

Col. Frank Milani, Director, Civil Defense Organization (cont'd)

defense workers engaged in civil defense work. A reading of the Maryland Workmen's Compensation Law, Article 101, of the Annotated Code of the Public General Laws of Maryland, Section 68, sub-section 4, defines "employment", as used in the statute, as "employment only in a trade, business or occupation carried on by the employer for pecuniary gain". In our opinion, the use of the phraseology "for pecuniary gain" would preclude civil defense volunteer workers from recovering under the Maryland Workmen's Compensation statute. Volunteer workers killed or injured while in shelters provided voluntarily by private firms or organizations, are, we think, in the same class as third persons who come in off the streets to take advantage of these shelters; that is, they are bare or gratuitous licensees.

An opinion of the Corporation Counsel of the District of Columbia reported in Municipalities and the Law in Action, 1951 Edition, page 28, reinforces this position by stating:

"The Corporation Counsel of the District of Columbia issued an opinion to the effect that civilian defense workers who were permitted to use private property without charge were bare licensees, and not business visitors, and the owner had no duty to protect them other than to warn against hidden dangers. The duty to the public using such property was held to be no greater than to defense personnel. The owner permitting such use of his property was not a bailee for personal property of defense workers and assumed no liability for such property."

As to third persons who make use of these shelters, we have already pointed out that they are gratuitous or bare licensees. We believe this classification can be made by applying the rule set forth in a 1953 Maryland case (Peregoy vs. Western Maryland Railway Co., 95 Atl. 2d 867). Chief Judge Sobeloff wrote:

"First, we consider the question, was the appellant an invitee or a licensee and what was the measure of care due him by the appellee? A licensee is one privileged to enter another's land by virtue of the possessor's consent, for the licensee's own purposes. He must take the property as he finds it, the owner or occupant undertaking no duty to a visitor who comes for his own pleasure or convenience, except that, if he becomes aware of the licensee's presence, the licensor must not injure him wilfully or entrap him. Brinkmeyer v. United Iron & Metal Co., 168 Md. 149, 177 A. 171. An invitee or business visitor is one invited or permitted to enter or remain upon land for a purpose connected with or related to the business of the occupant. He is entitled to the exercise of ordinary care by the owner or occupant of the premises to discover as well as to avoid any danger which might threaten him through the use of any agency under his control. Baltimore & Ohio R. Co. v. Walsh, 142 Md. 230, 120 A. 715."