

Burke v. City of San Diego

As cities eye ways to trim costs, they may want to think twice before taking the axe to a tree maintenance program. That's the warning from three Los Angeles plaintiffs' attorneys, at least.

In December, Browne Greene and Ivan Puchalt of Greene Broillet & Wheeler LLP and Daniel K. Balaban of Balaban & Spielberger LLP won a \$7.7 million verdict from the city of San Diego after a 60-foot tall queen palm tree fell on San Diego criminal defense attorney Michael Burke, leaving him paralyzed from the waist down. *Burke v. City of San Diego*, 37-2011-00086969 (San Diego Super., filed Mar. 4, 2011).

According to Burke's attorneys, the city, which accepted thousands of palm trees as a gift in the early part of the 20th century but

discontinued its maintenance program in 2007, should have been aware of the tree's deteriorating condition.

"We were testing the whole notion that a governmental entity can walk away from a responsibility by saying they don't want to pay for something," Greene said. "If you started the job, you finish the job. You accepted the trees, you have to care for the trees."

The tree, which was more than 70 years old, was one of two on Burke's street unable to weather several days of rain and sustained winds. Another palm had already fallen on his car, so Burke called a friend for a ride to work. While transferring his laptop between the vehicles, the second tree fell, hitting Burke in the midsection.

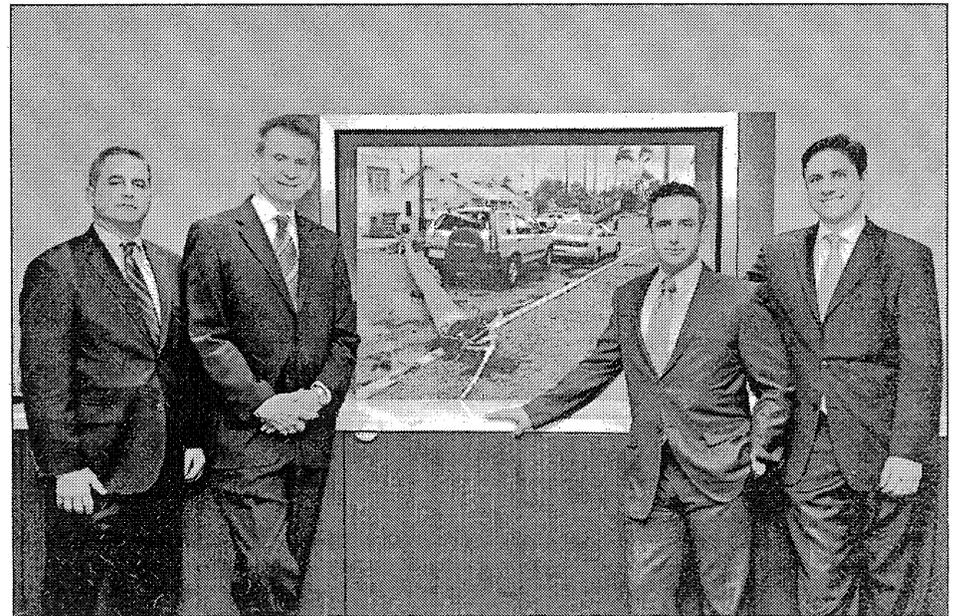
CASE INFO

Personal Injury

San Diego County
Superior Court Judge Ronald L. Styn

Plaintiff's attorneys: Greene Broillet & Wheeler LLP, Browne Greene, Ivan Puchalt; Balaban & Spielberger LLP, Daniel K. Balaban, Andrew J. Spielberger

Defense attorneys: San Diego Office of the City Attorney, Jane M. Boardman, Keith W. Phillips



Courtesy photo

From left: Andrew J. Spielberger, Browne Greene, Daniel K. Balaban, and Ivan Puchalt.

The city argued that the storm constituted an unforeseeable "act of God."

"These weren't acts of God," Balaban said. "These were acts of men. Men decided to accept the trees and care for them all these years, and then men decided to walk away from their responsibilities."

Greene added that the storm wasn't much of an excuse, anyhow. He said a meteorologist testified that at the time of the incident, the wind was blowing little more than 30 miles per hour.

"They weren't exactly hurricane-force

winds," Greene said.

Testimony also revealed that a city official had arrived on the scene after the first tree fell, putting the city on notice of the dangerous conditions. Rather than inspect the other trees or cordon off the street, the official took pictures from his car window.

"The hope from this case is that cities will be proactive and not reactive," Balaban said. "They should be devoting resources to finding problems and fixing them instead of waiting for tragedies to happen."

— Blake Edwards