

FACILITIES EXPERT REPORT

of the

ELWOOD JONES INJURY

By:

Brian O'Donel

April 30, 2010

Names and locations have been changed

Robson Forensic
Engineers, Architects, Scientists & Fire Investigators

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1.0 INTRODUCTION

On January 13, 2009, shortly after 6:00 a.m., Mr. Elwood Jones was attempting to clear a fallen tree from Creek Road in Hudson Valley, PA. Jones was struck and injured by a vehicle driven by James Arnold.

The tree had been growing on the adjacent Pullman Pumpkin Farm property before it fell. This report addresses if the owner/operator of that property had created dangerous conditions that caused the tree to fall. Reports by James Shultz, P.E. and Steven Becker address the actions of other parties, and the report of Kim Steiner, Ph.D., addresses the care and condition of the tree.

2.0 AVAILABLE INFORMATION

1. Police / Emergency Responder Reports
 - a. PA Police Crash Reporting Form, Crash # F#####, January 13, 2009
 - b. Twp. Police Dept. Incident Investigation Report #####M0085 (01)
 - c. EMS Form # #####, Incident # #####
 - d. Twp. Hose Co. #1, Incident # F#####
2. Photographs
 - a. Plaintiff's clothing and tree after removal, 31 photos
 - b. Vehicle post crash, 34 photos
 - c. Vehicle headlight lens, 6 photos
 - d. Crash scene, 13 photos
 - e. Plaintiff's injuries, 30 photos
 - f. Crash site, 5 photos
 - g. Tree, 22 photos
 - h. Plaintiff in hospital, 1 photo, January 14, 2009
 - i. Crash Scene, 13 photos, taken after removal of tree
3. Site Data and Information
 - a. Highway Engineering drawing of crash site
 - b. PENNDOT Right-of-Way drawings (4 sheets) of Creek Rd., July 23, 2004
4. Deposition of Elwood Jones, December 17, 2009
5. Deposition of Ruth Jones, December 17, 2009
6. Deposition of George Miller, September 15, 2009
7. Deposition of Jacob Hoffman, August 11, 2009
8. Deposition of James Arnold, May 28, 2009
9. Deposition of Michael Behr, September 15, 2009
10. Deposition of Raymond Carter, November 17, 2009

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11. Deposition of Sandra Lee Turner, September 9, 2009
12. Deposition of Sgt. Anthony Wright, September 29, 2009
13. Deposition of Donna Rodriguez, March 23, 2010
14. Complaint
15. Plaintiff's Interrogatories Addressed to Defendant : Fuel, Inc.
16. Plaintiff's Interrogatories Addressed to Defendant : Frank Pullman (first set) – 2 copies
17. Defendant Frank Pullman's responses and objections to Plaintiffs' interrogatories (1st set)
18. Plaintiff's Interrogatories Addressed to Defendant : Frank Pullman (supplemental)(1st set)
19. Defendant Frank Pullman's responses and objections to Plaintiffs' interrogatories(supplemental)(1st set)
20. Plaintiff's Interrogatories Addressed to Defendant : Joseph Pullman & Son Pumpkins, Inc. (first set)
21. Defendant Joseph Pullman & Son Pumpkin, Inc's responses and objections to Plaintiffs' interrogatories (First Set)
22. Plaintiff's Interrogatories Addressed to Defendant : Joseph Pullman & Son Pumpkins, Inc. (supplemental) (first set)
23. Defendant Joseph Pullman & Son Pumpkin, Inc's responses and objections to Plaintiffs' supplemental interrogatories
24. Plaintiff's Interrogatories Addressed to Defendant : Rogers Engineers, Inc. (first set)
25. Plaintiff's Interrogatories Addressed to Defendant : V-Tech Services, Inc. (first set)
26. Plaintiff's Request for Admissions Directed to Defendant: Joseph Pullman & Son Pumpkins, Inc.
27. Plaintiff's Request for Admissions Directed to Defendant: Rogers Engineers, Inc.
28. Witness Statement of Sandy Turner
29. Witness Statement of Rachael Robbins
30. Kim Steiner PhD Report
31. My Site Inspection of April 26, 2010

3.0 BACKGROUND

3.1 Site Conditions

The incident road is a 2 lane, paved PennDOT managed roadway running east/west through Concord, Bethel, and Upper Chichester Townships of Delaware County in southeastern Pennsylvania. The incident location has a designated total Right-of Way of 40 feet.

The tree fell from the property of the Pullman Pumpkin Farm at 1200 Creek Road. The property is on the north side of the highway and the tree had been growing approximately 2 feet off of the west side of the driveway on the property and approximately 7 feet off of the fog line/lane edge of the roadway.

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Jones was an employee of the Creek Manor Retirement Home which is on the south side of the road across from the Pumpkin Farm.

3.2 Description of the Tree

Kim Steiner, PhD, in his report described the tree as “a red maple with extensive decay in the lower portion of the trunk.” Steiner described the remaining stump as “mostly hollow or filled with brown-rotted wood, and the decay extended to the outside of the trunk over approximately 25% of the circumference of the tree on its south-southeastern side, in the direction of Creek Road.”

The incident tree is located immediately beside the driveway to the Pumpkin Farm’s 1200 Creek Road property. The tree base was mulched and the lawn around it cared for. The tree is likely to have overhung the public road as well as the Pumpkin Farm driveway with the potential to be struck via its proximity. Inspection and post-incident photos showed the majority (~75%) of the stump/base to be rotted/decayed with exposed decay on the south/southeast half of the tree base. The tree base measured approximately 22 to 24 inches in outside diameter with the inner approximately 17 inch up to the outer most wood and bark completely disintegrated.

3.3 Pumpkin Farm Maintenance Practices

Donna Rodriguez (Rodriguez), the Secretary/Treasurer and business manager, testified they inspected the property “At least twice a month” [DF: 36]. Michael Behr (Behr), the Maintenance Mechanic/Plant Manager, testified: “there’s other trees on the property that we have taken down, dead trees” and that the frequency was “probably like once a year” [MB: 22]. Behr also testified they had addressed other trees on the property that were being struck by their trucks [MB: 19-20]. Behr testified that the farm had utilized tree removal contractors, Tree Doctors and Three Brothers [MB: 21]. He cited an example when:

“Tree Doctors came out. Donna had a tree in front of her house that was leaning. It was leaning towards the road, towards the wires. They came out and took it down. And while he was there, there was another tree with a limb hanging out over the road that looked like it was ready to come down’ so I had the guy with the bucket truck take that out.” [MB: 23-24]

He went on to testify regarding his example, that; “It (limb) was sticking out over the road a little bit and was starting to hang down pretty good. And basically our truck that leaves there too, I was worried about one of our trucks hitting it, I mean it was sticking out. So I had the guy cut it, you know, take it down.” [MB: 25].

Behr also testified regarding property inspection stating: “We keep a pretty good eye out there. Just walk around and look.” At a frequency of “maybe once a month” [MB: 26].

4.0 DESCRIPTION OF THE INCIDENT

At approximately 6:00 a.m. on Tuesday morning of January 13, 2009, Jones responded to a tree that had fallen onto the roadway (Rte. 491) near the front of the Creek Manor Retirement Home. While in the process of attempting to clear and warn traffic of the tree, Jones was struck by a vehicle driven by Arnold. The incident tree was owned and maintained by the Pumpkin Farm.

Rachel Robbins, a nurse for the retirement home, stated in her Witness Statement:

When I arrived at Creek Manor I mentioned to a nurse that there was a tree that had fallen and that it was blocking traffic. Moments later I saw "Woody" Elwood Jones, and mentioned to him that there was a tree on the road "Creek Road." At this time "Woody" responded to me that he would check it out because if it's on the Country Manor's property he would need to take care of it.

The Police Report of Bethel Township Officer Wright stated that witness Sandy Turner observed Jones "holding a flashlight directing traffic around the fallen tree."

Testimony by Behr described the tree failure as splitting down the trunk from the top in two big sections that came off the top. The one section fell on the roadway. The trunk was described as rotted 7 to 8 feet up with a little piece sticking up off of it.

The top fell onto the roadway mostly in the west bound lane and it was this section that was struck by Arnold's vehicle.

Part of the decayed split trunk was left and Behr, testified that he later cut the tree up with a chainsaw and moved the debris [MB: 22:1-22:24].

5.0 ANALYSIS

5.1 The tree fell because it was decayed

Dr. Steiner, in his report, stated that "the subject tree failed on January 13, 2009, because it was rotted" and "that the hazardous condition of the this tree was exacerbated by the fact that the exposed decay weakened the tree on the side that faced Creek Road and by the fact that the remaining crown was almost entirely weighted in the direction of the roadway."

Post incident photos and inspection of the stump showed the decay to be advanced internally and progressed all the way to the outer surface in the south and southeast quadrants. The absence of the material in the cross section of the tree base translates to a reduction in strength.

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The weather conditions for the early hours of January 13, 2009, according to Wilmington (~10 miles south) data, was no precipitation with average wind speed of 4.5 mph. Data from Chester (~5 miles northeast) recorded average wind speeds of 0.85 mph. The data indicates that the tree fell in conditions of low winds.

Based on the manner in which the tree fell, and its condition, the tree failed and fell under conditions that a healthy tree would not have been affected by. This tree fell because it was decayed.

5.2 The Pumpkin Farm should have identified that the tree was dangerous before it fell

Dr. Steiner stated in his report that “the severe decay visible at the base of the tree was readily discoverable by reasonable inspection, and it should have signaled a hazardous condition to any prudent and responsible person.” Dr. Steiner, in his report, also indicated that “the advanced decay at the base of the tree indicates that it created a hazardous condition for many years prior to the accident.” The property owner should have had numerous opportunities to notice the conditions of the hazard with ample opportunities to correct it.

In Dr. Steiner’s analysis, he describes the limb extending southward from the subject tree over Creek Road was clearly identifiable as a hazard to vehicular traffic by the very fact that it had evidently been struck and abraded by one or more vehicles in the past, prior to the accident on January 13, 2009. Post-Incident photos and analysis by Dr. Steiner indicate that the upper portion of the tree may have failed prior to the January 13, 2009 incident.

Standard practice for safe facility maintenance requires inspecting and maintaining trees. Beering and Scott state in their paper Premises Liability and Your Trees:

Many property owners don’t realize that part of their legal duty to maintain their premises in a safe, hazard-free condition includes their trees. A properly performed inspection of trees and implementation of a maintenance program can lessen the property owner’s exposure to expensive negligence lawsuits, reduce hazardous conditions and preserve the landscape’s value. A property owner may be considered negligent if he or she has a tree that falls and harms a person or damages property.¹

Basic inspection of a tree involves observation of damage and/or disease, dead wood anywhere on the tree, holes or lesions of other than uniformly solid bark and wood, or any lack of foliage when its presence is expected. Damage is easily evidenced by outer bark removal and or strike witness marks.

¹ Premises Liability and Your Trees, by Beering, Peter and Scott, Judson, pg. 2 and 6
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If a tree has any of these issues, then these should alert the owner of required action. Minimal damage can be addressed with wound attention. Progressed latter stages of decay/rot that cannot be repaired make removal of the hazardous tree necessary.

The *Means Facilities Maintenance Standards* direct that trees on a property must be inspected at least once a year. Since the tree was dangerous; had it been reasonably inspected, the hazard should have been identified and corrected, and the incident and injury prevented.

The Pumpkin Farm should have known the tree was dangerous, that it could fall without warning, and that if it fell it would pose a hazard to anyone nearby and any users of the adjacent roadway.

5.3 The Pumpkin Farm should have removed the tree before it fell

The incident Tree's decayed conditions were foreseeable by reasonable inspection in the interest of property and premises safety. The Pumpkin Farm should have inspected and identified the dangerous conditions, and recognizing the tree's proximity to the public roadway, removed it before further incident.

The Pumpkin Farm violated the standard of care for safe facilities maintenance by failing to remove the tree, and that failure resulted in it falling and Jones being injured.

The *Means Facilities Maintenance Standards* directs property maintenance as follows:

Remove branches that extend over buildings and endanger roofs, eaves and windows or hang within eight feet of sidewalks and private drives. Prune trees along streets to provide clearance for busses, moving vans, and similar equipment.

Paint wounds more than one inch in diameter. Use tree wound paint if considerable repair of large trees is anticipated; otherwise, an outside lead paint is satisfactory.²

This is not only an expectation of a safe premises but also the focus of applicable building codes as invoked by the Counties of Pennsylvania.

The *International Property Maintenance Code* is a nationally accepted standard for safe property maintenance. It states:

² Means Facilities Maintenance Standards, by Liska, Roger W., PE, AIC (1988), p. 301
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302.3 Sidewalks and driveways. All sidewalks, walkways, stairs, driveways, parking spaces, and similar areas shall be kept in a proper state of repair and maintained free from hazardous conditions.³

The *International Property Maintenance Code* also requires:

102.2 Maintenance. Except as otherwise specified herein, the owner or the owner's designated agent shall be responsible for the maintenance of the buildings, structures, and premises.⁴

Recognizing the property/facility owner's responsibility of ownership as well as responsibility to provide a safe premises, the Pumpkin Farm had a responsibility to inspect their premises and address hazardous risks and dangerous conditions and to provide a safe premises to employees and neighbors.

The Pumpkin Farm claims they regularly inspected the property and that they had addressed other trees that required attention. Had they reasonably inspected and attended to this tree, they should have removed it before it fell.

6.0 FINDINGS

Within the bounds of reasonable technical certainty, and subject to change if additional information becomes available, it is my opinion that:

- 6.1 The Pumpkin Farm violated the standard of care for safe facilities maintenance by failing to remove the tree, and that failure resulted in it falling and Jones being injured.
- 6.2 For a period of years before it fell, the fact that the tree was dangerous and required removal would have been identified in the course of reasonable facility maintenance.
- 6.3 The Pumpkin Farm should have known the tree was dangerous, that it could fall without warning, and that if it fell it would pose a hazard to anyone nearby and any users of the adjacent roadway.

Brian O'Donel

³ *International Property Maintenance Code*, 2006, Pg. 3-2

⁴ *Ibid.*, Pg. 1-2

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