

Court upholds verdict in Darien tree warden case

A Connecticut Appellate Court has upheld the jury verdict in a personal injury case dating back to July 11, 2006, when a tree within a town's right-of-way toppled onto a vehicle and injured its passengers.

In 2006, Mieczyslaw Wisniewski and his wife Jolanta's car was hit by a massive sugar maple tree.

The Wisniewskis car was crushed upon impact, trapping Mieczyslaw in the car. Bleeding and in pain, he was extracted from the vehicle by emergency responders and rushed to hospital. As a result of the accident, Mieczyslaw sustained a broken neck among other injuries. His wife was also injured.

At trial in late 2009, a Superior Court jury found in favor of the Wisniewskis.

The defendants, the Town of Darien and Michael Cotta, the town's tree warden, appealed the verdict, claiming that the lower court should have directed the verdicts in their favor as

a matter of law and according to evidence.

"Clearly, the jury came to the correct conclusion based on the preponderance of evidence," said Atty. Alinor Sterling of Koskoff, Koskoff & Bieder, who argued the appellate case.

"As Darien's Tree Warden, Michael Cotta had a duty to inspect and maintain the trees under his care. His office had received three prior requests for him to inspect the tree in question because the homeowner and her arborist were concerned that the tree posed a safety threat. Mr. Cotta was alerted to the hazard, but Mr. Cotta failed to act appropriately on that information and, as a result, Mieczyslaw and Jolanta were severely injured when the tree fell on them," she said.

The jury found that the plaintiffs had established the negligence of the defendants.

Jolanta Wisniewski was awarded \$200,000, and Mieczyslaw Wisniewski was awarded \$1.5 million in damages.

As a result of his injuries,

Mieczyslaw Wisniewski could not continue in his construction job as foreman at Stamford Wrecking, and had to take a lower-paying position as a night-shift security guard.

Town attorney Wayne Fox said the matter was turned over to the town's insurance carrier at the time and that the payout will come from insurance company money.

"There were questions raised at the time of the verdict relating to the whole question of discretionary activity by a municipality as opposed to ministerial activity," he said.

"It was felt by the insurance company that the underlying question of law was such that an appeal of that issue should be taken," Fox said.

"When the Appellate Court ruled to uphold the lower court decision, I believe the insurance company considered filing an appeal with the Supreme Court. My understanding is that the insurance company then settled the case," he said.

- Susan Shultz

