



Article written for the IAA Newsletter – Summer, 2001 Indiana Law and the Liability of Trees

Can you answer these questions?

- What constitutes **negligence**¹?
- Who is considered negligent?
- What are the potential costs of litigation?
- What is the potential loss if found negligent?
- What is the “reasonable care” requirement that the State of Indiana requires to “prevent unreasonable risk of harm”?
- Whose duty is it to “perform a periodic inspection” of the property?

Indiana Supreme Court

In 1991 the Supreme Court of the State of Indiana upheld a decision² that pertains to you?³ The decision was that the “possessor of land in an urban area is subject to liability to persons using a public highway for physical harm resulting from his failure to exercise *reasonable care* to prevent an unreasonable risk of harm arising from the condition of trees on the land near the highway.”

The Supreme Court also determined⁴ that it was the landowners, “*duty... to perform periodic inspections* to be sure that the premises do not endanger those using the highway.”

What does this mean to you? It means that if you have a tree that threatens “unreasonable risk of harm to a public highway” you may be liable for any harm that the tree may cause if it falls. You are also responsible to provide a “routine inspection to be sure that the premises do not endanger those using the highway”.

Given the current trend toward litigation it is Vine & Branches opinion that you should not take any chances with the law.

The question is can you perform the routine inspection that the law requires?

Do you understand tree biology and tree characteristics well enough to recognize an “unreasonable risk”?

Vine & Branch has Certified Arborists on staff to inspect any part of you property that might present a risk to the general public. Call us today to set up an inspection.

Questions Arising from the 1991 Court Case

The case in 1991 was a case pertaining to trees that endangered the highway. My question is whether these same arguments could be made for trees that endanger the general public but which are not endangering the highway?

What about trees that present “risk of harm” to,

- A neighbors house,
- A school
- A public park
- A playground

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- A sidewalk
- A parking lot
- Golfers on a golf course
- Mature trees near a club house or pool during a lightning storm
- Players and participants on Sports fields

One argument that often comes up is "they play (use our facility) at their own risk". This may be true but do we want to test this in court? Time and again the trespasser to a property has sued because of an injury and won. In most cases the cost of litigation would be greater than the cost of curing the problem.

Another argument is that the occurrence of a tree or limb falling is an "Act of God"⁵. This argument has not held up in courts across the Country because the property has been "altered" and therefore "human agency" is involved in the liability⁶.

It is my opinion that it is definitely not worth the risk to leave dead trees that in any way endanger you or your neighbors. I also suggest that live trees be inspected for any weaknesses that would cause them to present a "risk of harm". Furthermore it would be worth investigating lightning protection for mature trees in highly populated areas of your property. Let Vine & Branch quote the removal of your dead trees, inspect your live trees and quote lightning protection for you property today.

Final thought for Professional Groundskeepers and Developers

During the 1991 case the fact that the landowner was a real estate developer was used to impeach his testimony that "he had not noticed the condition of the tree"⁷. Be careful! When a property has a professional groundskeeper involved it seems that his professional "knowledge" be used to hold him to a higher standard of reasonable care.

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Sincerely,
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Footnotes Page

¹ Negligence- The failure to use such care as a reasonably prudent person would use under similar circumstances.

² Court case Valinet V. Eskew, copy by West Group 2000 No claim to U.S. Original works.

³ Limitation acknowledged, Vine & Branch Inc. is not an Attorney group so any legal advice should be sought from your Attorney. We just represent our opinion and understanding as it may pertain to you.

⁴ Ibid.

⁵ Act of God- An act occasioned exclusively by violence of nature without the interference of any human agency.

⁶ Arboriculture & The Law, Merullo, Victor, Valentine, Michael, International Society of Arboriculture, Savoy IL 1992

⁷ Valinet V. Eskew, copy by West Group 2000 No claim to U.S. Original works.

Definitions are from Arboriculture & The Law.