



APR - ALTERNATIVE MARKETS

DEDICATED TO PUBLIC ENTITY

Timber!

Watch for Falling Trees and Rising Risk

Risk Managers of Public Entities: Beware! Trees are falling at record numbers, and the consequences can be catastrophic. Trees that are diseased, decayed, or suffer from insufficient soil or root systems can tumble without warning, injuring persons and property within the fallen path. Heavy rains, storms, and tornadoes may put otherwise healthy trees at risk; conversely, older trees and accumulated vegetation may become kindling for wildfires. Resulting injuries are severe, and property damage can range from molten aluminum to burned forests and structural damage. Jury verdicts and settlements are astronomical given the nature and severity of resulting damage; however, there are immediate actions that public entities can take to mitigate the expense of these costly claims.

Neither downed trees nor verdicts associated with litigation over negligence and liability are limited to one area of the country. A brief summary of three significant verdicts published by VerdictSearch in **Pennsylvania, California, and New York** follow as an illustration of the complex and costly injury and litigation resulting from fallen trees.

Pennsylvania: residents reported a sidewalk hazard—raised and uneven concrete due to the root structure of a tree. An expert was called to address the problem, and he cut the root system and re-cemented the sidewalk. One year later, on a rainy day, an unsuspecting citizen was struck by the falling tree while driving her sedan. During the trial, residents of the area provided testimony of complaints to the city after the repairs that the tree was leaning, and a new crack was opening on the sidewalk. The witnesses documented complaints to the city on multiple occasions, several months before the incident. The director of operations of landscape management testified that there were only four or five arborists employed by the city to inspect over 135,000 trees and that regular inspections were not required. The plaintiff was trapped in her vehicle for over an hour while



waiting to be extracted. She suffered from paraplegia and required 24-hour care. The verdict, \$61MM + \$2.44MM for delay damages = \$63.44MM.

California: Plaintiff was a 12-year-old boy on a camping trip when a tree fell and crashed through his tent. The boy sustained injury to his organs and a crushing injury to his leg, buttocks, and pelvis. The child suffered amputation of his right leg, anal sphincter, and right buttock area. Medical expenses exceeded \$3MM. The allegations were failure to warn of a dangerous condition, failure to inspect, and failure to maintain. Motions for summary judgment based on 1) recreational immunity, 2) natural condition of unimproved property, 3) no duty to plaintiff, and 4) proof of inspection failed. Because the plaintiff's mother paid a fee to enter the campground and conflicting expert opinion on when the tree would have been manifesting signs of disease, the case was resolved at mediation for \$47.5MM, of which the county paid \$24MM.

New York: Plaintiff was a 17-year-old boy was in the park when he was struck by a 23-foot-long branch that had fallen off a tree. He sustained a fractured skull and became comatose for 15 days. Plaintiff's counsel contended that tree inspections were conducted by unqualified, untrained personnel, and inspections were infrequent, inadequate, and did not satisfy standards established by the American National Standards Institute. The parties reached a settlement for \$5.05MM.

The duty to inspect, warn, maintain, and repair rests with the entity responsible for the land on which the tree resides. Solid risk management principles urge consideration to employ experts to inspect, identify, and treat trees before incidents occur and secure contracts favorable to the public entity for indemnification and defense.

The following general practices are recommended to assist in mitigating the exposure:

1. Identify wooded areas within boundaries where the public has access; for example, trees near streets and sidewalks, parks, and woodlands with biking or walking trails.
2. Ensure adequate budget funds for tree inspection and maintenance are allocated annually.
3. Develop a routine inspection and maintenance process in alignment with the American National Standards Institute.



4. Log public complaints and track timely inspection and resolution. Document the time, date, remedy, and person responsible.
5. Hire a qualified arborist, certified by the International Society of Arboriculture.
6. Review contracts and ensure that the indemnity agreement and limits of insurance are adequate. Contracts and agreements to review may include the following:
 - Utility easements
 - Land leases
 - Contractors
 - Event coordinators and vendors
 - Arborists
 - Environmental consultants
7. It is recommended that the contractors carry a minimum of \$5MM in coverage, which may include a combination of an underlying and umbrella policy.
8. Obtain properly executed certificates of insurance adding the public entity as an additional insured.
9. Certified key employees through the tree care academy at the Tree Care Industry Association or International Society of Arboriculture.

Many public entities do not realize the danger and impact of impaired trees until an unruly storm blows through leaving massive debris behind or a sudden, unexpected catastrophic loss occurs.

Avoid 20/20 hindsight and conduct routine tree inspection and maintenance that demonstrates commitment to serve and protect the members of our community. Implement the appropriate prevention and mitigation strategies outlined above to minimize the personal and financial impacts associated with injury from falling trees.

Resources:

- American National Standards Institute: ansi.org
- Tree Care Industry Association: tcia.org or www.treecaretips.org
- International Society of Arboriculture: isa-arbor.com