

Manager/Supervisor Risk Management

#60– 6/5/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: DANGEROUS CONDITION – TREE CLAIMS

Another common dangerous condition claim made against public entities involves tree limbs falling on parked vehicles. Usually there is an influx of these claims right after the first serious seasonal storms, but we also get falling limbs during hot spells when the trees draw water up into their leaves to resist the heat. Following an investigation and applying the elements of dangerous condition, the great majority of these claims are denied. Our investigations generally concentrate on ownership and notice issues, and rely heavily on entity records and the statements of the maintenance crews.

The first step in any tree claim is to confirm that the tree is actually owned by the entity (i.e. public property). If it is not our tree we quickly tender the claim back to its owner. If it is an entity tree then we look to see if the entity created the dangerous condition, or had notice of the condition. Creating the condition usually involves an improper or incomplete pruning of the tree. If the specific tree was pruned shortly before the accident we look to see whether it was entity staff or an independent contractor that performed the last maintenance. If it was not our staff we tender to the contractor.

Actual notice of a dangerous condition can come from an inspection, or from a call from a concerned citizen. Most trees in urban areas are on a maintenance/inspection schedule -- generally seven years for this area, but it can vary depending on the type of tree. Written records proving compliance with that schedule are essential, and allow us to prove that the entity took reasonable steps to discover potentially dangerous conditions. It is also valuable to have staff members recognize that any time they look at a tree they are performing an informal inspection; an employee stating "I pass that tree every day and would have noticed any obvious limb issues" is a great way to disprove notice.

A tree that has a history of dropping limbs, or one that has generated complaints from the public requires an immediate inspection, and continued maintenance. Recognized problems with the tree or public contact regarding a particular tree create notice, and usually create a duty for the entity to act.

The post-accident inspection also requires careful documentation. If there was no visible signs of disease, rot, or damage then there would be nothing to give the entity notice of a potentially dangerous condition (a few photos help a lot). On the other hand, if the involved limb displays outward signs of problems that a reasonable inspection would have revealed, then the reasonableness of the entity's inspection and maintenance schedule, and compliance with that schedule becomes important.

In most of the tree claims made against YCPARMIA members we find that the entity's inspection and maintenance records are complete, that the entity's schedule is being followed, and that the fallen limbs usually have no signs of disease, rot or prior damage. Therefore the elements of dangerous condition are not met, and the entity is not responsible for the damage.

Next topic: Dangerous Condition – Road Conditions