



# APPRAISING FOR LITIGATION IN “SAME SUIT” MULTIPLE PROPERTY CASES

Are you ready for this assignment?

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Several years back, my firm defended the County of Ventura in litigation over a catastrophic landslide in La Conchita, California. On January 10, 2005, at around 12:30 p.m., an estimated 10- to 20-foot high wall of water, mud and debris roared down from a steep 590-foot bluff located directly behind the small beach hamlet of La Conchita. When the debris flow finally stopped, almost four blocks were left buried in over 30 feet of mud and debris picked up by the sliding battering ram from the hillside above the town.

The debris flow itself was fleeting, but in those few seconds, over 10 people were killed, and more than 14 people were injured. Of the 166 homes in the community, 15 were destroyed and 16 more were red-tagged as uninhabitable.

The case involved \$200+ million in claims of personal injury, wrongful death, dangerous condition of public property, nuisance and inverse condemnation for damage to real property and personal property, including a large citrus and avocado farm at the top of the bluff. The County was sued by those affected by the 2005 landslide. The case began with over 115 plaintiffs bringing 31 separate lawsuits.

The inverse condemnation claims were based on the alleged failure of a County-constructed retaining wall protecting a local street from falling rocks and debris. The retaining wall was built

near the base of the hillside to keep rocks and debris off the street running parallel to the length of the hillside. Damages were sought for diminution in value of the real property caused by stigma, loss of insurability, lost collateral for loans, loss of property use and rentability. Personal property losses included everything from armchairs to a partially restored classic Ford Woody car.

### Brief History

The unincorporated town of La Conchita was known early on as “Punta Gorda.” Slow and modest changes began in the 19th century when this area was a stagecoach route, a U.S. postal carrier stop and later a rail spur line that was built along the California coast. With a few dynamite blast-assisted changes to modify the towering bluff, this area became perfectly wide and level enough to allow the safe placement of railroad lines and roadway traversing the coast. What began as a few temporary shacks to rest weary rail workers and stagecoach drivers became a small community of persons supporting the then-burgeoning oil industry along and in the area as well as travelers.

In 1971, this area added State Highway 101 parallel to the Pacific Ocean, allowing good access to and through the area. And finally in 1975, the La Conchita Ranch Company began farming citrus and avocados on 700+ acres along and top of the bluff.



A makeshift memorial to honor those who lost their lives at the site of the massive mudslide in La Conchita.

This entire La Conchita area has been historically unstable and subject to episodes of landslide, flooding and debris flows down off the bluff and westerly towards the Pacific Ocean. The year 2005 brought a series of 100+ year storms to the area, saturating the bluff and plateau above the town, ending with the bluff failure and ensuing landslide into the community.

### Impacts on Valuation

In an area historically subject to flooding, landslide and debris flows, the appraisers were tasked with selecting appropriate reporting data sets to determine if there was any diminution in value caused by the La Conchita landslide of 2005. The attorneys and the appraisers for the parties had to determine the appropriateness of whether the historical hillside instability could be isolated as a relevant and quantifiable market-driven factor affecting the before and after valuation. The comparable sales of properties in the hamlet were well below nearby areas that didn't suffer the looming threat of landslide.

Each party's appraisers used the same set of historical and current sales data for each of their 31 appraisals evaluating the diminution in property value claims. Our appraisers performed a separate paired sales study that isolated the impact of the potential landslide hazards on market participants. The appraisers for the property owners didn't do a similar study. If the market study was deemed inadmissible or found not credible, then there was a likelihood that one set of appraisal opinions would be excluded.

We believed that our appraisers used the correct approach to valuation. However, the consolidated cases magnified the risks associated with appraisal opinions that are not found persuasive by a jury or judge. And in this situation, we avoided having those issues evaluated for exclusion by the judge and examined by a jury for credibility. The plaintiff dismissed the County from the lawsuit halfway through the trial and before the damages phase began.

The parties had stipulated that the date of value for the evaluation of diminution in value was the date of the La Conchita landslide. The jury in this case heard testimony concerning the liability for tort causes of action and the inverse condemnation property damage claims, all together. There was highly emotional testimony mixed in with the more mundane property valuation issues.

A few odd issues arose in this litigation that are worth mentioning. One, there was no practical way to inspect houses or personal property that were destroyed in the landslide. Appraising from photos, interviews and depositions only was the only avenue for gathering such information. Some residents had some photos and property information that was required for their homeowner insurance policies. The appraisers decided against taking pictures of the houses buried in 30 feet of mud and debris.

Second, most of the houses contained unpermitted improvements, some built into the unstable hillside. The unpermitted improvements were also potential causes of the hillside current and future instability. Incorporating considerations of the complex landslide expert opinions into the appraisal reports required change orders to the initial cost proposals.

Lastly, coordinating the many appraiser depositions was extremely challenging. The window for exchanging expert opinions was 60 days of trial. Completing the valuation expert depositions for each of the 31 properties required coordinating the calendars of witnesses, court reporters, videographers and attorneys.

Same suit multiple property cases are exponentially more difficult but we know it's possible because we did it. ✪



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