

To tree or not to tree

By Luis Fragoso

According to the Washington State Legislature's website, Washington was nicknamed "The Evergreen State" by C.T. Conover for its abundant evergreen forests. However, the nickname has never been officially adopted. Regardless, people in our state like trees and they want cities to be slow to chop them down in the absence of a legitimate threat to person or property.

About a year ago a City tree fell on a house causing thousands of dollars in damage. The homeowner submitted a Claim for Damages form to the City but his claim was denied on the grounds that the City had no prior knowledge of any issues with the tree.

A few months after the denial was mailed, the City received a subrogation demand from the claimant's insurer along with an arborist report dated two years earlier. As it turns out, the previous homeowner had had some concerns about a group of trees within striking distance of her property and hired an arborist to complete a risk assessment. This arborist identified a dozen or so potentially hazardous trees, including the one that fell on the claimant's house two years later. The previous homeowner notified the City and provided a copy of her arborist's report. The City then hired a different arborist to confirm the potential hazard and, based on the arborist's recommendations, they removed the City-owned trees that presented a threat. The City's arborist also noted that the subject tree did not present an imminent danger. Unfortunately, the City was unable to locate a copy of the report and numerous attempts to obtain it from the arborist were unsuccessful.

Since there was no documentation to rebut the report submitted by the claimant's insurer, the focus was on the other relevant factor: causation, i.e. what actually brought the tree down. At the time the subject tree came down, there was a massive wind event and WCIA argued that the tree's failure was actually due to an act of nature beyond the control of the City. Luckily, even though the City was unable to produce a copy of the favorable report, the claimant's insurer accepted a compromise offer to settle their claim rather than getting into a long-drawn-out, expensive legal battle.

Trees provide many benefits but can cause great harm when they fail. Nevertheless, unless a tree owner has prior knowledge of a problem with a tree they cannot be held liable for its falling.