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## Workmen's Compensation—Allocation Between Employers of Compensation Award

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## Allocation Between Employers Of Compensation Award

One of the problems recurring in cases of injury to a workman while in the joint and concurrent employment of two employers is how to charge the Workmen's Compensation award against them—in proportion to the respective wage scales or in proportion to the degree of engagement of the employee in the service of each employer at the time of the accident.

In *Hunt v. Regent Development Corporation*,<sup>6</sup> the Court held that, although the facts demonstrated that the employee, a night watchman guarding the premises of two companies and receiving thirty dollars a week from one and fifty dollars a week from the other, was at no time disengaged from performing the duties owed to either employer, the liability must be apportioned to the wages paid. This decision follows the rule announced in *Stevens v. Hull Grummond & Co.*,<sup>7</sup> where an equal division of liability would have had the anomalous result of making one employer pay more in compensation than he had been paying in wages.

A dissenting opinion of Judge Desmond holds that the case of *Stevens v. Hull Grummond & Co.* is not applicable, because an equal division in that case would have violated the express command of the Workmen's Compensation Law that compensation could not exceed two-thirds of the wages paid.<sup>8</sup> Since, in the instant case, no such situation was present, Judge Desmond felt that the equal division ordered by the board and affirmed by the Appellate Division<sup>9</sup> should not be disturbed, such apportionments being properly left to the board where no rule of law is violated as a result.<sup>10</sup>

It would seem that there is room for an elaboration of the statutory definition of such responsibilities, especially in view of the fact that the Workmen's Compensation Law is not lacking in detailed specification in other areas, as for example in establishing the awards to be made for particular types of injury.

## Assemblyman Not An Employee

The question of whether a New York State Assemblyman is covered by the Workmen's Compensation Law was presented by the case of *Toomey v. New*

6. 3 N.Y.2d 133, 164 N.Y.S.2d 694 (1957).

7. 274 N.Y. 227, 8 N.E.2d 498 (1937).

8. N.Y. WORKMEN'S COMPENSATION LAW §15.

9. *Hunt v. Regent Development Corporation*, 1 A.D.2d 862, 148 N.Y.S.2d 794 (mem., 3rd Dep't 1956).

10. N.Y. WORKMEN'S COMPENSATION LAW §20 provides:

The board shall have full power and authority to determine all questions in relation to the payment of claims presented to it for compensation under the provisions of the chapter.