

# Fallen City Trees Can Give Rise To Constitutional Takings Claim

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## PRACTICE AREAS

Litigation

If high winds blow over a healthy city street tree onto adjacent private property, a city can now be exposed to liability without fault in an inverse condemnation claim.

It has long been the law that physical damage to private property from sewer back-ups, burst water-mains, downed power-lines, and similar works of public improvement can give rise to strict liability in inverse condemnation. In contrast, damage caused by falling city trees or branches was addressed under the Government Claims Act. This requires notice of a dangerous condition of public property and proof that the tree was defective or poorly maintained.

Now, the California Court of Appeal, Second District, has ruled that a city street tree can constitute a "work of public improvement," just like a sewer or a drainpipe. In *City of Pasadena v. Superior Court*, the court examined inverse condemnation and nuisance claims for damage to a private residence from a fallen tree. The tree was blown over during an unprecedented windstorm that damaged or destroyed over 7,000 city trees. The subject tree had been regularly and recently pruned before the windstorm. Yet, the court concluded the tree could be deemed a work of improvement and provide a basis for an inverse condemnation claim if it is part of a street beautification plan or urban forestry program, implemented and installed by a deliberate act of the city.

The court did not conclusively determine that the required deliberate government action had occurred. The court also did not decide whether the tree, as deliberately designed and constructed, caused the damage. Lastly, the court ruled that nuisance is only available for the fallen tree if the city acted negligently.

But the court's ruling that a tree may be a work of public improvement greatly expands the scope of potential liability for public agencies. Even if a city has an exemplary tree maintenance program, as was the case with Pasadena, this decision potentially exposes public entities to strict liability for fallen trees and attorney fee claims. The case also raises significant public policy concerns as public agencies evaluate their tree maintenance and urban forestry programs.

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For advice regarding the effect of this appellate decision, or inverse condemnation and governmental tort liability in general, please contact **Saskia T. Asamura, Robert C. Ceccon, or any member of the Firm's Litigation or Public Law Departments.**