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## ATTORNEY GENERAL OF WASHINGTON

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March 27, 2009

The Honorable Steven J. Tucker  
Spokane County Prosecuting Attorney  
1100 West Malloon Avenue  
Spokane, WA 99260

Re: *Death of Jo Ellen Savage & River Park Square Parking Garage*  
Case Review

Dear Honorable Steven Tucker:

On February 19, 2009, the Attorney General's Office (AGO) received the above-referenced referral with a request to review the investigative materials provided by your office and to provide you with an opinion about whether criminal charges are warranted. The referral involved the April 8, 2006 death of Jo Ellen Savage and the River Park Square parking garage. Ms. Savage died as a result of injuries she sustained when the vehicle she was driving fell from the fifth floor of the parking garage. Eyewitness accounts and physical evidence reveal that Ms. Savage's vehicle made minimal contact with a spandrel – a divider utilized in the River Park Square parking garage. The spandrel collapsed, failing to keep her car from falling from the garage. The question the Attorney General's Office has been asked to consider is whether either the owners or operators of the River Park Square parking garage could be charged with crimes related to the death of Ms. Savage – specifically the crime of manslaughter.

You did not confer on our office concurrent jurisdictional authority over the investigation and potential prosecution pursuant to RCW 43.10.232, and your office specifically retained ultimate charging authority in this matter. Therefore, we did not conduct a separate investigation, and our review was generally limited to the materials provided by your office.

Our office received multiple inquiries, offers of assistance and additional materials from concerned citizens purported to relate to this inquiry. We are including courtesy copies of the documents we have received with the materials we are returning to you. From our conversations with you, it appears that you have already received copies of those materials from the various sources.

The materials provided and reviewed included information gathered during an investigation conducted by the United State Attorney for the Western District of Washington as well as witness statements, and various engineering reports issued over the years related to the physical



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soundness and maintenance of the parking facility. Included among the materials was a good deal of information related to the issuance of public bonds and negotiations for the sale of the parking facility. These materials were reviewed, consistent with the mandate for a limited inquiry, solely for any impact they might have upon the possible motivation or mental state of those involved with the parking facility.

As previously stated, we considered the investigation in light of the possible charges of manslaughter. Manslaughter in the First Degree requires proof that the defendant recklessly caused the death of another, while Manslaughter in the Second Degree requires proof that the defendant caused the death of another with criminal negligence. RCW 9A.32.060 and 9A.32.070. Clearly the crime of manslaughter regardless of degree is categorized as a crime against persons, therefore the applicable charging standard is set forth in RCW 9.94A.411(2):

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder.

The legal standard applicable in this case, as with any criminal case is proof beyond a reasonable doubt. This case presents an additional layer of complexity in that it involves potential charges against a corporate entity or the owners, officers or principals of that entity.

A corporate entity is subject to the criminal law in Washington State to the same extent as any citizen. For purposes of the criminal code the definition of person includes "a corporation, joint stock association, or an unincorporated association." RCW 9A.04.110(17). Further, corporate liability and the criminal liability of the owners, directors, officers, employees or those authorized to act on behalf of a corporation is similarly provided for in the Revised Code of Washington. See RCW 9A.08.030. The corporate and personal liability provisions applicable to this matter are:

(2) A corporation is guilty of an offense when:

\* \* \*

(b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and on behalf of the corporation; or

\* \* \*

(3) A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.

The materials provided did not fully develop the issue of the corporate governance structure, or how specific actions or failures could be assigned to an individual, so I highlight that as a limitation of this review and a possible complication with the filing of criminal charges in this case.



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As noted above the crime of manslaughter has a *mens rea* requirement of either recklessness or criminal negligence depending upon the degree of the offense. These *mens rea* are defined at RCW 9A.08.010:

(c) RECKLESSNESS. A person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and his disregard of such substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation.

(d) CRIMINAL NEGLIGENCE. A person is criminally negligent or acts with criminal negligence when he fails to be aware of a substantial risk that a wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.

At issue in this case are the structural integrity and maintenance of the reinforced concrete spandrels which are used in the River Park Square parking garage. It was the failure of one such spandrel which resulted in the death of Jo Ellen Savage. These spandrels are employed within the River Park Square parking garage to separate the outer parking stalls from the exterior of the garage. It is a matter of dispute whether the spandrels are actually 'vehicle barriers' as that is a term of art carrying with it code and engineering requirements. The materials provided do not sufficiently explore whether the spandrels are in fact vehicle barriers (specifically whether they are attached to the load bearing structure and designed in such a way as to transfer a force applied to them to the structure), so this review will not resolve that issue.

The structural integrity and maintenance of the garage in general is a matter of some dispute with opinions ranging greatly in both the materials provided by the Spokane County Prosecuting Attorney's Office and the additional materials submitted to our office. Given the limited scope of our review, I will confine myself here to the spandrels themselves since it was the failure of one such spandrel that resulted in the death.

It appears to be undisputed that at the time the River Park Square parking garage was originally built (early 1970s) the building code in force at the time did not place technical design restrictions on the spandrels. Subsequent building codes have, however, set forth design and performance requirements for the spandrels. Specifically, the 1997 Uniform Building Code and the 2003 International Building Code address these requirements. These codes require that the spandrels be capable of resisting a single load of 6,000 pounds applied horizontally in any direction.

An engineering study was commissioned shortly after the April 8, 2006 death. Wiss, Janney, Elstner and Associates completed both an as designed and as built analysis of the spandrels. The study found that as designed the spandrels had a load capacity of 17,600 pounds. The analysis further concluded that the spandrels had a load capacity of 8,400 pounds, as built. The disparity



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is largely attributed to the placement of the reinforcing steel bars within the spandrel itself, with deviations from placement along the neutral axis resulting in reductions in the strength and flexibility of the spandrel. It is important to note that engineering studies conducted after the April 8, 2006 death show some significant deviation in the placement of the reinforcing steel resulting in reductions in strength and ductility, however, it must be remembered that such placement is a so-called hidden defect in that it would not be obvious to the owners or operators of the parking facility.

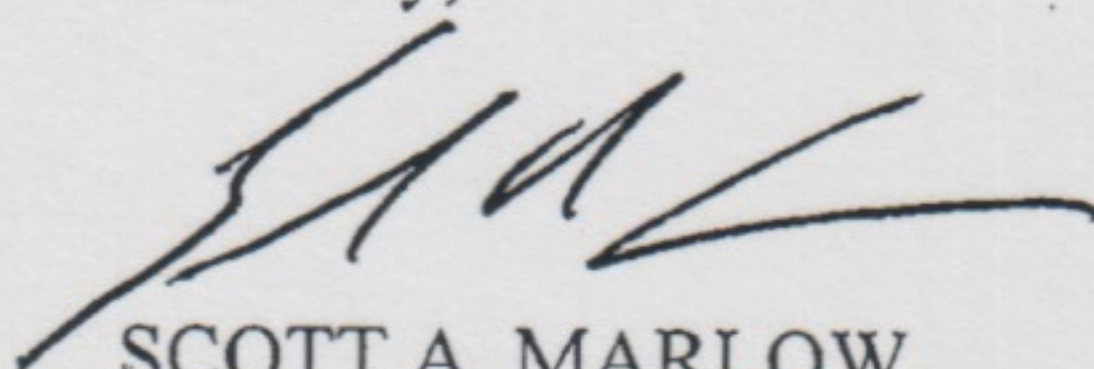
The materials presented contain what can fairly be described as a substantial number of engineering studies and opinions issued with regard to the River Park Square garage, some dating back to the early 1990's. Some of those studies are critical of the owners and operators of the facility for failure to maintain the garage. Many of the studies focus on the failure, either catastrophic or simple cracking, of the spandrels. The existence of these reports and studies can be viewed as an indication that the owners and operators of the parking facility were aware of the potential issues with the spandrels.

The fact remains, however, that the majority of these reports and studies conclude, as did the Wiss, Janney, Elstner and Associates study, that the spandrels meet the applicable building code. The Wiss, Janney, Elstner and Associates study was undertaken shortly after the April, 2006 incident and it concludes that both as designed and as built the spandrels met the applicable building code, and that maintenance of the facility did not play a role in the incident.

In light of these conclusions it will be difficult to establish beyond a reasonable doubt that Jo Ellen Savage's death was caused by either the criminal recklessness or criminal negligence of the parking facility owners or operators. Specifically, it would be difficult to prove beyond a reasonable doubt that the actions or inaction of the owners or operators of the parking garage constituted a gross deviation from the standard of care that a reasonable person would exercise in the same situation. Since your office has retained jurisdiction in this matter I will reserve a final opinion as to whether the applicable charging standards is set forth in RCW 9.94A.411 are met in this case.

I appreciated the opportunity to assist your office in this important inquiry, and I hope that our review has served some useful purpose. Should you wish to discuss this matter further, please do not hesitate to call.

Sincerely,



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