

IRWIN, MYKLEBUST, SAVAGE & BROWN, P.S.

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CLAUDE K. IRWIN
1912 - 2005

* ALSO ADMITTED IN IDAHO
** ALSO ADMITTED IN MASSACHUSETTS
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March 19, 2009

Scott A. Marlow
Assistant Attorney General
800 Fifth Avenue #2000
Seattle, WA 98104-3188

VIA EMAIL
scottm4@atg.wa.gov

RE: DEATH OF JO ELLEN SAVAGE

April 8, 2006

Dear Mr. Marlow:

Spokane County Prosecutor Steve Tucker advises he has requested that the Washington Attorney General's Office independently determine whether there are grounds for a criminal prosecution with respect to the death of Jo Ellen Savage on April 8, 2006. I understand this work has been assigned to you.

Jo Ellen Savage and I were formerly married; she and I enjoyed a good relationship after our marriage was dissolved. Together with Sally Savage, my wife, Jo and I raised our son Jesse A. Savage.

On Jesse's behalf, my firm brought a civil claim as to River Park Square and the Cowles, its owners. As I trust you know, the estate and wrongful death claims were settled for more than \$1.6 million. While the money is of no comfort, it provides a good measure of the culpability the insurers for the Cowles recognized with respect to this tragic and unnecessary death.

While a number of persons and associations have kept Jo's death in the media in an effort to advance their contention that this downtown Spokane restoration project was improperly financed, my family and I have avoided the media, relying upon the judicial system.

Consistent with this reliance, neither Sally nor I have made any effort to take advantage of our positions or relationships, whether through my service as a past President of the Washington State Bar Association, Sally's past service as a Senior Assistant Attorney General or our shared long acquaintance with Governor Gregoire.

Our goal was and remains to secure a competent, independent, non-political evaluation of the conduct of those responsible for the garage.

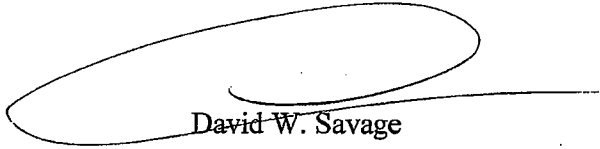
Scott A. Marlow
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It is important, however, that all those responsible for this matter understand I firmly believe the information placed in Mr. Tucker's hands, and now yours, (which includes the fruits of my work, the work of the United States Attorney for the Western District of Washington, the Federal Bureau of Investigation and a Grand Jury), clearly describes culpable criminal conduct. The owners of the garage knew for years prior to Jo's death of the very structural infirmity that resulted in it. Nevertheless, they chose not to correct the problem. I have attached to the email transmitting this a copy of my partner Robert Rembert's letter of September 17, 2008, which provides a bit more detail.

Given the rapid approach of the third anniversary of Jo's tragic and unnecessary death, please know that I am available to provide any information you might need to fairly, fully and carefully evaluate this tragedy.

Yours very truly,

IRWIN MYKLEBUST SAVAGE & BROWN, P.S.



David W. Savage

DWS: amm

cc: Governor Christine Gregoire (w/enc.)
Steven J. Tucker, Spokane County Prosecutor (w/out enc.)

Attachment:

Robert Rembert September 17, 2008, Letter

07/ZR/LP/RP/PS/Csp/AG/031909

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September 17, 2008

Steve Tucker
Spokane County Prosecuting Attorney
Public Safety Building, 1st floor
1100 West Mallon
Spokane, WA 99260

**VIA U.S. MAIL AND FACSIMILE:
509-477-3409**

Dear Mr. Tucker:

As you may know, together with David W. Savage, I represented the Estate of Jo Ellen Savage on wrongful death and survival claims as to the Cowles. You know that Ms. Savage died on April 8, 2006 when her Subaru fell five stories from the River Park Square (RPS) parking garage following a minor contact with an exterior barrier known as a spandrel. Despite the fact that the contact was foreseeable and slight, the garage failed to retain the automobile.

So slight was the contact that the right front portion of the vehicle sustained only contact marks and no deformation (the composite bumper, plastic headlight and fog lights were intact).

It is my understanding that Robert Westinghouse, Assistant United States Attorney for the Western District of Washington, has provided you with a good deal of the information with respect to the occurrence garnered in his investigation, work aided by the F.B.I. He advises that the information provided to you includes evidence adduced before the grand jury.

On behalf of the Savage family, I write to offer assistance from our files which support the settlement we achieved on the claims of one million six hundred and ten thousand dollars (\$1,610,000.00) with the insurers for the Cowles. Based upon our investigation, it is clear that the owners of the parking garage had longstanding and detailed knowledge that the spandrels were likely to fail as the result of foreseeable vehicular contact. Despite this knowledge, the owners took no corrective action notwithstanding the fact that several engineers recommended it well prior to Ms. Savage's death.

I trust the information provided by the United States Attorney's office includes a declaration by Rex Franklin. The declaration makes it clear that since at least 1990 the garage owners had actual knowledge that not only were the spandrels deficient, but they were failing in use, raising a clear public danger. As you may have already noted on review of the declaration, in the 1990's Franklin marked questionable spandrels for replacement with red spray paint. Nevertheless, this

work was not undertaken and, according to him, the decision was motivated purely by economics. The spandrel that failed Jo Savage had been marked for replacement.

Franklin's declaration records a number of other serious incidents, at least one of which included the possibility of serious injury.

As I trust you know, the garage owners engaged Atwood-Hinzman, Inc., consulting engineers, to evaluate the "precast exterior curb and wall," in order to determine 'their structural integrity.' The report records cracking, displacement, spalling, and deterioration of the panels, noting that 'the concrete used in these precast panels is obviously poor in some way.' It goes on to suggest that the panels 'should be replaced as we cannot determine the strength of the failed panels.' Atwood's work continued in an effort to explain the fact that the spandrels were failing on low-speed vehicular contact, noting:

'In our opinion, the panels are not resisting the required lateral load of 6000# although the engineering analysis indicates that they should.'

'It is our understanding that several panels cracked in the past when they were struck in a similar way. Based on this information, it appears that a problem exists.'

'There are two logical solutions to the problem:

- (1) Remove and test load a panel to failure so the load capacity can be established.
- (2) Assume that the panel will fail and add steel cables to stop vehicles before they impact the panels.'"

Although the garage continued to be dogged by spandrel problems, the owners did not act upon the Atwood recommendations.

The Walker Report of 1996 and the N.G. Jacobson & Associates report of 2003 were each similarly critical of the integrity of the spandrels. Indeed, Mr. Jacobson wrote in his report, "[t]he long term strength and safety of the pre-cast spandrel connections with continued concrete deterioration and steel corrosion is a concern in both the old and new garage addition."

Despite the fact that more than sixteen years had elapsed between the time of the first occurrence of which we know and April 2006 and several engineering recommendations had been made to revise the spandrels, the owners took no action to address this serious public safety issue of which they had specific knowledge.

Given these facts, I trust you can understand why we feel strongly that this matter warrants a careful criminal investigation. Because of the Cowles' prominence and the City's involvement

September 17, 2008

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with the garage, is imperative that your investigation be supported by the Washington State Patrol, a law enforcement agency of the highest integrity.

We will make our files available to you. These files include a careful reconstruction of the occurrence by John Habberstad, Ph.D, of Origin Engineering, who concluded that the speed of Ms. Savage's vehicle on contact was less than five miles per hour (a speed and impact insufficient to deploy the vehicle's air bags). Our files contain extensive photographs of Ms. Savage's vehicle, the garage, and the failed spandrel. We also have copies of all of the media video coverage at the time of the occurrence. Finally, we have a number of witness declarations and extensive interview notes.

We look forward to your professional and careful investigation of Jo Savage's death, a death which need not have occurred. Please feel free to contact me or Mr. Savage.

Yours very truly,

IRWIN MYKLEBUST SAVAGE & BROWN, P.S.



Robert W. Rembert

RR: amm

05/ZRAPUESLtr Steve Tucker 091208