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LITIGATION

Strange Bedfellows

A mudslide and an earthquake led to upheaval in attorney roles in two cases, resulting in awards and settlements in the millions.

By Leonard Novarro
Daily Journal Staff Writer

Lawsuits sometimes can produce strange bedfellows. How about an attorney going to bat for a savings and loan, then representing the same people the lender forecloses on? Or an outside attorney joining the city in a case that's become the target of a class action?

Two cases took that tenor recently. The first ended in a $4.8 million award and $1.4 million in other costs. The second ended in a settlement, which an insurance company agreed to pay, thereby saving the taxpayers of Los Angeles $4 million.

And both originated from natural disasters, the first from a Malibu mudslide and the second from the 1994 Northridge earthquake. The first began as two actions: *Thompson v. Geoplan Inc.*, filed in Santa Monica, and *Martin v. County of Los Angeles*. Eventually, they were consolidated and transferred to Los Angeles Superior Court downtown. *Thompson v. Geoplan Inc*. and related cross-actions, SC033363 (L.A. Super. Ct., consolidated Aug. 26, 1998).

By the time lead attorneys **Thomas S. Salinger and Steven J. Goon of Rutan & Tucker in Costa Mesa** got involved, the case, based on a complaint filed in 1994, already was 2 years old. Salinger was called in by Donald E. Royer, executive vice president and general counsel of Downey Savings and Loan in Newport Beach, one of the largest financial institutions in Southern California.

At the time, Downey had an interest in a home on McCray Lane in Malibu that was damaged during a 1995 mudslide and subsequently abandoned by its owners, Bruce Beddoe and Janice Bopp. Downey, the mortgage lender, took possession of the property after foreclosure. Royer asked Salinger to look into the matter after borings were made on the property in connection with a lawsuit originated by other property owners in the area.

Apparently, without the owners' knowledge, their homes were built on an ancient landslide. The first home to feel the effects of accumulated rain and runoff in the area was owned by Leslie and Julie Thompson, who abandoned it after the county declared it uninhabitable because of damage during a 1993 landslide. In 1994, the Thompsons filed a complaint in Los Angeles Superior Court to recover damages from the county, the geologists and engineers involved in the development, including Geoplan, and their neighbors, including Beddoe and Bopp, because of rain flowed in from their property.

When Beddoe and Bopp filed a cross-complaint after their home was damaged a year later, Downey decided to intervene in the Thompson action to pursue damage claims of its own. Shortly after that, Salinger joined the case.

At first, mediation seemed to be the course to follow, but then, Salinger said, "what we saw was everyone pointing fingers at one another."

"It was chaotic and frankly got nowhere," he said.

At issue was what triggered the slides in the first place. Assembling a team of geologists, hydrologists and civil engineers, Salinger began building a case that the toe of the slope supporting the homes on McCray Lane had eroded because the county's flood control district had diverted water from elsewhere through its storm drain system. With maps depicting what the area looked like before development, he showed that 240 million gallons of additional water — more than the area could handle — ran through the system between 1962 and 1998.

Throughout the discovery process, attorneys for the county, largely represented by Nowland Hong, now a partner with Brown Winfield Canzoneri in Los Angeles, denied any diversion took place. However, an interdepartmental memo from 1978 not only acknowledged the problem but also warned of potential danger, suggesting "that perhaps downstream properties ought to be investigated for potential damage from even minor storms due to increased run-off."

According to Salinger, it was the smoking gun that turned the case in his favor.

Before the trial, Salinger, Goon and Royer decided their chances on recovering damages would fare better by joining hands with the property owners.

"It appeared that, after a year or so into the litigation, it would be difficult representing the current owner, Downey, and not also prior owners," Salinger said. "There would also be an issue as to who would be entitled to what portion of the damages."

So, in 1998, Salinger took on the representation of Jack and Adaline Martin and Beddoe and Bopp. By that time, the other property owners had settled with the city.

With no offer being made by the county to settle with Salinger's clients, the matter went to jury trial before Judge Frank Gafkowski in January of this year. The trial was split, with the liability issue argued first. Gafkowski ruled in favor of Downey and the homeowners on an inverse condemnation claim, which contended that property damages were the result of a public works improvement, thereby entitling the plaintiffs to compensation.

A week later, the jury returned a verdict, also in favor of the plaintiffs, finding the county negligent and responsible for a dangerous condition. The damage phase ended March 22 when the jury, after 21/2 days of deliberation, returned its decision awarding $4.8 million in damages. A subsequent award of $1.4 million in attorney fees and costs by Gafkowski brought the total judgment to $6.2 million.

Salinger believes his case was strengthened by the testimony of Martin, who described trying to save his property during a rainstorm while his wife held him from slipping off the slope.

Throughout the trial, the county's position was that it didn't own or maintain the storm drain running through the area, yet files produced by Salinger indicated otherwise. In addition, the county's markings were all over the drain, according to Salinger.

The verdict is being appealed on the basis that some of Gafkowski's instructions were misleading, according to Hong.

"Public entities are not generally negligent. It has to be a public employee according to government code," Hong said, referring to Section 631.8 of the California Code of Civil Procedure.

In addition, he said, "they had no proof of causation."

"Despite the memo," he said, "they have to prove the landslide was caused by a certain amount of water, and they couldn't show or demonstrate how much water it took to trigger the landslide."

Goon said the unusual alliance of Downey and the homeowners clinched the case.

"The individual homeowners lost the most but did not have the resource to engage in a five-year war of attrition with the county," he said. "Downey did. They made it possible for them to get their day in court."

The government fared a lot better in the other case, *Porter v. City of Los Angeles,* BC119914 (L.A. Super. Ct.). A companion case filed separately, *City of Los Angeles v. National Union Fire Insurance Co.*, BC202114 (L.A. Super. Ct.), ended up satisfying settlement requirements after mediation.

The first action, known as the Porter case, began in 1997 when 150 tenants of a medical building sued the city for forcing them to vacate because of damages from the Northridge quake. Marc Seltzer of Susman Godfrey in Los Angeles represented the plaintiffs.

The crux of the complaint, alleging inverse condemnation, was that the city improperly acted in taking the property and was negligent in demolishing it. The tenants sought to recover $20 million, roughly the value of the property.

After the city lost a summary judgment motion claiming it was immune from prosecution, Commissioner Bruce Mitchell awarded the plaintiffs in November 1998 partial class certification on liability issues but not damages. The size of the case now forced Deputy City Attorney Peter King to seek help from the outside.

"We were understaffed as we were preparing to go to trial. It became clear we needed additional help," King said.

That's when Ronald Turovsky, a partner in Manatt, Phelps & Phillips of Los Angeles, was hired. His marching orders: Resolve the dispute without costing the city tax dollars.

"I don't think it was unusual to hire an outside law firm," Turovsky said. "But it was unusual in the pairing up approach. I was told from the beginning that the city attorney's office would remain very involved and that we'd split things and team up. I viewed that as having additional resources. I hadn't seen that before."

The city also filed a cross-complaint against Cleveland Wrecking, the demolition company, and maintained that National Union, as insurer for Cleveland, also had an obligation to cover the city.

"The way we typically obtain additional insurance in cases where we have independent contractors is that we require that they name us as additional insured," King said. "The insurance company represented the demolition contractor but refused my request to defend and indemnify us. At that point, we filed a cross-complaint."

Once the class action was certified, the next issue was liability, to be taken up at trial, scheduled for Jan. 10, 2000.

"That left us in a potentially very, very long trial," Turovsky said. "If we were to lose on liability and had to try 150 different trials on damages, this would go on forever."

Both sides began assembling a battery of witnesses: seismologists, structural engineers and experts on earthquake effects and damage.

"It was quite expert-driven," Turovsky said.

In all, 70 witnesses were deposed over 140 days.

Turovsky's next step was to file a summary judgment motion to eliminate the inverse condemnation claim. At that point, the plaintiffs approached the city for a settlement offer. Turovsky offered $4.2 million, but it was rejected.

As a result, "we stated that our settlement offer would be withdrawn if our motion for summary adjudication were granted," Turovsky said.

It was, which now left the plaintiffs to establish negligence on the city's part. At the same time, National Union's motion on grounds that the city had no claim under its policy was denied.

"Thus," Turovsky said, "we headed to trial on a very focused claim for negligence, in which we were the defendant, and on all issues against Cleveland Wrecking."

Margaret Levy, a partner in Turovsky's firm, was set to represent the city in its claim against National. The weekend before the Porter case was slated for trial, both sides met again. A settlement was reached - for $2.7 million. Then, in the National Union case, another all-day mediation session, mandated by Judge Enrique Romero, led to a second settlement between the city and the insurance company, in which National agreed to cover the award, outside attorney fees and court costs, totaling $4 million.

"We agreed as part of that settlement to dismiss Cleveland, as well," Turovsky said. "We were able to cover the city for all amounts paid to plaintiffs and all the attorneys' fees."

The final settlement was reached June 12.

Seltzer was not available for comment, but Turovsky said the winning motion on inverse condemnation was "a significant turning point."

"Otherwise, you'd have to argue that the city, within days of a significant disaster, with loss of life and enormous property damage and fires, didn't act reasonably in concluding the building was in terrible shape," he said. "That would have been very difficult to prove."

According to King, the cases demonstrated "a unique partnership between the city and outside counsel."

"Typically, when the city retains an outside attorney, the entire case is turned over," he said.

Because of his previous involvement, however, King stayed on. And, as the case unfolded, "the strengths of both private and public sector were brought to bear," he said.

SNAPSHOTS

Case: *Thompson v. Geoplan Inc.* and *Jack Martin, Adaline Martin v. County of Los Angeles, County of Los Angeles Flood Control District*, SC033363 (L.A. Super. Ct., verdict March 22, 2000)

Type: Inverse condemnation, negligence and dangerous condition of public property

Verdict: In favor of the plaintiffs; $4.8 million in damages

Attorneys:
Plaintiffs — Thomas S. Salinger and Steven Goon, Rutan & Tucker, Costa Mesa
Defendant — Nowland Hong, representing Los Angeles County

Judge: Judge Frank Gafkowski

Case: *Porter v. City of Los Angeles*, BC119914, (Los Angeles, 2000); Superior Court, and *City of Los Angeles v. National Union Fire Insurance Co.*, BC202114 (Los Angeles Super. Ct., settled June 12, 2000)

Type: Inverse condemnation, liability and negligence

Settlement: $2.7 million for the plaintiffs

Attorneys:
Plaintiff —Marc Seltzer, Susman Godfrey, Los Angeles
Defendant — Ronald Turovsky and Margaret Levy, Manatt, Phelps & Phillips, Los Angeles; Peter King, deputy city attorney for the C city of Los Angeles

Judge: Commissioner Bruce Mitchell; retired Judge Enrique Romero