

### Scenario 3

Based on **DeBenedetto v. CLD Consulting Engineers**, 153 N.H. 793 (2006).

- In context of comparative fault, apportionment of damages, and contribution under RSA 507:7-e the Court held word “party” includes “...all parties contributing to the occurrence giving rise to an action, including those immune from liability or otherwise not before the court.”
- Court has further stated that seeking to apportion fault to non-party is in “the nature of an ‘affirmative defense.’” The defendant “essentially becomes another plaintiff who must seek to impose liability on a (non-litigant) just as the plaintiff seeks to impose it on him.” Goudreault v. Kleeman, 158 N.H. 2336, 256 (2009).
- Result is a defendant must develop and prove a *primo facie* case of fault against the non-party.