

Vine & Branch Inc.

Tree Care

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(Article take from IAA Newsletter – Winter, 2001)

Indiana Law and the Liability of Trees - Answers to questions from the last IAA Newsletter

• What is negligence?

Definition of negligence: "The failure to use such care as a reasonably prudent person would use under similar circumstances"ⁱⁱⁱ.

What often must be decided in a courtroom is what would a reasonably prudent person do?

Our duty as an Arborist is to inform our clients about their trees so that they can make decisions as reasonably prudent persons. Oftentimes our clients do not realize the danger a tree may present. To most of our clients if a tree has leaves it is healthy. They do not understand that decay in trees can leave the tree in a weakened state that may cause the tree to fail.

As Arborists we should inform our clients about trees that we see that may present a danger to them or to the general public. Many times this may mean informing them about a tree that they did not even know was a problem. It is in everyone's best interest to make known to a client any potentially hazardous situation that we may see.

With potentially hazardous trees it would be a good idea to put in writing our findings and have the client sign a copy, especially if they are not going to do anything to alleviate the hazardous situation. Give them notice in writing, have them sign it and keep it on file.

• Who is considered negligent?

A property owner can be considered negligent if he has a tree that fails and causes harm to a person or damage to property. Generally there has to be injury or damage for negligence to be claimed. Again it has to be determined if the person was acting as a "reasonable man" would in the care of his trees.

The instance of a hazardous tree is much like if you left the sewer lid off the sewer and a person fell in it and was hurt. If you leave a tree that causes injury to another you may be considered negligent.

Also if as a practicing Arborist you do not inform your clients of **a potentially hazardous tree that you notice** and the tree fails and causes damage you may be considered negligent! The downfall of this whole argument is that any tree at any given time (given the right (or wrong) circumstances) may fail. As Arborists we need to continue our training so that we are more qualified to predict which trees are statistically more likely to fail.

- **What are the potential costs of litigation and what is the potential for financial losses if found negligent?**

An approximate cost of a bench trial is \$25,000- 35,000 or higher.

An approximate cost of a jury trial is \$35,000-75,000 or higher.

The average settlement cost of a negligence case can go anywhere for \$300,000 to \$1,000,000 plus. Remember the McDonalds coffee case?

The threat of pending litigation is not a time to get proud. Take this threat seriously! Advise your company agents to give extra care to avoid the legal system if at all possible. If someone threatens to sue try to settle the case before you end up in court. It can definitely be an expensive proposition!

I certify that all the statements of fact in this article are true, complete and correct to the best of my knowledge and belief, and that they are made in good faith. They should not be construed as legal advice but are intended to provoke thought and to bring awareness to legal issues. Legal advice should be sought from your company attorney!

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Suggested reading

- *Arboriculture and the Law*, by Victor Merullo and Michael Valentine
- *Tree Law Cases in the USA*, by Lew Bloch, Bloch Consulting Group, Potomac, and MD.2000. ISBN 0-9704772-0-1
- Dunster, J.A. and Murray, S.M. 1997. Arboriculture and the Law in Canada. Savoy: International Society of Arboriculture.

Suggested study material

- Matheny, Nelda and Clark, Jim, *A Photographic Guide to the Evaluation of hazard Trees in Urban Areas*, ISA Press, 1994
- Harris, Richard, Arboriculture, *Integrated Management of Landscape Trees, Shrubs, and Vines*, Prentice Hall, Upper Saddle River, New Jersey, 1999.
- Hartman, John, Pirone, Thomas, *Pirone's Tree Maintenance*, Oxford University, 2000.
- Shigos, Alex, *A New Tree Biology*, Shigo and Trees Assoc., Durham NH 1989.