

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

Under this rule, we find that both third parties using shelters for civil defense personnel are mere licensees and that the duty owed them was set out clearly in the case of State, Use of Lorenz vs. Machen, 164 Md. 579, when Judge Bond announced the principle that -

"* * * Permission or license gives leave only to take the property as the visitor finds it, and that the owner or occupant undertakes no duty to those visitors who come for their own pleasure or convenience and not upon his invitation or upon inducement, express or implied, from a common advantage, except that, being aware of their presence, he must not injure them wilfully or entrap them. 'A licensee must take the property as he finds it, and is entitled not to be led into danger by something like a fraud.' Pollock, Torts (11th edition) 544."

The law in this respect is set out more completely in 41 Opinions of the City Solicitor 171.

2. In answer to the second question, we feel that when a plant volunteers the use of its equipment and manpower for civilian defense activities, even though under disaster conditions a plant's employees may be performing a variety of tasks, that under the doctrine of respondeat superior the plant's ownership would be responsible for any torts committed by their employees. Thirty-five states have had the foresight to pass special legislation with provisions to the effect that, except in cases of wilful misconduct, gross negligence, or bad faith, no civil defense worker complying with or reasonably attempting to comply with the State's Civil Defense Act shall be liable for the death of or injury to persons or for damage to property as the result of such activity. Our review of the Maryland Civil Defense Act shows that, unfortunately, this provision is not now included.

This entire field is one which has received a great deal of discussion and upon which a great deal has been written. Some suggest that the responsibility is really that of the Federal Government and that we should look to the Federal Government to provide compensation for civil defense workers killed or injured. Nearly 75% of the states, however, have attempted to fill the breach by passing special legislation providing protection for civil defense workers. Maryland, however, seems to be bringing up the rear in this regard. I fully appreciate how this lack of legislation handicaps your work, but until you do get the kind of legislation you need, the law, as I have stated it, will continue to apply.