

Losses a big concern for L.A.



Ashley
HOMESTORE

labor day
 **event**



... inside, along Park Street in Paso Robles after a magnitude 6.5 earthquake

By **Kong-Gong Lin II, Rosanna Xia and Doug Smith . Contact Reporters**

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It was three days before Christmas when a magnitude 6.5 earthquake rocked the Central Coast in 2003.

Cracking like a bullwhip from the mountains, the shaking felt like an explosion in Paso Robles' historic downtown. Two women working at a clothing store were crushed to death by falling bricks and plaster as they ran out of an old building — the last people to die in a California earthquake.

The families of the women sued the property owners, who responded that the quake was an "act of God" and

that the building was in compliance with city building codes. The city had required this and other brick buildings to be seismically retrofitted, but the deadline for completion was still years away when the quake hit.

A jury awarded the families nearly \$2 million, concluding that the property owners were negligent for not making the building safer. In 2010 a state appeals court upheld the verdict, finding that the building's compliance with city law "did not insulate owners of unreinforced building from negligence in failing to retrofit building."

The question of whether property owners can be held liable for earthquake losses bears heavily on Los Angeles, where officials are considering an ambitious plan to publicly identify and require retrofits of potentially dangerous buildings. Some property owners fear that assessing the seismic risks of their buildings will create legal liability in the event of a destructive quake.

Loyola Law School professor John Nockleby called the Paso Robles decision "profoundly important."

Nockleby compared it to the hypothetical case of a building without sprinklers or fire extinguishers that is struck by lightning and catches fire.

"Well, the lightning is an act of God. We can't control that. But we can take steps," he said. "And so, in an earthquake zone, if you have a building that is susceptible to falling down or collapsing or serious damage, and you're aware that it requires retrofitting in order to withstand modest earthquakes, you could certainly be liable."

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— Juror Kelly Fontes

Earlier California earthquakes have resulted in out-of-court settlements.

In the 1994 Northridge quake, 16 residents were crushed to death when the Northridge Meadows apartment complex collapsed. The owner's insurer paid undisclosed damages to the families of the victims.

After the 1989 Loma Prieta earthquake, more than \$2.2 million was paid to the families of three workers

who were killed when a San Francisco brick building's fourth-story wall fell onto a parking lot below, leaving parked cars crumpled and twisted, according to a report at the time in the San Francisco Chronicle. Settlement amounts to the families of two others who died were not disclosed.

But the Paso Robles case has drawn much more attention from seismic safety officials and policymakers because a jury found negligence and it created case law.

Potentially hazardous

Jennifer Lynn Myrick and Marilyn Frost-Zafuto worked at Ann's Contemporary Clothing, an upscale dress shop in downtown Paso Robles.

Myrick had just turned 20 and planned to get married in a few months. Frost-Zafuto was 55. After her daughter left for college in the fall, she wanted to get out and socialize, and took delight in her retail job helping women pick dresses.

The store was inside the landmark Acorn building in Paso Robles' downtown. It was built in the 1890s out of brick, topped with an acorn-shaped clock tower.

The city did a survey of brick buildings and alerted the Acorn's owner in 1989 that it was among those that officials concluded was potentially hazardous. Three years later, Paso Robles passed a law requiring retrofits of these buildings. The Acorn building had a 2018 deadline.

The Dec. 22, 2003, quake caused the building's walls to collapse. The roof slid onto the sidewalk, taking down the clock tower. Myrick and Frost-Zafuto were crushed by bricks as they fled.

"It just looked like somebody dropped a bomb on it," Frank Mecham, the mayor at the time, recalled.

When families decided to sue, some lawyers they consulted warned they would lose.

"You had everybody out there, saying, 'You know what? This is not winnable. No way. It's an act of God,'" said Myrick's father, Leroy.

The families believed they had a case, saying the building owner was well aware of the risk of the unreinforced brick building and should have strengthened it. They also argued that the owners didn't disclose the earthquake risk to the public, as it was required to do under the law.

"Everyone wants to blame God for the earthquakes," said Myrick's mother, Vicky. "The purpose of the

lawsuit was to bring about accountability ... for these business owners that remain open knowing that their building could collapse in the event of an earthquake."

The building was owned by trusts led by Mary Mastagni. Her attorneys argued in court that it was reasonable to have not completed the retrofit by the time of the earthquake.

Mastagni's attorneys argued that the 2018 deadline "reflects a balance of safety, community interests and cost," thus providing "a legislative determination of what was reasonable," according to court documents.

The attorneys argued that the owner "had no duty to retrofit until 2018, the deadline established by ordinance," according to court records.

But the jury saw the case as one of negligence.

"We unanimously agreed, 'Yes, they were neglectful,'" juror Kelly Fontes said in an interview. "They were well aware of the condition of the building. They didn't act."

The 2nd District Court of Appeal added that the city law did not exist to protect building owners from lawsuits or provide a reason to delay retrofits.

The idea behind the retrofit law "is not the promotion of the interests of building owners. Instead, the overriding policy is public safety," the court ruled.

The California Supreme Court in 2010 denied the owners' request to review the case.

A new campaign

The question of quake liability could become an issue as Los Angeles moves forward with a new earthquake safety campaign.

Mayor [Eric Garcetti](#)'s plan to grade buildings by their earthquake risk — possibly using letter grades or a number of stars — would allow tenants and guests to know the seismic safety of every building in Los Angeles.

Garcetti has also said he wants some type of mandatory retrofit program.

Though Los Angeles has already ordered retrofits of brick structures similar to the Acorn building, the city is now considering mandatory retrofits of other potentially dangerous buildings. A Times investigation last

year found more than 1,000 older concrete buildings across Los Angeles, of which experts say as many as 50 would collapse in a major earthquake.

There are an unknown number of wood apartment buildings with weak first stories. That type of building has been a concern in Los Angeles since the Northridge Meadows apartment collapse.

Property owners say liability issues are a huge concern. Beverly Kenworthy, executive director of the Los Angeles division of the California Apartment Assn., said any retrofitting ordinance needs to come with a way to ensure that owners can pay for and complete retrofits quickly, such as through tax credits or access to low-interest loans.

"Even if you are retrofitting ... what happens if you don't get it done in time and an earthquake happens?" she said. "It's worrisome."

A grading system would be problematic, she added, unless it came with a retrofitting plan that provides financial help. Otherwise, she said, many owners would struggle to make their buildings safer on their own.

Legal experts said that property owners could be held financially responsible even if the city doesn't act.

"Willful ignorance doesn't really help you," Nockleby said. "The standard isn't, 'What did you know?' In fact, the standard is, 'What would a reasonable owner know?' And a reasonable owner is certainly aware of earthquakes."

Added Stanford Law School associate professor Nora Freeman Engstrom: "The jury will decide: Did you act reasonably? And certainly, a jury could decide you should've known — it was unreasonable for you not to act."

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