

When a tree falls...

By Carlene Brown

Over 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 their foliage and several of our members experienced a tremendous amount of toppled trees and fallen branches as a result. These windstorms triggered unforeseen claims and many inquiries regarding who may be responsible for the damages and cleanup of the debris. The answer depends on the facts as each individual claim involves a different scenario requiring investigation of all the circumstances.

Members should consider adopting an annual tree inspection and pruning program to identify member trees with 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 there could be allegations of liability should the tree fall onto and damage private property. The owner of the damaged property could make a reasonable case that the member knew or should have known that the tree was at risk for breakage and should have been removed. Knowledge of an unsafe condition creates a duty to correct the condition as soon as reasonably possible. According to *Wright v. Kennewick*, 62 Wn.2d (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 the condition. If the member was not aware of any issues with the tree until after the incident had already occurred, they had no opportunity to prevent the incident from happening.

On the other hand, if a member owned or maintained tree falls on private property, the responsibility for damage caused by the tree may not necessarily fall upon the member. Many of the trees that fell during prior years' windstorms were perfectly healthy yet toppled due to heavy rainfall followed by wind. A property owner does not have a duty to ensure that each tree located on their land or right-of-way will remain standing during an act of nature.

Sometimes, no matter how much a member prepares trees for a storm, they may still find it necessary to clean up debris afterward. If a member elects to remove debris from private property caused by a healthy fallen tree, this would be an expense to the member. Should subsequent damage occur to the private property during the process of debris removal, the member would then create liability where it previously did not exist. For this reason, we strongly recommend that our members transfer the risk by contracting with a reputable tree service to work with the private property owner for debris removal. To successfully transfer the risk, the tree removal contract should contain the proper indemnification/hold harmless language, require the company to have adequate insurance to cover the risks of the specific job, and name the member as an additional insured. For sample insurance and indemnification language, see [ADM.21 Insurance Indemnity Requirements For Contracts](#).

WCIA also recommends that members develop a method for documenting and tracking citizen/employee concerns, requests, and complaints. To demonstrate a member met its duty to respond in a reasonable time and 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. See [PWK.13.01 Sample Citizen Action Request Form](#).

For further information on tree management see WCIA's Liability Resource Manual Guideline [PAR18-Municipal-Tree-Management](#).

Any further questions surrounding this matter may be directed to your assigned Risk Management Representative at WCIA.