.25 hrs. and minimum was 9 hours. Her 2007 tax return shows earnings of $9,526.51. Over 52 weeks this comes to an hourly wage of $8.52, evidence that she reported her tips. In 2009, she averaged approximately 40 hrs./week. Is she entitled to reconstruction of her wage for purposes of permanent disability?

5. Katherine Bradford is a 34 year old florist at Forever Flowers where she fell, twisting her left knee in the course of her employment on July 29, 2004. She underwent surgical repair of a torn ACL. She missed approximately 4 months from work. She had been working at FF part-time and attending school for 1 year prior to the accident. Her class schedule went year round with a week or two off between quarters. She would work more or less depending on her classes and the

season (eg> wedding season, etc..) Her classes ended on June 19, 2004. Around the same time, the owner offered her a full-time position at FF as the full-time designer had resigned and the owner needed someone to fill that position. She decided not to resume her classes the following quarter and to take the full-time job. She began working full time on July 12, 2004. Respondent argues that her wage and rate are based on the 26-week wage statement and that she is not entitled to reconstruction of the perm rate because she had worked full time prior to the accident. Is she entitled to reconstruction of her wage for purposes of permanent disability?

6. Walter Reed is a 22 year old waiter at Chili's who suffered an L5-S1 herniated disc when he slipped and fell on December 13, 2008. He received authorized treatment, including 2 epidural blocks, and temporary disability at $198.00/wk. At the time of the accident, he worked full time (40 hours/week) at Muscle Madness as a personal trainer and swim instructor and 15-20 hours/week at Chili's. He averaged $8.18/hr. at Chili's. He averaged $8.18/hr. at Chilis. Testimony at trial revealed Chili's had a full-time wait staff in addition to the part-timers. As a result of the back injury, he has difficulty lifting, bending, and sitting for long periods of time. He has limited many of his activities because of his back injury. He did not return to work at Chili's. He resigned from his job at Muscle Madness soon after being released from treatment on the basis that he did not feel he was physically capable of performing his job duties. He looked for other full-time employment but the jobs for which he was qualified, he was unable to satisfy the physical requirements. Currently, he works as a hairdresser earning up to $450.00/week (but working less than full-time) and is planning on taking college classes. Is he entitled to reconstruction of his wage for purposes of permanent disability?

# ADDITIONAL HYPOS:

1. Worker is hired to perform framing for XYZ Construction at the rate of $15.00 per hour. The regular work day is 7 AM to 3:30 PM with ½ hour for lunch. The regular work week is Monday through Friday with occasional work on Saturdays at time and a half. Worker is injured in the course of his employment on the first day of work. Assume he is under treatment and unable to work for more than 7 days. What are his Temporary Disability and maximum Permanent Disability rates?

2. Assume all of the facts in question #1, except Worker has been with XZY for 3 months prior to the accident and has worked 2 Saturdays at time and a half. Will this have any impact on his rate?

3. Assume the facts in #1 and #2 except there was no mention of overtime or Saturday work. Worker has been employed with XYZ for 6 months and has missed 22 days due to illness unrelated to work. On one occasion Worker worked a Saturday morning. What effect does the above have on his rate?

4. Assume Worker was hired as a salesman for ABC Company at an annual salary of $60,000.00 per year. Worker was injured after working 6 months for the employer and regularly worked 50-60 hours per week. During the period of employment Worker missed 2 weeks with the Flu. Calculate Worker's wage and rate.

5. Sales Rep is hired by ACE Real Estate Co. and works on straight commission. Over the last year before injury Sales Rep earned the following monthly commissions: Jan. $10,000, Feb. $7000, Mar. $3000, April $9000, May $10,000, Jun. $7,500 July $6500, Aug. $12,000, Sept. $8,000, Oct. $6,500, Nov. $7,500, and Dec. $2,500. Sales Rep is injured Jan. 5th and had earned no commissions in the new year as of the date of the accident. Calculate Sales Rep's wage and rate.

6. Assume Sales Rep above takes a $400.00 per week draw against commissions. Would this change the calculation of wages and rate?

7. Sales Rep is working for Acme Drug Co. and is hired at a Salary of $50,000 per year together with bonuses paid for incentive sales programs. In 2011 Sales Rep receives bonuses totaling $15,000. What is Sales Rep's wage and rate?

8. Sally Waitress was hired by Danny's Dinner at the hourly rate of $3.75 per hour for 35 hours per week for a weekly wage of $131.25 per week. She works Tuesday through Saturday 7 hours per day. (a) She testified that she averaged $70.00 per day in tips. What are her wage and rate? (b) She reported $200.00 per week in tips to her employer and paid income tax on $131.25 + $200.00 = $331.25 per week. What is her wage and rate? (c) She reported $100.00 per week in tips to her employer and pais income taxes on $131.25 per week. What are her wage and rate?

9. Joe Worker was injured while working for Plumbing Contractors Inc where he earned $750.00 per week. Joe also held a second job with Ace Security, where he did guard work for $250.00 per week. What is his wage and rate?

10. Assume the facts above but the security work is for and paid by Plumbing Contractors Inc.

11. John Driver was employed by Fast Freight as a driver and was paid for each trip based upon the gross weight of the cargo and the miles traveled. Some trips required John to drive 10 hours per day while shorter trips might require only 6 hours per day. What information do you need to calculate wages and rate?

12. Sally drives school bus for Midland School District. She works from 6:30 A.M. to 9:30 A.M. and from 2:00 P.M. to 5:00 P.M. everyday school is in session. Does it make a difference whether Sally is paid a salary or by the hour? In either case should it matter whether Sally is paid for holidays and "In Service days"? Should wages be reconstructed?

13. A County Corrections Officer receives full salary in leu of Temporary Total Disability Benefits. Should the salary be taxed as regular income while the Corrections Officer is out of work and under medical treatment?

14. How is the maximum and minimum rates determined?

15. Peter Part-Timer works for Donut Shop from 7:00 A.M. until 12 Noon three (3) days per week. Peter is paid $8.00 per hour. Peter is injured and is out of work for 20 weeks and under medical treatment. [a]What is his Temporary Disability rate, assuming he was injured in 2010. [b] What is his maximum Partial Permanency rate? [c] What is his maximum Total Permanency rate?

16. Bill is hired by ACME Apartments as a handyman. He receives a salary of $2,000.00 per month and a two bedroom apartment. The two bedroom apartments rent for $1,000.00 per month in the complex. Bill is injured while fixing plumbing in one of the units. What is his wage and rates?