Wielding the A300 Standards: The Shield and the Sword

By James Komen

When I first sat down to breeze through the American National Standards Institute (ANSI) *Tree, Shrub, and Other Woody Plant Management—Standard Practices* some years ago, my initial reaction was how obvious and self-evident some of the requirements were. I kept reading line items thinking, "Of course you would do that!" and, "How could someone practice otherwise?" It was a self-validating readthrough that essentially confirmed what I felt like I already knew. Before I opened these documents, I was expecting to learn new, sage advice about professional practice. But now I know that I was approaching the standards all wrong.

What I did not understand at the time was, as consensus documents, the "standards" are a documentation of what industry stakeholders can agree upon, at least within the context of the ASNI approval process. The power behind these standards is not from imparting knowledge of yore, but rather it is the articulation of what is generally acceptable and unacceptable by the industry as a whole. They articulate who will be bound by their guidelines and who can perform tasks. When wielded correctly, the standards can form powerful legal weaponry to use both defensively and offensively.

After I finished my brief perusal of the standards years ago, I set them down on a shelf and put them out of mind. Over the following years, I would read about them in the trade papers or hear them discussed in the abstract at conferences. I would see them referenced in job specifications and ordinances. But I never actually sat down and studied them carefully until recently. It was during my most recent read-through that I realized how much power was contained in their text.

Applicability to Individuals

Basic negligence theory requires proving four elements: Duty, Breach, Causation, and Damages. All four elements must be proven for a claim of negligence to prevail, but I will only discuss the first two elements here. Duty is a legal obligation to take reasonable action when performing tasks that can harm others. Breach of duty is a failure to take reasonable actions to fulfill that obligation, as determined by the Standard of Care. The Standard of Care is the degree of care that a person must exercise in fulfilling a Duty of Care.

The ANSI A300 parts 1-10 standards can be used as evidence to help a court of law determine who owes a Duty of Care and what Standard of Care each individual will be held to. Section 1.3, which is part of all the A300 standards, articulates the individuals to whom the standards apply:

> "ANSI A300 standards shall apply to any person or entity engaged in the management of trees, shrubs, palms, or other woody plants, including federal, state or local agencies, utilities, arborists, consultants, arboricultural or landscape firms, and managers or owners of property."

The breadth of this statement makes the A300 standards document very powerful because it applies to EVERYONE listed. Whether you are an arborist, a consultant, or a landscape designer, they apply to you. If one of these listed people fails to perform any of the following sections containing the word "*shall*," then that person would be in violation of the standards. Thanks to Section 1.3, these standards may be used as evidence that even a nonarborist had breached his Duty of Care.

How many times have you seen the A300 standards incorporated by reference in the specifications of a contract for pruning, plant health care, or risk assessment assignment? Whether they're aware of it or not, the agencies or tree owners handing you those specifications are binding themselves to the standards as well! True, Section 1.3 appears to mean the standards apply universally without a prerequisite of an individual affirmatively accepting them (or even being aware they exist), but there is a much stronger case the standards should be enforced as a Duty if a manager's signature is on a contract that references them. If the standards are being used as evidence against a defendant, that defendant cannot dodge responsibility by saying "I'm not an arborist" if he meets the description

of another party listed. With Section 1.3, it's a very weak defense to say the defendant didn't read the standards, especially if they are incorporated in the text of a contract.

Further, each individual section of the standards applies, even when not referenced directly. Suppose a tree pruning crew acknowledges it is held to A300 Part 1: Pruning. The company may argue it wasn't hired to assess risk, so Part 9: Risk Assessment shouldn't apply. But it would be wrong. Section 3 of Part 1 is a list of Normative References. These are documents incorporated by reference; simply by being listed as a whole, all of the individual standards are also included. Among the Normative References is "ANSI A300…***all parts***." That means if a pruning crew acknowledges it is held to the pruning standards of Part 1, it must also be held to the standards listed in Part 9: Risk Assessment. Wow!

Depending on the context of a conflict, the standards can be used defensively or offensively. In this article, I highlight a few key sections of Part 1: Pruning and Part 9: Risk Assessment. These sections speak to the element of Breach. If one or more standards are violated, then there is evidence the individual "failed to take reasonable action" and therefore breached their Duty of Care.

Defensive Application: The Shield

Tree risk assessors and tree care companies alike can be expected to perform an inspection of the trees within their scope of work. Depending on the scope of the assessment, some tree defects may be observed, and some may not. Referencing Part 9 of the A300 standards is an effective way of articulating the limits of the Standard of Care assessors will be held to. These are the rules that limit the risk assessment to the trees, targets, and level specified in the scope of work.

Job Specifications

Section 92.5 states, "Tree risk assessors ***shall not be*** required to assess trees other than those included in the specifications." This protects assessors from being held to inspect other trees not included in the scope. Suppose a tree not included in the scope of work fails and causes damage. The tree assessor will have a strong defense if he references 92.5 and can show the scope of work does not include the failed tree. As stated earlier, this standard binds both the assessor AND the manager, thereby limiting the Duty owed by the risk assessor.

Similarly, Section 92.6 reads, "Tree risk assessors ***shall not*** be required to perform a higher level of assessment than specified in the specifications." This protects assessors from being expected to use a tool or test that is not listed in scope of work. Per 93.5.2, any tools or techniques not included in a Level 1 or Level 2 assessment would be a Level 3 assessment. If a Level 3 assessment is not explicitly listed in the scope of work, then the assessor has a strong defense that he should not be required to have used additional tools or techniques to detect defects when assessing a tree for risk.

Suppose a tree is hollow, but there are no signs of internal decay from a Level 2 Basic all-visual inspection specified in a contract. It may be true the decay could have been detected by performing a drilling test or pull test, but the assessor would not be held to that standard, thanks to 92.6. If the tree failed, the assessor would have a strong defense to a claim of negligence if he could show a copy of his scope of work showing "Level 2 Basic Assessment" and point to 92.6. According to the A300 standards, he would have a good argument that he acted as a "reasonably prudent person." Failing to detect the decay may not have been a breach of his Duty of Care.

There are a number of tools that may be used as part of a Level 2 Basic inspection including: binoculars, mallet, probe, compass, camera, and measuring tools. These tools do not elevate a Level 2 Basic inspection to a Level 3 Advanced assessment. However, they are optional, not required; an arborist *may* use them but is not required to do so. As long as the inspection specifications are clear that an inspection will be all-visual or will only use one or two of those tools, the arborist still has a good defense that he acted as a "reasonably prudent person" if the specifications are followed.

Level of Inspection

Another critical defensive maneuver relates to a Level 1 Limited Visual assessment. Often assessors are asked to perform quick look-and-see inspections. Such inspections may be in the context of drive-by inspections, walk-by inspections, or even in the context of estimating tree work. In the interest of speed, only obvious defects are observed and reported. But which targets and tree parts should be considered by the assessor?

Section 93.3.1 answers this question: "The tree(s), targets, and unique conditions of concern (if any) to be considered in Level 1 assessments ***shall*** be specified." That means three things:

- If a tree is not specified, it is not included;
- If a target is not specified, it is not included; AND,
- If the conditions of concern are not specified, they are not included.

This is a really powerful defense for an assessor performing a Level 1 Limited Visual inspection! 93.3.1 protects assessors from their clients later claiming a loss from a target, tree, or tree part not explicitly spelled out in the scope of work. If the client were to claim the assessor ought to have inspected for an unlisted attribute, then *the client* would be in violation of this standard.

Citing 93.3.1 as a defense can turn the plaintiff's claim into a contradiction. If a tree, tree part, or target is not listed in the scope of work, then one of two things would have to be true:

- The plaintiff failed to include the unlisted attributes in the scope of work and thus the assessor should not be held to inspecting for them; OR,
- The plaintiff violated the A300 standards.

There's a lesson here for tree assessors and service providers. In your scope of work, make sure to specify which tree parts you will be evaluating. According to 93.3.1, if an assessor states he will look for "branch defects" in his scope of work, and then an inspected tree fails at the root crown, he should not be held to have inspected for root crown defects.

The exception language from 93.3.1 only applies to Level 1 Limited Visual Assessments. That means it is advantageous for tree assessors and service providers to have some language in their contracts stating their inspections are Level 1 Limited Visual unless otherwise explicitly laid out in their scope of work. How can this be done so categorically? If you look at a tree from the ground, aren't you performing a Level 2 Basic Assessment? Not necessarily. 93.3.2 requires the perspective of the assessment be specified. It provides examples of different perspectives, among them being "one sided-ground based." So if you specify in your contract or tree service bid forms that you are only inspecting the trees with a Level 1 Limited Visual Assessment from a one sided-ground based perspective, you've got a pretty good argument that your inspection should not be held to the same standard as even a Level 2 Basic Assessment. But don't forget: you must also include a description of the trees, tree parts, and targets considered, or else *you* will be in violation of 93.3.1!

Offensive Application: The Sword

From the opposite perspective, the A300 standards can also be used by plaintiffs to offensively assert the defendants' Duty of Care was breached. There are a number of scenarios where the standards come into play, and I discuss a few of them here, specifically with respect to risk assessment and tree pruning.

Tree Risk Assessment Reports

Many municipalities have some form of tree protection ordinance that requires evidence if a tree poses an unacceptable level of risk for a tree removal permit to be granted. Often substandard tree reports are submitted on behalf of the tree owners in an effort to obtain permits. Part 9 of the A300 Standards gives ammunition for someone to appeal a permitting decision by a municipality.

I would like to highlight three key mandatory requirements for risk assessments that use the "shall" language:

- 91.3: "Tree risk assessments ***shall*** consider the likelihood of failure, the likelihood of the failed tree or tree part impacting a target, and the likely resulting consequences."
- 92.7: "The time frame of the assessment ***shall*** be specified."
- 93.6.1: "The tree risk assessor ***shall*** analyze the tree, site, and target information and determine the level of risk."

Together, these three requirements mean that if an assessment fails to consider any of those listed attributes, the assessor is in violation of Part 9 standards.

Time Frame

Often, I see risk assessment reports state a tree has a specified likelihood of failure, but the reports fail to list the time frame over which that likelihood of failure rating is assessed. If the report states the tree has a *probable* likelihood of failure, do they mean within the next week? Within the next month? The next year? Next ten years?

You may have already known the likelihood of failure rating is meaningless without a time frame. And reports that fail to include a time frame probably appear unprofessional to you because they aren't clear about the period over which the tree's risk is assessed. But 92.7 provides the language to show that not only is the report written poorly, but it is actually in *violation* of the risk assessment standards! If a municipality were to grant a tree removal permit based on a report that was in violation of the standards, there could potentially be grounds for an appeal of the permit. Good or bad, that's a powerful sword to use for tree preservation or for suppression of development.

Likelihood of Failure, Likelihood of Impact, Consequences

The same logic applies to reports lacking one or more of the three components of a tree risk assessment: likelihood of failure, likelihood of impact, and consequences. Often only one or two components are assessed in the report, and a conclusion of undue burden of risk is inappropriately drawn without assessing the remaining component. With 91.3, such a report would be in violation of A300 Part 9.

Fot example, a tree may have a *probable* likelihood of failure within the specified time frame, but if it has a *low* likelihood of impacting a target, the tree would still pose a *low* risk. Yet some risk assessment reports simply conclude a tree must be removed because the likelihood of failure is *probable*. Or the consequences of a tree striking a person if it were to fail may be *severe*, but the likelihood of failure isn't rated. Moreover, 93.6.1 requires the report to include a discussion of the tree, site, and target information. If any one of those components is missing, then the report would also be a violation of the standards and could be thrown out. Yikes!

Pruning Practices

One of the goals of the authors of A300 Part 1: Pruning Standards was to lay out ground rules for pruning practices and articulate what actions were unacceptable. If something goes wrong and a plaintiff suffers a loss, the plaintiff's goal will be to show the defendant breached his Duty of Care. If the plaintiff proves the defendant violated an industry standard, it can be persuasive evidence of such a breach.

Who Can Prune Trees

Right from the beginning of Part 1, Section 2.3.3 states:

> "Pruning ***shall*** be performed only by arborists or other qualified professionals who, through related training and on-the-job experience, are familiar with the standards, practices, and hazards of arboriculture related to pruning and the equipment used in such operations."

This dense piece of text has several important points, but the first and most important word that should perk up your Scooby-Doo ears is the word "***shall***." The next most important words are "***only***" and "***and***." Together, these three words function to make ALL of the listed components mandatory and exclusive. This means the performance of pruning is EXCLUSIVE to those who:

- Have BOTH training AND on-the-job experience; AND,
- Are familiar with BOTH the applicable standards (A300, Z133.1, etc...) AND the practices (BMPs) related to pruning.

A person performing pruning that fails to meet any one of these prerequisites would be in violation of the ANSI standards.

Training, Experience, and Familiarity with Standards

The term "training" refers to some form of educational endeavor. Notice the terms "training" and "on-the-job experience" are listed separately. It may seem banal, but listing them separately signals to a reader they have different meanings. Since on-the-job experience does not equal training, a defendant cannot claim that on-the-job experience will satisfy the prerequisite of training. So if a person without some form of educational endeavor is performing pruning, then that person is in violation of this standard. Thus a plaintiff may try to produce evidence that a defendant tree pruner has not attended any training courses to show the pruner is in violation of the standards.

Next, if a person who performs pruning is not familiar with either the ANSI standards or the ISA Best Management Practices (BMPs), then that person is in violation of this standard. One line of questioning that can be applied when cross examining a defendant is to question him on the content of the standards and BMPs. You may remember leafing through those documents at some point long ago, but are you ready to be quizzed on their content in front of a jury? Even if you really have read the standards and BMPs, a poor job of answering questions on the stand may convince the jury that you aren't sufficiently familiar with them.

What is an Arborist?

The glossary is an often overlooked section of the standards, but it contains another clause that packs a powerful punch: the definition of an arborist. Section 10.2 defines an arborist as, "an individual engaged in the profession of arboriculture who, through experience, education and related training, ***possesses the competence*** to provide for, or supervise the management of, trees and other woody plants." The prerequisite of "competence" could be measured by the jury in a variety of ways, which means ISA's entire library of educational materials is all potentially quizzable while a defendant is sitting on the stand. If the plaintiff can successfully show the defendant is incompetent in the eyes of the jury, then the defendant will fail to meet the definition of "arborist" and thus be in violation of the standard.

Pruning Actions

Once the exclusive subset of individuals who can perform pruning has been defined, A300 Part 1 moves on to specific acceptable and unacceptable actions for pruning trees. As before, the key word to pay attention to in each of the following three sections is "shall," denoting a mandatory requirement.

Tree Identification

First, section 4.3 states, "Plant species, size, age, condition, and site ***shall*** be considered when specifying the location and amount of live branches to be removed." It seems like the easiest way to show someone violated this standard is to ask them to identify the species of the tree that was pruned. If pruning crew can't ID the tree, then it couldn't have considered the tree's species when writing specifications for the pruning work. Thus, it would be in violation of the standard. Tree ID isn't just an advisory recommendation—it's mandatory.

But section 4.3 doesn't just apply to the tree pruners; it applies to the tree owners and managers, too (per Section 1.3). Suppose a tree manager writes vague specifications such as: "Prune the trees on Elm Street." If the tree manager is subsequently unhappy with the results of the pruning, the pruners could use this same clause as a defense. If the tree manager cannot identify the species of the trees, then he failed to consider their species and is thus in violation of the standard. This would lead to a potential defense of contributory negligence; although the resulting pruning may have damaged the trees, the tree manager's violation of the standard could be said to have contributed to the loss, thereby lessening or blocking the liability transfer to the tree pruners.

Pruning Cuts

How many times have you seen bark torn from a failure to precut a long branch before making the finish cut? Did you know there's a standard that addresses this? Section 7.1.2 mandates, "Branches likely to split wood or tear bark beyond the pruning cut ***shall*** be precut to avoid this type of damage." So if a pruning crew tears bark and causes damage to the trees, it was in violation of the standard. Their failure to precut the limb caused a tearing of bark. And while that wraps up Duty, Breach, and Causation, all that would be left to make a claim against this crew would be an assessment of the Damages. This could

be done with an appraisal of the depreciation of the tree's condition rating.

Tool Sterilization

One standard is particularly relevant to the managers of Canary Island date palms. Section 9.8 states, "When palm pruning practices have a high potential to spread pests, appropriate precautions ***shall*** be taken." Canary Island palms are susceptible to *Fusarium* wilt, which is easily transmitted on chain saws. Chain saws are not easily sterilized, so the recommended management of Canary Island palm fronds is to prune with only sterilized flat-edged saws or to assign a different chain saw to each individual tree. If a tree pruning crew fails to take one of these strategies, then they would be in violation of the standard. To prove a breach of Duty of Care, it's just an easy few questions to ask at deposition or trial: "Did you use a flat edge saw? Did you sterilize your tools? If not, did you use a chain saw? Did you use a different chain saw for each tree?"

Conclusion

In the context of conflict resolution, either through municipal fines, arbitration, or litigation, the ANSI standards can be very powerful tools to bring into battle. They articulate who will be bound by their guidelines and who can perform pruning. They provide a shield with which practitioners can defend themselves from claims of negligence, and they also provide a sword which can be used to enforce justice upon those who derelict their legal obligations.

Be aware of the interaction between the standards and your contracts and scope of work documents. Be aware of the interrelation of all the standards. And above all, be aware of what knowledge and level of competence you will be held to if things go wrong. I hope that after reading this article, you'll be inspired to dust off those standards and give them a much more thorough reading.

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PEST PROFILE

Adelgids

Adelgids (Adelgidae) are small aphidlike insects that suck plant juices on conifers, including Douglas-fir, fir, hemlock, larch, pine, and spruce. Vigorous plants tolerate moderate populations, and most adelgid species are unlikely to seriously harm trees.

- Adelgids commonly occur beneath cottony white or grayish material they secrete and sometimes are inside of galls.
- High adelgid populations cause foliage yellowing, early drop of needles, and drooping and dieback of terminals.
- The Balsam Woolly Adelgid (*Adelges piceae*) has seriously damaged or killed tens of thousands of true fir trees in the eastern United States and has become established in Oregon and northwestern California.

What Do I Do?

- Usually no control is needed to protect the health of established trees.
- Large populations can be controlled by applying insecticidal soap, narrow-range oil, or other insecticides in the spring when crawlers are abundant.
- Adelgids and their cottony masses can be dislodged or killed using a forceful stream of water.
- Report infestations of Balsam Woolly Adelgids to the county agricultural commissioner.