



When Trees Attack: Subrogation Strategies for Fallen Tree Claims



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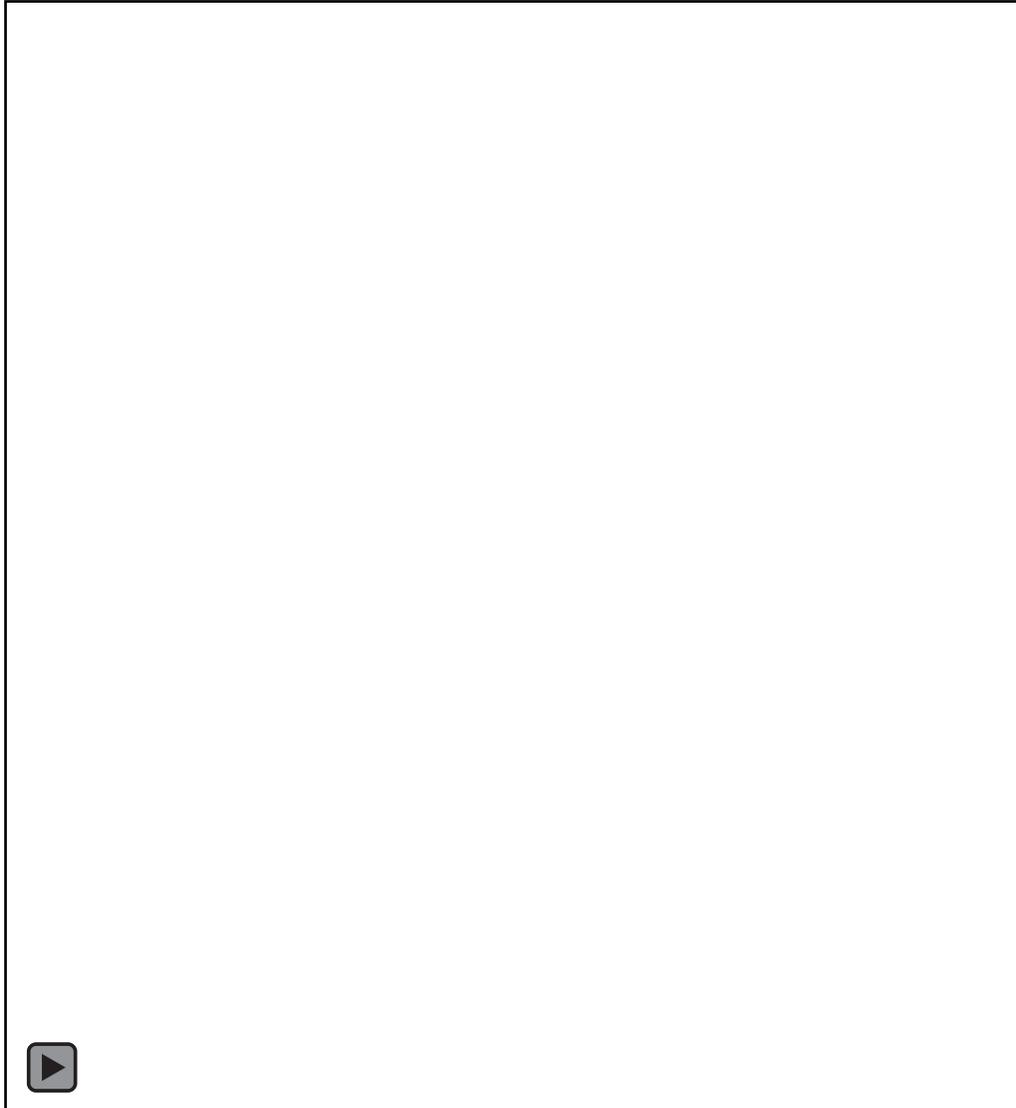
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Overview

- Typical Fallen Tree claims
- Common Assumptions that can Kill Subrogation Claims
- BIG 3 Investigative Questions
- Negligence Analysis
- Identifying Potentially Responsible Parties
- Public v. Private Tree Owners
- Prior Notice: Actual and Constructive
- Early Evidence and Investigation Pitfalls
- The Consulting Arborist (Tree Expert)
Qualifications and Role in Determining Causation
- Investigative Tools
- Decay and Defect
- Case Studies

Timber-Cam:



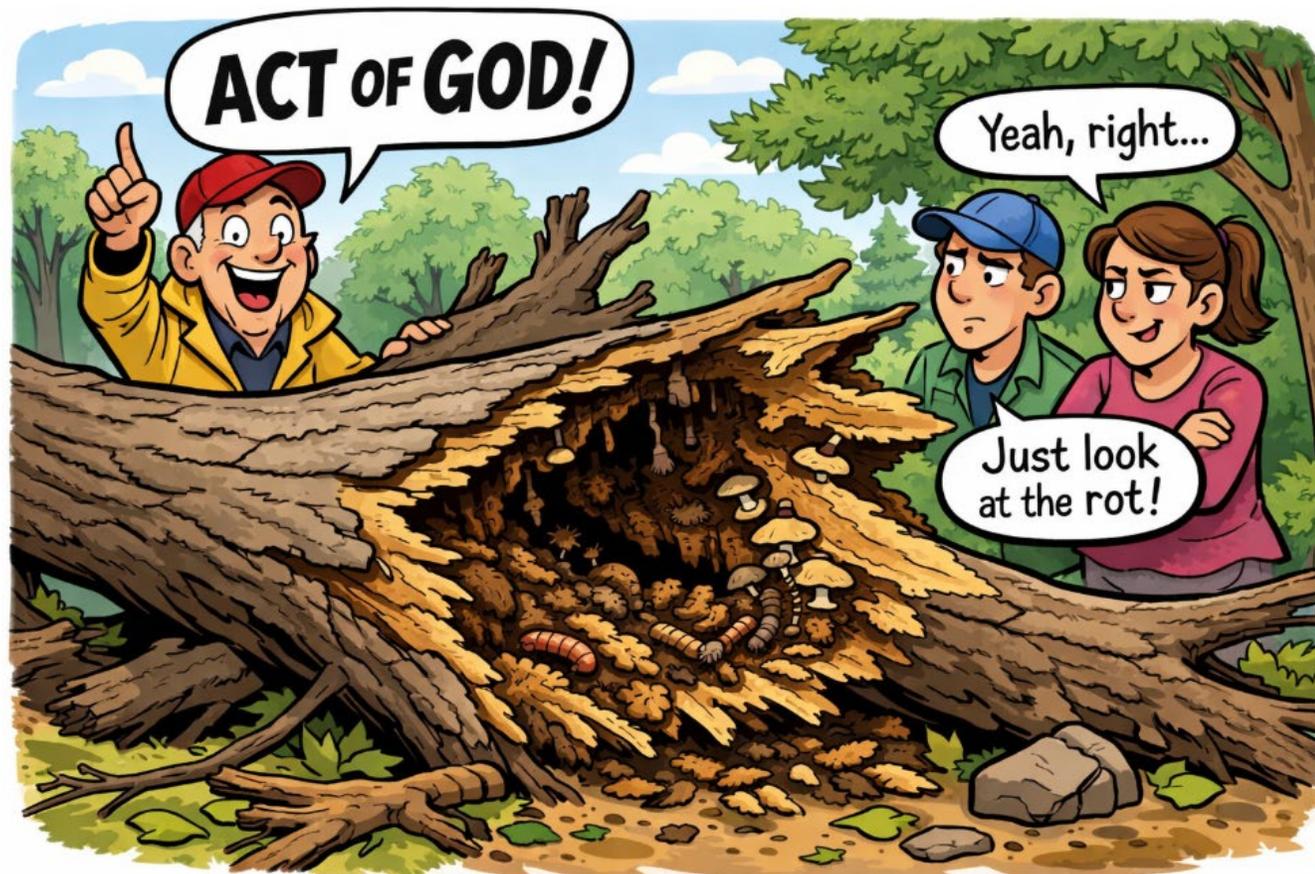
Fallen Tree Claims



Why Tree Claims are Deceptive

- **Common False Assumptions:**

- **Act of God**
- **The tree owner is strictly liable**
- **Decay after a loss was obvious prior to the loss**



BIG 3 Investigative Questions:

1. **Who is responsible for the tree?**
2. **Did they have actual or constructive notice of a defective or dangerous condition of the tree?**
3. **Was what caused the tree failure the defective or dangerous condition they had notice of and failed to properly address?**



Negligence Analysis

- **Negligence, not Strict Liability**
 - **Tree owners are not insurers of their trees**
 - **Liability is based on negligence; claimant bears burden of proof**
- **To recover, claimant must prove:**
 - **Duty:** A third party owed a duty to maintain tree
 - **Breach:** Prior notice of a dangerous condition and failure to act
 - **Causation:** The breach caused the tree fall/failure
 - **Damages:** Resulting property damage



Identifying Responsible Third Parties

- **Who could be responsible?**

- Private property owner (neighbor)
- Public entity (city/county)
- Tree maintenance company or landscaper contractor

- **How do we find them?**

- Insured interview
- Property records
- Maintenance history
- Government records



Private v. Public Owners

	Public	Private
Standard of Care	Reasonableness under municipal standards/policies	Reasonable property owner standard
Notice Requirements/Deadline	Statutory notice + short claim deadlines	No pre-suit claim notice (standard SOL applies)
Immunity	Potential immunity defenses apply	No immunity defenses
Tree Companies	Often contracted → scope matters	Liability depends on timing & scope of work

Proving Prior Notice: Where most claims fail



Actual Notice

- The tree owner was specifically alerted to a dangerous or defective condition (letter, email, text, complaint, prior demand, etc.)



Constructive Notice

- The dangerous condition was open and obvious, and the owner knew or should have known through reasonable inspection



No notice = no negligence, even if the tree was clearly defective



Investigation Pitfalls

- **Evidence Blind Spots**
 - Failure to consider *all* relevant evidence
 - Absence of historical visual evidence
 - Incomplete historical knowledge
- **Documentation Failures**
 - Lack of proper documentation
 - Overlooked records and documentation
 - Missing maintenance and inspection history
- **No Scientific Verification by an Expert**

Evidence that Matters Early On

- **Document, Document, Document**
 - Scene photos & videos (before cleanup)
 - Ring/neighbor surveillance footage
 - Witness statements (insured, neighbors)
 - Any prior complaints, emails, texts, etc.
- **Engage a Tree Expert Immediately (Before Anything is Removed)**
 - **Trunk failure/uprooted tree** —→ preserve entire trunk and root ball
 - **Branch failure** —→ preserve failed branch and attachment point

Trunk/Rootball Failure



Branch Failure



Selecting your Tree Expert

- **Registered Consulting Arborist (RCA)**, from ASCA (American Society of Consulting Arborist)
- **Board Certified Master Arborist (BCMA)**, from ISA (International Society of Arboriculture)
- **ISA Tree Risk Assessment Qualification, TRAQ (FOR ALL TREE CLAIMS)**
- **ISA Urban Forest Professional Certification**, (Municipal Claims)
- **ISA Utility Specialist Qualification**, (Utility/Powerline Claims)
- **ASCA Tree & Plant Appraisal Qualification, TPAQ** (Appraisals & Tree Collisions)
- **Academic degrees: BS and/or MSc in closely related field such as Forestry, Urban Forestry or Horticulture**
- **Key Qualification: 10+ years of Proven Practical Experience in the Field**

Verify your Tree Experts Credentials

- ASCA Verification & Find a Registered Consulting Arborist:

<https://www.asca-consultants.org/search/custom.asp?id=3818>



- ISA Verification & Find an Arborist:

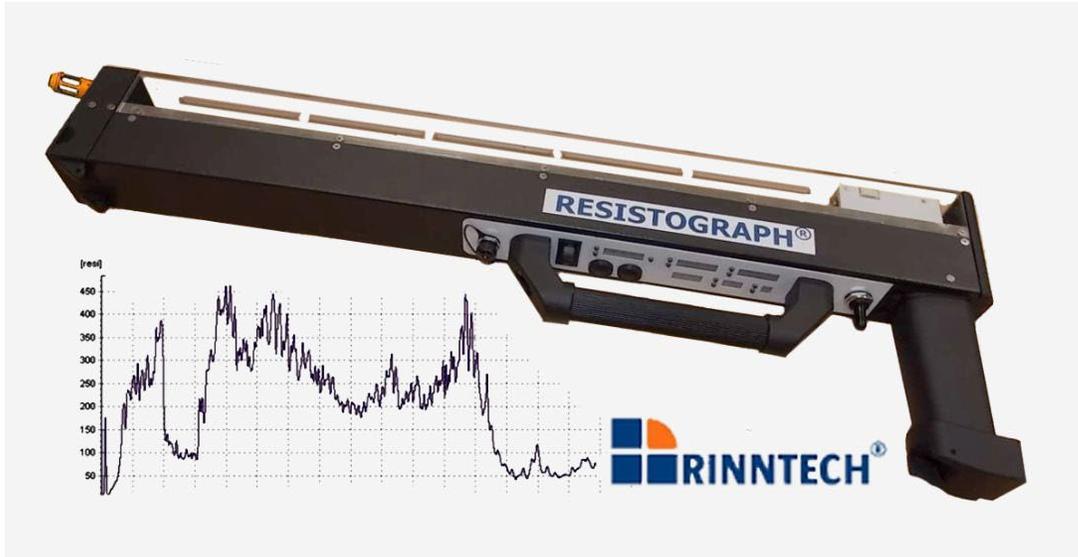
<https://www.treesaregood.org/findanarborist/findanarborist>



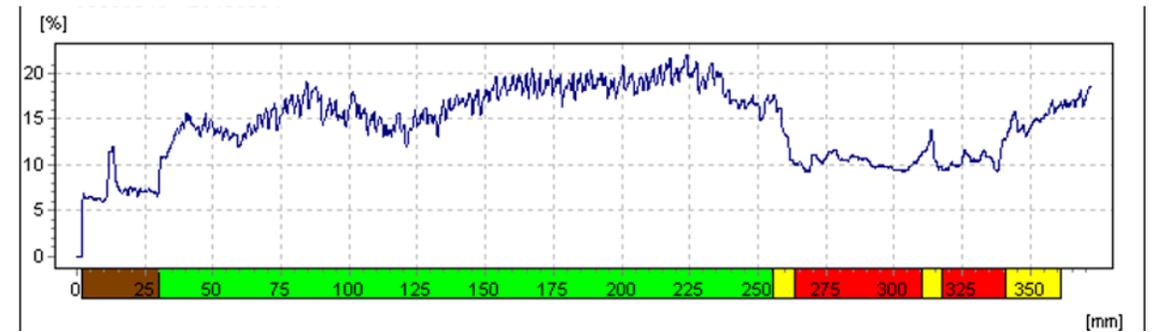
You Cannot Prove Decay without an Expert

- **Expert knowledge is required to distinguish a healthy tree from one that is decayed or defective**
- **Tree Experts use specialized tools to assess internal tree or root decay:**
 - **Resistance Drilling**
 - **Increment Coring**
 - **Sonic Tomography**
 - **Laboratory Sampling & DNA analysis**
 - **Pneumatic- or Hydro- soil excavation**

Resistance Drill & Increment Borer



Resistance Drilling with Resistograph®



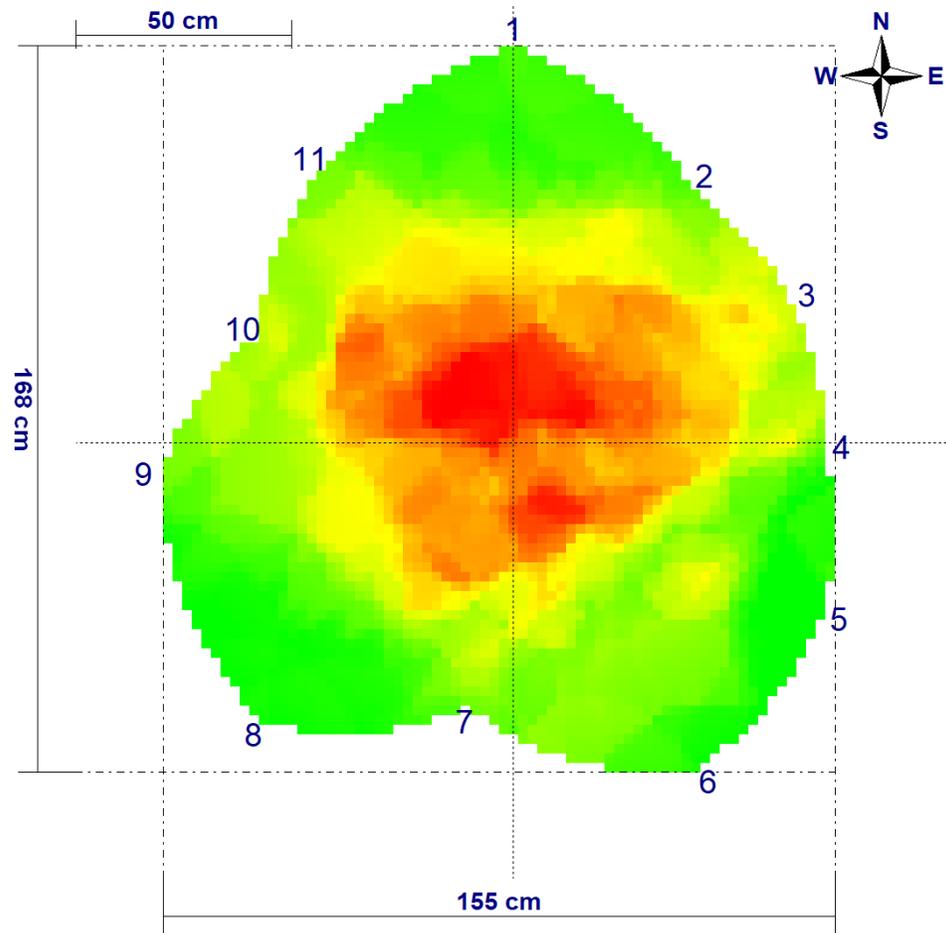
Sonic Tomography



Sonic Tomography – Sonic Tomogram

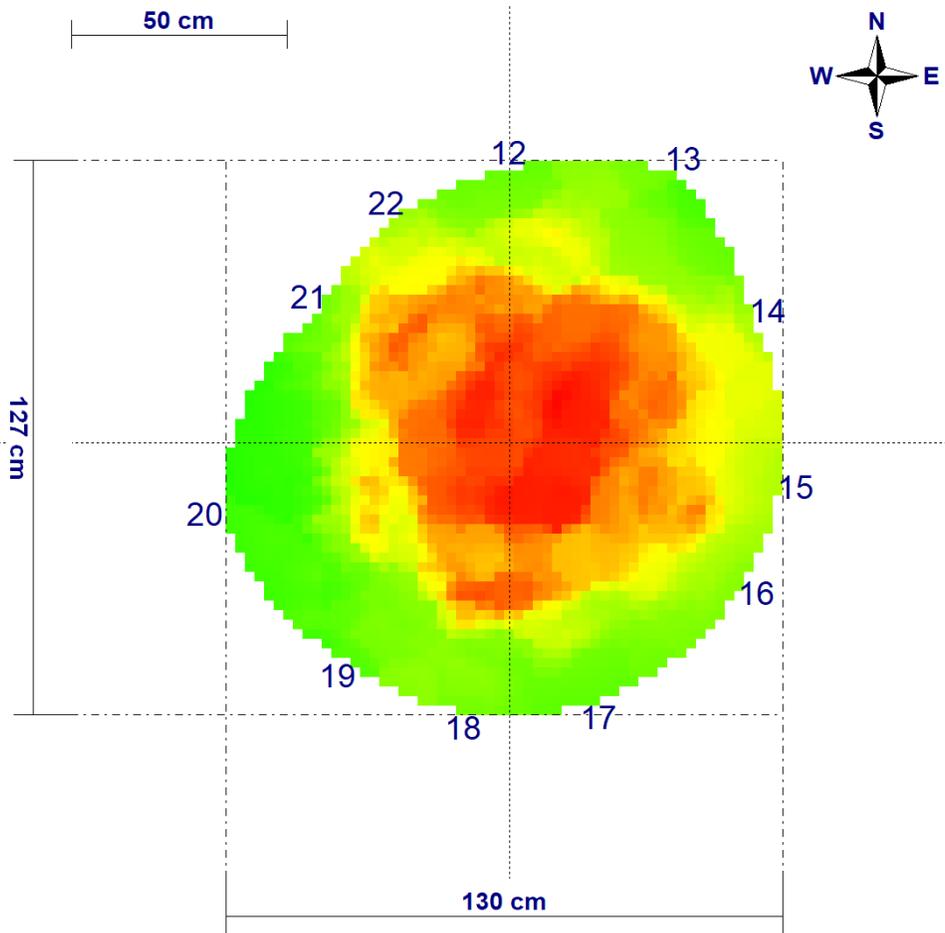
Project: Quercus lobata, Valley Oak
Location: Kaseberg Park, near light pole

H: 16 cm



Tree: Valley Oak
Tree species: Ring-porous

H: 140 cm

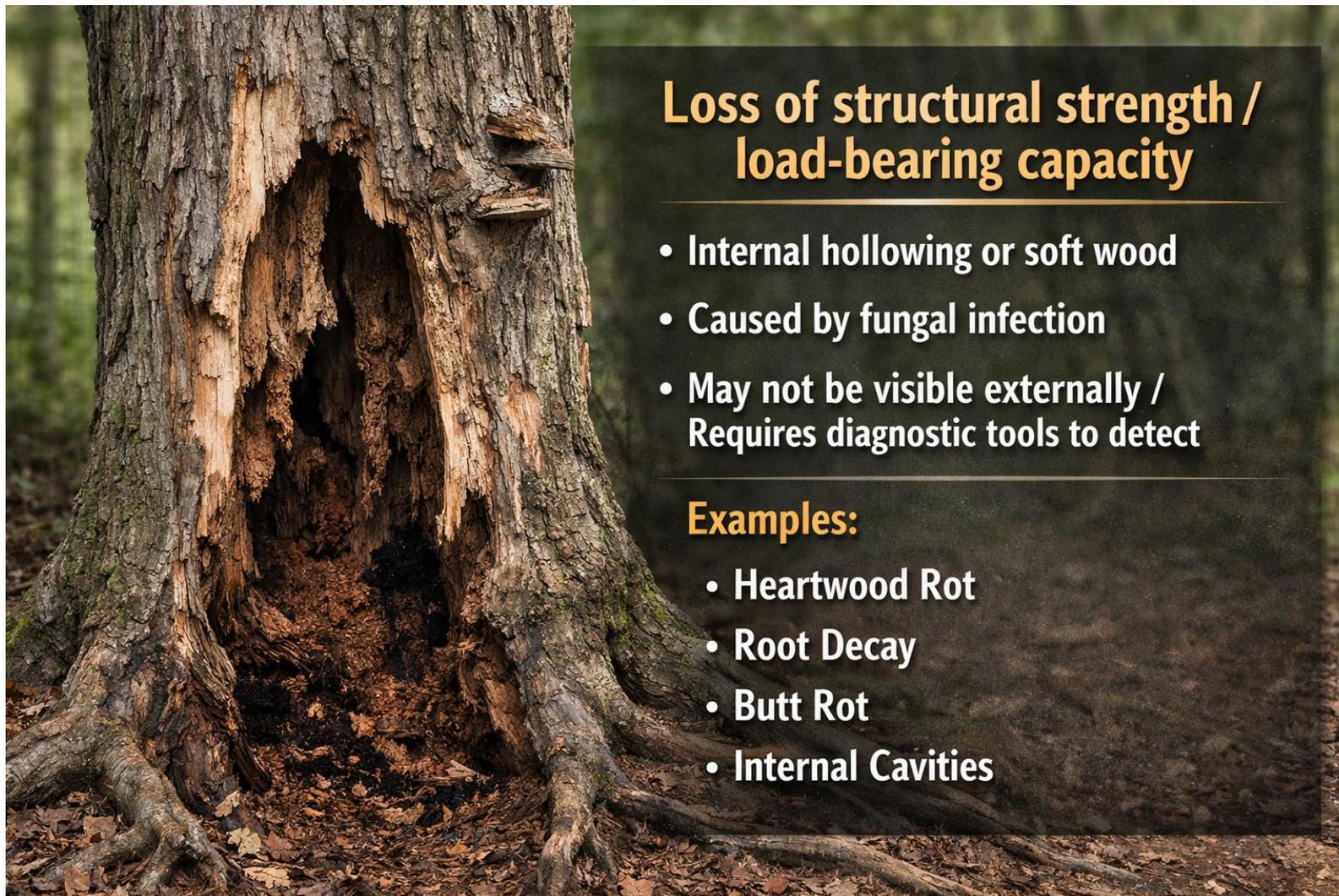


Date: 6/16/2023
North: 0°

Pneumatic Root Excavation with Airspade



Decayed Trees



Loss of structural strength / load-bearing capacity

- Internal hollowing or soft wood
- Caused by fungal infection
- May not be visible externally /
Requires diagnostic tools to detect

Examples:

- Heartwood Rot
- Root Decay
- Butt Rot
- Internal Cavities

Decayed Tree Trunk



Decayed Tree Trunk



Decayed Tree Trunk



Decayed Tree Trunk, dissected



Decayed Tree Trunk



Decayed Tree Trunk



Decayed Tree Trunk



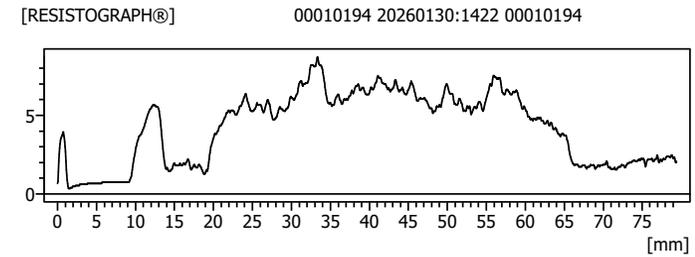
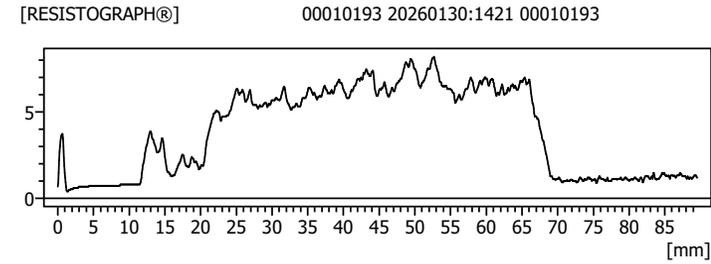
Branch failure, overextended branch



Decayed Tree Branch



Decayed Tree Branch



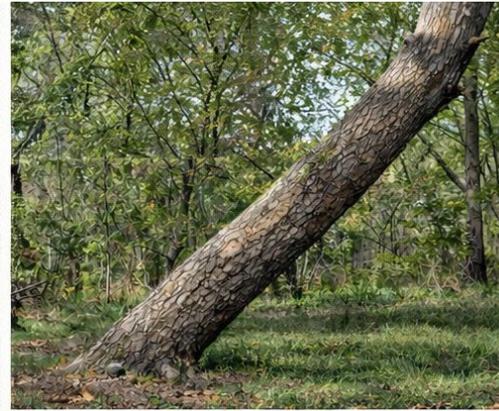
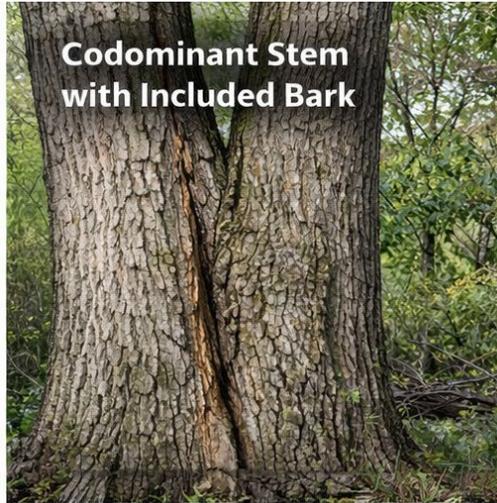
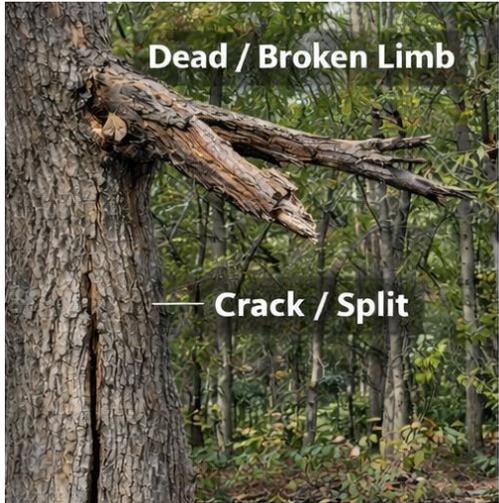
Decayed Tree Branch, dissected



Decayed Tree Roots



Defective Trees



What an Arborist Evaluates After a Tree Fall – Other Key Evidence



Case Study 1: Negligent Neighbor

Facts:

- Insured verbally advised neighbor of leaning tree in Sept 2021
- Neighbor hires Tree service to trim trees
- Neighbor tells insured tree may have termites in Sept 2022
- Insured never hears from neighbor again
- Neighbor's tree falls on insured property in Feb 2024
- Tree remains are gone when the insured submits the claim but provides photos



Case Study 1: Negligent Neighbor

Investigative Questions:

1. Who is responsible for the tree?
2. Did they have actual or constructive notice of a defective or dangerous condition of the tree?
3. Was what caused the trees failure the defective or dangerous condition they had notice of and failed to properly address?



Case Study 1: Negligent Neighbor Outcome

Defense Arguments:

1. Act of God
2. No Prior notice
3. Trimming in 2022 was reasonable care

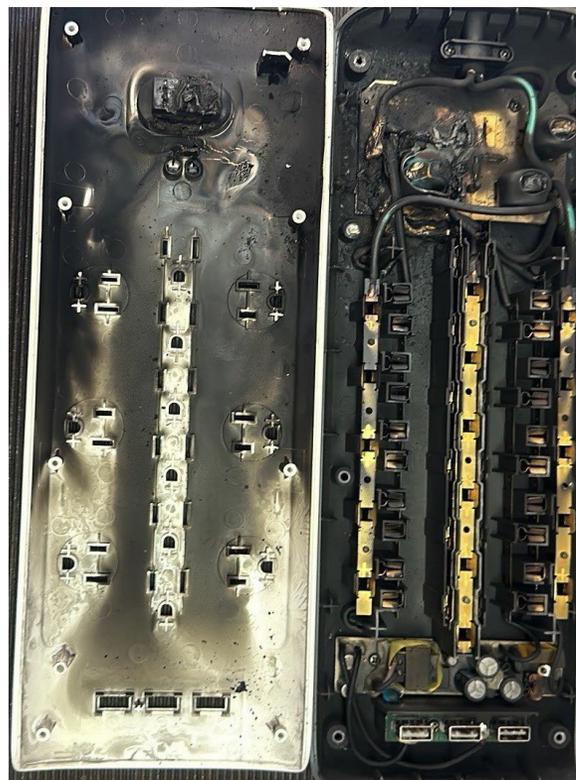
Our Arguments:

1. Not Act of God - wind gusts (40-50 mph) were insufficient to uproot a healthy tree
2. Prior Notice – Actual and Constructive
3. Reasonable Care – A year and a half with no inspections or trimming is not taking reasonable precautions

Outcome: Successful Recovery!

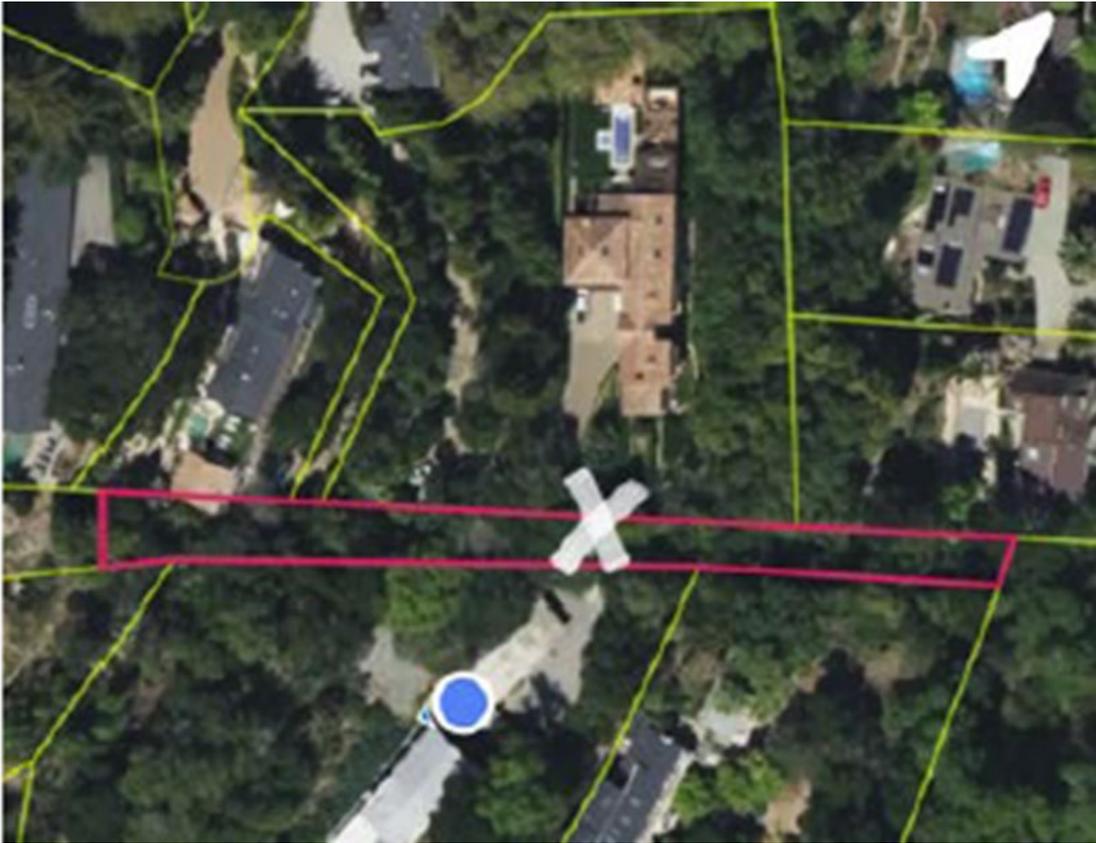


Case Study 2: Utility Easement



- **Facts:**
 - **Small electrical event/fire at a surge protector within the insured property**
 - **Fire Marshal determined the cause was a power surge from the utility company wires**
 - **Utility company determined that the service wire to the insured property broke due to fallen tree**

Case Study 2: Utility Easement



Investigative Questions:

1. Who is responsible for the tree?
2. Did they have actual or constructive notice of a defective or dangerous condition of the tree?
3. Was what caused the trees failure the defective or dangerous condition they had notice of and failed to properly address?

Case Study 2: Utility Easement Outcome



Defense Arguments:

1. Utility does not own the tree
2. Utility not responsible for trimming trees that interfere with service lines
3. Utility said inspected 3 months prior with no issues noted; rot only seen once broken open

Our Arguments:

1. Utility had easement from the HOA
2. Service lines were on the Utility's easement which made the utility responsible for trimming
3. Arborist photo noting signs of defect that the utility company should have noticed if inspected 3 months prior

Outcome: Successful Recovery!

Case Study 3: City-Owned Dead Tree

First Set of Facts:

- Late 2021, insured complains to City about dying tree
- City inspects and confirms: “Dead/Dying Tree”
- City sends letter: backlog & budget restrictions and suggests owner remove tree at own expense

Key Issue: Public entity notice & delay

DEAD / DYING / DAMAGED TREE OR STUMP REMOVAL

Due to a substantial backlog and budgetary restrictions, the time frame for the work indicated below is unknown. As an alternative, the property owner may perform the tree removal at their own expense by requesting to be issued a no-fee tree removal permit on-line at <http://bsspermits.lacity.org/> or <http://bss.lacity.org/Request.htm>, or by calling (800) 996-2489.

- Tree(s) are healthy at this time. Tree(s) shall not be removed.
- A crew shall return to remove the tree and stump as resources allow.

Case Study 3: City-Owned Dead Tree

Nov 2022 – Tree is Set on Fire

- Ring footage of tree set on fire in AM
- Fire Department responds

Second Complaint to City

- Insured complains burned tree will fall
- City Responds: “We will be out to cut the tree”

Tree remains standing. No removal.



Case Study 3: City-Owned Dead Tree

February 2023

- Loud impact overnight
- House shakes
- Dead + Burnt tree falls on house



Case Study 3: City-Owned Dead Tree

Investigative Questions:

1. Who is responsible for the tree?
2. Did they have actual or constructive notice of a defective or dangerous condition of the tree?
3. Was what caused the trees failure the defective or dangerous condition they had notice of and failed to properly address?



Case Study 3: City-Owned Dead Tree

- **Why Subrogation Succeeded:**
 - Clear ACTUAL notice (twice)
 - Written City confirmation – “dead tree”
 - City acknowledgment of removal obligation
 - Failure to timely remove known hazard
- **Takeaways for Public Tree Claims**
 - Always request inspection records
 - Demand internal work orders & trimming logs
 - Preserve complaint letters
 - Look for written admissions

Questions?

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