

Trees and catch basins - it's storm season in the Northwest

By Gordy Van

2020 has definitely been an (ahem) interesting year. After COVID and fires with unhealthy air quality, fall has now arrived and with it come the storm related issues we confront on an annual basis. The WCIA Claims Department sees a variety of claims ranging from damage from trees and branches to water damage to property.

Regarding tree damage, we frequently see the assertion that because it is the City's tree, the City is therefore liable for any resulting damage. We have had tree damage claims ranging in severity from vehicle damage, to roof damage and even injuries and fatalities to pedestrians struck by trees or debris. According to the case of *Lewis v. Krussell 101Wn.App.178*, an owner or occupier of land located in or adjacent to an urban or residential area and on which trees are growing does not have a duty to take corrective action to protect adjacent land from the danger of falling trees absent actual or constructive knowledge that the trees are defective or that an alteration to a natural condition on the land creates a hazard to the adjacent property. Department comments addressing the condition of the tree prior to the loss and whether the City had any knowledge of a defective or dangerous condition assist us in our investigation. Photos are also very helpful.

Every year we see water damage claims resulting from clogged catch basins. When leaves began falling, catch basins may become clogged, especially following a windstorm that causes a greater than normal amount of leaves to fall. If the member reasonably inspects and maintains catch basins, we have good public duty doctrine defenses to claims that may result following a clogged catch basin claim. As is the case with many public works liability exposures, actual or constructive notice is one of the key elements of the liability analysis.

We also see claims resulting from stormwater systems that are simply overwhelmed by the increased rainfall that may accompany a storm. The member is not liable for insufficient capacity if the stormwater system is properly designed, constructed and maintained. Many municipal storm sewer systems are designed to meet 25-year storm events. Their engineering specifics suggest they may be overwhelmed by larger storm events. The costs to engineer municipal storm systems for 100-year storm events is impractical and not required by liability case law, currently. The member should maintain the storm sewer system so ongoing maintenance records are helpful. Photos and rainfall measurements are also very helpful.

Although it is unfortunate when community members sustain storm related damage through no fault of their own, the member is usually not liable for acts of nature over which they have no control. Here's to hoping we catch a break for the rest of 2020 and this storm season is a mild one!

If your community sustains large scale flooding and you are considering submitting a claim to FEMA, please call or email the WCIA Claims Department to discuss damage to member-owned property, scheduled with WCIA. FEMA will require a response from your property insurer before you can obtain emergency funding, so call us early so WCIA can help you document your property insurance coverage for FEMA.