



## EXECUTIVE SUMMARY

Approximately 67% of the State of Connecticut is covered by trees. Although it is easy to get lost in the beauty of Connecticut's forests and parks, one should not forget the potential damages that trees can cause if not properly inspected and maintained. As with any exposure, a program should be put in place to identify and manage risk; a useful technique to assess our current risk management efforts is to review past experiences and determine if future efforts should be enhanced.

## SCENARIO

On August 15, 2018, a large town owned tree with a large diameter limb broke and landed on a 2017 Mercedes AMG GT Coupe. The vehicle was parked in a designated parking spot that was clearly identified by paint. The weight of the limb crushed the vehicle's roof, causing it to compress into the passenger compartment. The amounting damage caused the vehicle to be totaled.

The claimant notified the police department, who arrived on scene and completed a property damage report and provided the claimant with a police report number. The next business day, the claimant contacted the Town and requested that the Town pay for the repairs to his vehicle, since it was a town owned tree. The Town initially denied the request, stating that the resident was parking at his own risk. Unsatisfied with this answer, the claimant retained legal counsel and submitted a notice of intent to file suit. The claimant's attorney filed a motion to obtain all Town policies, ordinances and records pertaining to the town's tree management program.

## INVESTIGATION AND DAMAGES

During discovery, it was determined that the Town had previously "tagged" the tree for removal; however, a significant time had elapsed between the identification of the tree and when the limb broke free and landed onto the vehicle. It was also discovered that the Town has a tree management policy, which states that: "... Once a tree has been identified as in need of removal, the town tree warden or his designee will 'tag' the tree. Once tagged, the tree will be prioritized for removal based on its condition and location, the tree shall be removed within 6 months of tagging..."

Further investigation revealed:

- The tree had originally been tagged on October 19, 2017 – 10 months prior to the incident.

- The town's prioritization of trees identified 3 levels, with 1 being immediate danger in a high volume location and 3 being low risk, low volume location.
- The tree involved in the claim was prioritized as a level 2 – intermediate risk in a medium volume location.
- The tree tag was not present on the tree on the date of loss, indicating that it had fallen off sometime between initial tagging and date of loss.

## LESSONS LEARNED

- **Tree Trimming Policy.** Consider ensuring that tree trimming policy language does not create a ministerial duty (such as stating that the Town "must" or "shall" act) and that it does not contain a ministerial time frame (such as "...within 6 months ...").
- **Update Tagging Policy based on CT General Statute 23-59.** CT Gen. Statute 23-59 states, "... unless the condition of such tree, shrub or group of shrubs constitutes an immediate public hazard, the tree warden shall, at least ten days before such removal or pruning, post on each tree or shrub and may post on each group of shrubs a suitable notice stating the tree warden's intention to remove or prune such tree, shrub or group of shrubs..." Essentially, there is no need to tag a tree unless the tree will be removed in at least 10 days.
- **Prioritization and Classification.** Consider adjusting the prioritization language and categorizations to reduce the likelihood of creating a ministerial duty and negligent act. Consider classifying trees as the following:
  - Consider tree removal; or
  - Continue to evaluate tree for removal on a regular basis.