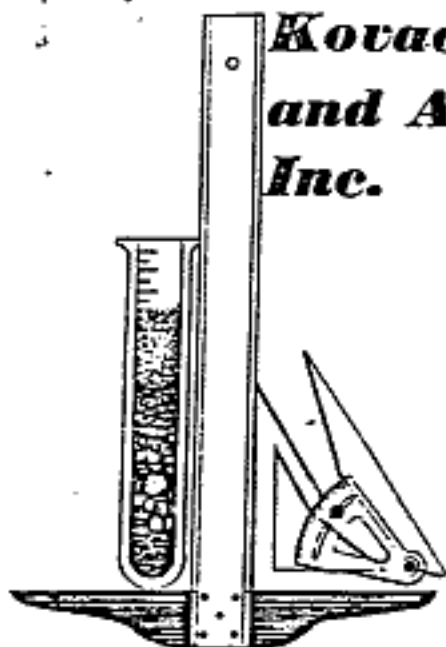


**Kovacs-Lyer
and Associates
Inc.**



May 26, 1987

000487 JUN-1 87

Board of Registration for
Professional Engineers & Land Surveyors
1428 Howe Avenue, Suite 56
Sacramento, California 95825-3298

Attention: Wendy S. Magnum

Subject

Case No. 87-01-11

Gentlemen:

Pursuant to your letter of request of May 19, 1987 with regard to your investigation of Dr. Hu, I'm pleased to submit the following information:

Dr. Hu was retained to perform geotechnical services at a project at 1411 Sunset Boulevard. This property lies within the hillside area of Los Angeles. The approximate slope between the street and northerly property line is roughly three horizontal to one vertical. This pitch and slope would indicate to any geotechnical engineer that the services of an engineering geologist should be employed to determine the nature of the earth materials lying below the site. This requirement is documented within the Los Angeles City Building Code. The City Building Code defines designated hillside areas. The site is definitely within the area designated by the Code. Dr. Hu's ignorance of the local building code constitutes part of his negligent action in this complaint.

Reference was made to Dr. Hu's report of September 9, 1985,

ENGINEERING GEOLOGY / SOILS & FOUNDATION ENGINEERING

11430 VENTURA BLVD., STUDIO CITY, CALIFORNIA 91604-3182 (818) 980-0825 (213) 877-2757

be made in bedrock materials following the investigation and advice of an engineering geologist.

Submitted herewith is a copy of the Order to Comply, Number K88213, issued by the City of Los Angeles of December 5, 1986. Specifically, please refer to Item 3 wherein the Building Department requires that a soil and geology report be provided prior to further work on the site. To the best of my knowledge, no engineering geologist was consulted by Dr. Hu, despite this recommendation and order by the Building Department.


Submitted herewith for your further consideration is a copy of the City of Los Angeles Department of Building and Safety, Grading Pre-Inspection Report. Please note that the grading inspector, Earl Forbus requested that a geological report be submitted to the Grading Division. Dr. Hu's failure to follow the direction constitutes a negligence on his part and a failure to recognize the standard of care within this area of California.

For your further consideration, we submit herewith a copy of the City of Los Angeles Department of Building and Safety, Grading Division, Application for Review of Technical Reports. Please note Item 3, which indicates that prior to issuance of any reports, submit a supplementary report substantiating vertical cuts. To satisfy this condition Dr. Hu proceeded to prepare a report dated May 21, 1986, which I previously submitted to you. Please note that the calculations attached to the letter are in error. Dr. Hu fails to recognize the bedded nature of the material, fails to recognize that tension cracks developed on the slope, fails to recognize that there is a surcharge on the slope, and fails to take into account the possibility of tension cracks developing. #

This calculation fails to meet the standard of care as practiced by the majority of geotechnical engineers in this area of California.

Thank you for this opportunity to submit additional information regarding the unfortunate fatality which occurred on January 7, 1987. The causes of this accident are the bedded natures of the shale and siltstone found on the site, which was not disclosed by Dr. Hu's report and therefore, he is negligent and failed to follow the standard of care as commonly practiced in this area. If I can be of further assistance to you in this investigation of the unfortunate fatality, please call or write to me.

Very truly yours,


G. S. KOVACS
R.C.E. 13503

GSK:emb

Enclosures

ENGINEERING GEOLOGY / SOILS & FOUNDATION ENGINEERING

CAST: MS CHATTEN-BROWN = DA
MR MARTINEZ = DA'S EXPERT ENGINEER
MSSRS MAYCOCK, OSBORNE, MASATIR = HV'S DEFENSE LAWYERS

~~DELETED~~ TESTIMONY OF
DA'S FIRST
EXPERT

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TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

VICTOR CORONA MARTINEZ,

CALLED AS A WITNESS BY AND ON BEHALF OF THE PEOPLE, WAS
EXAMINED AND TESTIFIED AS FOLLOWS:

THE CLERK: THANK YOU, SIR. PLEASE HAVE A SEAT IN
THE WITNESS STAND.

PLEASE TELL US YOUR NAME, SIR.

THE WITNESS: VICTOR CORONA MARTINEZ.

THE CLERK: THANK YOU, SIR.

DIRECT EXAMINATION

BY MS. CHATTEN-BROWN: = DA

Q GOOD MORNING, MR. MARTINEZ. BY WHOM ARE YOU
EMPLOYED?

A LOS ANGELES COUNTY DEPARTMENT OF PUBLIC
WORKS.

Q IN WHAT CAPACITY?

A I'M A GEO-TECHNICAL ENGINEER.

Q AND HOW LONG HAVE YOU HAD THAT POSITION?

A SINCE 1975.

Q WHAT WAS YOUR TRAINING AND EDUCATION FOR
THAT POSITION?

A I HAVE A BACHELOR OF SCIENCE IN CIVIL
ENGINEERING WITH A MINOR IN GEO-TECHNICAL ENGINEERING,
AND I HAVE TAKEN CLASSES AT THE UNIVERSITY OF SOUTHERN
CALIFORNIA, EXTENSIVE CLASSES THROUGH CALIFORNIA

1 A THERE IS TO OBTAIN THE REGISTRATION FOR
2 GEO-TECHNICAL ENGINEER.

3 Q WHAT ARE THOSE REQUIREMENTS?

4 A YOU HAVE TO BE A REGISTERED CIVIL ENGINEER
5 FOR FOUR YEARS AND PASS A QUALIFYING EXAMINATION.

6 Q IS THAT ADMINISTERED BY THE STATE OF
7 CALIFORNIA?

8 A YES, IT IS.

9 Q AND THERE IS A SET SCORE THAT HAS TO BE MET
10 BEFORE SOMEONE QUALIFIES; IS THAT CORRECT?

11 A YES.

12 Q 75 PERCENT OR SOMETHING LIKE THAT?

13 A WELL, YOU HAVE TO MEET THE REQUIREMENTS. 1
14 BELIEVE THEY GRADE ON A CURVE.

15 *MR*
MAYCOCK Q NOW, AS FAR AS THE 15 EMPLOYEES THAT YOU'RE
16 SUPERVISING WHO ARE ENGINEERS, DO THEY SOMETIMES MAKE
17 MISTAKES IN REVIEWING THE REPORTS?

18 *MARTINEZ* A YES.

19 Q AND SO WHAT YOU DO IS YOU REVIEW THEIR WORK
20 SO THAT IF THEY MAKE A MISTAKE, MAYBE YOU'LL CATCH IT;
21 IS THAT RIGHT?

22 A YES. I TRAIN THEM AND REVIEW THEIR WORK.

23 Q HOW MANY PEOPLE DOES THIS GO THROUGH BEFORE
24 SOMETHING FINALLY GETS AN APPROVAL?

25 A FROM A SOILS POINT OF VIEW, TWO PEOPLE; THE
26 ENGINEER VIEWING THE REPORT AND MYSELF.

27 Q SO YOU WOULD THEN BE THE ONE WHO WOULD PUT
28 YOUR IMPRIMATUR OR STAMP OF APPROVAL ON ANY OF THE SOILS

1 REPORTS THAT GO THROUGH; IS THAT RIGHT?

2 A THAT'S CORRECT.

3 Q IS THIS FOR THE ENTIRE COUNTY OF
4 LOS ANGELES?

5 A YES.

6 Q AND ONCE YOU SAY IT'S OKAY, THEN FROM THE
7 SOILS STANDPOINT, THEN SOMEONE ELSE WOULD BE THE ONE WHO
8 WOULD ISSUE A PERMIT; IS THAT CORRECT?

9 A YES.

10 *MAYOULL* Q NOW, SOME OF THE TIME, I GUESS PEOPLE WHO
11 ARE WORKING UNDER YOU MAKE MISTAKES IN ANALYZING THE
12 REPORTS; ISN'T THAT RIGHT?

13 *MAYOULL* A YES.

14 Q AND SOME OF THE TIME, THE PEOPLE WHO PREPARE
15 THE REPORTS, THE PRIVATE ENGINEERS, MAKE MISTAKES; IS
16 THAT RIGHT?

17 A YES.

18 Q NOW, IN THIS CASE, THINKING ABOUT 1411
19 SUNSET BOULEVARD, YOU HAVE INDICATED YOU BELIEVE THERE
20 WERE SOME MISTAKES IN THAT REPORT; ISN'T THAT RIGHT; THE
21 PRELIMINARY SOILS REPORT, THE FOLLOW-UP?

22 A I THINK THERE WERE SOME OMISSIONS IN THE
23 REPORT.

24 Q IS THERE ANYTHING IN YOUR MIND THAT WOULD
25 MAKE YOU THINK THAT THESE WERE INTENTIONAL OMISSIONS?

26 A NO.

27 Q SO WHAT WE HAVE HERE IS WHAT YOU WOULD
28 CHARACTERIZE AS A GOOD FAITH MISTAKE; IS THAT RIGHT?

1 MS. CHATTEN-BROWN: OBJECTION. IRRELEVANT.

2 THE COURT: WHAT'S THE BASIS?

3 MS. CHATTEN-BROWN: AS TO HOW HE WOULD
4 CHARACTERIZE --

5 THE COURT: I DIDN'T HEAR THE BASIS OF YOUR
6 OBJECTION.

7 MS. CHATTEN-BROWN: IRRELEVANT.

8 THE COURT: OVERRULED.

9 THE WITNESS: I AM SORRY. WOULD YOU RESTATE THAT?
10 BY MR. MAYOCK:

11 Q YES. WHAT WE HAVE HERE IS WHAT YOU WOULD
12 BELIEVE TO BE A GOOD FAITH MISTAKE BEING MADE ON THE
13 PART OF HU AND ASSOCIATES?

14 A IN THE PREPARATION OF THE PRELIMINARY
15 REPORT, I WOULD SAY YES. IN THE FOLLOW-UP, I WOULD SAY
16 THAT HE SHOULD HAVE MADE SOME ADJUSTMENTS.

17 Q AND THERE'S NOTHING THAT YOU FEEL WAS AN
18 INTENTIONAL WRONGFUL ACT ON HIS PART IN ANY OF THIS, DO
19 YOU?

20 A NO.

21 MS. CHATTEN-BROWN: OBJECTION. AGAIN, IRRELEVANT
22 AND CALLS FOR LEGAL CONCLUSION, LEGAL BASIS.

23 THE COURT: MS. CHATTEN-BROWN, I AM ASSUMING THAT
24 ONE OF THE PURPOSES OF THIS WITNESS IS TO ESTABLISH SOME
25 SORT OF STANDARD OF CARE. I BELIEVE IN INVOLUNTARY
26 MANSLAUGHTER, THE PEOPLE DO HAVE THE BURDEN OF SHOWING
27 SOME CRIMINAL NEGLIGENCE; ISN'T THAT RIGHT?

28 MS. CHATTEN-BROWN: YES.

1 THE COURT: IS THIS WITNESS BROUGHT FOR THE
2 PURPOSE OF SHOWING THAT AT ALL?

3 MS. CHATTEN-BROWN: YES, HE IS. BUT THE GOOD
4 FAITH OF THE MISTAKE IS NOT THE TEST. IT'S WHETHER OR
5 NOT THERE WAS A -- WELL, I THINK IN THIS PARTICULAR
6 INSTANCE, THAT THIS WITNESS WOULD BE AS TO THE STANDARD
7 OF CARE. BUT AGAIN, THE GOOD FAITH MISTAKE --

8 THE COURT: I AM GOING TO INSERT MY OWN OBJECTION.
9 I BELIEVE IT'S VAGUE. I BELIEVE WHAT GOOD FAITH COULD
10 MEAN TO ONE INDIVIDUAL AND TO ANOTHER MAY BE DIFFERENT.
11 SO I AM GOING TO SUSTAIN THE OBJECTION ON VAGUENESS AS
12 OPPOSED TO RELEVANCE.

13 MR. MAYOCK: FINE. *end*

14 BY MR. MAYOCK:

15 Q IN ANY EVENT, AS FAR AS THE PREPARATION OF
16 THIS SOILS REPORT, WHEN IT WAS RECEIVED BY YOUR OFFICE,
17 IT WAS REVIEWED BY SOMEONE WHO APPROVED IT INITIALLY; IS
18 THAT RIGHT?

19 A WE DID NOT REVIEW THIS REPORT. OUR OFFICE
20 DID FOR PURPOSES OF ISSUING A PERMIT.

21 Q WELL, WHEN THE REPORT WAS RECEIVED, IT WAS
22 REVIEWED BY SOMEONE IN YOUR OFFICE WHO SAW NO OBJECTIONS
23 TO IT AT THE TIME THEY MADE THEIR REVIEW?

24 A IT WAS REVIEWED BY ME.

25 Q DID ANYONE ELSE IN THE OFFICE REVIEW IT
26 OTHER THAN YOURSELF?

27 A OUR GEOLOGIST REVIEWED IT.

28 Q AND THE GEOLOGIST DIDN'T FIND ANYTHING WRONG

1 OF THE BEDDING STRENGTH.

2 Q SO ONCE BEDDING PLANES WERE DETERMINED TO
3 HAVE BEEN PRESENT, WHAT FIGURE SHOULD HAVE BEEN USED IN
4 THE CALCULATIONS TO DETERMINE STABILITY?

5 A THE 300 COHESION AND THE 30-DEGREE FRICTION.

6 Q TO THE BEST OF YOUR KNOWLEDGE, WERE ANY
7 CHANGES EVER MADE AFTER BEDDING PLANES WERE DETERMINED
8 TO BE PRESENT?

9 ~~A NO.~~

*Chatten Brown = DA
Witness = Martinez*

10 CHATTEN *Brown* Q ONCE THE BEDDING PLANES WERE DETERMINED TO
11 BE PRESENT, IF WORKERS WERE PRESENT WORKING AT THE BASE
12 OF THOSE, HOW IMPORTANT WOULD IT BE FOR THE SOILS
13 ENGINEER TO TAKE SOME ACTION WITH REGARD TO THOSE
14 CALCULATIONS?

15 MR. MAYOCK: *Defense lawyer* OBJECTION. VAGUE.

16 THE COURT: SUSTAINED.

17 BY MS. CHATTEN-BROWN:

18 Q IF THE BEDDING PLANES WERE PRESENT AND
19 EMPLOYEES WERE WORKING IN THE AREA, WHAT SHOULD HAVE THE
20 SOILS ENGINEER DONE?

21 MR. MAYOCK: VAGUE. *Another Defense lawyer*

22 MR. OSBORNE: ASSUMING A FACT, THAT THE SOILS
23 ENGINEER KNOWS ABOUT THAT. NO FOUNDATION FOR WHAT
24 SOMEBODY --

25 THE COURT: SUSTAINED.

26 BY MS. CHATTEN-BROWN:

27 Q IF THE SOILS ENGINEER HAS BEEN APPRISED OF
28 THE PRESENCE OF BEDDING PLANES AND HAS IN FACT HIMSELF

1 OBSERVED THE SITE AFTER SOME EXCAVATION AND WORKERS ARE
2 PRESENT AT THE BASE OF THE EXCAVATION, WHAT SHOULD THE
3 SOILS ENGINEER DO?

4 MR. MAYOCK: OBJECTION. IT'S VAGUE.

5 THE COURT: IN WHAT WAY?

6 MR. OSBORNE: CALLS FOR SPECULATION AND CONCLUSION
7 ON THE PART OF THIS WITNESS ANYWAY AS TO WHERE THE
8 PEOPLE WOULD BE, IF THE PEOPLE SHOULD BE IN THE JOB SITE
9 OR NOT, WHAT SHOULD BE DONE.

10 THE COURT: WELL, WE HAVE A HYPOTHETICAL THAT HAS
11 BEEN POSED AND WE ACTUALLY HAVE TWO OBJECTIONS.

12 MR. OSBORNE STATED THAT IT WAS WHAT? THAT IT WAS VAGUE?

13 MR. MAYOCK: NO. I SAID IT WAS VAGUE. THERE'S
14 NOTHING INDICATING ORIENTATION OF THE BEDDING PLANES,
15 THE LOCATION OF THE BEDDING PLANES, THE EXCAVATION SITE,
16 THE LOCATION OF THE PEOPLE. IT'S JUST NOT SPECIFIC
17 ENOUGH.

18 THE COURT: SUSTAINED.

19 MS. CHATTEN-BROWN: I WILL RESTATE IT WITH THAT IN
20 MIND.

21 BY MS. CHATTEN-BROWN:

22 Q IF AN EXCAVATION WAS BEGUN EXPOSING SOUTH
23 DIPPING BEDDING PLANES AND THE SOILS ENGINEER HAD BEEN
24 APPRISED OF THAT AND VIEWED THE PREMISES HIMSELF AND IF
25 EMPLOYEES WERE WORKING AT THE BASE OF THE EXCAVATION ON
26 THE SOUTHERN SIDE, WHAT WOULD THE SOILS ENGINEER DO?

27 MR. MAYOCK: OBJECTION. IMPROPER HYPOTHETICAL.
28 THERE'S NOTHING TO INDICATE DR. HU EVER VIEWED THE

1 BEDDING PLANES OR ANYONE --

2 MS. CHATTEN-BROWN: THERE IS EVIDENCE THAT HE WAS
3 AT THE SITE AFTER EXCAVATION.

4 THE COURT: THERE WAS TESTIMONY THAT HE HAD GONE
5 TO THE SITE AFTER THE EXCAVATION HAD BEGUN.

6 MR. NASATIR: NOT WHEN WORKERS WERE IN THAT HOLE,
7 AND THAT'S THE IMPROPER PART.

8 THE COURT: ALL RIGHT. WHEN YOU SAY -- JUST A
9 MOMENT. THE IMPROPER PART IS THAT THE WORKERS WERE NOT
10 IN THE HOLE AT THE TIME HE WAS THERE?

11 MR. NASATIR: YES.

12 THE COURT: WHY DON'T YOU REPHRASE IT. WHAT'S
13 IMPROPER ABOUT THAT?

14 MR. NASATIR: BECAUSE THAT'S NOT IN EVIDENCE.

15 THE COURT: THAT THE WORKERS WERE AT THE BASE OF
16 THE EXCAVATION? THERE WAS TESTIMONY THAT THE WORKERS --
17 THE VICTIM WAS AT THE BASE OF THE EXCAVATION.

18 MR. NASATIR: NOT WHEN DR. HU WAS PRESENT.

19 THE COURT: I UNDERSTAND THAT.

20 MR. NASATIR: IN THAT REGARD, IT'S EITHER
21 IRRELEVANT OR AN IMPROPER HYPOTHETICAL IN MY WAY OF
22 THINKING BECAUSE --

23 THE COURT: SUSTAINED.

24 BY MS. CHATTEN-BROWN:

25 Q ASSUMING ALL OF THE FACTS THAT I ALREADY
26 STATED IN TERMS OF THE DIRECTION OF THE BEDDING PLANES
27 AND THE EXCAVATION AND THE SOILS ENGINEER KNOWS THAT
28 WORK IS PROGRESSING AND REPRESENTATIVES OF THE SOILS

1 ENGINEER ARE SENT OUT TO CHECK THE FOOTINGS, WHAT
2 SHOULD THE SOILS ENGINEER DO?

3 MR. OSBORNE: AGAIN, THE SAME OBJECTION. THERE'S
4 NO EVIDENCE BEFORE THIS COURT THAT THE SOILS ENGINEER
5 KNEW THE WORK WAS COMMENCING OR THAT PEOPLE WERE IN THE
6 CONSTRUCTION SITE TO TAKE ANY TYPE OF ACTION. ON THAT
7 BASIS, THERE'S NO FOUNDATION FOR HIM TO GIVE US HIS
8 OPINION AS TO WHAT DR. HU WOULD HAVE DONE.

9 THE COURT: WHAT YOU ARE STATING IS THAT THERE'S
10 NO EVIDENCE THAT THE SOILS ENGINEER KNEW THAT THE WORK
11 WAS PROGRESSING. IS THAT THE BASIS?

12 MR. OSBORNE: THERE'S NO EVIDENCE TO THAT EFFECT
13 BEFORE THE COURT AT THIS TIME TO BASE A HYPOTHETICAL ON.
14 THERE'S BEEN PEOPLE TESTIFYING AS TO WORK WAS GOING ON,
15 BUT NOBODY TESTIFIED THAT DR. HU KNEW THAT WORK WAS
16 GOING ON. THERE WAS TESTIMONY THAT MR. WHITTREY FROM
17 HIS OFFICE WAS OUT THERE AND WALKED THE SITE.

18 HE DIDN'T SAY THERE WAS WORK GOING ON. HE
19 HAD A SHOVEL AND DUG A LITTLE BIT. THERE WAS ANOTHER
20 BIT OF EVIDENCE THAT DR. HU WAS OUT THERE LOOKING AT THE
21 NORTH WALL OR THE WEST -- EXCUSE ME -- THE WEST WALL
22 WHERE THERE WAS A PROBLEM AND LEFT, BUT THAT THERE WAS NO
23 EVIDENCE AT THAT POINT THAT THERE WAS WORK GOING ON THAT
24 DR. HU WAS AWARE OF. SO THERE'S NO EVIDENCE BEFORE THE
25 COURT THAT DR. HU WAS AWARE THAT WORK WAS GOING ON TO
26 FRAME THIS HYPOTHETICAL QUESTION.

27 MS. CHATTEN-BROWN: YOUR HONOR, I WOULD ASK THAT
28 THE QUESTION BE ALLOWED SUBJECT TO MOTION TO STRIKE.