



2015 CLM Annual Conference

Palm Desert

**Factors to Consider Before Sending in Your RSVP
to the Joint-Defense Agreement Party**

Presenters: Byron Bowles, *McAnany, Van Cleave & Phillips, P.A.*
Paula Letterman, *American National Property & Casualty Company*
R. Wade Vandiver, *Argo Group US*

Factual Scenario

Sue Good was walking into her favorite restaurant, Sitting Duck l'Orange, with her left foot in the parking lot and her right foot on the curb, when she slipped on ice. The restaurant is in the State of Blue. Sue was in the course and scope of her employment, delivering a very heavy box of napkins for her employer. Sue's employer is in the State of Red and paid benefits under Red State's workers compensation laws.

Despite numerous attempts to determine the location of the ice, it is unknown whether the ice was on the curb or the parking lot. The restaurant believes ones of its employees put ice melt down sometime that day, but has no records. They have produced an invoice from the snow removal company, Plow'Em Down, which shows that the parking lot was treated with ice removal product, Barely Melts, via a machine on the back of a truck that has a swath of 6 feet on both sides of the vehicle. The landlord, Slum Lord of the Commercial Rings, for the shopping mall where Sitting Duck l'Orange is located, paid for the parking lot treatment, but passed the cost on to its tenants as a common maintenance charge. The rental agreement between the restaurant and the landlord had mutual indemnification language. The services agreement between the snow removal company and the landlord had indemnification and additional insured language, but only for the benefit of the landlord.

When Sue fell, she suffered a catastrophic injury to her person as well as total damage to her cassette tape player, which she was listening to, which ended up in pieces as a result of the fall. Her new Slide-Easy bowling shoes were ruined as well from the fall. She was not bowling at the time but loved wearing the shoes because of their comfort. When the ambulance arrived at the scene, it accidentally ran over her leg with one of its wheels. It was the driver's first day on the job and was licensed as an EMT, but had received no training regarding safe driving techniques from the City of Claimville's Fire Department. He also had a .28 blood alcohol at the time.

After receiving \$1,000,001.00 in workers compensation benefits, and timely within the applicable statute of limitations, Sue filed a negligence action against Sitting Duck l'Orange and its carrier (which is allowed under the laws of the State of Blue), Slum Lord of the Commercial Rings, and the City of Claimville. Slum Lord tendered the defense and indemnity to Sitting Duck and Plow'Em Down. Slum Lord filed a Third Party Petition against Plow'Em down after its tender was denied and a cross-claim against Sitting Duck. Sitting Duck also filed a Third-Party

Petition against Slide-Easy and Barely Melts. Sue's employer has intervened to protect its workers compensation lien. Claimville's carrier denied any coverage and refused to defend. Plaintiff amended to add direct claims against Slide-Easy and Barely Melts.

Counsel for Slide-Easy has sent a proposed Joint Defense Agreement to all attorneys, except Sue's attorney, which states:

All Parties, their counsel, and associated insurance companies agree that we will hereby jointly defend this case brought by Sue Good.