

**STRINDBERG & SCHOLNICK, LLC**  
*Attorneys at Law*

August 12, 2009

**CONFIDENTIAL AND PRIVILEGED PURSUANT TO I.R.E. & F.R.E. 408**

**Sent Via Certified Mail**

Ben Ysursa, Secretary of State  
State of Idaho  
304 North 8<sup>th</sup> Street, Room 149  
PO Box 3720  
Boise, ID 83720-0080

*Re: Notice of Claim - Pamela Lowe*

Dear Secretary Ysursa:

This letter constitutes notice of claims pursuant to Idaho Code § 6-901 *et seq.* with respect to Ms. Lowe's claims against Idaho Transportation Department ("ITD"), an executive department of the State of Idaho. Although many of Ms. Lowe's claims are exempt from the notice requirements of § 6-901, we are providing notice of those claims as well.

Ms. Lowe began working for the Idaho Transportation Department as a Construction Associate in September of 1993. In 2000 Ms. Lowe was promoted to District Engineer position, and in 2004 she became the Administrator of the Division of Motor Vehicles. In September 2006, Ms. Lowe was promoted to the Deputy Director of ITD and a few months later, in December of 2006 Ms. Lowe was offered the ITD Director position.

As I am sure you are aware, the Idaho Transportation Board (the "Board") is established pursuant to Idaho Code § 40-301 and is "vested with authority, control, supervision and administration of the department created and established by this title." The Board is composed of seven (7) members appointed by the Governor. I.C.A. § 40-302. The Director of the Department is appointed by the Board pursuant to Idaho Code § 40-503 which provides that, "The director shall serve at the pleasure of the board and may be removed for inefficiency, neglect of duty, malfeasance or nonfeasance in office." Throughout her tenure as ITD's Director, Ms. Lowe received satisfactory performance evaluations and was never informed of any deficiencies in her performance. Ms. Lowe's March 2008 review, which was the last review she received before she was terminated, concluded that Ms. Lowe "achieves solid sustained performance."

Nonetheless, on May 11, 2009, Board Chairman Mr. Manning asked Ms. Lowe for her resignation. He told her that ITD was in good shape, that she was doing a good job running the department, but that there was some unhappiness with her political relationships. Ms. Lowe subsequently met with the Board and asked why she was being asked to resign. Once again, Mr. Manning and the other Board members stated that although she was performing well, some politicians were concerned with Ms. Lowe's leadership. Beyond these vague statements she was not provided with any specifics. Ms. Lowe told the Board that she was unwilling to voluntarily resign from her position and that the reasons given by the Board for her to do so were insufficient and its allegations unsubstantiated. On July 16, 2009 the Board voted unanimously to terminate Ms. Lowe's employment with ITD effective July 31, 2009, although grounds for her dismissal, as defined by statute, did not exist. The Board also refused to hold any sort of hearing or otherwise give Ms. Lowe the ability to challenge her termination.

Based on the above, Ms. Lowe has claims for violation of her due process and liberty rights under both the United States and Idaho State Constitutions. Specifically, she was deprived of her property interest in her employment and her liberty interest in her good name and reputation without due process. She was also denied both a pretermination hearing as well as a sufficient notice and a full and fair post-termination hearing with respect to her termination.

Moreover, given comments made by Board members with respect to Ms. Lowe, she also has a claim for gender discrimination. Specifically Board member Gary Blick made derogatory statements with respect to Ms. Lowe's gender at the time the board was considering her appointment to the Director position. Mr. Blick stated that "no little girl would be able to run this department" or words to that effect. Mr. Blick also questioned Ms. Lowe's appointment by rhetorically asking, "What are we going to do when she [Ms. Lowe] decides to start a family?" These comments give rise to claims under both the federal and state constitutional provisions protecting Ms. Lowe's equal protection rights as well as claims pursuant to Title VII of the Civil Rights Act of 1964 and the Idaho Human Rights Act.

Furthermore, Ms. Lowe has breach of contract and breach of the covenant of good faith and fair dealing claims for the Board's decision to terminate her without sufficient cause pursuant to Idaho Code §40-503. Even though Ms. Lowe's appointment is intended to be shielded from the political whims of elected officials, it clear that politics played a role here. The political motivations include both a waste of funds issue that jeopardized the pocket books of large campaign contributors of both Governor C. L. "Butch" Otter and Senator John McGee (further outlined below), and the fact that Senator McGee's friend, Julie Pipal, was forced out of ITD due to performance issues. In fact, Senator McGee introduced a bill in the 2009 session that would have politicized the Director by stripping the Board of its role in appointing and removing the Director and given that power to the Governor.

Ms. Lowe also has a whistleblower claim pursuant to Idaho Code § 6-2101 *et seq.* In 2006 URS-Washington Group Division and CH2M HILL company, together known as Connecting Idaho Partners ("CIP"), were selected by the Board to be Program Managers ("PM")

for ITD's Grant Anticipation Revenue Vehicle bond program ("GARVEE"). The initial contract was worth approximately \$50 million dollars. At the time, Washington Group, CH2M Hill and members of both company's board of directors and staff and their families were significant campaign contributors to Governor C. L. "Butch" Otter and Senator McGee.

During the February 2007 Joint Finance and Appropriations Committee hearing regarding ITD's budget, Ms. Lowe told legislators that she would take a detailed look at the CIP contract and renegotiate the terms to reduce it and move as much work as possible in-house at ITD. Shortly after this presentation, Ms. Lowe and Mr. Manning were called into a meeting with Jeff Malman, then Governor Otter's Chief of Staff. Mr. Malman was extremely upset and told Ms. Lowe that she should not have said she would renegotiate the CIP contract. Sometime after this meeting, Mr. Manning also told Ms. Lowe that she "needed to be careful with CIP," and that the "Governor could be compromised."

Ms. Lowe was not deterred by these threats and was determined to do what was in the best interest of the State of Idaho and its citizens. Later that year during a renegotiation period with CIP, she had ITD take several of the projects away from CIP to administer them in-house. And in the summer 2008, Ms. Lowe directed her staff to implement ways that ITD could take back program management so as to phase out the CIP contract as quickly as possible. In Fall 2008, Mr. Manning once again told Ms. Lowe that her she should not take the Program Management back from CIP because the Governor would not like it.

The CIP contract negotiations were rescheduled to begin after the 2009 legislative session. However, on May 11, 2009, just three (3) days after the 2009 Idaho legislative session ended, Mr. Manning approached Ms. Lowe asking her for her resignation. The Board terminated her on July 16, 2009, before she had a chance to cut back the CIP contract and eliminate waste of funds.

Ms. Lowe has been injured and has suffered, and will continue to suffer, significant damages as a result of her termination. These damages include: lost wages and benefits (both back and front pay); compensatory and emotional distress damages; consequential damages; attorney fees and costs; and potentially punitive damages against certain individual board members. Ms. Lowe's reputation and standing in the community has also been severely damaged and she will seek compensation for that as well. Ms. Lowe also intends to seek injunctive relief including reinstatement. As many of Ms. Lowe's damages are ongoing and will continue into the future, the amount of her damages is unknown. However, her lost wages and benefits through the end of August 2009 are estimated at \$18,267, and her attorneys fees and costs to date are approximately \$8,000.

Ms. Lowe, who was at all relevant times, and still is, a resident of Ada County, Idaho can be contacted via my office. If you have questions or need additional information, please contact me directly.

Sincerely,

**STRINDBERG & SCHOLNICK, LLC**

A handwritten signature in black ink that reads "Erika Birch". The signature is written in a cursive style with a large initial "E".

Erika Birch

cc: client  
Karl Vogt, Lead Deputy Attorney General  
Idaho Transportation Department  
[karl.vogt@itd.idaho.gov](mailto:karl.vogt@itd.idaho.gov)