

**Verdict: Wrongful death, 77 year old male, loss of consortium.
Verdict of \$1,306,371.65**

In this wrongful death case, Attorney McNamara represented *Madeline McDermott, Administratrix of the Estate of William McDermott and Madeline McDermott Individually* for damages due to the death of her husband William McDermott. The count on behalf of Mrs. McDermott was for loss of consortium. The case was tried in front of the Honorable James Abrams in the Judicial District of Middletown in 2011. The trial was bifurcated, the liability issues tried first in a seven day trial, resulting in a decision in the Plaintiffs' favor. A hearing in damages was held thereafter, the sole issue being the amount of damages that should be assessed against the state. Much of the following description of the case is taken from the Findings of Fact by Judge Abrams in his January 4th, 2012 decision. On the morning of February 8, 2005, a State of Connecticut Department of Transportation (hereinafter "CDOT") work crew was dispatched to remove a 55 foot tall sugar maple tree in Cromwell, Connecticut. The tree was located on a grass strip that runs in a north-south direction in front of 391 Main Street (Route 99). The grass strip is bounded on the east by Main Street and on the west by a pedestrian sidewalk. The CDOT work crew consisted of six men: Hector Lorenzo, Peter Conroy, Anthony Horton, Keith Tavel, David Dickinson and Lorenzo Pituzello (hereinafter "the work crew"). Hector Lorenzo, Peter Conroy, and Anthony Horton worked exclusively on tree cutting jobs and performed

all of the tree removal responsibilities at the work site. Keith Tavel, David Dickinson and Lorenzo Pituzello sometimes worked on tree removal jobs, but more frequently worked on jobs involving road construction or repair. They were responsible for brush removal, site security, and traffic management at the worksite.

Upon their arrival at the work site, the members of the work crew placed two traffic cones on the sidewalk, one at each end of the work site. The cone marking the southern end of the work site was placed on the sidewalk approximately 85 feet south-southwest of the surface of the tree. The cone marking the northern end of the work site was placed on the sidewalk approximately 100 feet north-northwest of the surface of the tree. These cones were never moved during the course of the tree removal operation.

Peter Conroy made the cuts to the tree by use of a chainsaw in a bucket truck. The work crew first employed a method known as "limbing," where they removed the tree's limbs from bottom to top. The crew then removed the tree trunk in segments from top to bottom, a procedure known as "chunking."

At approximately 1:30 pm on February 8, 2005, William McDermott, who had no connection with the tree removal operation, parked his motor vehicle in a driveway located south of the work site. He exited his vehicle and walked north, past the southern sidewalk cone. He then proceeded another thirty feet to where David Dickinson and Keith Tavel were standing, approximately 55 feet from the surface of the tree. When William McDermott arrived at the work site, all of the tree's limbs had been removed, as had several segments of

the trunk. William McDermott stood between David Dickinson and Keith Tavel, talking to them for 10 to 15 minutes, as they all faced the tree and observed the tree cutting operation.

During this period, Hector Lorenzo was on the ground near the tree, Peter Conroy was in the bucket near the top of the tree holding a chainsaw, and Lorenzo Pitruzello was in the street directing traffic. Anthony Horton was in a pickup truck pointed south along the road, directly east from where David Dickinson, Keith Tavel, and William McDermott were standing. At approximately 1:45 pm, Peter Conroy tied a rope around the top of the tree, which now stood slightly over 25 feet high. The other end of the rope was attached to the trailer hitch of Anthony Horton's pickup truck. Peter Conroy then cut a large notch, known as a "pie cut" or "wedge cut," in the southern side of the tree approximately 14 feet, 6 inches above the ground. He then proceeded to make a horizontal cut, or "back cut," in the northern side of the tree at the same height as the wedge cut. Once Peter Conroy made the horizontal cut, Anthony Horton drove the pickup truck, pulling a trunk segment approximately 10 feet, 10 inches in height off the tree in a southerly direction.

These actions resulted in the trunk segment falling to the ground on the southern side of the tree. The trunk segment fell in a controlled manner in the general area where the crew members anticipated it would fall. When the trunk segment hit the ground, it struck a log approximately 25 inches long in a pile of logs at the base of the tree. It was not standard industry practice to remove all limbing debris on the ground prior to beginning a chunking operation. The log was propelled in the air by the force of

the falling tree trunk segment at great speed in a low arc. It struck William McDermott in the forehead, who was still standing between David Dickinson and Keith Tavel about 55 feet from the tree, causing him to fall backward and strike the back of his head on the sidewalk. The log eventually came to rest almost 90 feet from the tree, approximately 30 feet beyond where William McDermott was struck. Mr. McDermott tried to get up several times after being struck by the log and had to be restrained from doing so. He was taken by ambulance to Hartford Hospital. William McDermott died the next day as a result of his injuries. He was 77 years old.

Dr. Dennis Ryan, a professor of Arbiculture and Urban Forestry, testified as an expert witness on behalf of the plaintiff. Dr. Ryan is the chairman of the American National Standards Institute (ANSI) that created the tree safety standards recognized in all fifty states and was previously the executive Director of Forestry and Horticulture for the city of New York, which entailed responsibility for all the vegetation in New York City except trees at housing sights and schools. Dr. Ryan testified in support of the allegations of the plaintiffs' complaint, testifying that the CDOT had breached the standard of care in securing the work site by failing to designate a person to keep pedestrians out of the work zone, by failing to communicate properly so that people were stationed in the correct spot, by failing to train the personnel properly to protect pedestrians and by failing to manage the site properly. He testified that Mr. McDermott should not have been allowed into the work zone and that all of these failures were the cause of his injury. Judge

Abrams deemed Dr. Ryan to be the most credible of the expert witnesses. Attorney McNamara also called Mr. Bruce Villwock as his expert, who was a CDOT employee and had formerly been disclosed by the state as an expert in the proceedings before the Claims Commissioner.

Most of Dr. Ryan's testimony addressed the defendant's failure to secure the work zone and keep pedestrians out of the area. He described the dangers inherent in the tree removal industry and that due to the physics involved in the tree removal operation, virtually anything can happen. The defendant called one William Graham as its expert as well as Mr. James Ritter, director of safety for the CDOT. The defendant's position as trial was basically that this event was not foreseeable and that consequently the CDOT had no duty to Mr. McDermott. The defendant's position was that the cones placed on the sidewalk were not placed there to stop pedestrians from walking through the area, but rather, to show that there was something going on up ahead. Judge Abrams found as a matter of fact that the general type of harm that resulted from the tree removal operation and had killed Mr. McDermott was a foreseeable event.

Attorney McNamara called all of the work crew members as witnesses, whose testimonies often proved contradictory to each other. William Graham, the defendant's expert, did not have anywhere near the experience and expertise of Dr. Ryan and would not even admit that a diagram containing an image of the "grim reaper" *was* the grim reaper, a humorous moment in an otherwise sad set of circumstances.

Attorney McNamara called one of the McDermotts' sons and their daughter to testify about the relationship between their parents and the quality of their marriage and home life. He also called the director of the Cromwell Funeral Home who testified that the attendance at Mr. McDermott's wake was record-setting for that funeral home. He also called a neighbor of the McDermotts, who testified about the block party that Mr. McDermott organized for the return of their neighbor's son from Desert Storm. Mr. McDermott had actually changed the sign of the street where they live, from Steven's Lane to Jeffrey Walton Lane. There was also testimony from all of the damage witnesses about Mr. McDermott's robust activities in the surrounding neighborhood, where he would snow plow the sidewalks and neighbors' driveways in the area, even at age 77.

Attorney McNamara presented a photo album beginning during the dating period of Mr. and Mrs. McDermott through the end of his life, showing their early life together, children, and family activities. The testimony by Mrs. McDermott was humble, dignified, sorrowful and compelling.

In his final argument, Attorney McNamara told the judge that if we all had neighbors like Mr. McDermott, the world would be a far better place. Then quoting from Shakespeare's Julius Caesar from the speech by Marc Antony about Brutus, he told Judge Abrams, "His life was gentle, and the elements so mix'd in him that nature might stand up and say to all the world, "This was a man!"

Judge Abrams found in favor of the plaintiffs and awarded Mr. McDermott's estate \$850,000, which was comprised of \$675,000 for his loss of life and loss of ability to enjoy life and \$150,000.00 for his pain and suffering from the time he was hit until the time he died. Judge Abrams awarded Madeline McDermott \$435,000.00 in loss of consortium damages, stating, "There is little question that Mrs. McDermott would have enjoyed a far richer life had Mr. McDermott survived." The total amount of the verdict totaled \$1,306,371.65. As Judge Abrams awarded more than the offer of judgment of \$300,000 that was filed in the loss of consortium count, the claim for offer of judgment interest in the amount of \$163,464.48 is pending, which has been contested by the defendant on the basis of sovereign immunity.

