

Prune your exposures

By Gordy Van

A woman and her son were stopped at a red light on a State highway off-ramp, waiting to turn left. When her light turned green, she proceeded into the intersection and was struck by a vehicle that had run a red light. The woman was killed and her son was injured. The woman's husband and other son were following in the vehicle behind her and saw the collision. The striking driver had a minimum limits policy, which was insufficient compensation for the injuries sustained. A claim was filed against both the City and Washington State Department of Transportation (WSDOT), alleging that vegetation that had been planted as part of an off-ramp beautification project limited the decedent's ability to see the vehicle approaching from her left and created liability for the City and WSDOT.

The City had previously requested WSDOT install certain improvements to the off-ramp to complement the City's "gateway" beautification project. WSDOT retained a landscape contractor to install shrubs alongside the off-ramp. Unbeknownst to the municipalities, the contractor could not obtain the variety of the plant specified, which would have had a mature height of under two feet and instead installed a variety that grew to greater heights. Neither the City nor WSDOT maintained the vegetation. Following the accident, the City requested WSDOT trim the vegetation, which it did. WSDOT asserted it was the City's duty to maintain the vegetation as the City had requested the beautification by WSDOT. WSDOT was unable to provide any written documentation that the duty to maintain the vegetation in what was WSDOT's right of way had been transferred to the City.

Prior to 2016, case law indicated there was no duty on a municipality to trim naturally occurring vegetation. This changed with the case *Wuthrich v. King County*, 185 Wn.2d 19, in which the Supreme Court held that a municipality has the duty to take reasonable steps to remove or correct for hazardous conditions that make a roadway unsafe for ordinary travel, including hazardous conditions created by roadside vegetation. The court rejected the notion that the duty will make municipalities strictly liable for all traffic accidents as only "reasonable care is owed"; what constitutes reasonable care is likely a question of fact that precludes summary judgment. While the claimants in this current case would likely argue the vegetation in question was not naturally occurring in the first place as it had been planted by WSDOT's contractor, the *Wuthrich* case now places a duty on municipalities to trim vegetation that may obscure a driver's line of sight. This created potential liability for WSDOT and the City.

Pre-litigation, the claimants mediated with WSDOT. Suit was threatened against WSDOT and the City if the case did not resolve. To resolve any claims against the City, we contributed a very minor amount and obtained a release in favor of the City. The State paid over \$2 million to resolve claims against it.

While we did not incur liability against the City in this case, if the vegetation had been on City property, rather than belonging to WSDOT, the exposure to the City would have been significant. When you document your regular and reasonable road vegetation maintenance activities you meet the court required duty to make public roadways safe for ordinary travel for cars, trucks, motorcyclists, bicyclists, pedestrians and all lawful users of the public roads.