

# Don't be Swayed by Easy Breezy Trees

By Carlene Brown

In the past several years, Washington State experienced early windstorms. Due to the time of year the storms occurred, many of the trees had not lost foliage and several of our members experienced a significant amount of toppled trees and fallen branches as a result. These early windstorms trigger unforeseen claims and many inquiries regarding responsibility for the damage and cleanup of debris. Payment or denial of a claim depends on the facts, as each individual claim involves a different scenario requiring investigation of the circumstances.

If a member-owned tree falls on private property, the responsibility for damage caused by the tree may not fall upon the member. Many of the trees that fell during prior years' windstorms were perfectly healthy yet toppled due to heavy rainfall and wind. A landowner does not have a duty to ensure that every tree on their land will remain standing during an act of nature.

Members should consider adopting an annual tree inspection and pruning program to identify member trees that have obvious signs of disease or deterioration and to trim vegetation and remove limbs that are at risk of falling. If a tree has outward signs of deterioration, it is recommended that an arborist or tree expert be consulted to determine whether the tree should be removed. Once a tree is determined to be diseased or at risk of toppling due to its condition, and the member fails to remove the tree in a reasonable amount of time, the member may be responsible for damage or injury the tree causes should it fall. The owner of the damaged property or the person injured could make a reasonable case that the member knew or should have known that the tree was at risk of breakage and should have been removed. Knowledge of an unsafe condition creates a duty to correct the condition in a reasonable period of time. According to *Wright v. Kennewick*, 62 Wn.2d 163 (1963), a municipality is liable for a dangerous condition which it did not create only if it has notice of the condition and does not act in a reasonable manner to correct it.

Sometimes, no matter how much a member prepares its trees for a storm, it may still find debris after the event. WCIA strongly recommends that members not enter private property to remove storm debris, even if the debris is from a member tree. If a member causes damage to private property during the process of debris removal, the member could create liability where previously none existed. WCIA recommends that members allow private property owners to remove debris from their own property. If the member agrees to remove debris from private property, it is recommended that the member transfer the risk by contracting with a reputable tree service.

WCIA also recommends that members develop a method for documenting and tracking citizen and employee tree concerns, requests, and complaints. To demonstrate a member met its duty to respond in a reasonable time and appropriate manner, the member should document the date and time notice was received and the date and time corrective action was taken, or the reason why no action was warranted.

For related guidelines and samples, please see PWK.13.01-Sample Citizen Action Request Form and PWK.15-Municipal Tree Management in our Liability Resources Manual. The Liability Resource Manual is available through the Member Resources page on the WCIA website: <http://www.wciapool.org/member-resources>.

For additional information, please contact your assigned WCIA Risk Management Representative.