

When a tree falls, who pays?

By Lisa Knapton

Autumn is here and not only does it bring glorious fall colors with the turning of the leaves but also brings an increased risk of falling trees due to the perfect combination of soggy ground and high winds. Staff receives Member inquiries regarding responsibility for the damage caused by trees falling and how the cleanup of the tree debris should be handled. The answer really depends on the circumstances leading to the falling of the tree.

If a Member-owned tree falls on private property, the responsibility for the damage caused by the tree or branches may not rest with the Member. Perfectly healthy trees can topple due to high winds and heavy ground saturation experienced during storms. When this occurs, it is considered an Act of God, which is due to natural causes that could not have been prevented by ordinary care or foresight. A property owner does not have a duty to ensure each tree located on their land will remain standing during such an event. Damage caused to private property by a fallen tree showing no evidence of deterioration should be addressed by the private property owner's insurance.

If a Member-owned tree has obvious signs of disease or deterioration prior to the storm event, the owner of the damaged property could make a reasonable argument that the Member knew or should have known that the tree was at risk for failure and should have removed it before it could fall. Knowledge of an unsafe condition creates a duty to correct the condition in a reasonable amount of time. That knowledge could also trigger liability if the Member does not act reasonably to remove the defective tree once they become aware of its condition.

If a Member elects to remove debris caused by a **healthy** fallen tree the Member owns or maintains, this would be an expense born by the Member. If subsequent damage occurs to the private property during the removal of the debris, the Member could be creating liability where there previously was none. For this reason, WCIA strongly recommends that our Members transfer the risk by contracting with a reputable tree service for removal of debris, especially when it is resting against structures such as buildings and fences. A Member who chooses to have employees perform debris removal from private property, should only do so after obtaining a signed release and hold harmless agreement from the property owner. For assistance with drafting a release, please contact your WCIA Risk Management Representative. For further information on tree management see our Liability Resource Manual Guideline PAR 18 - Municipal Tree Management. The Liability Resource Manual is available through the Member Resources page on the WCIA website: <http://www.wciapool.org/member-resources>.