

# Rotted Tree Falls During Storm, Injuring Woman

On Monday, January 25, 2011, a massive band of thunderstorms was approaching Palm Beach County, Florida. The National Weather Service issued a storm advisory indicating that the rapidly approaching weather front was capable of producing tornadoes. A special Public Information Statement was issued at 6:00 that evening.

Upon hearing the weather advisories, Ms. Smith (not her real name) checked her property for potential problems. She noted that her patio umbrella, in its open position in her backyard, could become a missile in such severe windstorms, creating a danger to herself, her home, and her neighbors. The winds were already blowing hard as she began lowering the umbrella. Suddenly a dead pine tree, located outside her fenced yard in a preserve area maintained by her community's Homeowners Association, toppled over the fence and into her yard, striking Ms. Smith on her back and left arm. She was nearly killed. The tree missed her head by inches, but she did suffer a severe compound fracture of her left upper arm with radial nerve injury and complete displacement of the left distal humerus.

The incident was frightening and Ms. Smith's injuries extremely painful. She was admitted to a local hospital for five days. Treatment included orthopedic surgery to reduce and align the fractured bones. An incision was made from the shoulder to the elbow and a plate was inserted with eight screws to help align the bones. The orthopedic hardware would have to remain in place for a full twelve months. Following removal of the hardware, Ms. Smith would require surgery to revise the scar in hopes of lessening tenderness in the arm and to improve its appearance.

Seeking legal recourse for this out-of-the-ordinary, tragic event, Ms. Smith asked SDSBS attorney **Greg Barnhart** to investigate further. His investigation revealed that the Association had failed to properly in-

spect and mitigate the dangerous condition presented by the many dead trees within the preserve area, specifically the trees near Ms. Smith's western property line. The declaration of covenants and restrictions for the community established that the preserve must be perpetually maintained in good condition. The community's planned unit development survey requires monthly inspections of the preserve. Section VIII of the approved management plan requires

quarterly inspections of the preserve be conducted in perpetuity. The duties owed to the community by the Association are stated within its own documents, and these were clearly not met, as evidenced by abundant photographs.

The tree that fell on Ms. Smith had extensive rot and insect damage. It had been dead for an extended amount of time prior to falling into her yard. The Association knew or should have known of the danger posed by the dead pine tree standing just outside Ms. Smith's property line.

The Association defended Ms. Smith's claim of negligence by introducing a conservation

easement which they said prevented it from doing anything in the preserve area, including removing trees other than nuisance and exotic species. It also asserted that Ms. Smith knew that the tree had been dead for some time, but had failed to report it. This, the Association said, established comparative negligence for her own injuries.

Mr. Barnhart and his team were able to complete their investigation of the scene, medical records, and documents. Despite a vigorous defense asserted by the Association, the defendant eventually agreed to pre-suit mediation. After hearing the evidence that would be presented at trial, the Association agreed to resolve the matter to Ms. Smith's complete satisfaction. The parties were able to reach settlement in the amount of \$250,000 within 18 months of the tragic incident. ♦

