ooth. She contracted what she described s blotches or a rash on her legs. The lotches or rash she claimed were due to ne alternate heating and chilling of her gs when she switched on or off the heater. hey did not constitute a disability. How-ver, on complaint to her employer, she was ld to see her doctor. While on her way o see her doctor, on her own time, she ipped on the sidewalk and fell, fracturing n ankle. Although the day was cold and e testified there was ice and snow on the lewalk, the claimant alleged that she fell dely due to weakness resulting from se blotches, and the Industrial Board found; and found that the cause of the ll was an occupational disease, characteric of and peculiar to her employment.

The Court of Appeals, in an opinion that istles with logic and sound sense, struck s free-for-all system from the language f the New York Act. They unanimously fused to concede that this was an occuational disease. To make every disease at arose out of and in the course of emoyment compensable as an occupational isease, they said, would be to make the mpensation law "the equivalent of life d health insurance." The court further id that to be "occupational," the disease ust be one which "results from the nare of the employment"; and that by nare of the employment is meant—conditions which all employees of a class are subject d which attach to the occupation—"a zard which distinguishes it from the usual e of occupations, and is in excess of the zard attending employment in general."

(Goldberg vs. 954 Marcy Corporation, decided January 11, 1938, and reported in 276, N. Y. 313 12 N E. 2nd 311.)

Thus, after more than two years of eat uncertainty as to the meaning of the w, the Court of Appeals has eliminated om the New York Statute the diseases ordinary life which are only incidental speculatively related to the occupation.

Just a word about hernia as an occupanal disease. Never heretofore regarded an occupational disease, but quite gendally recognized under certain circumnces as an accidental injury—the Occunonal Disease Law of Michigan, enacted year, specifically included hernia in schedule of diseases. Not all hernias, vever, are so included, but only those rly of recent origin, as to which disability follows immediately, and in which prompt report to the employer is made. This is not far different from the rule in regard to hernia as an accident. But in New York, during the past year, it has become somewhat the fashion to regard almost every hernia as either an accident or an occupational disease.

This followed on a decision of the Court of Appeals, sustaining an award for hernia as an occupational disease wherein the Industrial Board specifically found that no accident had occurred. In the case presented, the worker was required, in the course of his employment, at frequent intervals, to rotate his body on the hips. This man was employed in a glass factory. He gathered molten glass on the end of a punty, which he, in turn, swung about and placed in a mold. The weight was not excessive, being only a matter of a few pounds. In affirming this award, the Court of Appeals said:

"The finding, supported by evidence, is that the continuous gathering and lifting of glass from a furnace involved a constant twisting and straining of the body. This process, from gradual stretching, resulted in a hernia which is a disease (Matter of Alpert vs. Powers 223 N. Y. 97, 101.) There is medical testimony that claimant's occupation would produce this disease and there are judicial decisions in other jurisdictions holding that hernia is an occupational disease (Marathon Paper Mills Co. vs. Ind. Comm. 203 Wis. 17; Travelers Ins. Co. vs. Locke 56 Fed. (2nd) 443, 444)."

(Foster vs. Gilkinder Brothers Inc., 278 N. Y. 348 16 N. E. 2nd 360.)

Perhaps the most controversial question involved in occupational disease legislation is the treatment of liabilities for dust diseases of the lungs. In no class of cases is the marked difference between accidents arising at a given time and place and occupational diseases more pronounced. In this category of cases, we find silicosis, anthraco-silicosis, and asbestosis, all of them forms of pneumonoconiosis. While these diseases in some of their forms are among the most ancient, their ravages having been recognized generations ago, little has been known until recent years of their causation, of their pathology, and of their complications with other diseases. A vast fund of knowledge of these diseases has been gathered in the past ten years, and intensive studies of their etiology and pathology are still going forward.

One fact stands out clearly, and that is, that these diseases do not progress to the point of disability until after many years of exposure to dust. The length of time, varying from five to twenty-five or more years, is dependent in large measure upon the concentration of dust, the composition of the dust, the time actually exposed during working hours, and the individual susceptibility or resistance of the worker. Another fact that stands out is that the fibrosis of the lungs, once acquired, is permanent and incurable, and, in uncomplicated cases is not susceptible to medical treatment.

Many thousands of workers today, under no law but the common law, have been employed in employments exposing them to more or less heavy concentrations of dust for many years. In the event of the enactment of an occupational disease law including those diseases, industry will find itself, at the stroke of a pen, liable for conditions already acquired through long years of employment, and which may become disabling at any moment. In this situation, the best guaranty against disablement is continuous and steady employment. Many a man, actually able to work and earn good wages, while he has a job, will be able to demonstrate by x-ray and clinical examination the presence of a marked degree of silicosis, when his job stops because of depression or otherwise.

Hence arises the question of the so-called "accrued liabilities." This term which has come into common use is perhaps not an exact term, in that "liability" does not occur until disablement, and the liability is only "accrued" at that time. What we have in mind when we discuss accrued liabilities is the condition of fibrosis of the lungs which has accrued and has been acquired over a period of years. This condition, being permanent, remains with the worker, whatever and wherever may be his employment. Perhaps a more exact expression would be "potential liabilities," and yet they are more than potential; the condition giving rise to them is actually existent.

Industry tells us quite truly that it cannot now pay full compensation out of current income to all of the men employed in industry who may have in the past incurred some degree of fibrosis of the lungs. But if industry cannot assume these liabilities, how much less justification is there to call upon insurance, out of the premiums of next year, to pay for disablements acquired over the past fifteen years, and for which it received no premium?

In this difficult situation, it has been found necessary in many states, if employment is to be continuous and unbroken, and if men are eventually to be compensated for the fibrosis acquired due to future exposures, to absolve, to a great extent, industry from the obligation of compensation for past exposures, and to base compensation upon the extent of exposure after the enactment of an occupational disease law. Thus, there has come into acceptance in several states the principle of graduated compensation benefits for dust diseases, limited to future exposures, and eliminating in large measure the exposures of the past.

Under this system compensation for disability or death occurring during the first month under the new law would be only a nominal amount (it has been set as low as $500 to start with). A person disabled during the second or third month after the enactment of an occupational disease law will have been exposed, to a small extent at least, under that law. The exposure is perhaps in itself insufficient to actually result in any harm. But the maximum benefits will be increased, month by month by small increments, until in the course of two or three years the full limit chargeable to industry in the particular state will have been reached. This system is not so complicated as it might seem.

The effect of it is rather to postpone the going into effect of a dust disease law for a matter of two or three years, and experience under this law has demonstrated that few claims arise where the compensation benefits are so limited, the workers preferring to stay at work as long as they can. It may be said that it works hardship in the case of the person who becomes really totally disabled in the early months of law. When measured by the liability with which the employer may fairly be charged, it does not, in fact, work a hardship, and when compared with the existing system in states not now under occu-