



The Basics of Design Immunity: Creating a Paper Trail

September 23, 2021

Presented by: Robert C. Ceccon - Richards, Watson & Gershon

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Overview of Lawsuit

- 90 plaintiffs
- 10 deaths
- Personal injuries – Soft tissue to fractures
- 4 people rescued after being buried alive
- 27 homes damaged or destroyed
- Personal property damage



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Alvis v. County of Ventura

Ventura County Superior Court
Case No. CIV 238700
La Conchita Landslide of January 10, 2005

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The Wall Identified by Pile Number



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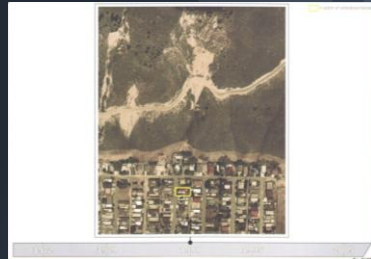
Topics

1. Facts relating to the La Conchita Landslide
2. Overview of the law of design immunity
3. Ventura County's review of the design of a retaining wall



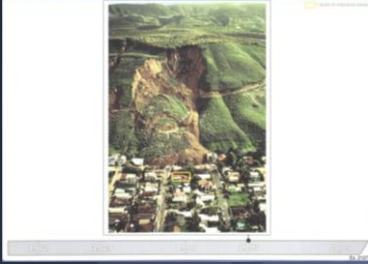
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1988



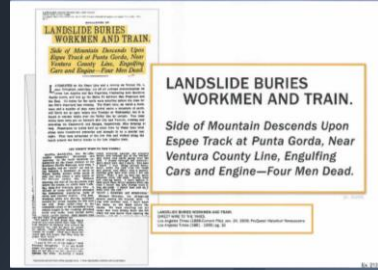
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1995



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La Conchita Landslide – January 1909



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The 1995 Slides Blocked Vista Del Ricon



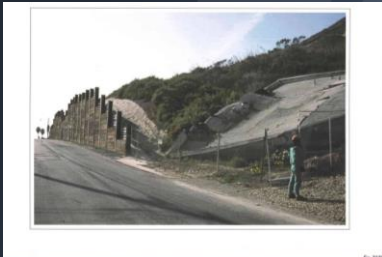
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PCH: The morning of January 10



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The Wall Soon After Completion

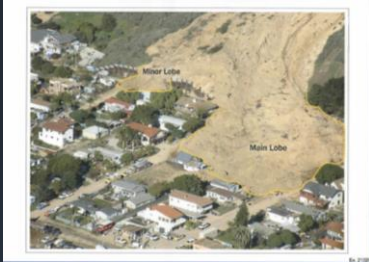


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La Conchita 2005 Slide Minor and Main Lobes



RWG
LAW

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Design Immunity

- A public entity claiming design immunity must establish three simple elements:
 1. An alleged **causal relationship** between the design and the accident;
 2. **Discretionary approval** of the design before construction; and
 3. **Substantial evidence** supporting the reasonableness of the approval of the design.

- Govt. Code § 830.6

RWG
LAW

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Plaintiffs' Theories

- Wall caused water to dam up behind the wall, and destabilized the slope.
- Wall diverted debris to go to the south.

RWG
LAW

14

Motion for Summary Judgment

Question
of Fact
Standard

vs.

Substantial
Evidence
Standard

RWG
LAW

17

Topics

1. Facts relating to the La Conchita Landslide
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RWG
LAW

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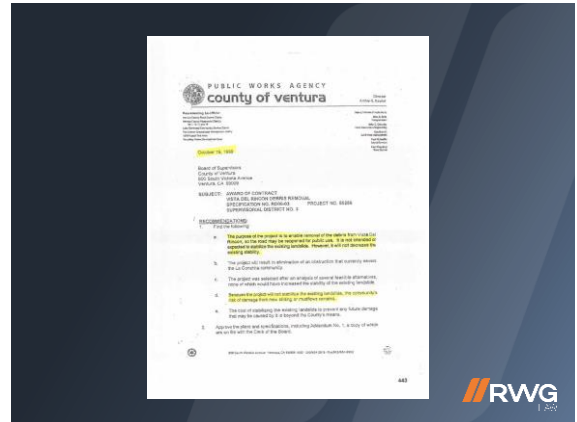


RWG
LAW

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Evidence of Reasonableness

- The evidence of reasonableness need not be undisputed, as the statute provides immunity when there is substantial evidence of reasonableness, even if contradicted. The statute grants immunity as long as reasonable minds can differ concerning whether a design should have been approved.

• *Dobbs v. City of Los Angeles* (2019) 41 Cal.App.5th 159, 162.



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Recommendations

1. Find the following:

- The purpose of the project is to enable removal of the debris from Vista Del Rincon, so the road may be reopened for public use. It is not intended or expected to stabilize the existing landslide. However, it will not decrease the existing stability.
- The project will result in elimination of an obstruction that currently severs the La Conchita community.
- The project was selected after an analysis of several feasible alternatives, none of which would have increased the stability of the existing landslide.
- Because the project will not stabilize the existing landslide, the community's risk of damage from new sliding or mudflows remains.**
- The cost of stabilizing the existing landslide to prevent any future damage that may be caused by it is beyond the County's means.



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Topics

- Facts relating to the La Conchita Landslide
- Overview of the law of design immunity
- Ventura County's review of the design of a retaining wall**



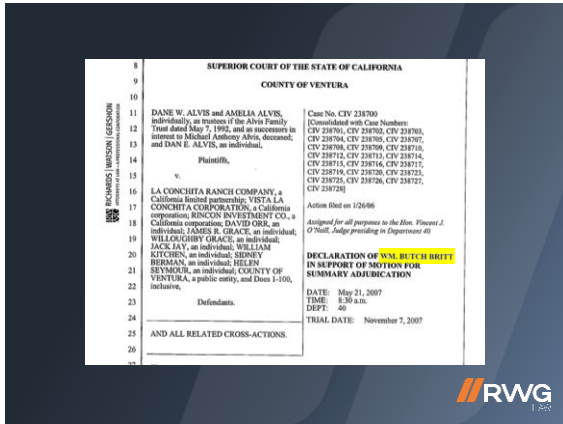
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Post-Approval Design Examination

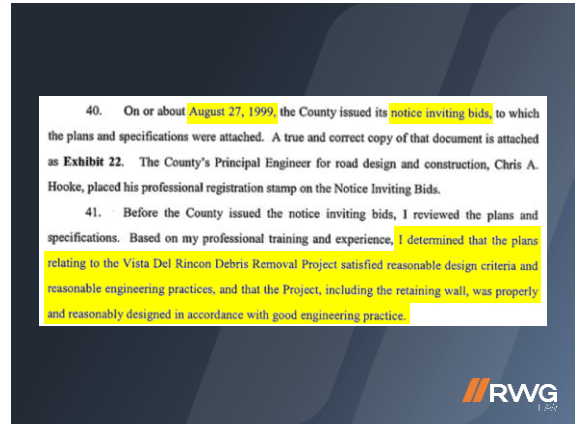
- October 12, 1999:** Consultant RJR Engineering writes letter with 17 questions concerning design.
- October 19, 2009:** Board of Supervisors approves Zeiser Kling plans and specifications.
- October 29, 1999:** Designer Zeiser Kling responds to 17 questions.
- November 23, 1999:** RJR responds to October 29, 1999 letter with more questions.
- December 23, 1999:** Zeiser responds to questions.
- April 5, 2000:** Geotechnical engineers at Fugro West provide further comments.
- April 17, 2000:** Public Works Director authors memo outlining the issues raised by O'Tousa, Bryant, and Zeiser, and concludes: "I am convinced that this project has been designed in accordance with reasonable professional engineering judgment, and with due consideration for public safety."



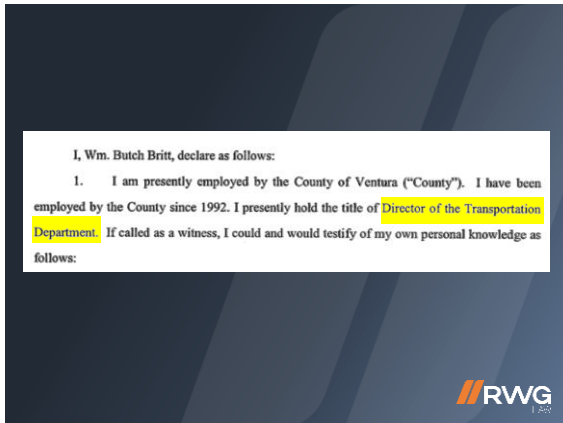
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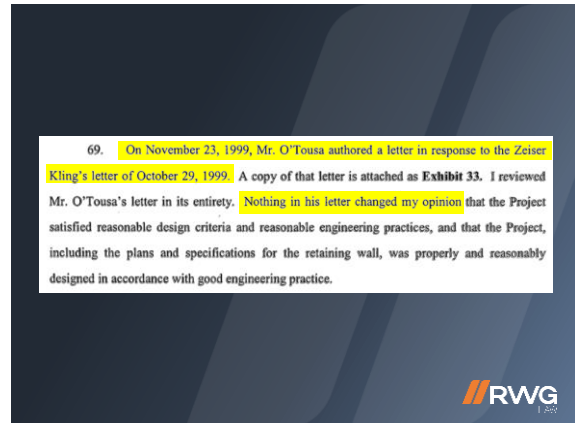
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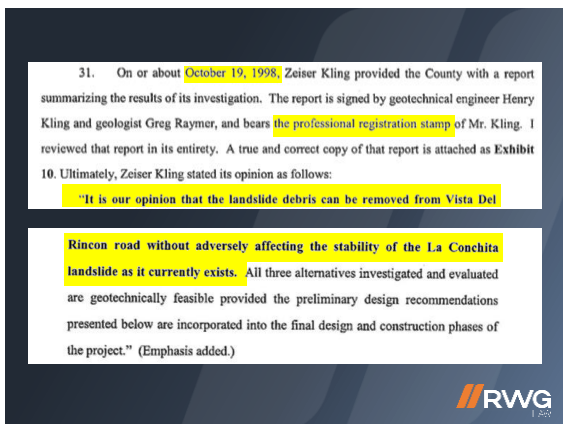
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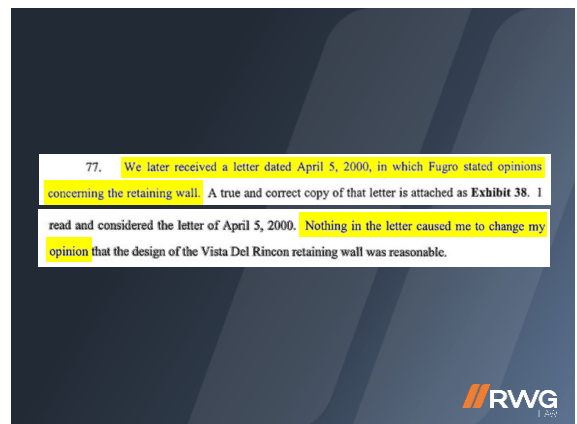
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80. Following my review of the letter of April 5, 2000, and after months of investigating the matter, I authored a memorandum to John C. Crowley, Interim Director of Public Works. A true and correct copy of that memorandum is attached as Exhibit 39. I concluded the memorandum by stating my opinion, based on my professional training and experience, following the review of all the plans and specifications, and following the review of the letters of Mr. O'Tousa, Fugro West, and Zeiser Kling, as follows:

"I am convinced that this project has been designed in accordance with reasonable, professional engineering judgment and with due consideration for public safety."



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I, Chris A. Hooke, declare as follows:

1. I have been employed by the County of Ventura (the "County") since 1999. I hold the title of Deputy Director of County's Transportation Department. If called as a witness, I could and would testify of my own personal knowledge as follows:



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94. It is my opinion today that the Project satisfied reasonable design criteria and reasonable engineering practices, and that the Project, including the plans and specifications for the retaining wall, was properly and reasonably designed in accordance with good engineering practice.



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12. Before I signed the notice inviting bids, I reviewed the plans and specifications. A true and correct copy of the plans and specifications were attached to Exhibit 22. I reviewed and signed the plans.

13. By placing my professional stamp on the notice inviting bids, I certified that I had reviewed the plans and specifications, and that it was my opinion that the Project satisfied reasonable design criteria and reasonable engineering practices, and that the Project, including the plans and specifications for the retaining wall, was properly and reasonably designed in accordance with good engineering practice. Those same plans and specifications were also reviewed and signed by the County's acting Director of Public Works, Paul Ruffin, and Deputy Director of Public Works, Butch Britt.



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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

DANE W. ALVIS and AMELIA ALVIS, individually, as trustees of the Alvis Family Trust dated May 7, 1995, and its successors; to Michael Anthony Alvis, deceased, and DAN E. ALVIS, an individual.

Plaintiffs,

v.

LA CONCHITA RANCH COMPANY, a California limited partnership, VETA LA CONCHITA CORPORATION, a California corporation, RINCON INVESTMENT CO., a California corporation, DAVID ORR, an individual, JAMES E. GRACE, an individual, WILLIAM KITCHEN, an individual, JACOB JAY, an individual, WILLIAM BEHRENS, an individual, HILLEN SEYMOUR, an individual, COUNTY OF VENTURA, a public entity, and Does 1-100, Individually.

Defendants.

AND ALL RELATED CROSS-ACTIONS.

Case No. CIV 238700
(Consolidated with Case Numbers: CIV 238700, CIV 238702, CIV 238703, CIV 238704, CIV 238705, CIV 238707, CIV 238708, CIV 238709, CIV 238710, CIV 238711, CIV 238712, CIV 238713, CIV 238714, CIV 238715, CIV 238716, CIV 238717, CIV 238719, CIV 238720, CIV 238721, CIV 238722, CIV 238723, CIV 238726, CIV 238727, CIV 238728)

Action filed on 12/06/06

Assigned for all purposes to the Hon. Vincent J. O'Neill, Judge presiding in Department 49

DECLARATION OF CHRIS A. HOOKE IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION

(Exempt from filing fees - Civ. Code § 6301)

DATE: May 21, 2007
TIME: 8:30 a.m.
JHPF:49

TRIAL DATE: November 7, 2007



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Substantial Evidence of Reasonableness: Dissent is Acceptable

"Here there is ample evidence to support the reasonableness of the design. The plans bear the professional stamps of a geotechnical engineer and a civil engineer from Zeiser. The plans were approved by Britt, a registered civil engineer. Britt declared that the project has been designed with reasonable professional engineering judgment. Even geotechnical engineer, Samuel Bryan of Fugro, whom Alvis seeks to characterize as a dissenting voice, testified in his deposition: 'We took no exceptions to their input parameters or we couldn't find any issues with their design.'

O'Tousa might be considered a dissenter, but he testified in his deposition that he did not review the plans. In any event, section 830.6 provides immunity **even if the evidence of reasonableness is contradicted.**"

- Alvis v. County of Ventura, 178 Cal.App.4th 536, 553-554 (2009)



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Plaintiffs' Theories

- Wall caused water to dam up behind the wall, and destabilized the slope.
- Wall diverted debris to go to the south.



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- Singh declared. . . : "[The wall] had a 'dam effect.' It caused a rise in the groundwater table in the slide mass behind the wall and created a failure zone with a large volume of debris flow. This failure zone was a mass of soil behind the wall containing additional water that the wall did not permit to drain freely, and that was more likely to slide and create a debris flow."

- *Alvis v. County of Ventura* (2009) 178 Cal.App.4th 536, 545



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Evidence re: Drainage

- **October 12, 1999:** O'Tousa raises question of whether wall will drain adequately.
- **October 29, 1999:** Zeiser's letter discusses installing a subdrain and notes: "logged soldier pile walls typically contain spaces for water to travel through."
- **April 17, 2000:** County's Public Works Director's final memorandum states: "Landslide debris behind the wall would drain freely through the spaces between the timber lagging. We did consult with Zeiser Kling during the review process, and concur that the timber lagging will be self-draining because of the open spaces between the timber lagging. Accordingly, we did not require weepholes or internal drainage systems."



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The Wall Identified by Pile Number



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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF VENTURA

11 DANE W. ALVIS and AMELIA ALVIS, Case No. CIV 234700
12 individually, as trustees of the Alvis Family Trust dated May 7, 1992, and as successors in interest to Michael Anthony Alvis, deceased, etc., et al., Assigned to Hon. Vincent J. O'Neill, Jr.
13 Date: August 13, 2007
14 Time: 10:00 a.m.
15 Plaintiffs, Dept: 40

16 v. LA CONCHITA RANCH COMPANY, a California limited partnership, etc., et al.,
17 Defendants.

18 **DECLARATION OF AWATAR SINGH, FILED IN OPPOSITION TO DEFENDANT COUNTY OF VENTURA'S MOTION FOR SUMMARY ADJUDICATION**

19 **Memorandum Of Points And Authorities; Response To Separate Statement Of Undisputed Facts And Statement Of Additional Material Facts; Plaintiffs' Evidence In Opposition To The County Of Ventura's Motion For Summary Adjudication; Evidentiary Objections Filed Concurrently**

20 AND RELATED CROSS-ACTIONS

21 Complaint Filed: January 26, 2006
22 Trial Date: June 9, 2008
23



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Summary of Pile Performance During January 10, 2005 Landslide

General Description of Pile Performance	Piles in this Category	Number of Piles in this Category
Not impacted by debris, no movement or displacement	1, 2, 4, 5, 6, 7, 8, 9	9
Not impacted by debris, wall tilted	None	0
Impacted by debris, debris moved away from pile	10, 18, 19, 20, 21	5
Impacted by debris, pile tilted or heaved	11, 12, 13, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, 28	14



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County Considered Drainage

- "It is undisputed that Zeiser and Britt considered the concerns of the County's consultants and rejected the need for any design changes to improve drainage. In particular, Britt's memorandum of April 17, 2000, states he consulted with Zeiser during design review and concurred that the wall would be self-draining. "Accordingly, we did not require weep holes or internal drainage systems." Weep holes and internal drainage systems are precisely the features Singh declared should have been added to the wall.

[T]he alleged change of conditions relate directly to the factors the County considered in making its design choices. It is that sort of second-guessing of the County's design choices that section 830.6 was enacted to prevent."

- *Alvis v. County of Ventura*, 178 Cal.App.4th 536, 555-556 (2009)



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60. In the letter of October 29, 1998, which is attached as Exhibit 31, Mr. Kling and Mr. Raymer responded to each of Mr O'Tousa's questions. They placed their professional registration stamps on the letter. I reviewed that letter in its entirety. Throughout the letter, Mr. Kling and Mr. Raymer repeatedly acknowledge that the wall would not withstand a debris flow. They also stated that if a debris flow occurred, it would be "channelized in the drainage along the northern boundary of the La Conchita landslide."



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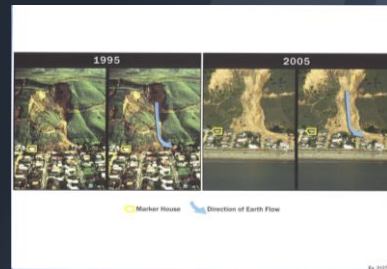
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1995 & 2005 Slide Path



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La Conchita 2005 Slide Minor and Main Lobes



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Sensitivity Analysis



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Design immunity does not apply to inverse condemnation claims



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LoewLoew LLP
 1000 15th Street, Suite 2000
 San Francisco, CA 94103
 Tel: 415.774.2000

DATE: 07/07/19
 AMOUNT: \$ 89,148.00

CHECK NO. 05413

PAY *****041221887148.00*****

TO THE ORDER OF *****041221887148.00*****

LoewLoew LLP
Ken Reuland

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INVOICEN	INVOICEN	INVOICEN	INVOICEN	INVOICEN	INVOICEN
		Client's Conchita			
					TOTAL



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Thank you.

Robert Ceccon
rcecccon@rwglaw.com

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