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SPECIAL REPORT

RISK ASSOCIATED WITH FIRST RESPONDER TRAINING

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My company is the sole tenant in a large commercial manufacturing facility. Given the reduced occupancy and potential for slow emergency response, our landlord is providing a "First Responder" training course for their employees.

This course generally teaches participants how to respond to incidents of property damage or bodily injury. Since my employees are one of the few on the premises, the landlord has requested that we participate in the first responder training and become part of the team. Should we participate? What liability will we incur?

What liability will the tenant incur if their employees act as a first responder and cause further injury or damage?

MCL 333.20965 provides that "*Unless an act or omission is the result of gross negligence or willful misconduct, the acts or omissions of a medical first responder...do not impose liability in the treatment of a patient*..."

The tenant-responder would have to act with gross negligence in order to be liable. Regardless of this threshold, if the tenant's employee responds and causes additional injuries, both the tenant and the responder will be sued and forced to defend their actions (i.e. proving that they were not grossly negligent).

Do not assume that the tenant is protected by the indemnity provision of their lease, assuming one exists. The indemnity agreement likely says that the landlord must indemnify, defend and hold the tenant harmless for the landlord's negligent acts. If, for example, the landlord's employee slips and

breaks their back and the tenant-responder causes further injuries during the initial response, the injured party will likely sue the responding employee, but the indemnification agreement is irrelevant if the landlord was not negligent since it was the responder that exacerbated the injuries.

On the other hand, if this was a property loss and the tenant-employee responded, MCL 333.20965 would not apply since the incident did not involve bodily injury. If the tenant-responder did anything that made the damage worse, both the tenant and the tenant's employee could be liable for the damages. A good example would be pouring water on a fuel fire.

Since the training is sponsored by the tenant and the employee was acting in the scope of their employment, vicarious liability would apply and the tenant would be liable for the acts of their employees in the scope of their employment.

What liability will the tenant incur if they participate in the training and then fail to respond during an incident?

In Michigan, there is no duty to rescue, absent a special relationship. In this case, the landlord is inviting the tenant's employees to participate in the training and be "*included in the team"* because of the frequency that the tenant's employees are on site and the fact that they are often there with very few other persons or response capabilities.

I would argue that this reinforces the evidence of a special relationship giving rise to a duty to rescue. It seems to suggest that the landlord is expecting the tenant to respond to both bodily injury and property damage events. If the tenant participates in the training and then the tenant-responders fail to respond appropriately at the time of an incident, both the tenant and the employee could be held liable.

Despite the legal ramifications, the training might still be a good idea since it has the potential to save lives and reduce property damage. The risk associated with the training must be balanced with its benefits.