



OBJECTIVES

The objectives of this large loss claim review are to:

- Examine a CIRMA Liability-Auto-Property (LAP) loss resulting from a claim that occurred at a local town park.
- Discuss elements of the claim that impacted the municipality's ability to mitigate loss severity.
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned.

INCIDENT BACKGROUND

The claim occurred due to a 42-year-old resident (Claimant) becoming injured while walking her dog within a CIRMA Member Town parking lot. On the date of the incident, a tree branch broke off and landed on both the Claimant and her dog shortly after arriving at the parking lot. Injuries sustained by the Claimant included fractures to her right leg and ankle that required surgery, broken teeth, and abrasions to the legs, arms, and torso. The Claimant's dog also experienced a broken front leg and multiple abrasions. As a result of the incident, the Claimant filed a negligence lawsuit against the Town highlighting the injured resident's physical damages, lost wages and emotional distress. The Town ultimately settled the claim out of court for \$165,000.

INCIDENT INVESTIGATION

- The incident occurred in mid-September when a 42-year-old resident (Claimant) and her nine-year-old dog were walking in a municipal parking lot.
- The weather on the day of the incident was partly cloudy with a high of 60-degrees, and it was noted there were occasional wind gusts that exceeded 20 mph.
- While the Claimant was walking her dog, a gust of wind caused a tree limb overhead to crack, break and fall to the ground, striking both the Claimant and her dog.
- The Claimant called 9-1-1, prompting an emergency response, and was ultimately transported to a local hospital while the dog was taken to a local emergency vet.
- The Claimant suffered fractures to her right leg and ankle that both required surgical intervention, broken teeth, and abrasions to the legs, arms and torso.
- The Claimant's dog suffered a broken front leg and multiple abrasions.
- Following the incident, the CIRMA-Member Town received a

notice of intent to sue from an attorney representing the Claimant.

- The following facts were determined through the subsequent investigation:
 - The tree in question was located on town property and fell under the "care and control" of the Town Tree Warden.
 - Language within the municipality's Vegetation Management and Arboricultural Standards requires, *"All public deciduous trees on improved properties shall be pruned on a rotational basis of not more than five (5) years. This involves pruning each town-owned deciduous tree at least once in this period based on the medium prune specifications in this document."*
 - The Town Tree Warden hired two (2) years before the incident, could not provide documentation that any trees located around or within the parking lot in question were ever pruned or assessed.
 - Occasionally, the Town Tree Warden contracted with a third-party to assist with tree maintenance, pruning, and removal; however, records were sporadic, and documentation was not maintained for the trees at the parking lot in question.

INJURY AND DAMAGES

As a result of the incident, the Claimant retained legal counsel, who ultimately filed a notice of intent to file suit against the municipality and its officers. The suit alleged that the Town had a duty to maintain the trees on town property and that the municipality failed to develop and maintain such areas adequately; thus, the Claimant alleged that the public entity was negligent, which was the proximate cause of the Claimant's injuries. Damages include medical and attorney fees, lost wages, and emotional distress.

Because the investigation determined that the municipality's policy created a ministerial act, the municipality could not call on qualified governmental immunities. Thus, it was decided to settle this matter outside of court for **\$165,000**, including all fees.

CONCLUSION

Municipalities work regularly to develop and maintain trees, parks, and vegetation so that they can be accessed and used by their residents safely. When municipalities do not have a balanced approach to maintaining their established protocols and processes are not followed, liability risk can significantly increase.

The State of Connecticut requires every town to have a tree war-

den under Connecticut General Statute (CGS) 23-58, with powers and responsibilities for said tree warden found under CGS 23-59. This statute allows the tree warden to “prescribe such regulations for the care and preservation of such trees and shrubs as the tree warden deems expedient.”

The Town is held to the policies and regulations it imposes through its tree warden, and therefore, the Town should review those policies and regulations for feasibility. Suppose the Town wishes to use a vendor or third-party to execute its policies. In that case, it should ensure that the vendor has the capabilities and knowledge to do so, and that such work is properly documented.

KEY RECOMMENDATIONS/ACTION ITEMS

CIRMA Risk Management recommends the following best practices to help prevent these incidents from occurring:

- Consider reviewing town policies on tree maintenance:
 - Avoid using restrictive language as to exactly when trees will be inspected or maintained or specifically how many trees will be inspected/maintained in that time frame.
 - Consider conducting a regular review of the tree warden policies to match the Town’s ability to execute them.
- Consider re-enforcing communication with third-party vendors that are executing town policies:
 - Consider maintaining assessment records and work orders as applicable.
 - For additional assistance in reviewing vendor contracts, consider utilizing the CIRMA’s contract review services, consulting your CIRMA Risk Management Consultant, and working with the municipality’s legal counsel.
- Consider training applicable staff on Connecticut’s grounds maintenance and tree liability laws, as outlined in Connecticut General Statute 23-59.