

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

PAUL WARREN BUCK, II)	
)	
Plaintiff,)	
)	
v.)	Case No.: CL25000841-00
)	
CITY OF RICHMOND,)	
)	
Defendant.)	

PLAINTIFF’S MOTION FOR SPOILIATION OF EVIDENCE JURY INSTRUCTION

Plaintiff in accordance with Va. Code § 8.01-379.2:1(B), respectfully moves the Court for an adverse-inference jury instruction due to spoliation of critical evidence. Plaintiff requests that the Court instruct the jury as follows with respect to the missing railing evidence:

The City of Richmond had a duty to preserve evidence that was relevant to the issues in this case. The City of Richmond failed to take reasonable steps to preserve the metal railing that failed on December 16, 2024. You may presume that the missing evidence would have been unfavorable to the City of Richmond.

Virginia Code § 8.01-379.2:1 imposes a duty on parties and potential litigants to preserve evidence relevant to foreseeable litigation and authorizes courts to instruct juries with an adverse inference when such evidence is spoliated. As detailed below, the City of Richmond violated this duty by failing to preserve the broken railing, despite clear notice that litigation was likely.

On December 16, 2024, Paul Buck suffered a fall of approximately seven feet from the front porch of the Richmond Public Library after a metal safety railing gave way beneath him. This failed railing – including its corroded base and attachment points – was the critical physical evidence of the hazard that caused Mr. Buck’s injuries. After the incident, the City (through its Department of Public Works (DPW) and contractor) removed and discarded the broken railing.

At the time of the incident and in the weeks immediately following, litigation was reasonably foreseeable to the City, and the City was explicitly put on notice to preserve the railing:

- Notice of Claim (Exhibit 1): Plaintiff served the City with a formal Notice of Claim pursuant to Virginia Code § 15.2-209. This notice alerted the City that Mr. Buck was making a legal claim for injuries “as a result of the City’s negligence in maintaining the railings” at the library, and it was provided within weeks of the incident, well within the statutory notice period. The notice of claim underscored the likelihood of litigation and should have reinforced the importance of preserving the railing as evidence.
- Preservation Letter (Exhibit 2): Plaintiff’s counsel also sent a preservation letter to the City Attorney on December 31, 2024, invoking Va. Code § 8.01-379.2:1 and expressly requesting that the City “preserve any and all evidence related to this incident, including but not limited to” incident reports, maintenance records, and “[a]ny photographs or video recordings of the railings taken before, during, or after the incident.” The letter expressly warned that failure to preserve such evidence “may constitute spoliation of evidence.”
- FOIA Request (Exhibit 3): Even before the above letters, on December 19, 2024, Plaintiff submitted a Freedom of Information Act request to the City (through the Richmond Public Library) seeking, among other records, “any . . . internal incident or injury reports taken on the date of loss, and any videos or pictures taken pertaining to the above-referenced incident.” (Exhibit 3). This FOIA request put the City on notice that Plaintiff was actively seeking documentation of the railing’s condition. In response, the City produced an incident report and some security video footage, but no photographs of the failed railing were provided, indicating that none were taken or preserved by the City.

Despite these multiple notices and requests, the City failed to preserve the very piece of evidence that lies at the heart of this case. The broken railing itself was lost when the City's contractor hauled it away as scrap within days of the incident. City officials have confirmed, by way of deposition, that the contractor "disposed of all of the railings when they replaced" the porch railings, and that "no one told [them] to reserve [the pieces] for litigation."

Moreover, the City has produced no photographs or other documentation showing the condition of the failed railing's base or mounts before it was removed. Mr. Buck and his experts, as a result, have been deprived of the best evidence of the railing's corrosion and weakness. The City's own DPW representative (Jeffery Simon) admitted at deposition that he never personally inspected the broken railing. In that deposition, Mr. Simon would not even concede that the railing was badly corroded, suggesting that what appears to be rust in post-incident photos "could be discoloration" and noting that he couldn't confirm the condition because he "didn't put [his] eyes on" the railing at the time. The City, however, is contesting the condition of the railing – implying the railing might not have been obviously defective – even though it was the City's own failure to preserve the railing that prevents the parties from examining the actual physical evidence today.

The City's Spoliation Warrants an Adverse Inference Instruction

Under the facts of this case, all prerequisites for a spoliation remedy under Va. Code § 8.01-379.2:1 are met. The City had a clear duty to preserve the failed railing and evidence of its condition, yet it failed to take reasonable steps to do so, resulting in the permanent loss of highly probative evidence. Plaintiff has suffered prejudice as a result, because the missing railing is key to proving the City's negligence (e.g. the extent of corrosion and hazard) and to rebutting the City's defenses. An adverse inference jury instruction is justified and necessary to cure that prejudice.

The consequence of the City's inaction is that the evidence cannot be restored or replaced. The metal railing itself is gone forever – it cannot be restored or replaced through additional discovery. No 3D scans, detailed measurements, or physical analysis of the railing's fractured metal or corrosion are possible. This missing evidence squarely prejudices the Plaintiff's ability to fully prove the dangerous condition of the railing and the City's notice of that condition. It also hampers Plaintiff's ability to rebut any suggestion by the City that the railing's failure was caused by something other than long-term corrosion (for example, excessive force or misuse) – a theory Plaintiff could have definitively disproven by testing the actual railing, had it been preserved.

Virginia Code § 8.01-379.2:1(B)(i) empowers the Court to order measures to cure such prejudice when evidence that “should have been preserved” is lost. Here, the prejudice to Plaintiff is clear and significant: a central piece of physical evidence is missing, and its absence hinders Plaintiff's case while potentially allowing the City to speculate about the evidence's true import. No lesser measure than an adverse inference will adequately cure this prejudice. Simply put, without a jury instruction, the City could benefit from its own spoliation by arguing a lack of proof about the railing's defect or by inviting jurors to wonder whether the railing was really in poor condition. An instruction is needed to level the playing field, permitting the jury to infer that the missing evidence would have confirmed Plaintiff's claims about the railing's hazardous state.

For the foregoing reasons, Plaintiff respectfully asks that the Court grant this Motion and give the jury a spoliation or missing evidence instruction as outlined above, permitting the jury to infer that the missing railing and any related photographs would have been unfavorable to the City.

PAUL WARREN BUCK, II

By: 
Counsel

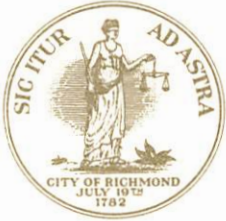
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gray@graybroughton.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that I sent the foregoing on October 21, 2025 by email and fax to:

Shannan M. Fitzgerald, Esq. (VSB No. 90712)
Monica J. Malouf, Esq. (VSB No. 97097)
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219
Telephone: (804) 646-7953
Facsimile: (804) 646-5743
Monica.Malouf@rva.gov
Shannan.Fitzgerald2@rva.gov
Counsel for Defendant City of Richmond


Counsel



CITY OF RICHMOND
OFFICE OF THE CITY ATTORNEY
900 EAST BROAD STREET, SUITE 400
RICHMOND, VIRGINIA 23219

TELEPHONE 804-646-7940
TELECOPIER 804-646-7939

EXHIBIT

1

LAURA K. DREWRY
CITY ATTORNEY

WIRT P. MARKS
DEPUTY CITY ATTORNEY

January 3, 2025

Broughton Injury Law
Attn: Sharif L. Gray
9701 Gayton Road, Suite 12
Henrico, VA 23238

Re: Paul Buck
Date of Incident: December 16, 2024

Dear Mr. Gray:

Without waiving any defenses, this will acknowledge receipt of your letters dated December 31, 2024, regarding the above-referenced matter. Your claim has been forwarded to CorVel Corporation, the City's Third-Party Administrator for handling.

Any inquiries or concerns regarding the status of the claim should be directed to CorVel at 800.365.5998 or emailed to GM-CHNC-CLT-LIA-HUB@CORVEL.com.

Sincerely yours,

/s/

Wirt P. Marks
Deputy City Attorney

WPM:dwl

cc: CorVel
Risk Management
File



Sharif L. Gray
Direct: (804) 613-3800
Fax: (804) 250-5069
sharif@graybroughton.com

December 31, 2024

Laura K. Drewry, City Attorney
900 East Broad Street, Suite 400
Richmond, VA 23219

Re: Notice of Claim Pursuant to Virginia Code § 15.2-209

Client Name: Paul Buck
Incident Location: Richmond Public Library
101 E Franklin St, Richmond, VA 23219
Incident Date: December 16, 2024

Dear Ms. Drewry:

Please accept this letter as notice of Paul Buck's claim against the City of Richmond in accordance with Virginia Code § 15.2-209. As a result of the City's negligence in maintaining the railings at the Richmond Public Library (101 E Franklin St, Richmond, VA 23219), on December 16, 2024, Mr. Buck fell approximately seven feet suffering serious personal injuries.

Please consider this letter a timely notice under Virginia Code § 15.2-209, as it is being provided within six months of the date of the incident.

Please confirm you received this notice. Should you have any questions, please do not hesitate to contact me at (804) 613-3800 or at sharif@graybroughton.com.

Sincerely,

Sharif L. Gray

Enclosures:

1. FOIA Request to RPL Concerning "Incident Occurring on 12/16/24"
2. City of Richmond Incident Report Form

The Broughton Law Firm, PLLC
9701 Gayton Road, Suite 12, Henrico, VA 23238
Phone: 804.613.4333 | Fax: 804.250.5069



Sharif L. Gray
Direct: (804) 613-3800
Fax: (804) 250-5069
sharif@graybroughton.com

December 31, 2024

Laura K. Drewry, City Attorney
900 East Broad Street, Suite 400
Richmond, VA 23219

Re: Request for Preservation of Evidence for the City of Richmond

Client Name: Paul Buck
Incident Location: Richmond Public Library
101 E Franklin St, Richmond, VA 23219
Incident Date: December 16, 2024

Dear Ms. Drewry:

Our law firm represents Paul Buck, who was seriously injured on December 16, 2024, at the Richmond Public Library located at 101 E Franklin St, Richmond, VA 23219. Virginia Code § 8.01-379.2:1 provides that a “potential litigant has a duty to preserve evidence that may be relevant to reasonably foreseeable litigation.” As such, I respectfully request that you preserve any and all evidence related to this incident, including but not limited to:

1. Incident Reports and Complaints: All reports, complaints, or records regarding the December 16, 2024 incident, prior complaints about the railings, and any similar incidents or injuries at the library.
2. Maintenance and Inspection Records: All records related to maintenance, repairs, inspections, and structural assessments for the railings or similar safety features at the library or comparable public buildings from January 1, 2019, to December 31, 2024.
3. Photographs and Videos: Any photographs or video recordings of the railings taken before, during, or after the incident and during the past five years.
4. Policies and Procedures: Copies of all policies, guidelines, or procedures regarding safety inspections, maintenance, repair, hazard mitigation, and fall prevention for public facilities.
5. Contracts and Agreements: Copies of contracts or agreements with vendors or contractors responsible for inspection, maintenance, or repair of the railings or library infrastructure.

6. Training Records: Records of training provided to employees or contractors responsible for maintenance or safety inspections at public facilities, including the library.
7. Budget Documents: Budgets or financial records related to maintenance or repair allocations for the Richmond Public Library.
8. Internal Communications: Emails, memos, or other communications discussing the condition of the railings or other safety issues at the library.
9. Insurance Information: Records of any insurance policies or claims related to injuries occurring at the library.
10. Permits and Approvals: Copies of permits or approvals for renovations, repairs, or maintenance work at the library during the past five years.
11. Meeting Records: Minutes, notes, or agendas from City meetings discussing the library's condition or safety issues.
12. Comparable Complaints or Records: Records of complaints, lawsuits, or maintenance issues related to unsafe conditions at other City-managed public properties.

Failure to preserve any and all evidence related to this incident, including but not limited to the evidence identified above, may constitute spoliation of evidence and could result in claims for damages as well as evidentiary and monetary sanctions.

Please confirm receipt of this letter. Please also forward a copy of this letter to your liability insurance carrier and to all persons and entities with custodial responsibility for the evidence referred to in this letter. If any of the requested evidence is not available, please inform us in writing as to the reason for their unavailability.

Should you have any questions or need additional information, please do not hesitate to contact me at (804) 613-3800 or sharif@graybroughton.com.

Thank you for your cooperation in this matter.

Sincerely,



Sharif L. Gray



Sharif L. Gray
Direct Dial: 804.613.3800
Direct Fax: 804.250.5069
sharif@graybroughton.com

December 19, 2024

Via Electronic Mail:

Mr. Scott Firestine, Director
Richmond Public Library
101 E. Franklin Street
Richmond, VA 23219
Email: scott.firestine@rva.gov

Re: **FOIA Request**
My Client: Paul Buck
Date of Incident: 12/16/2024
Location of Incident: Richmond Public Library – Main Library
101 E. Franklin Street, Richmond, VA 23219

Greetings:

Our firm represents the above client for personal injuries and damages received as a result of the above-referenced incident.

Under the Virginia Freedom of Information Act §2.2-3700 et seq. of the Code of Virginia, I am requesting an opportunity to obtain copies of public records including any and all citizen complaints or reports of damage to the outside stairways/railings within the past 5 years, maintenance or service reports for repairs to the outside stairways/railings within the past 3 years, invoices from any third-party maintenance/construction/repair companies that recently was or currently is working on the property, any internal communications referencing the above incident or our client, internal incident or injury reports taken on the date of loss, and any videos or pictures taken pertaining to the above-referenced incident.

If there are any fees for searching or copying these records, please submit an invoice and I will see that it is promptly paid. Should you have any questions, or need additional information, please do not hesitate to call.

Sincerely,

Sharif L. Gray