New York Heart Bills: Presumptions Governing Police and Firefighters' Cardiac Disabilities

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I. Introduction

Statutes commonly referred to as heart bills have been enacted in many states to create a presumption that heart disease suffered by a police officer or firefighter resulted from employment.\(^1\) Such laws facilitate the payment of disability benefits under police and firefighter pension plans,\(^2\) but they have been challenged on the ground

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1. The purpose of Heart Bill legislation was to create the dual presumption of line-of-duty and accident causation. Sen. John Marchi, Chairman, New York State Senate Cities Committee: Statement regarding legislative intent of the City Heart Bill, June 8, 1979, before Senate membership. Unpublished Transcript, pp. 4990-91 (Debate over re-enactment of the City Heart Bill, 1979 N.Y. Laws ch. 321) [hereinafter cited as Transcript].

2. "Accident" disability payments, for purposes of retirement or death benefits, are greater than payments categorized as retirement for "ordinary" disability or "ordinary" death benefits. A firefighter's medical examination for retirement on ordinary disability must show
   - that such member is physically or mentally incapacitated for the performance of duty and ought to be retired. If such medical examination shows
   - that such member is physically or mentally incapacitated for the performance of duty and ought to be retired, the medical board shall so report and the board shall retire such member for ordinary disability.

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NEW YORK, N.Y., ADMIN. CODE, § B19-7.83 (1976). See also § B18-42.0 (police). Ordinary death benefits for firefighters are received by their estate "[u]pon the death of a member who has not completed the period of service, as elected by him for retirement, or upon the death of a former member . . . ." Id. § B19-7.79. See also § B18-38.0 (police). Retirement allowances for police and firemen equal three-fourths of their final compensation for accidental disability or death. Id. § B19-7.89 (fire), § B18-47.0(3) (police). Ordinary disability benefits are awarded in addition to accumulated pension contributions. They amount to one-third of a member's salary at date of retirement if he has under ten years of service. Id. § B19-7.88 (fire), § B18-46.0 (police); one-half of his salary for service of ten to twenty years. Id. For service of at least twenty years, the member is entitled to one-fortieth of his final compensation multiplied by the number of years of service. Id. This amount must exceed one-half his final compensation. Id. Members with at least twenty-five years service receive retirement allowances of one-fiftieth of their final compensation multiplied by their total years in service, an amount which also must exceed one-half the final compensation. Id. Municipal pensions are not subject to state and local taxes. Id. § B19-7.94 (fire), § B18-52.0 (police). However, ordinary disability pensions (1/2) are subject to federal taxes, while accidental disability pensions (3/4) are not. Rev. Rul. 45, 1972 - 1 C.B. 34; NEW YORK, N.Y., ADMIN. CODE § B18-52.0
that medical evidence does not fully support such a presumption, and

(1976). A police officer or firefighter seeking Heart Bill benefits must apply through the Fire Department or Police Department Pension Fund Boards. New York, N.Y., Admin. Code § B19-2.0 (fire), § B18-13.0(a) (police) (1976). The Police Department's Board consists of union representatives with six votes and city representatives with six votes. Id. § B18-13.0(a). Id. § B19-2.0(a) (fire department with double number of votes but same union-city distribution). Seven-twelfths of the votes authorized to be cast are needed to confer benefits. Id. § B19-2.0(b) (fire), § B18-13.0(b) (police).

A Medical Board consisting of three physicians is appointed for both the Police Department, id. § B18-20.0, and the Fire Department, id. § B19-7.18. One physician on each Medical Board is appointed by the appropriate Pension Board. The Commissioner of Hospitals appoints another physician. The Police Department's remaining physician is appointed by the city's Director of Personnel, while the Chief Medical Examiner for the city's Civil Service Commission appoints the third member of the Fire Department's Board. Each Medical Board arranges and passes upon all medical examinations, investigates all essential statements and certifications by or on behalf of a member in connection with the application for disability retirement, and reports to the appropriate Pension Board on its conclusions and recommendations.

Several steps are followed by a fire or police employee who seeks accident disability for a heart condition. Police Department procedures will be used as an example. (a) The officer files a form, including the relevant details of his case, with the New York City Police Department Pension Section, which then processes it. (b) When an officer applies for accident disability payments, the Police Commissioner, in a parallel action, applies to the Medical Board for a "Commissioner's Disability" for either ordinary or accident benefits, allowing the Medical Board to make the decision about the officer's disability. (c) Staff of the Chief Surgeon's Office, which administers the work of the Police Pension Board, receives the completed form. (d) The Medical Board calls the officer to a meeting of its members where the primary issue is whether the officer is disabled. Approximately 95% of the "heart" cases are atherosclerosis (thickening and hardening of the walls of the arteries) or ischemic heart diseases (developing when coronary circulation is insufficient to supply oxygen demands of the myocardium). See notes 60, 61 infra and accompanying text. The Board may have the officer undergo one or more of three tests: a stress test; a Thallium Scan (use of radioisotopic substance to detect decreased blood flow); or a cardiac catheterization angiogram (surgical procedure in which dye is injected directly into heart and/or coronary vessels to determine areas of obstruction of blood flow). After considering the officer's evidence, the Board decides whether or not to award accident benefits. (e) The Board's decision is forwarded to the Police Pension Board of Trustees, which meets once a month. While the Medical Board's finding of disability is conclusive, its determination regarding causation may, under certain conditions, be overruled by the Board of Trustees. Meschino v. Lowery, 31 N.Y.2d 772, 290 N.E.2d 825, 338 N.Y.S.2d 625 (1972). Interview in New York City with James J. Dwyer, N.Y.C. Finance Commissioner's representative to Police and Fire Department Pension Boards (August 28, 1981).

As a result of a 1945 case, City of New York v. Schoeck, 294 N.Y. 559, 63 N.E.2d 104 (1945), a deadlock vote at a Pension Board of Trustees meeting would relegate the applicant to ordinary disability or death benefits. For a discussion of Schoeck, see note 105 infra. Schoeck would later serve as one of the bases for the 1979 litigation involving the Heart Bill, where it was asserted that city trustees attempted to deadlock Pension Boards of Trustees meetings from March through July, 1979. The result would have been to retire applicants with lesser (ordinary) disability pension benefits, and then force these applicants to utilize other legal resources by obtaining a writ of mandamus or declaratory judgment through an Article 78 proceeding. N.Y.
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that they impose unnecessary costs on municipal and state govern-
ments.4

In New York, two statutes govern heart disease suffered by police
officers and firefighters—one covering New York City (City Heart
Bill),5 the other covering New York State (State Heart Bill).6 Both
bills establish a line-of-duty presumption which provides that any
impairment of health caused by diseases of the heart and the resulting
disability or death are presumptive evidence that the impairment was
job connected, unless proven otherwise.7 In addition, the State Heart

CIV. PRAC. ART. 78 (McKinney 1981). Schoeck would have mandated the court to
treat the Board's decision with greater judicial deference, thereby effecting the same
result had the Board originally denied the application. Brief for Respondents at 18,
Uniformed Firefighters Ass'n, Local 94 v. Beekman, 52 N.Y.2d 463, 420 N.E.2d 938,
438 N.Y.S.2d 746 (1981). When union representatives on both boards refused to
attend meetings to prevent a quorum, the city brought a mandamus proceeding to
compel their attendance. The unions also sued the city, seeking a declaration by the
court of the proper meaning of N.Y. GEN. MUN. LAW § 207-k (McKinney Supp.
1980-81). On appeal to the appellate division, all of the suits were consolidated. See
generally notes 101-03 infra and accompanying text.

3. A number of physicians have given testimony to the effect that there is little
basis for specialized heart legislation for police officers or firefighters. See notes
23-30, 100 infra and accompanying text.

4. See note 99 infra and accompanying text.


7. N.Y. GEN. MUN. LAW § 207-k subdiv. a (McKinney Supp. 1980-81) provides in
part:

Notwithstanding the provisions of any general, special or local law or
administrative code to the contrary, but except for the purposes of sections
two hundred seven-a and two hundred seven-c of this chapter, the work-
men's compensation law and the labor law, any condition of impairment
of health caused by diseases of the heart, resulting in total or partial
disability or death to a paid member of the uniformed force of a paid
police department or fire department, where such paid policemen or
firemen are drawn from competitive civil service lists, who successfully
passed a physical examination on entry into the service of such respective
department, which examination failed to reveal any evidence of such
condition, shall be presumptive evidence that it was incurred in the per-
formance and discharge of duty, unless the contrary be proved by compe-
tent evidence.

Although the statute does not specify applicability to New York City by identifying
coverage of "certain cities," virtually no court or administrative decision has applied
its provisions to any other city. But see Kieper v. Fitzgibbons, 91 Misc. 2d 1067, 399
N.Y.S.2d 376 (Sup. Ct. Oswego County 1977) (applied N.Y. GEN. MUN. LAW §
207-a (McKinney Supp. 1980-81) in conjunction with § 207-k for no apparent rea-
son). This is presumably because New York City police officers and firefighters do
have their own pension system, while their colleagues in other cities are included in
the New York State Policemen's and Firemen's Retirement System. Regarding pay-
ment of salary, wages and medical and hospital expenses incurred in the performance
of duties, § 207-a and § 207-c would apply to non-N.Y.C. police officers and
firefighters since New York is the only municipality with greater than one million
Bill contains an explicit rebuttable accident presumption which applies only to police officers, and enables payment of accident disability benefits unless it is shown that the injury was not accidental. While the City Heart Bill has no explicit presumption, a rebuttable accident presumption has been implied by courts and pension administrators.

This Note analyzes the history and current status of New York's two heart bills, with particular emphasis on the City Heart Bill. The judicial and legislative background of the bills as well as comparable laws in other jurisdictions are discussed in Section Two. The most recent court decisions construing the New York heart bills, including Uniformed Firefighters Ass'n, Local 94 v. Beekman, are examined in Section Three. Finally, Section Four analyzes the effect of judicial interpretations of the City Heart Bill and assesses various alternatives available to the city.

The State Heart Bill, N.Y. Retire. & Soc. Sec. Law § 363-a (McKinney Supp. 1980-81), provides in part:

1. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, any condition of impairment of health caused by diseases of the heart, resulting in disability or death to a fireman shall be presumptive evidence that it was incurred in the performance and discharge of duty and the natural and proximate result of an accident, unless the contrary be proved by competent evidence.

2. Notwithstanding any provisions of this chapter or of any general, special or local law to the contrary, any condition of impairment of health caused by diseases of the heart, resulting in disability or death to a policeman, presently employed, and who shall have sustained such disability while so employed, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence.

This section originally provided that a cardiac condition found in either a policeman or fireman was presumed to be an accident. In 1973 the statute was amended to extend to both job-relatedness and accidental causation. 1973 N.Y. Laws ch. 1046, § 30. In 1974, the statute was again amended to provide the dual presumption for firemen while maintaining only one presumption for police officers—that the condition was job-related. 1974 N.Y. Laws ch. 967.


9. Line-of-duty, or job connection, is presumed under both statutes. This means that an injury resulted from and was attributable to one's employment. The "accident" presumption is not mentioned in the city statute, but has been incorporated by judicial and administrative interpretation. See note 22 infra and accompanying text. Both presumptions are difficult to rebut because the cause of a heart problem is far more elusive than, for example, the cause of a broken leg or other external injury which occurs as the result of a specific occurrence during the course of employment.

II. Historical Background

Heart bills are based on certain assumptions concerning the work performed by police and firefighters, including the existence of stress-generating factors, risks faced in their regular duties, and the range of possible effects of these duties on their health. It took twenty-two

11. In describing the hazards of an urban police officer, one proponent of the N.Y.C. Heart Bill has pointed to the accumulation of incidents which, as a whole, supposedly contribute to accidental heart injury. Such factors might include "a shot-gun blast just short of fatal; a knife-thrust missing by an inch of a vital organ; a chase on foot up a pitch black stairway or down a dark alley and over a wall; a pistol in the hand of a potential assassin which misfires . . . such is the common life pattern of the police officer on duty." Brief for Petitioners-Respondents at 8, DeMilia v. McGuire, 52 N.Y.2d 463, 420 N.E.2d 938, 438 N.Y.S.2d 746 (1981), quoting Sergeant Harold Melnick, President of the N.Y.C. Police Dep't Sergeants Benevolent Ass'n. Such heart conditions presumably affect police officers and firefighters in both large urban areas, see, e.g., Margiasso v. Levitt, 65 A.D.2d 910, 410 N.Y.S.2d 909 (3d Dep't 1978) (Syracuse); Cunningham v. Levitt, 40 A.D.2d 915, 337 N.Y.S.2d 684 (3d Dep't 1972) (Fort Authority Police Dep't); and smaller municipalities and suburban communities throughout the state, see, e.g., Tremblay v. Levitt, 65 A.D.2d 901, 410 N.Y.S.2d 689 (3d Dep't 1978) (Lockport); Nolan v. Comptroller, 59 A.D.2d 799, 398 N.Y.S.2d 770 (3d Dep't 1977) (Village of So. Nyack); Acciavatti v. Levitt, 57 A.D.2d 131, 393 N.Y.S.2d 613 (3d Dep't 1977) (Eastchester).

Issues relating to statutory construction that arise under the New York State statutes have been litigated in other jurisdictions as well. Thirty-eight states have adopted legislation similar in effect to New York's Heart Bills. See, e.g., Alabama: ALA. CODE §§ 11-43-144(b), 36-30-22 (1977); California: CAL. GOV'T CODE § 31720.5 (West Supp. 1981); Colorado: COLO. REV. STAT. § 31-30-508 (1977); Connecticut: CONN. GEN. STAT. ANN. § 7-433(a) (West 1972); Florida: FLA. STAT. ANN. §§ 112.18, 185.34 (West 1973 & Supp. 1974-80); Georgia: GA. CODE ANN. §§ 78-1017(b) (Supp. 1981); Massachusetts: MASS. ANN. LAWS ch. 32, § 94 (Michie/Law. Co-op 1973). There are several types of statutes, most of which have been litigated in favor of those employees seeking worker's compensation for heart benefits. See, e.g., Bussa v. Workmen's Compensation Appeals Bd., 259 Cal. App. 2d 261, 66 Cal. Rptr. 204 (1968); Schave v. Department of State Police, 58 Mich. App. 178, 227 N.W.2d 278 (1975); Commonwealth v. Oil City, 15 Pa. Cmwlth. 544, 328 A.2d 170 (1974); Page v. City of Richmond, 218 Va. 844, 241 S.E.2d 775 (1978); Sperbeck v. Department of Indus., Labor & Human Relations, 46 Wis. 2d 282, 174 N.W.2d 546 (1970). Most states are covered by worker's compensation. In New York City, however, worker's compensation does not apply. For a discussion of the coverage by worker's compensation of heart related injuries, see generally 1B A. LARSON, WORKMEN'S COMPENSATION LAW § 41.72 (1980 & Supp. 1981); Davis, Workmen's Compensation in Connecticut — The Necessary Work Connection, 7 CONN. L. REV. 199 (1975); Milner, Heart Disease Due to Occupational Emotional Stress: A Compensable Claim Under Oregon Worker's Compensation Law? 10 ENV'T'L LAW 159 (1979); Note, Heart Injuries Under Worker's Compensation: Medical and Legal Consideration, 14 SUFFOLK L. REV. 1365 (1980). Virtually every state incorporates a presumption of service connection when heart conditions result from the performance of active duty. In many of the states, the presumption cannot be rebutted merely by evidence of preexisting heart disease nor by medical opinion that the occupation had no effect on the weakened heart. 1B A. LARSON, supra § 41.72(a). The type of employee covered
years, however, for police and fire unions to convince the state legislature and the governor to pass these bills. Until they were finally enacted in 1969 and 1970, heart bills had been repeatedly vetoed by New York State governors. Despite similarities between the City Heart Bill and the State Heart Bill, there are several significant distinctions in both the language of the legislation and the case law which has arisen since their enactment.

by a Heart Bill varies among the states. While most bills apply to only uniformed employees of paid fire and police departments, a few extend coverage to employees such as corrections, custodial, public works, buildings police, and certain airport personnel, or special tax district firemen and port authority firemen. See, e.g., FLA. STAT. ANN. § 112.18 (West Supp. 1974-80) (special firemen); MASS. ANN. LAWS, ch. 32, § 94 (Michie/Law. Co-op 1973) (special peace officers). But see Saal v. Workmen’s Compensation Appeals Bd., 50 Cal. App. 3d 291, 123 Cal. Rptr. 506 (1975) (statute did not cover California State University policemen); State Compensation Ins. Fund v. Workmen’s Compensation Appeals Bd., 251 Cal. App. 2d 772, 59 Cal. Rptr. 760 (1967) (court refused to extend benefits of full-time salaried deputy sheriff to include a deputy coroner who was also a deputy sheriff). Many states require a minimum amount of service time before allowing heart-related disability payments. See, e.g., ALA. CODE §§ 11-43-144(b), 36-30-22 (1977) (three years); CAL. GOV’T CODE § 31720.5 (West Supp. 1981) (five years); GA. CODE ANN. § 78-1017(b) (Supp. 1981) (five years); ILL. ANN. STAT. ch. 108 1/2, § 6-151.1 (Smith-Hurd Supp. 1981-82) (ten years). A related issue is the type of heart trouble covered by the statute. Through statute and case law, some Heart Bills have included hypertension under the definition of heart trouble, Muznick v. Workmen’s Compensation Appeals Bd., 51 Cal. App. 3d 622, 124 Cal. Rptr. 407 (1975), but not cerebral vascular stroke, Coyne v. Workmen’s Compensation Appeals Bd., 69 Cal. App. 3d 770, 138 Cal. Rptr. 373 (1977), or a firefighter’s cardiac neurosis, Baker v. Workmen’s Compensation Appeals Bd., 18 Cal. App. 3d 852, 96 Cal. Rptr. 279 (1971). Few statutes discuss the provision of benefits in terms of “risk factors.” Such factors may include cigarette smoking, drinking, or being overweight. Letter from Harvey G. Kemp, Jr., M.D., Director, Division of Cardiology, St. Luke’s Hospital, to Reinaldo A. Ferrer, M.D., N.Y.C. Commissioner of Health (April 12, 1979). At least two states disallow payment of the fire or police employee’s disability pension if it results from excessive use of alcohol or prohibited drugs. See, e.g., GA. CODE ANN. §§ 78-1017(b) (Supp. 1981) (“no benefits shall be payable . . . for any disability resulting from the chronic and excessive consumption of alcoholic beverages, or addiction to [illegal] drugs . . .”): accord, COLO. REV. STAT. § 31-30-508 (1977). Under most statutes, the employee upon entry must pass a physical examination which does not reveal any evidence of heart problems or pre-existing cardiac diseases. See, e.g., ALA. CODE §§ 36-30-22, 11-43-144(b) (1977); CONN. GEN. STAT. ANN. § 7-333(a) (West 1972); FLA. STAT. ANN. §§ 112.18, 185.34 (West 1973 & Supp. 1974-80); MASS. ANN. LAWS ch. 32, § 94 (Michie/Law. Co-op 1973).


13. For a discussion of the differences between and objections to these Heart Bills, see notes 23-43 infra and accompanying text.
A. Statutory Analysis

1. New York City's Heart Bill

The City Heart Bill has repeatedly passed both legislative houses since its enactment in 1970. The bill was re-enacted in 1974 as part of omnibus legislation covering several other retirement provisions. The inclusion of the City Heart Bill in a legislative package ensured its passage, a tactic which was also used successfully in 1979 despite the city's concerted lobbying efforts. The New York State Senate extended both bills for a two-year period in June, 1981.

The effect of the City Heart Bill has been to facilitate the collection of accident disability pensions by police officers and firefighters considerably higher than ordinary disability payments. The bill does this in two ways: it creates one rebuttable presumption that any heart condition was caused by a member's job and another rebuttable presumption, as interpreted by the New York pension administrators and courts, that the heart condition was an accident. The dual presumption represents a departure from pre-heart bill practice. Before the bill was enacted, New York City police officers and firefighters had to prove a specific connection between their injury and performance of their police or firefighting duties, and that the injury resulted from a single, discrete accident. The bill has been inter-
interpreted to mean that any heart injury incurred was accidental, in addition to the assumption that it was incurred in the line of duty. Explicit language concerning the line-of-duty presumption is found in the statute and provides that any disease of the heart "shall be presumptive evidence that it was incurred in the performance and discharge of duty."22 No such language relating to an accident presumption is contained in the statute, however, and courts have relied instead on legislative intent and public policy.

There have been several arguments raised against enactment23 and re-enactment24 of the bill. Perhaps the most persuasive of these is the position that a heart bill is not supported by medical evidence linking heart conditions to police or firefighting work.25 A prominent heart

accident disability) and § B18-39.0 (accidental death benefits). When the New York City Police and Fire Pension Funds were created in 1940, New York, N.Y., [1940], N.Y. Local Laws (No. 2) (New York, N.Y., Admin. Code §§ B18-48.0(c), B19-7.9(c) (1976)), the legislature adopted the New York City Employees Retirement System (NYCERS) and the state system rules requiring separate proof of accidental causation, in addition to job-relatedness. NYCERS, created in 1920, allowed a member to retire with extraordinary disability benefits if he could demonstrate that he was "physically or mentally incapacitated for the performance of city service as a natural and proximate result of such city service . . ." (1920 N.Y. Laws ch. 427, § 1714). It was amended in 1923 to require the showing of an accident to qualify for extraordinary death or disability benefits (1923 N.Y. Laws ch. 142, §§ 6, 8). In 1924, the N.Y.S. Retirement System adopted the same provision as described above (1924 N.Y. Laws ch. 619). When the 1940 legislation was established for N.Y.C. Police and Fire members, both the NYCERS and state system requirements of proof of accident causation were considered applicable to New York City. Brady v. City of New York, 22 N.Y.2d 601, 241 N.E.2d 236, 294 N.Y.S.2d 215 (1968); accord, Drayson v. Board of Trustees, 37 A.D.2d 378, 326 N.Y.S.2d 328 (1st Dep't 1971), aff'd, 32 N.Y.2d 852, 299 N.E.2d 684, 346 N.Y.S.2d 273 (1973); DeSio v. Codd, N.Y.L.J., October 22, 1974, at 19, col. 3 (Sup. Ct. N.Y. County); McPartland v. Board of Trustees of the Police Pension Fund, N.Y.L.J., December 14, 1978, at 10, col. 4 (Sup. Ct. N.Y. County).

22. The State Heart Bill, however, has provided explicitly for a dual rebuttable presumption of line-of-duty and accident. See note 7 supra. A 1974 amendment to the State Bill deleted this accident provision for police officers, 1974 N.Y. Laws ch. 967, while the presumption remained unchanged for firefighters. Id. Opponents of the City Heart Bill have pointed to State Heart Bill cases as representing what the city's bill should have been. They assert that the presumptions of the State Bill are identical to that of the city. Brief for Appellants at 29, DeMilia v. McGuire, 52 N.Y.2d 463, 420 N.E.2d 938, 438 N.Y.S.2d 746 (1981). The unions supporting the City Heart Bill have maintained that its directive is to prevail over any provision of law or administrative code, see note 7 supra. Brief for Petitioners-Respondents at 26, DeMilia v. McGuire, 52 N.Y.2d 463, 420 N.E.2d 938, 438 N.Y.S.2d 746 (1981). See also notes 75, 76 infra (obviating the need to prove a specific, discrete "accidental" event).

25. See also note 100 infra and accompanying text.
surgeon has said that “the precise etiology of arteriosclerosis or atherosclerosis remains undetermined.”

Another heart specialist suggested that if the city sought to take responsibility for any heart ailment which affects a police officer or fireman, then it “should be equally responsible for cancer, stroke or practically any other illness.”

One study showed that rates of cardiovascular disease and mortality have been approximately the same or lower for police officers and firemen, compared with the public at large. No clear relationship has been established between stress and the onset of disease, and there has been no proven correlation between the occupations of police or firefighting and the predilection to heart disease. Finally, while acknowledging the widespread acceptance of the statute, a prominent doctor noted that although it is easy to “be persuaded emotionally that everything should be done for these individuals who are at highest risk in our city,” it may be time for “re-examination of the quality of the data upon which a diagnosis and subsequent compensation hinges.”

A second criticism of the City Heart Bill is that it mandates by statute what has not been achieved through the collective bargaining process. The Mayor’s Office of Labor Relations advised in 1970 that the device of statutory intervention to establish pension benefits applicable to public employees “contravenes the basic public policy of the legislature as reflected by the ‘Taylor Law,’ which encourages public employers and designated representatives of their employees to bargain collectively with respect to wages, hours and other terms and conditions of employment, including pension benefits.” For example, legislation enacted in 1979 referred to as the “Lung Bill” was

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29. Id., citing letter to Reinaldo A. Ferrer, M.D., N.Y.C. Comm’r of Health, from Emanuel Goldberg, M.D., Chief, Div. of Cardiology, Beth Israel Medical Center (April 30, 1979). Accord, letters to Reinaldo A. Ferrer, M.D., N.Y.C. Comm’r of Health, from Edmund H. Sonnenblick, M.D., Chief, Div. of Cardiology, Albert Einstein College of Medicine (April 17, 1979) and Richard Gorlin, M.D., Chairman, Dep’t of Medicine, Mount Sinai Medical Center (April 27, 1979).
30. Letter from Richard Gorlin, M.D., supra note 29.
33. See note 155 infra and accompanying text.
passed to provide special benefits for New York City firemen suffering from lung diseases.\textsuperscript{34} It was asserted that because the bill resulted from collective negotiations between the city and a firefighters' union, it would be highly inappropriate for the state to mandate that the city provide a comparable benefit for heart disease.\textsuperscript{35}

There are other persuasive objections to the City Heart Bill. One is that many years may have intervened between the time of entry into service when a physical examination is required and the time a heart condition is suffered; therefore, factors other than occupation may have contributed to the condition.\textsuperscript{36} Another argument is that the statute's presumption that heart disease is an "accident" is "contrary to existing principles in determining work-connected accidents or disabilities under the Workmen's Compensation [or] most retirement systems and insurance programs."\textsuperscript{37} For instance, the Retirement and Social Security Law had authorized accidental disability retirement benefits only when the applicant was completely incapacitated for the performance of his duties. The City Heart Bill, however, allows such benefits even when a member is only slightly or partially disabled.\textsuperscript{38} It also has been argued that the bill's fundamental premise is discriminatory. All other municipal employees who might at some time develop heart disease—whether or not their employment involves stress or strenuous exercise—would not receive the same benefits.\textsuperscript{39}

Finally, there is the issue of cost. When proposed in 1970, there were objections to the bill as a "mandated expense" and "burden on local government."\textsuperscript{40} The New York City Housing Authority Chairman stated that his agency's forced increased contributions to its police officers' pension fund could have an unpredictable impact on its budget.\textsuperscript{41} When the merits of the bill were debated in 1979, the New York City Chief Actuary estimated that in its first eight and one-half years the City Heart Bill had cost the city $61 million more

\textsuperscript{34} Id.
\textsuperscript{36} Memorandum by State Div. of the Budget, supra note 35.
\textsuperscript{37} Id.
\textsuperscript{38} Report from N.Y.S. Dep't of Audit & Control to Robert R. Douglass, Counsel to the Governor (May 8, 1970).
\textsuperscript{39} Letter from Herbert H. Smith, Executive Director, County Officers Ass'n of N.Y.S., to Robert R. Douglass (April 30, 1970).
\textsuperscript{40} Letter from Donald A. Walsh, N.Y.S. Conference of Mayors, to Robert R. Douglass (April 27, 1970).
than the city would have paid for ordinary disability and death benefits. He projected that the bill could cost the city an additional $6.2 million a year in the future.

Determined to curb the rising costs of the Heart Bill, the Mayor, in 1979, instructed his representative on the Pension Boards to seek from the Corporation Counsel a definition of the term 'accident' and advise the boards whether [the City Heart Bill] incorporates or stands apart from the general requirement for line-of-duty pensions that an 'accident' be required.

The result was a decision overruling a 1973 Corporation Counsel Opinion. The earlier opinion was
deemed to be incorrect because it stated that the bill not only included a job connection presumption, but also contained a presumption that the injury was an accident. The Corporation Counsel asserted in 1979 that the city’s Administrative Code provisions defined accident as a discrete and unforeseeable event and, therefore, accident should not be presumed under the heart bill because the language of the bill does not mention accident. Finally, he concluded that Pension Board Trustees should more carefully inquire about facts to rebut that presumption. By more carefully scrutinizing applications for accident disability benefits, the city could ultimately slow down its rising pension costs.

Despite the Mayor’s vigorous opposition to the City Heart Bill, the Governor reapproved the bill in 1979, stating that although it contained an “unsupportable” presumption, it was presented to him as part of omnibus legislation. Therefore, the City Heart Bill was enacted despite many strong public policy arguments against it.

51. See note 8 supra.
52. Op. Corp. Counsel at 18 (February 28, 1979). Throughout the opinion, the Corporation Counsel cited such cases as D’Alessandro v. Levitt, 59 A.D.2d 967, 399 N.Y.S.2d 289 (3d Dep’t 1977); Acciavatti v. Levitt, 57 A.D.2d 131, 393 N.Y.S.2d 613 (3d Dep’t 1977) and Timpson v. New York State Policemen’s & Firemen’s Retirement System, 54 A.D.2d 812, 388 N.Y.S.2d 43 (3d Dep’t 1976), in which accidental disability benefits were denied to police officers and firefighters who were members of the State Retirement System. In his view, the State Heart Bill was being interpreted the way the City’s should have been. *Id.* at 10. Thus, the granting of accidental pensions should be precluded in the majority of cases reviewed. But see Ferrigno v. Board of Trustees of Police Pension Fund, 63 A.D.2d 872, 405 N.Y.S.2d 465 (1st Dep’t 1978), aff’d, 48 N.Y.2d 788, 399 N.E.2d 946, 423 N.Y.S.2d 916 (1979) (police-man’s cardiac condition not job related, thus he was entitled to ordinary, not accidental, disability). McPartland v. Board of Trustees of Police Pension Fund, N.Y.L.J., December 14, 1978, at 10, col. 4 (Sup. Ct. N.Y. County) (separate proof of accident causation for N.Y.C. firemen and policemen); DeSio v. Codd, N.Y.L.J., October 22, 1974, at 19, col. 3 (Sup. Ct. N.Y. County) (degenerative disease not an accident; policeman therefore not entitled to accident disability pension). The language of the City Heart Bill also specifically states that its provision would supersede any local legislation. See note 7 supra. It is important to realize that the Administrative Code is the result of enabling legislation, while the City Heart Bill establishes presumptions and evidentiary guidelines governing the Administrative Code’s rules and regulations.
53. Governor’s Memorandum filed with 1979 N.Y. Laws ch. 321 (June 29, 1979). Relying on the state’s ability to overcome the presumption found in the State Heart Bill, Governor Carey urged the Medical Boards and Trustees of NYCERS to “take the administrative and legal steps necessary to prevent any further abuse in this area.” *Id.*
2. New York State’s Heart Bill

The State Heart Bill was enacted in 1969. Originally it contained the presumption that injury to or impairment of the heart was the natural and proximate result of an accident, unless any substantial evidence to the contrary could be shown.\(^\text{54}\) Four years later the legislature amended the statute by extending to covered state police officers and firefighters the presumption that such disease was “incurred in the performance and discharge of duty.”\(^\text{55}\) The following year, however, the presumption of accidental causality for police officers was deleted,\(^\text{56}\) prompting the New York City Corporation Counsel to review the City Heart Bill’s presumptions regarding accident. His opinion concluded that the City Heart Bill, like the amended state bill, created the rebuttable presumption that heart disease disability, in the police and fire services, was caused by a line-of-duty accident.\(^\text{57}\)

Nearly all of the decisions rendered under the State Heart Bill have upheld a strict interpretation requiring specific proof of accidental injury.\(^\text{58}\) For example, if a police officer is chasing a robbery suspect and suffers a heart attack, this would be considered an activity within the normal course of police duties and not accidental within the meaning of the statute. The presumption of job causality has rarely been upheld.\(^\text{59}\) A typical case would be a firefighter who has a

\(^{54}\) 1969 N.Y. Laws ch. 1103, § 1.
\(^{56}\) 1974 N.Y. Laws ch. 967, § 1.
\(^{59}\) Fischer v. Levitt, 65 A.D.2d 858, 410 N.Y.S.2d 378 (3d Dep’t 1978) (evidence that city fireman had underlying atherosclerotic disease, was diabetic, overweight, and a heavy smoker, was sufficient to rebut presumption that a heart attack suffered off-duty was incurred in the performance and discharge of duty); DeLeon v. Levitt, 65 A.D.2d 646, 409 N.Y.S.2d 456 (3d Dep’t 1978) (statutory presumption that fireman’s death from heart disease was a natural and proximate result of an accident did not change long-standing definition of “accident” in the pension context or diminish State Comptroller’s authority to determine the factual issue); D’Alessandro v. Levitt, 59 A.D.2d 967, 399 N.Y.S.2d 289 (3d Dep’t 1977) (accident presumption no longer retained for policemen with respect to heart impairment); Pastor v. Levitt, 58 A.D.2d 669, 395 N.Y.S.2d 711 (3d Dep’t 1977) (to entitle applicant to accidental retirement allowance, heart disability must be caused by an accident in the course of employment and statute only creates presumption that heart impairment was the result of an accident which may be rebutted by substantial evidence to the contrary);
proven underlying coronary atherosclerotic condition and happens to suffer a heart attack as he carries a fire hose to a hydrant. This is not considered to be a result of performing his firefighting duties.

Acciavatti v. Levitt, 57 A.D.2d 131, 393 N.Y.S.2d 613 (3d Dep't 1977) (a policeman must establish that the results of his disabling disease were proximately caused by an accident); Weiss v. Levitt, 55 A.D.2d 724, 389 N.Y.S.2d 176 (3d Dep't 1976) (presumption that policeman’s heart disability was the result of an accident was not conclusive, but instead may be rebutted by substantial evidence to the contrary); Timpson v. N.Y.S. Policemen’s & Firemen’s Retirement Sys., 54 A.D.2d 812, 388 N.Y.S.2d 43 (3d Dep’t 1976) (evidence sufficient to rebut presumption that disability was result of an accident incurred in the performance of claimant’s duty). A number of other cases also hold that the court, by statute, is bound to accept the State Comptroller’s reading of the State Heart Bill in disability cases. See, e.g., Merkle v. Levitt, 69 A.D.2d 973, 416 N.Y.S.2d 92 (3d Dep’t 1979); Sansone v. Levitt, 67 A.D.2d 1044, 413 N.Y.S.2d 500 (3d Dep’t 1979); Tremblay v. Levitt, 65 A.D.2d 901, 410 N.Y.S.2d 689 (3d Dep’t 1978); Nolan v. Comptroller, 59 A.D.2d 799, 398 N.Y.S.2d 770 (3d Dep’t 1977); Clark v. Levitt, 50 A.D.2d 695, 375 N.Y.S.2d 461 (3d Dep’t 1975).

60. Atherosclerosis is a form of arteriosclerosis, the general condition characterized by thickening and hardening of the arterial walls. Atherosclerosis is the development of deposits or plaque within the inner wall of an artery, and is the most frequently found coronary artery disease. Note, Heart Injuries Under Workers’ Compensation: Medical and Legal Considerations, 14 Suffolk L. Rev. 1365 (1980). Although the cause of atherosclerosis is unknown, multiple “risk factors” seem to increase the chances of a person developing it. The major risk factors are hypertension, hypercholesterolemia, and cigarette smoking. Studies have shown that other risk factors are less important, but can play a role. These include diabetes, excessive weight, sedentary lifestyle, family history, aggressiveness and competitiveness. Id., citing Sagall, Compensable Heart Disease, 5 Trial 29, 30 (1968); Wolinsky, Atherosclerosis, in CECIL TEXTBOOK OF MEDICINE, § 362 at 1218, 1221 (15th ed., 1979). See also letter from Harvey G. Kemp, Jr., M.D., Director, Div. of Cardiology, St. Luke’s Hospital Center, to Reinaldo A. Ferrer, M.D., N.Y.C. Comm’r of Health (April 12, 1979) (discussion of job stress and risk factors).

61. “Heart attack” is the common name for myocardial infarction. The myocardium is the heart muscle which contracts rhythmically to pump a continuous flow of blood. Note, Heart Injuries Under Workers’ Compensation: Medical and Legal Considerations, 14 Suffolk L. Rev. 1365, 1372 (1980), citing Edwards, The Cardiac Patient and the Workmen’s Compensation System: Medical Aspects, 1968 ABA SECTION INS. NEC. & COMP. LAW 264. In order to function properly, the myocardium requires the nutrients and oxygen carried by the blood from coronary arteries. Id., citing Roth, Myocardial Infarction and the Compensation Law, 1970 Legal Med. Ann. 357, 358. Development of plaque in the coronary arteries is a gradual process which can take several years before adversely affecting the myocardium. Myocardial ischemia can arise as a result of reduction of blood flow through the coronary arteries because of atherosclerotic obstruction. Id., citing Lesch, Ross & Braunwald, Ischemic Heart Disease, HARRISON’S PRINCIPLES OF INTERNAL MEDICINE, 1261, 1262 (8th ed. 1977). Myocardial infarction, one type of myocardial ischemia, is a severe manifestation of ischemia where an area of the myocardium dies due to a sudden and severe decrease in its blood supply. Symptoms of myocardial infarction can include severe chest pain with sweating, nausea, giddiness and vomiting. Id. at 1337, citing Julian, Myocardial Infarction, in CECIL TEXTBOOK OF MEDICINE, § 363.3, at 1229-30 (15th ed. 1979).

62. A frequent point of contention in New York and other states is the amount of evidence needed to rebut or overcome the presumption. One major difference,
Therefore, there is a major distinction between the city and state bills: under the State Heart Bill, the burden of proof regarding accident causation has been shifted to the employee, while under the City Heart Bill, the burden has been placed upon the employer. In fact, the difficulty of proving causation as a result of the strict definition of accident under the State Heart Bill has been an important factor in the few accident disability pensions that have been awarded under that bill. In addition, there is perhaps a disincentive for injured employees under the state bill to file for accident disability pensions in that by law, they can remain on full, paid sick leave for that period of disability until their application for accident disability is approved or until they reach mandatory retirement age. Such police officers and firefighters cannot be retired on ordinary disability pensions. Thus, an injured member might not seek accident disability because a denial of this application would have no adverse effect on

however, is that in jurisdictions other than New York, a definition of "accident" is rarely found in the statutes. Florida's statute, for example, includes an accident presumption for both police officers and firefighters. \textit{Fla. Stat. Ann.} \S\S 112.18, 185.34 (West 1973 \& Supp. 1974-80). Connecticut's Heart Bill, \textit{Conn. Gen. Stat. Ann.} \S\S 7-433a, 7-433c (West 1973 \& Supp. 1980-81), grants disability benefits when the police officer's or firefighter's impairment of health occurs on- or off-duty. Connecticut's statute is also one of the few which specifies the public policy rationale behind the legislation. Section 7-433c was established "in recognition of the unusual risks attendant upon these occupations, including an unusual high degree of susceptibility to heart disease and hypertension, which would act as an inducement to attracting and securing persons for such employment, and in recognition that the public interest and welfare will be promoted by providing such protection for such . . . members . . . ." \textit{Id. See also Ill. Ann. Stat.} ch. 108-½, \S 6-151.1 (Smith-Hurd Supp. 1981-82) (the legislature expressed its concern that since firemen perform unusual tasks in time of stress and danger, are exposed to great heat and extreme cold in certain seasons, and are required to work in the midst of heavy smoke and toxic fumes, they should be afforded special pension rights). Several states provide such benefits for police and firefighters in large municipalities only. \textit{See, e.g., Ala. Code} \S\S 11-43-144, 36-30-20 (1977); \textit{Colo. Rev. Stat.} \S\S 31-30-508, 31-30-608 (1977). Most apply the Heart Bill to any municipality, regardless of population. \textit{See, e.g., Fla. Stat. Ann.} \S\S 112.18, 185.34 (West 1973 \& Supp. 1974-80); \textit{Conn. Gen. Stat. Ann.} \S 7-433a (West 1973); \textit{Mass. Ann. Laws}, ch. 32, \S 94 (Michie/Law Co-op 1973).

63. Through Heart Bills, the legislature sought to relieve police officers and firefighters of the heavy burden of establishing a link between their heart ailments and their jobs. The burden has been shifted to the government with respect to job-relatedness, and the presumption is difficult to rebut. There is not the same need regarding accident causation, which is expressly required under the State Heart Bill. However, New York City courts have interpreted the language of the City Heart Bill as including an accident presumption, even though the statute contains no such specific presumption. \textit{See text accompanying notes 75, 76 infra.}

the injured member since he can receive a full salary until he chooses to retire.\textsuperscript{65}

B. Judicial and Administrative Interpretations

In general, a heart bill application is first reviewed by a medical board and is then forwarded, under the city bill, to the Police or Fire Department's Pension Board of Trustees, and under the state bill, to the State Comptroller.\textsuperscript{66} It is only when the applicants or government administrators challenge the Boards' or Comptroller's rulings that a court proceeding is initiated. Court proceedings begin in the New York State Supreme Court and are appealable.

1. New York City's Heart Bill

Two primary issues have been involved in City Heart Bill cases: whether injuries were presumptively sustained in the line of duty and whether injuries were presumptively an accident. On both issues the city usually has lost because it has not chosen or has not been able to rebut the strong dual presumptions propounded by police and fire unions.\textsuperscript{67}

Medical Boards have upheld the dual presumption of line-of-duty and accident causation in City Heart Bill cases.\textsuperscript{68} Courts have accepted the city boards' proposition that the bill's purpose was "to overcome . . . the necessity . . . of having to connect their heart condition to a specific incident except in particularly dramatic and traumatic occurrences. Stresses and strains upon the cardiac system do not arise overnight, but are a cumulative result of recurrent crises."\textsuperscript{69} In \textit{Lemmerman v. McGuire},\textsuperscript{70} for example, a city policeman's application for accidental disability benefits, claiming disabling arrhythmia or intrinsic heart disease, was denied by the Medical Board three times. When the officers sought a declaratory judgment,\textsuperscript{71} the New York State Supreme Court held that under the City Heart Bill the presumption of job-relatedness carries with it the presumption of accidental causation.\textsuperscript{72} In another case, petitioner had severe chest

\begin{footnotes}
\item[66] See generally note 2 supra and accompanying text.
\item[67] See notes 73-76 infra.
\item[68] The NYCERS system could apply the same rule to cases involving Transit and Housing police officers who are also covered by the Heart Bill. New York, N.Y., Admin. Code § B3-1.0 (1976).
\item[69] Uniformed Firefighters Ass'n, Local 94 v. Beekman, 104 Misc. 2d at 834, 430 N.Y.S.2d at 913.
\item[70] 102 Misc. 2d 56, 58, 422 N.Y.S.2d 568, 570 (1979).
\item[71] Id. at 57, 422 N.Y.S.2d at 569.
\item[72] Id.
\end{footnotes}
pains, irregular heart beat, and a high pulse rate. His application for accident benefits was denied because the condition was “not job related.” In reviewing the Pension Board decision, the court found that the city failed to prove by competent evidence that the disabling heart condition was not job related. These cases are typical of the lack of success by the city when it has chosen to contest the award of an accident disability pension. The city’s experience has been similar to that of most states in the nation.

74. Id.
75. Id. Accord, Taylor v. Police Pension Fund, N.Y.L.J., February 26, 1974, at 16, col. 6 (Sup. Ct. N.Y. County) (Medical Board report so uncertain and ambiguous as to cause of heart disease that case should go to trial); Drake v. McGuire, N.Y.L.J., March 30, 1979, at 6, col. 3 (Sup. Ct. N.Y. County) (petitioner sustained his burden by submitting proof that disability was caused by heart disease). But see Sullivan v. Board of Trustees of Fire Pension Fund, 42 A.D.2d 541, 541, 345 N.Y.S.2d 9, 10 (1st Dep’t 1973), where the cause of a firefighter’s disability was in dispute. The court stated in dicta that if it were a heart condition as claimed, there would have been a rebuttable presumption that it was of accidental origin. After extensive examination, petitioner was found to be suffering from a neurosis, and was retired. Thus, if the Medical Board were to find that a disabling neurosis could result from his job performance, petitioner could not receive accidental benefits. Id. The presumption was also successfully rebutted by the city in Ferrigno v. Board of Trustees of Police Pension Fund, 63 A.D.2d 872, 405 N.Y.S.2d 465 (1st Dep’t 1978), aff’d, 48 N.Y.2d 788, 399 N.E.2d 946, 423 N.Y.S.2d 916 (1979), where although a police lieutenant had a history of surgery and radiation for Hodgkin’s Disease, and the court would not overturn the Medical Board’s findings. See also Manza v. Malcolm, 44 A.D.2d 794, 355 N.Y.S.2d 110 (1st Dep’t 1974) (it was within the purview of the Medical Board to resolve conflicts regarding service connected disabilities). Accord, Matter of Cama (McGuire), N.Y.L.J., Jan 5, 1982, at 11, cols. 1-2 (Sup. Ct. N.Y. County) (Board of Trustees acted reasonably in determining that alcohol poisoning, not severe coronary arteriosclerosis, was cause of police detective’s death). But cf. Bulger v. Board of Trustees of Police Pension Fund, 51 A.D.2d 950, 381 N.Y.S.2d 496 (1st Dep’t 1976) (Medical Board relied on incorrect autopsy report); Seubert v. McGuire, Sup. Ct. N.Y. County, Index No. 17893/78, March 1, 1979 (Medical Board’s determination denying cardiac disease was arbitrary and unreasonable). Cf. Edwards v. Codd, 59 A.D.2d 148, 398 N.Y.S.2d 153 (1st Dep’t 1977) (probationary police officer, dismissed after suffering heart attack, should have been retired under the City Heart Bill).
76. See, e.g., Bennett v. Board of Trustees of Police Pension Fund, N.Y.L.J., September 22, 1980, at 6, cols. 3-4 (Sup. Ct. N.Y. County) (no merit to respondents’ contention that petitioner must prove that specific accident caused hypertensive cardiovascular disease); Walsh v. Codd, 68 A.D.2d 805, 414 N.Y.S.2d 6 (1st Dep’t 1979) (once the Police Department Board of Trustees determined that an accident did not cause disabling condition, its duty was performed); Altman v. McGuire, N.Y.L.J., August 26, 1980, at 5, cols. 3-4 (Sup. Ct. N.Y. County) (mere fact that heart condition was caused by emotional stress is conclusory and should not have been the basis for denying accident benefits). But see Belnavis v. Board of Trustees of Fire Pension Fund, N.Y.L.J., Jan. 22, 1982, at 1, col. 6 (1st Dep’t).
77. Because most of the Heart Bills in the country establish a presumption of work connection to cardiac problems, the underlying issue is frequently the strength of the
2. New York State’s Heart Bill

In contrast with the large number of New York City administrative and judicial decisions which have granted accident disability pensions, few have been granted under the state law when applicants have disputed the state medical board or comptroller’s decisions. Of the total number of accident retirement allowances granted by the state, approximately 6% were awarded under the bill.78 Medical evidence gathered by the State Policemen’s and Firemen’s Retirement System has been sufficient, in nearly all cases, to rebut the “in-service” (line-of-duty) and accident presumptions contained in the law. In such cases, applicants are usually retired on ordinary disability pensions.79

The accident presumption under the state pension system rarely has been rebutted. For example, in an early pre-heart bill case, Croshier presumption, who can rebut it, and how. In most states the presumption, when litigated, has proven to be quite strong. Police and firefighters, on the whole, have been accorded their disability pensions despite efforts by government retirement systems to rebut it. In California, for example, where the employer’s evidence was not sufficient to rebut the presumption, “[s]uch heart trouble or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.” CAL. LAB. CODE, § 3212.5 (West Supp. 1981). See also San Francisco v. Workmen’s Compensation Appeals Bd., 49 Cal. App. 3d 689, 122 Cal. Rptr. 599 (1975), aff’d, 583 P.2d 151 (1978); Bussa v. Workmen’s Compensation Bd., 259 Cal. App.2d 261, 66 Cal. Rptr. 204 (1968). Accord, Caldwell v. Division of Retirement, 344 So.2d 923 (Fla. Dist. Ct. App. 1977), quashed in part, remanded in part, 372 So.2d 438 (Fla. 1979); Division of Retirement v. Putnam, 386 So.2d 824 (Fla. Dist. Ct. App. 1980); see also Daniels v. Division of Retirement, 389 So.2d 340 (Fla. Dist. Ct. App. 1980). Evidence of pre-existing heart disease has also been held not to relate to occupation in Michigan. Schave v. Department of State Police, 58 Mich. App. 178, 227 N.W.2d 278 (1975) (employer had to affirmatively prove non-occupational causation). Accord, City of Oak Ridge v. Campbell, 511 S.W.2d 686 (Tenn. 1974) In Virginia, history of a fireman’s emphysema, coronary artery disease and heavy cigarette smoking was insufficient to rebut the presumption. Page v. City of Richmond, 218 Va. 844, 241 S.E.2d 775 (1978). The employer had to adduce evidence of a non-work related cause of the disability. Id. at 848, 241 S.E.2d at 777.


79. To receive ordinary disability retirement benefits, a police officer or firefighter must have at least ten years of service. He or she undergoes at least one medical examination, and the Comptroller determines whether the member is physically or mentally incapacitated for duty and should be retired for ordinary disability. The actual retirement allowance granted depends on several factors, including whether or not the applicant is sixty years old, the amount of his accumulated pension contributions, the actuarial equivalent of the reserve-for-increased-take-home pay,
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v. Levitt, the New York Court of Appeals sustained the State Comptroller’s determination that a forest ranger’s fatal heart attack, incurred while fighting a fire, was not an accident for the purposes of accidental death benefits. The decedent had a mild cardiac insufficiency and had previously been told by doctors not to return to active firefighting duties. His subsequent death, therefore, was not considered to be an accident incurred during the performance of his job.

Croshier helped lay the groundwork for maintaining a strict requirement of proof of accident causality in many State Heart Bill decisions rendered since 1969. In one case, evidence that a police officer had been treated for heart disease for the past six years was sufficient to rebut the presumption that a heart attack occurring on duty was the result of an accident. Similarly, the New York Court of Appeals in Bunnell v. New York State Policemen’s & Firemen’s Retirement System, held that a firefighter did not establish any relationship between the pulling of a firehouse hose and the onset of heart disease. The court also found that he had suffered from an underlying atherosclerotic disease prior to the hose-pulling incident.

The deletion of the accident presumption for police officers in 1974 resulted in a continuation of the court’s rigorous requirements regarding burdens of proof. In construing the legislative intent behind this amendment, the appellate division frequently ruled that police officers must clearly establish that their disabilities were the proximate result of an accident. This reasoning was based, in part, on a prior

and a pension computed according to his final salary and years of service. N.Y. Retire. & Soc. Sec. Law § 362 (McKinney Supp. 1980-81).

81. Id. at 266, 157 N.E.2d at 489, 184 N.Y.S.2d at 326.
82. Id.
83. See, e.g., Sansone v. Levitt, 67 A.D.2d 1044, 413 N.Y.S.2d 500 (3d Dep’t 1979); accord, Tremblay v. Levitt, 65 A.D.2d 901, 410 N.Y.S.2d 689 (3d Dep’t 1978) (police officer’s disability not accidental, and he was thus not entitled to accident disability under this section).
85. Id. at 916, 397 N.Y.S.2d at 172.
87. Id.
88. Acciavatti v. Levitt, 57 A.D.2d 131, 393 N.Y.S.2d 613 (3d Dep’t 1977). See also Nosworthy v. Levitt, 50 A.D.2d 976, 376 N.Y.S.2d 654 (3d Dep’t 1975) (substantial evidence presented that petitioner was not incapacitated by possible herniated disc).
decision in which the court had held that the legislature had not intended to eliminate the accident requirement when it added a rebuttable accident presumption.  

As to the line of duty requirement, the State Comptroller usually has been able to introduce evidence rebutting the presumption. In *Fischer v. Levitt*, a city fireman suffered a heart attack at home after he had been off-duty for three days. The court was persuaded by the Comptroller’s presentation of evidence showing that the fireman had underlying atherosclerotic disease and diabetes, was a heavy smoker and was overweight. All of these factors combined to rebut the work connection presumption, and the court held that he was not entitled to an accident disability pension. The state also has successfully rebutted the presumption when a police officer’s disability was actually found to be the result of insufficient heart muscle reserve caused by a heart attack sustained during purely personal activities. A few other jurisdictions have similarly treated heart bill requirements, scrutinizing applications rather strictly instead of adopting a lenient attitude towards granting pensions.

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89. Weiss v. Levitt, 55 A.D.2d 724, 389 N.Y.S.2d 176, (3d Dep’t 1976). This holding was reaffirmed the same year, with the court again taking notice of the revised statutory requirements. D’Alessandro v. Levitt, 59 A.D.2d 967, 399 N.Y.S.2d 289 (3d Dep’t 1977).

90. 65 A.D.2d 858, 410 N.Y.S.2d 378 (3d Dep’t 1978).

91. See note 60 supra.

92. 65 A.D.2d at 859, 410 N.Y.S.2d at 379. Accord, Timpson v. New York State Policemen’s & Firemen’s Retirement Sys., 54 A.D.2d 81, 388 N.Y.S.2d 43 (3d Dep’t 1976) (walking upstairs did not constitute accident, and risk factors, such as obesity, smoking, hypertension and diabetes were sufficient to rebut presumption).


94. In three states, Alabama, Pennsylvania, and Texas, the municipal employer was able to rebut the link between disability and occupation. City of Tuscaloosa v. Howard, 55 Ala. App. 701, 318 So.2d 729 (1975), held that there was no accident when claimant had experienced chest pains as he performed firehouse cleaning duties. Further, the myocardial infarction resulting from progressive arteriosclerotic heart disease was not a fireman’s employment hazard. Two years later, Alabama’s Heart Bill, ALA. CODE, tit. 37, § 450(4) (1977), was challenged as violating due process when it was amended to exclude firemen in cities with a population of 250,000 or over. Norris v. Seibels, 353 So.2d 1165 (Ala. Civ. App. 1977), 353 So.2d 1169 (Ala. Civ. App. 1978). The court held that there was no reasonable relationship between the classification and purpose of the pension law, and hence, the statute was struck down as unconstitutional. *Id.* Pennsylvania and Texas have given weight to the determinations that employees did not meet their burden of proof regarding service connection. Bogen v. Civil Serv. Comm’n, 32 Pa. Commw. Ct. 412, 378 A.2d 1307 (1977). See also Smith v. Civil Serv. Comm’n, 53 Pa. Commw. Ct. 164, 417 A.2d 810 (1980); City of Houston v. Caldwell, 582 S.W.2d 494 (Tex. Civ. App. 1979); Cline v. Firemen’s Relief & Retirement Fund, 545 S.W.2d 895 (Tex. Civ. App. 1976). Where the presumption shifts the burden of proof to the employer as to work causation, some states permit the employer to rebut the prima facie case by proving that the
A number of state disability pension applicants have challenged the appropriateness of the State Comptroller's determination of what constitutes an accident under the State Heart Bill. An example is *Merkle v. Levitt*,\(^{95}\) where the court held that the State Comptroller's determination would not be disturbed if supported by substantial evidence.\(^{96}\) The Comptroller's role has been upheld in every major case seeking appellate review.\(^{97}\) "The Comptroller's determination disapproving petitioner's application for accidental disability retirement is factual and thus, if supported by substantial evidence, must be affirmed since 'exclusive authority' to render decisions on retirement applications is vested in the Comptroller."\(^{98}\)

### III. Uniformed Firefighters Ass'n, Local 94 v. Beekman

The Office of the Mayor in 1979 urged the state legislature not to renew the City Heart Bill because it was costly for the city\(^{99}\) and did not have a medical basis.\(^{100}\) As a result, two actions were com-

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\(^{95}\) 69 A.D.2d 973, 416 N.Y.S.2d 92 (3d Dep't 1979).

\(^{96}\) Id.

\(^{97}\) *Nolan v. Comptroller*, 59 A.D.2d 799, 398 N.Y.S.2d 770 (3d Dep't 1977) (finding by Comptroller that former police officer was not totally incapacitated by gunshot wounds was adequate to permit appellate court to evaluate and review); *Clark v. Levitt*, 50 A.D.2d 695, 375 N.Y.S.2d 461 (3d Dep't 1975) (Comptroller's evaluation of conflicting medical testimony must be accepted in proceeding on application for accident disability retirement).


\(^{99}\) In his 1979 letter to Governor Carey opposing reenactment of the City Heart Bill, Mayor Koch stated that the bill would cost the city an additional $12 million annually for normal retirement costs. Urging the Governor to veto the 1979 omnibus legislation of which the Heart Bill was a part, the Mayor asserted that "[a]t a time when the City faces a potential budget gap of nearly $800 million in f.y. [fiscal year] 1982, when its unfunded pension liability is over $10 billion, when the fire pension fund is bankrupt and when essential services, including police and fire, are being cut to the bare minimum, we cannot afford the luxury of a $12 million Heart Bill." Letter from Mayor Edward I. Koch to Governor Hugh L. Carey (June 26, 1979), Governor's Bill Jacket (1979 N.Y. Laws ch. 321).

\(^{100}\) The Mayor's office relied on letters by prominent heart specialists and physicians. *See* notes 23-30 *supra* and accompanying text. The Mayor also cited another
menced, one by the police officers' union and one by the firefighters' union, alleging that the city's new approach to limiting pensions under the heart bill was incorrect and seeking a judicial interpretation of the bill. Two years later in Uniformed Firefighters Ass'n, Local 94 v. Beekman, the New York Court of Appeals rendered a decision on these two cases in a consolidated action.

This was the first case in which the court of appeals was asked to interpret the statute, and it affirmed several lower court decisions in favor of the police and firefighters' unions. In state supreme court, the police and firefighters had been the subject of mandamus

letter in the 1979 Governor's Bill Jacket, which said:

I presume that your reference to 'heart disease' means coronary artery disease or is mainly concerned with that type of heart disease. The basic pathologic lesion in coronary artery disease is atherosclerosis or arteriosclerosis. The precise etiology of arteriosclerosis or atherosclerosis remains undetermined. To be sure, there are certain primary and secondary risk factors that may contribute to the development of the disease but cannot be considered the cause of the disease. Indeed, there is some controversy over their relative significance.

In light of the fact that the cause of the disease remains undetermined, I do not believe there is any scientific medical evidence to justify the validity of the presumption that said condition was incurred in the performance and discharge of duties pertaining to policemen and firemen.

Letter from Michael E. DeBakey, M.D., Baylor College of Medicine, Department of Surgery, to Reinaldo A. Ferrer, M.D., N.Y.C. Comm'r of Health (April 28, 1979).

On January 11, 1978, the Pension Commission conducted a public hearing on disability retirement problems at which it received testimony from medical experts as to the legitimacy of the current heart bills. The testifying physicians unanimously concluded that the bills were not justified on a medical or scientific basis, and that with respect to heart disease there was no reason to treat policemen and firemen differently from the general population. Memorandum of N.Y.S. Permanent Comm'n on Public Employee Pension and Retirement System (May 1, 1978).


104. See notes 101-103 supra.

105. The PBA suit commenced after the issuance of the 1979 Corporation Counsel Opinion, see notes 46-52 supra, when City Board of Trustee members of the Police Pension Fund rejected the Medical Board's certification of approximately fifteen applications for line-of-duty widows' pensions and disability retirements based on heart-related injuries. Brief for Petitioners-Respondents at 4, DeMilia v. McGuire, 52 N.Y.2d 463, 420 N.E.2d 938, 438 N.Y.S.2d 746 (1981). The city's antipathy towards the Heart Bill would result in claimants having to prove that the cardiac problems
actions when they refused to attend the Pension Board meeting in a

upon which applications were based were the natural and proximate result of a specific accident. See Op. Corp. Counsel at 17 (February 28, 1979). Since the city and union members disagreed about the definition of accident, a tie vote within the Pension Board would undoubtedly occur. See note 2 supra. The Police Commissioner would then be empowered to retire the applicants on ordinary pensions until the impasse could be resolved. City of New York v. Schoeck, 294 N.Y. 559, 63 N.E.2d 104 (1945). In Schoeck, although the Fire Department's Medical Board had found that an applicant for a line-of-duty disability retirement was disabled, the Board concluded that such disability was not caused by the applicant's fire duties. A tie vote at the Pension Board resulted in Schoeck's remaining in service, but with his application for disability retirement resolved. The city sued to compel Schoeck's retirement on ordinary disability. The court of appeals held that when there is a tie vote situation regarding causation, the court may not usurp the trustee's function by ruling on evidentiary matters. The court further held that the applicant should be retired at ordinary disability, with the Board of Trustees being allowed to resolve the causation issue at a later date. If the Board were to later grant an accident disability, the applicant would also have the right to receive retroactive accident disability payments. The court noted that this might prevent the situation of a medically incapacitated employee remaining unretired on the public payroll at full pay. Id. at 566-67, 63 N.E.2d at 107. To avoid a tie vote as occurred in Schoeck, union members boycotted Police Pension Fund meetings; the city, however, was able to obtain an order of mandamus requiring such union members to attend the meetings and vote on all calendar items. City of New York v. DeMilia, N.Y.L.J., June 18, 1979, at 13, col. 6 (Sup. Ct. N.Y. County), aff'd, 73 A.D.2d 849, 422 N.Y.S.2d 543 (1st Dep't 1979). Justice Hughes held that police union trustee members were not justified in refusing to attend Board meetings and that an applicant should not have to prove a specific accident occurred.

A parallel action seeking declaratory judgment on the meaning of the City's Heart Bill was commenced by the police union in DeMilia v. McGuire, N.Y.L.J., November 20, 1979, at 6, col. 3 (Sup. Ct. N.Y. County). In granting the declaration, Justice Ascione held that the City Heart Bill should be interpreted to afford a N.Y.C. police officer the presumption that a heart condition "was incurred as an accident in the performance and discharge of duty, unless the contrary be proved by competent evidence." Id. Justice Ascione also stated in dicta that "City Administration members . . . attitude was directly contrary to the decisions of this Court and those of Special Term construing § 207-k." Brief for Petitioners-Respondents at 16, DeMilia v. McGuire, 52 N.Y.2d 463, 420 N.E.2d 938, 438 N.Y.S.2d 746 (1981). He described the difficulty of proving that a cardiac impairment was accident induced, and stated that the City Heart Bill was designed by the legislature to overcome this difficulty. DeMilia v. McGuire, N.Y.L.J., November 20, 1979, at 6, col. 3. Justice Ascione disagreed with the analogy made by the Corporation Counsel to Third Department cases, see notes 46-52 supra, which had claimed that several major similarities existed between the development of the City and State Heart Bills. Id. Justice Ascione's most cogent argument was that State firemen and police officers receive full pay for their entire period of disability until mandatory retirement, unlike their New York City counterparts, and thus few apply for the benefits. Id. The declaratory judgment was affirmed without opinion by the Appellate Division. 76 A.D.2d 1039, 429 N.Y.S.2d 336 (1st Dep't 1980). The mandamus proceeding was not a part of the appeal at the court of appeals.

106. Firefighters also boycotted Pension Board meetings and sought a ruling on the proper interpretation of the City Heart Bill. This resulted in a consolidation of the mandamus action and declaratory judgment actions. Uniformed Firefighters Ass'n, Local 94 v. Beekman, 104 Misc. 2d 829, 430 N.Y.S.2d 909 (Sup. Ct. N.Y. 
protest over the new policies espoused in the Corporation Counsel's opinion. In parallel actions, the unions sought declaratory judgment, attempting to elicit clarification of the City Heart Bill and a decision on what the statute meant in terms of accident causation and evidentiary proof. The declaratory judgment actions, affirmed by the appellate division, were decided in favor of the unions, and established that members would be afforded the rebuttable presumption of job-to-injury connection and accidental causation.

The court of appeals agreed with the courts below that the plaintiff unions were "entitled to a declaratory judgment that section 207-k of the General Municipal Law creates a presumption that a disabling or fatal heart condition suffered by a New York City police officer or fireman was accidentally sustained as a result of his employment if not rebutted by contrary proof." In so deciding, the state's highest court rejected the city's contentions that the statute did not create any presumption that the heart condition was accidental, and that the employee or his family must affirmatively prove that the condition was the result of a particular accident occurring at a specific time and place. In fact, the effect of this decision may have been to establish

County 1980), aff'd, 76 A.D.2d 1043, 429 N.Y.S.2d 339 (1st Dep't 1980) (per curiam), aff'd, 52 N.Y.2d 463, 420 N.E.2d 938, 438 N.Y.S.2d 746 (1981). The State Supreme Court, special term, granted declaratory and injunctive relief to the firefighters' union and dismissed the mandamus proceeding. Id. Justice Greenfield construed the City Heart Bill in accordance with the 1973 Corporation Counsel Opinion, see note 48-49 supra, and the views of the union trustees, that the statute provided a presumptive entitlement to line-of-duty accidental disability pension benefits which could only be rebutted by competent evidence. Compare Justice Greenfield's opinion with Justice Ascione's, supra note 105. The court also held that the applicant would not be required to prove that his line-of-duty disability was caused by a specific accident. 104 Misc. 2d at 837, 430 N.Y.S.2d at 915. 107. See notes 46-52 supra.

108. Id.

109. 76 A.D.2d 1039, 429 N.Y.S.2d 336 (1st Dep't 1980); 76 A.D.2d 1043, 429 N.Y.S.2d 339 (1st Dep't 1980).

110. 52 N.Y.2d 463, 472, 420 N.E.2d 938, 942, 438 N.Y.S.2d 746, 750.

111. The amount of evidence necessary to overcome a presumption, in most New York cases, has been "substantial" evidence presented by the adversary to the contrary. For a discussion of presumptions in connection with compensable injuries, see 4 BENDER'S N.Y. EVIDENCE § 230.02[2][j] (Supp. Dec. 1980). New York courts, however, do not fully define "substantial evidence" when used in connection with presumptions. It may mean evidence sufficient to support a finding of that non-existence of the presumed fact. See generally 4 BENDER'S N.Y. EVIDENCE § 230.04[3] (1980).

112. The court agreed with the Police and Fire Unions that a "practical" definition of accident would not be "the result of any particular incident" but can be "a gradual and progressive degeneration as a result of the continuous stress and strain of the job." 52 N.Y.2d at 471, 420 N.E.2d at 941, 438 N.Y.S.2d at 749.
a conclusive dual presumption, given the city's lack of success in presenting sufficient evidence to rebut the presumptions.\textsuperscript{113} Justice Wachtler, writing for the majority in a 5-2 opinion, based his decision on several grounds. First, he rejected the city's contention that the statute made no reference to accidental causation.\textsuperscript{114} He chose instead to look to extensive legislative history which showed that "the literal reading proposed by the city would frustrate the statutory 'purpose'."\textsuperscript{115} He quoted State Senator John Marchi, the bill's sponsor, who had stated that the purpose of the bill was to recognize heart disease as an occupational hazard for police officers and firemen which is not generally the product of one discrete incident but rather a long-term condition.\textsuperscript{116} Judge Wachtler concluded that a practical interpretation would dispense with the need for pointing to particular accidents as the condition's cause.\textsuperscript{117} Thus, the court in \textit{Beekman} chose to look behind the actual wording of the statute to the purported intent of the legislature.\textsuperscript{118}

In a dissenting opinion, Justice Jasen agreed with the city that it was "indisputably clear that the statute does not provide for a presumption that the employee's disability or death was accidental." \textit{Id.} at 474, 420 N.E.2d at 943, 438 N.Y.S.2d at 751. The court was apparently endorsing the conclusion of the lower court in \textit{Beekman} that if the applicant has the burden of establishing that the etiology of his heart condition is a specifically identifiable incident of trauma, this would be comparable to "giv[ing] [with] one hand while taking away with another." 104 Misc. 2d at 837, 430 N.Y.S.2d at 914.

\textsuperscript{113} See notes 75-76 \textit{supra} and accompanying text.


\textsuperscript{115} \textit{Id.} at 471, 420 N.E.2d at 941, 438 N.Y.S.2d at 749.

\textsuperscript{116} \textit{Id.}

\textsuperscript{117} \textit{Id.} at 472, 420 N.E.2d at 941, 438 N.Y.S.2d at 749. In a dissenting opinion, Justice Jasen stated that because the language of the statute was clear and unambiguous, the majority had gone beyond the bounds of proper judicial interpretation. Furthermore, the same legislature knew how to create a dual presumption when need be. The original State Heart Bill included an accident presumption. Such presumption was deleted with respect to police officers in 1974, leaving only a line-of-duty presumption.

\textsuperscript{118} The court adopted the principle that statutes should not be construed in a manner inconsistent with the intent behind their enactment. N.Y. \textit{STATUTES} § 144, at 291 (McKinney 1971). The United States Supreme Court has stated that a reasonable construction of a statute, rather than one leading to absurdity or futility, is called for to work its intended result. United States v. American Trucking Ass'n, Inc., 310 U.S. 534, 543 (1940). This reasonable construction should be sought when the plain meaning produces results at variance with the policy of the legislature. \textit{Id.} It is fair to say that the court considered the remarks by Senator John Marchi during the 1979 legislative debate an accurate expression of that legislative intent, since he was one of the original drafters. \textit{See} note 1 \textit{supra}. If the statute were applied "simplistically, or based on a mechanical reading", the legislative purpose would be denied. Pell v. Coveney, 37 N.Y.2d 494, 496, 336 N.E.2d 421, 422, 373 N.Y.S.2d 860, 862 (1975).
A second approach relied on by the Beekman court was to look toward the successive re-enactment of the statute as significant. The city disputed the notion that re-enactment of a statute would necessarily constitute adoption of its repeated construction by administrative agencies, arguing that a bill can be erroneously construed by such interpreters. The New York Court of Appeals, however, followed the general rule that when the legislature amends or renews a statute, it is assumed that it was cognizant of pertinent judicial decisions.

Other New York cases have followed that reasoning, by holding that when language is ambiguous, there should be inquiry into the statute's meaning. Matter of Caraballo, 49 N.Y.2d 488, 493, 403 N.E.2d 958, 960, 426 N.Y.S.2d 974, 976 (1980). New York State Bankers Ass'n v. Albright, 38 N.Y.2d 430, 437, 343 N.E.2d 735, 738-39, 381 N.Y.S.2d 17, 20-21 (1975); The Beekman court, in implementing the statute, was attempting to examine its purpose and the legislatures' intent. See Williams v. Williams, 23 N.Y.2d 592, 598-99, 246 N.E.2d 333, 337, 298 N.Y.S.2d 473, 478 (1969), quoting 2A SUTHERLAND, STATUTORY CONSTRUCTION 316 (3d ed. 1943) ('[A] statute is 'clear and unambiguous' because the court has considered the meaning of the statute and reached a conclusion on the question of legislative intention.'). Legislative intent can also be identified as the "fundamental rule", the "great principle which is to control", and "the grand central light in which all statutes must be read." N.Y. STATUTES, § 92 at 179 (McKinney 1971).

In United States v. Board of Comm'rs, the United States Supreme Court stated that "when a Congress that re-enacts a statute voices its approval of an administrative or other interpretation thereof, Congress is treated as having adopted that interpretation, and this Court is bound thereby." 435 U.S. 110, 134 (1978). See also N.Y. STATUTES § 129 at 276 (McKinney 1971) ("Where the legislature has enacted without material change a rule heretofore governing conduct by an administrative agency, it in effect adopts the practical construction which had been placed on the rule by the agency.") Id. Going beyond the assumption that a statute must follow the interpretation of executive branch officials, the legislative intent of the statute was expressly indicated to the legislature by one of its authors, Senator John Marchi. Transcript, supra note 1, at 4990-91. See also Board of Educ. v. City of New York, 41 N.Y.2d 535, 543, 362 N.E.2d 948, 954, 394 N.Y.S.2d 148, 155 (1977); Chatlos v. McGoldrick, 302 N.Y. 380, 388, 98 N.E.2d 567, 571 (1951).


Matter of Cole, 235 N.Y. 48, 53 (1923). This rule is further supported by several federal cases, including one which said that a court could accord "great weight to the longstanding interpretation placed on a statute by an agency charged with its administration. This is especially so where the legislative body has re-enacted the statute without pertinent change." NLRB v. Bell Aerospace Co., 416 U.S. 207, 274-75 (1974). Helvering v. Reynolds, 306 U.S. 110 (1939), involved the administrative construction of a revenue act which had been repeated regularly for at least forty
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Therefore, the court in *Beekman* held that any re-enactment of the City Heart Bill must be read in light of previous judicial interpretations.\(^{122}\)

Finally, in an extension of the second rule the court followed a third approach: an administrative construction or interpretation, such as that rendered by the Medical Board or the Pension Board, should not be changed by the courts unless the construction or interpretation constitutes an error.\(^{123}\) City officials had asserted that the legislature acted with deliberation and knowledge when it purposely omitted an accident presumption in the City Heart Bill.\(^{124}\) As a result, the city viewed the legislative purpose as being at variance with the language of the statute and believed there was no need to seek extrinsic aids for interpretation, such as relevant legislative history or interpretations by agencies responsible for administering the statute.\(^{125}\) It believed that to resort to this method would be inappropriate since the language of the statute was not ambiguous.\(^{126}\) Arguing for a strict construction of the heart bill’s language, the city had sought to compare the language used in its bill with that found in the state bill.\(^{127}\) The city concluded that since the legislature had expressly included an accident presump-

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\(^{122}\) See also *Hotel Ass’n v. Weaver*, 3 N.Y.2d 206, 214, 144 N.E.2d 14, 19-20, 165 N.Y.S.2d 17, 23 (1957) (Legislature retained and re-enacted provisions of rent law); *Matter of Foscarinis*, 284 A.D. 476, 477-78, 132 N.Y.S.2d 323, 325-26 (1954) (statute consistently and repeatedly interpreted in such a manner for thirteen years); *Dobess Realty Corp. v. Mazid*, 186 Misc. 225, 231-32, 61 N.Y.S.2d 324, 330 (Sup. Ct. N.Y. County 1946) (practical construction given statute by State Liquor Authority was reasonable).

\(^{123}\) "It is well recognized that a long-continued course of action by state or local administrative officers is entitled to great weight unless manifestly wrong." N.Y. STATUTES § 129 (McKinney 1971). The long-standing interpretation should be disturbed only if an interpretation is "irrational or unreasonable" or if it constitutes a "clear error of law". United States v. Leslie Salt Co., 350 U.S. 383 (1956); *Fineway Supermarkets, Inc. v. State Liquor Auth.*, 48 N.Y.2d 464, 468, 399 N.E.2d 536, 538, 423 N.Y.S.2d 649, 651 (1979).

\(^{124}\) See *Theurer v. Columbia Univ.*, 59 A.D.2d 196, 398 N.Y.S.2d 908 (3d Dep’t 1977), where the court held that the existing statutes encompassed the same subject matter as previously enacted, and the legislature was presumed to have acted with deliberation and knowledge.

\(^{125}\) See *New York State Bankers Ass’n v. Albright*, 38 N.Y.2d 430, 436-37, 343 N.E.2d 735, 738-39, 381 N.Y.S.2d 17, 20-21 (1975), citing *United States v. American Trucking*, where the court stated that absence of facial ambiguity is rarely conclusive, and that when aid to construction of the statute’s meaning is available, its use should not be forbidden.

\(^{126}\) See N.Y. STATUTES § 120 (McKinney 1971).

\(^{127}\) See notes 7, 8 and 22 supra.
tion in the state bill, it would have done so in the City Heart Bill had it meant for one to be included.\textsuperscript{128}

In rejecting the city's arguments and deferring to established administrative construction, the court held that "the practical application [of the statute] by the boards shows that they understood it to have the effect of dispensing with the need for heart disability applicants to point to particular accidents as the cause of the condition . . . [which] is entitled to great weight."\textsuperscript{129} The *Beekman* court compared the city and state statutes and found that as to state employees "the legislature . . . after some apparent experimentation, adopted a different approach to this type of presumption"\textsuperscript{130} from that of the city, where it "has not seen fit to change the statute or its settled effect despite the city's ardent efforts."\textsuperscript{131} It concluded that "for the courts to approve a change in the interpretation of the statute, which would blunt its known impact, would amount to judicial repeal."\textsuperscript{132}

As to the meaning of accident, the court said that an accident is a gradual and progressive degeneration resulting from the job's continuous stresses and strains.\textsuperscript{133} This is significantly different from the definition propounded by the city: a sudden, fortuitous, unexpected event which causes an injury.\textsuperscript{134} In so deciding, Justice Wachtler

\textsuperscript{128} See *People ex rel West Side Elec. Co. v. Consolidated Tel. & Elec. Subway Co.*, 187 N.Y. 58, 79 N.E. 892 (1907), where the court held that when a statute is clear and unambiguous "practical construction" is inappropriate, especially when the legislature has enacted other nearly identical legislation. See also *Matter of Caraballo*, 49 N.Y.2d 488, 494, 403 N.E.2d 958, 961, 426 N.Y.S.2d 974, 977 (1980) (an administrative pronouncement is not to be slavishly followed when it runs contrary to the clear wording of the statutory provision); *Hines v. LaGuardia*, 293 N.Y. 207, 216, 56 N.E.2d 553, 557 (1944) (administrative practice may not thwart a statute, the purposes of which are clear); *Travel House v. Grzechowiak*, 31 A.D.2d 74, 79-80, 296 N.Y.S.2d 689, 695-96 (4th Dep't 1968), aff'd, 24 N.Y.2d 1034, 250 N.E.2d 355, 303 N.Y.S.2d 79 (1969) (taxicab licensing ordinance not ambiguous and should have been given effect as it was written, not as administrators thought it should have been written).

\textsuperscript{129} Id. at 472, 420 N.E.2d 938, 941, 438 N.Y.S.2d 746, 749.

\textsuperscript{130} Id. at 472, 420 N.E.2d 942, 938 N.Y.S.2d at 750.

\textsuperscript{131} Id.

\textsuperscript{132} Id.

\textsuperscript{133} Id. at 471, 420 N.E.2d at 941, 438 N.Y.S.2d at 749.

\textsuperscript{134} For an example of accident being defined as an event which takes place without foresight or expectation and proceeding from an unknown cause, see *Arthur A. Johnson Corp. v. Indemnity Ins. Co.*, 6 A.D.2d 97, 175 N.Y.S.2d 414 (1st Dep't 1958), aff'd, 7 N.Y.2d 222, 164 N.E.2d 704, 196 N.Y.S.2d 678 (1959). The city had wanted the court to follow the earlier New York State workmen's compensation cases and New York City Employees Retirement System rules requiring separate proof of accident causation. For example, it must be shown that a member was injured or died as the natural and proximate result of an accident sustained in the performance
adopted the reasoning of prior decisions. An accident does not have to be a particular event and can occur over a period of time. An analogy was made to workmen's compensation cases, especially *Gray v. Semet-Solvay Co.*, where the New York Court of Appeals held that a worker's death caused by mineral poisoning or serous meningitis due to poisonous fumes was an accident, although the fatal poisoning was not a discrete event. The court also held in another workmen's compensation case that an internal head injury, such as coronary occlusion or thrombosis, when brought on by overexertion or strain in the course of daily work, was an accident. A further example is of duty. See, e.g., 1938 N.Y. Laws ch. 407 (use of term "accident" in workmen's compensation law), New York, N.Y., Admin. Code §§ B18-48.0(c), B19-7.9(c) (1976). Croshier v. Levitt, 5 N.Y.2d 259, 157 N.E.2d 466, 184 N.Y.S.2d 321 (1959). This requirement has been applied to New York City firemen and police officers. See, e.g., Brady v. City of New York, 22 N.Y.2d 601, 241 N.Y.2d 236, 294 N.Y.S.2d 215 (1968); Drayson v. Board of Trustees of Police Pension Fund, 37 A.D.2d 378, 326 N.Y.S.2d 328 (1st Dep't 1971), aff'd, 32 N.Y.2d 852, 299 N.Y.S.2d 684, 346 N.Y.S.2d 273 (1973); Matter of Vosden, Index No. 8635/80, July 8, 1980 (Sup. Ct. N.Y. County); McPartland v. Board of Trustees of Police Pension Fund, N.Y.L.J., December 14, 1978, at 10, col. 4 (Sup. Ct. N.Y. County); DeSio v. Codd, N.Y.L.J., October 22, 1974, at 19, col. 3 (Sup. Ct. N.Y. County). The city has also relied on other appellate division holdings, beginning with McCadden v. Moore, 276 A.D. 490, 95 N.Y.S.2d 740 (4th Dep't), aff'd, 301 N.Y. 760, 95 N.E.2d 819 (1950), to support its position that specific accident causality, as defined in most of these cases, has had to be proven. For examples of Third Department cases, see also Sansone v. Levitt, 67 A.D.2d 1044, 413 N.Y.S. 2d 500 (3d Dep't 1979); Tremblay v. Levitt, 65 A.D.2d 901, 410 N.Y.S.2d 689 (3d Dep't 1978); Selinger v. Levitt, 65 A.D.2d 668, 409 N.Y.S.2d 807 (3d Dep't 1978).

135. 231 N.Y. 518, 132 N.E. 870 (1921). Exposure to radioactive substances over a period of several months and beryllium poisoning also have been upheld as accidental injuries. Canadian Radium & Uranium Corp. v. Indemnity Ins. Co. of N. Amer., 411 Ill. 325, 104 N.E.2d 250 (1952) (radioactive substances); Beryllium Corp. v. American Mutual Liability Ins. Co., 223 F.2d 71 (3d Cir. 1955) (beryllium). Exposure to the persistent coughing of a tubercular inmate led to a correction officer's contracting the disease, and this, too, was deemed to be an accident. Middleton v. Coxsackie Correctional Facility, 38 N.Y.2d 130, 341 N.E.2d 527, 379 N.Y.S.2d 3 (1975).

136. 231 N.Y. at 518, 132 N.E. at 870.

137. Mase v. James H. Robinson Co., Inc., 301 N.Y. 34, 92 N.E.2d 56 (1950) (overruling prior decisions that for a heart attack to be compensable, it must have been caused by a strain more severe than was imposed by the usual nature of the employee's work). See also Suber v. Hope's Windows, Inc., 38 A.D.2d 656, 327 N.Y.S.2d 294 (3d Dep't 1971) (machine operator suffered a sudden pain, constituting an accidental injury); Jamroz v. Refined Syrups & Sugars, Inc., 33 A.D.2d 859, 305 N.Y.S.2d 916 (3d Dep't 1969) (an accident may be the result of continuous strenuous physical efforts which contribute to the ultimate heart injury); Miner v. Chrysler Corp., 33 A.D.2d 523, 304 N.Y.S.2d 52 (3d Dep't 1969); Ellis v. Armour & Co., 31 A.D.2d 690, 295 N.Y.S.2d 842 (3d Dep't 1968) (unexpected collapse of a claimant's hip while standing on a platform was an accident); Jones v. Curran & Co., Inc., 33 A.D.2d 525, 303 N.Y.S.2d 541 (3d Dep't 1969) (heavy work reactivated underlying osteomyelitis, constituting industrial accidental injury).
Schechter v. State Ins. Fund, where the court found that a trial attorney’s heart attack was related to intense emotional and physical strain, and was an accidental injury within the meaning of the workmen’s compensation law.

A second line of cases has held that an accident may be regarded as an event unexpected in its cause or result. Causal connection has been found between a neck condition and an accidental injury sustained when a claimant’s exposure to a strong draft forced her to protect her neck by sitting in an awkward position. Unexpected events include emotional stress which produces an accident. In Klimas v. Trans Caribbean Airways, Inc., an employee’s fatal heart attack, brought on by anxiety and mental stress resulting from fear of losing his job with an airline, was considered to be an accident. Benefits were awarded in another case for psychic and physical injury to a woman who had discovered her supervisor’s sudden suicide, because the court found that her incapacitation due to acute stress was an accident.

The Beekman court has thus adopted a broad definition of accident, including the finding that a long-term condition may be considered job connected and accidental. This ruling has already had an impact on several decisions in the New York State Supreme Court.

The Beekman decision has been cited by courts seeking guidance as to the meaning of an accidental disability in litigation unrelated to the

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138. 6 N.Y.2d 506, 510, 160 N.E.2d 901, 903, 190 N.Y.S.2d 656, 660 (1959), (citing Masse: “what constitutes an industrial accident is to be determined by the common sense viewpoint of the average man.”).
139. Id. at 510, 160 N.E.2d at 903, 190 N.Y.S.2d at 660.
142. Id. at 216, 176 N.E.2d at 717, 219 N.Y.S.2d at 19.
City Heart Bill. In an action commenced in 1978, a city police officer had suffered a hearing disability after 31 years of participating as a range officer in Police Department pistol practice and marksmanship training. The Police Pension Board had confirmed his hearing disability, but denied his application for accident disability. It found that there had been no specific incident but instead had been a deterioration of hearing over a period of time. The court remanded for further investigation into the possibility that the disability was the result of repeated exposure to loud noise. Because the Medical Board continued to recommend ordinary disability, citing the officer’s war service as the possible cause of the hearing problem, the case came before the state supreme court in August, 1981. Citing Beekman, the presiding justice applied the court of appeals’ holding by analogy, stating that absent contrary proof, accidental causation in a hearing impairment case should be inferred, and that there was no factual basis for the inference that the disability was attributable to his war service. Beekman also has been cited in another hearing impairment case involving long-term hearing loss, decided in favor of the applicant seeking an accident disability pension.

More recently, Beekman was cited in a state supreme court decision involving an action by a woman seeking accidental death benefits when her son, a police officer, was killed during an off-duty scuffle in

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145. Id.
146. Id.
148. McManus v. McGuire, N.Y.L.J.; October 27, 1980, at 12, col. 1 (Sup. Ct. N.Y. County) (Special Term rejected Board of Trustees requirement that petitioner show a single, discrete accident which resulted in the loss of hearing), citing Uniformed Firefighters Ass’n, Local 94 v. Beekman, 76 A.D.2d 1043, 429 N.Y.S.2d 339 (1st Dep’t 1980). Similarly, the Beekman ruling may affect O’Hagan v. Board of Trustees of The New York City Fire Department Pension Fund, N.Y.L.J., December 1, 1978, at 6, col. 6 (Sup. Ct. N.Y. County), remanded, 72 A.D.2d 501, 420 N.Y.S.2d 391 (1st Dep’t 1979), remanded after hearing, 80 A.D.2d 506, 435 N.Y.S.2d 603 (1st Dep’t 1981), republished, 439 N.Y.S.2d 374 (1st Dep’t 1981), order resettled, 81 A.D.2d 818, ___N.Y.S.2d___ (1st Dep’t 1981). In another post-Beekman ruling, however, the appellate division reversed the granting of an accident disability pension. Duester v. McGuire, 81 A.D.2d 553, 438 N.Y.S.2d 325 (1st Dep’t 1981). It found that the Medical Board made no findings concerning the heart condition and remanded for reconsideration. The lower court had erred when it granted the pension as such power resides in the Board of Trustees and cannot be assumed by the court. Id., citing Meschino v. Lowery, 34 A.D.2d 255, 310 N.Y.S.2d 908 (1st Dep’t 1970), modified, 31 N.Y.2d 772, 290 N.E.2d 825, 338 N.Y.S.2d 625 (1972).
The court held that the police officer had acted in the line of duty because he was protecting his partner and "in an effort to carry out the statutory purpose and implement public policy the courts have held that there is a presumption that the police officer's disability had been accidental for purposes of line-of-duty pension benefits." Finally, the Beekman appellate division decision was cited when a science teacher applied for accidental disability benefits after developing a heart condition which he claimed resulted from almost twenty years of exposure to chemicals.

It is clear that the Beekman ruling has had implications for non-heart related disabilities, and may be applied to an even wider range of physical or perhaps psychological disabilities. This is a result of the court's expansive definition of accident, which will undoubtedly have an impact on future decisions in both public and private sector pension and worker's compensation cases.

IV. Effect of Judicial Decisions

One consequence of the Beekman decision and subsequent lower court cases is that costs will continue at the same, or possibly greater rate, than in prior years. In 1979 the City Heart Bill was estimated as costing taxpayers $12.3 million per year, greater than what it would have cost had union members received ordinary disability pensions. The Mayor's Management Advisory Board estimated in 1976 that pension costs could be reduced by $17 million per year over a period of time if the heart disease presumptions were eliminated.

150. Id.
152. Justice Greenfield denied petitioner's motion, stating that while an accidental disability need not arise in a sudden, unexpected or out-of-the-ordinary occurrence, petitioner would have to demonstrate that the Medical Board's determination was not "arbitrary and capricious." Id., citing Uniformed Firefighters Ass'n, Local 94 v. Beekman, 104 Misc. 2d 829, 838, aff'd, 76 A.D.2d 1043, 429 N.Y.S.2d 339 (1st Dep't 1980).
HEART BILLS

The *Beekman* decision also may favorably influence the passage of new legislation. Two bills were introduced during the 1981 legislative session—one would provide the addition of language, identical to the "Lung Bill"\(^{155}\) presumption for firemen,\(^{156}\) to the city’s Administrative Code—the other would establish the City Heart Bill as permanent legislation.\(^{157}\) This second bill has been proposed and rejected several times in previous years. In light of a strong judicial affirmation, however, state legislators may believe that this is an appropriate time to codify the bill.

In view of the court of appeals ruling on the City Heart Bill, the city may choose one or more courses of action should it adhere to its anti-heart bill position. The approach which would probably be most successful is a serious attempt to rebut the dual presumptions read into the statute. The burden is upon the city to present substantial evidence to overcome the statute’s rebuttable presumptions.\(^ {158}\) While most states do not provide examples of successful rebuttal methods, there is an entire body of case law which has developed under the State Heart Bill, where the State Comptroller did gather sufficient evidence to rebut the presumptions of line-of-duty and accident causation.\(^ {159}\) These state cases could be scrutinized for specific factors, including medical evidence of pre-existing or pre-disposing health and heart problems, high risk factors such as smoking, obesity or congenital conditions, and evidence that there was either no accident or that the injury involved ordinary work performance.

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Notwithstanding any other provisions of this Code to the contrary, any condition of impairment of health caused by diseases of the lung, resulting in total or partial disability or death to a member of the uniformed force, who successfully passed a physical examination on entry into the service of such department, which examination failed to reveal any evidence of such condition, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence. (Added by 1969 N.Y. Laws, ch. 1106.)

The Lung Bill has been construed and applied to extend its rebuttable presumption to all aspects of the proof requisite for a line-of-duty accidental disability pension. The Uniformed Firefighters Association has urged that the City Heart Bill’s rebuttable presumption be similarly extended to all elements of proof regarding heart disabilities.

\(^{156}\) S. 4277 (A. 5829-A), proposed March 3, 1981.

\(^{157}\) S. 4279 (A. 5830), proposed March 3, 1981.

\(^{158}\) See note 7 *supra*.

\(^{159}\) J. Richardson, *Evidence* § 58 (10th ed. 1974); 4 *Bender’s New York Evidence* § 230.04 (1980); *see* notes 52, 58-59 *supra*. 
The city also might consider a change in the procedures governing pension administration. It could allocate to medical boards a greater responsibility for seeking facts to rebut the heart bill’s presumptions. It could establish, for example, personnel units whose primary function would be to investigate heart bill case histories. At a salary of $15,000–20,000 per year, with five investigators assigned to the Police and Fire Departments, the combined salaries of approximately $90,000 would be less than the amount they could ultimately save the city by reducing the number of accident disability pensions granted instead of ordinary disability payments. To complement this change, another procedure could be implemented by the city to save time and money spent on judicial proceedings initiated when pension applications are rejected or appealed. A body of hearing officers could be appointed to review appeals from the Pension Board decisions prior to, or in place of, full-scale mandamus or declaratory judgment proceedings under Article 78. This would resolve cases at an earlier stage.

Finally, the city might bring lawsuits challenging the statute on state or federal constitutional grounds. In one state it was held that a special firefighter heart bill was unconstitutional as class legislation. The statute, which made heart disabilities occupational diseases in the case of fire department members, was held to have created special substantial benefits to be paid from the public treasury under the guise of the worker’s compensation law. The statute violated a North Carolina constitutional provision against special emoluments and privileges, and furthermore, consisted of benefits not accorded to other municipal employees or the general public. Similar challenges might be made in state or federal court under the New York State constitutional prohibitions against gifts or loans of state credit, money or property, or under its equal protection provision. It is unlikely, however, that either challenge would be suc-

160. For information on New York City civil service job titles and salaries. see generally The Civil Service Leader and The Chief (weekly newspapers).
161. See note 153 supra.
163. 234 N.C. 86, 66 S.E.2d 22 (1951), But see City & Co. of San Francisco v. WCAB, 22 Cal. 3d 103, 583 P.2d 151, 148 Cal. Rptr. 626 (1978); Grover v. Town of Manchester, 168 Conn. 84, 357 A.2d 922, appeal dismissed, 423 U.S. 805 (1975).
164. Id. at 92, 66 S.E.2d at 26.
165. Id.
166. N.Y. Const. art. 7, § 8, art. 8, § 1.
167. N.Y. Const. art. 1, § 11.
cessful. Statutes believed to be “class legislation” have frequently
different treatment of persons similarly situated may be justified if reasonably related to
an appropriate government interest. A statute is presumptively
valid and will not be disturbed unless it is without a reasonable
relation to a valid state purpose when neither fundamental rights nor
suspect classifications are involved. Supportors of the City Heart
Bill argue that it is justified in terms of maintaining adequate police
and fire protection, and would prevail over attempts to show that
other city workers deserve increased pension benefits due to stressful
occupations or a high incidence of heart problems.

The statute might be attacked on due process grounds. For
example, in one case a heart bill that established a conclusive
presumption was found to have violated the due process clause of
both the state and federal constitution. The Workmen’s Compen-
sation commissioners had refused the city’s offer to show that claim-
ant’s heart attack did not arise out of his employment and was due to
systemic health conditions. While conclusive presumptions have

168. See, e.g., Rinaldi v. Yeager, 384 U.S. 305, 308-09 (1966); McLaughlin v.
Florida, 379 U.S. 184, 191 (1964); Fulilove v. Kreps, 584 F.2d 600 (2d Cir. 1978);
(S.D.N.Y.), rev’d, 567 F.2d 1197 (2d Cir. 1977), cert. denied, 440 U.S. 979 (1979);

School Crossing Guards Ass’n of City of New York, Inc. v. Beame, 438 F. Supp. 1275
(S.D.N.Y. 1977); Muesman v. Ward, 95 Misc. 2d 478, 408 N.Y.S.2d 254 (Sup. Ct.
Queens County 1978); Cooper v. Morin, 91 Misc. 2d 302, 398 N.Y.S.2d 36 (Sup. Ct.
N.Y. County 1977); People v. Holbrook Transp. Corp., 84 Misc, 2d 650, 378
N.Y.S.2d 939, appeal dismissed, 88 Misc. 2d 80, 389 N.Y.S.2d 514 (Sup. Ct. N.Y.
County 1976).

City of New York, 346 F. Supp. 140 (S.D.N.Y. 1972); Alevy v. Downstate Medical

171. U.S. CONST. amend. XIV.

establishing conclusive presumption concerning heart disease connection to employ-
ment violated due process clauses of both state and federal constitutions); but see
Colgan v. Board of County Comm’rs, 21 Md. App. 331, 320 A.2d 82 (1974), aff’d,
274 Md. 193, 334 A.2d 89 (1975) (special statutes regarding heart cases were not
unconstitutional as to alleged “irrebuttable presumptions,” due process or equal pro-
tection issues).

173. See text accompanying note 113 supra.

174. CONN. CONST. art. 1, § 8.

175. U.S. CONST. amend. XIV.

176. 161 Conn. at 143, 285 A.2d at 322.
been struck down by the United States Supreme Court in the civil context where they conflict with the due process or equal protection clauses of the fourteenth amendment, the Court has recently shown reluctance to overturn conclusive presumptions where a statutory classification was reasonably based. This trend highlights the difficulties inherent in bringing constitutional challenges involving conclusive presumptions.

The city would face a similar problem if it were to argue that the heart bill violates "state action" principles. If the unions' Pension Boards of Trustees, who are public officers, were to veto a city resolution to return a case to the Medical Board for further investigation or analysis, they would be acting "under color of state authority." Such a veto might be sufficient to give the city standing to argue a state action claim, for municipal corporations have been held to be "persons" within the meaning of the fourteenth amendment. Yet the rights violated may, in fact, be the very ones noted above: a veto would effectively turn a rebuttable presumption into a conclusive presumption, which would be difficult to persuade a court to overturn.

V. Conclusion

Many states have enacted heart bill legislation granting high pension benefits to police officers and firefighters suffering from heart conditions. In New York, judicial decisions reflect what appears to be the concern of the legislature that there is a connection between the high-stress nature of police and firefighting work and heart conditions. New York legislators have not adequately reviewed the ra-
tionale of a dual line-of-duty and accident presumption. This was clear when the City Heart Bill was debated in 1979, and state senators expressed their desire to reward those who risk their lives daily in the performance of duty.\textsuperscript{182} In effect, emotional issues relating to the dangers of crime and fire have attained more prominence than the distinctions between accident causality and non-work related heart problems.\textsuperscript{183} As long as the sentiment supporting high pension awards for those engaged in police and fire service exists, it will be extremely difficult for state and municipal governments to eliminate or reduce the impact of heart bill legislation.

Andrea J. Berger

One day I saw a big fire being put out in my neighborhood . . . so I saw the stress and the smoke and everything . . . I think that if a person is doing that kind of job for years eventually something's got to give. The stress is tremendous . . . I can't conceive of a cop walking the streets in the City of New York without having his eyes in back of his head, without worrying constantly all day long if somebody's going to pull a gun on him or try to attack him . . . and if a cop has to go out on beat with those feelings of stress and strain and worry and concern . . . over a period of time . . . it's going to have a toll on him . . . and I think that you yourself know that one of the causal factors of heart attacks and heart conditions is stress and strain and worry . . .

Transcript, supra note 1, at 4968, 4975.

182. At the debate, several senators expressed distrust and disdain for testimony by noted heart specialists concerning the lack of evidence linking police and fire work to heart problems. Transcript, supra note 1, at 4947, 4954-56, 4960, 4962-63.

183. State Senator Mauriello's comments were representative of the consensus of a majority of legislators in attendance.

The police and firemen of this state, admittedly we've given them something preferential treatment. Well, darned well we should. We've given them laws and we've given them problems that they can't handle, and maybe we ought to give them something, something in return for the jobs that they do, not only in upstate but in New York City, where we've given them three times as much murder, made a target out of them, police and firemen.

\textit{Id.} at 4948-49. It was noted in the course of the debate that deskbound police officers and firefighters are also covered by the law. \textit{Id.} at 4925.