

Exam:	[REDACTED]
Exam Form:	C2502

Response

To: Mrs. Jamison

From: Applicant

Date: February 25, 2025

Re: Jamison v. Sunrise Ladder Co., Inc.

Good afternoon Mrs. Jamison,

Introduction

This letter will address two points: firstly, whether you may obtain default judgment or other sanctions against Sunrise Ladder Co., Inc. (hereinafter "Sunrise") based on their failure to preserve the allegedly defective run locks and secondly, whether you can bring an independent tort action against Adadvanced Testing, LLC (hereinafter "Advanced") based on their destruction of the rung locks.

1. You will likely be able to obtain other sanctions against Sunrise

Based on Dr. Samuel Stein's deposition, where he stated that "as [he] recall, they specifically instructed us not to return them, but to destroy them," when asked why the rungs were not returned after testing, there is sufficient evidence to show that Sunrise failed to preserve the allegedly defective rung locks.

The Court of Appeals in *Sabrina Brown v. Waldrop Truck Leasing Corp.*, heard a similar case to yours where a widow brought a cause of action for wrongful death on behalf of her husband after he was killed in an accident while driving a semi-truck leased by his employer. Similarly, important evidence in the case was destroyed by a third party. In the aforementioned case, Waldrop destroyed the burnt truck remains that had been stored in a salvage yard for almost 20 months prior to Mrs. Brown filing a cause of action against Waldrop for negligent repair and maintenance, strict liability, and breach of implied warranty.

The court of appeals in this case stated that, "default represents the most severe sanction available to a court against a defendant, and therefore should only be exercised where there is a showing of bad faith and where lesser sanctions will not suffice" *Waldrop Truck Leasing Corp.* However, the court also indicated the trial court's broad discretion to impose sanctions. These sanctions vary in degrees from least restrictive to the most restrictive, with default judgment being the most restrictive sanction. In the aforementioned case, the court of appeals, imposed the least restriction

Additionally, the court of appeals in *Waldrop Truck Leasing Corp.* established a five factor test in "considering whether sanctions are warranted, the court must consider: (1) whether the party moving for sanctions was prejudiced as a result of the destruction, alteration, or non-preservation of the evidence; (2) whether the prejudice could be cured; (3) the practical importance of the evidence; (4) whether the party responsible for the destruction, alteration, or non-preservation acted in good faith or bad faith; and (5) the potential for abuse if testimony about the evidence is not excluded." As broken down below,

you may have sufficient evidence to establish that you have been harmed as a result of Sunrise's failure to preserve the evidence.

a. Whether the party moving for sanctions was prejudiced as a result of the destruction

Here, there is sufficient evidence to establish that you will be prejudiced because the rung locks were a material part of your case. The rung locks no longer exist after Sunrise examined them. Professor Juan Hernandez's ability to test them as your expert witness will likely disenfranchise you because you do not have access to material information.

On balance, it may be established that you will be prejudiced.

b. Whether the prejudice could be cured

Here, you may be able to establish that the prejudice would be cured through default judgment. However, as established this is the most restrictive sanction. Unlike Mrs. Brown, you filed your wrongful death claim quickly, and Sunrise was not disadvantaged by storing this evidence. On balance, the remedy to this may be the most restrictive sanction, however because courts have broad discretion and default judgment is deemed to be a harsh punishment, this may not be as likely.

Nevertheless, you will likely succeed in a motion for sanctions because there is sufficient evidence you have been prejudiced. Courts use the aforementioned balanced test to determine so and you have established a clear prejudice.

"Sanctions for spoliation, courts may dismiss a case in its entirety against a plaintiff or enter a default against a defendant, exclude expert or other testimony concerning the evidence, or impose a jury instruction on spoliation of evidence that raises a presumption against the spoliator." Brown.

These sanctions are listed in ascending order and you may be entitled to the lowest one based on the evidence.

Therefore, it is likely you will succeed in obtaining sanctions against Sunrise. As mentioned above, obtaining default judgment will not likely be possible, however because the trial courts have discretion to award sanctions, there may be a possibility that default judgment could be granted in your case.

2. You may be able to bring an independent tort action against Advanced

In 2019, the Supreme Court of Columbia reversed the court of appeal's affirmance of the trial court's denial of leave to bring an independent tort action against a third party.

In *Zubul v. Standard Motors Corporation*, the plaintiff brought a products liability action claiming a manufacturing defect against Standard Motors. However, the car that was driven in this accident, was owned by another third party - the plaintiff's aunt who refused to allow Standard Motors any opportunity to inspect the vehicle. Due to this, Standard Motors filed an independent tort action based on spoliation against the plaintiff's aunt, Christine Simpson. The trial court erred in denying leave to bring this cause of action and the Supreme Court held that:

"we disagree that Columbia law does not authorize an independent tort action for spoliation of evidence. We hold that it does. When a third party destroys, alters, or fails to preserve evidence, a party to an action who is injured by any wrongful conduct on its part does not have the benefit of remedies available within the action itself."

Similarly, your independent tort action against Advanced should be heard because Advanced "fail[ed] to preserve evidence" when they destroyed the rung locks. Per Dr. Stein's deposition testimony, it is clear that Sunrise likely encouraged them to destroy this evidence. Although Advanced will argue that retaining tested items is not required by them unless the person seeking the test requests to do so, the intentional destruction may be wrongful conduct. Although Advanced was not aware of your husband's death as a result of the possible rung locks, the destruction may be sufficient to bring an independent tort action.

Although your success in an independent tort action cannot be guaranteed, the trial court's broad discretion as encouraged by the Supreme Court in *Zubul v. Standard Motors Corporation*, highlights the broad authority to bring such an action. A trial court's dismissal of a third party independent tort claim is the most restrictive form of a sanction.

Thus, you may be successful in an independent tort action against Advanced because they were a third party who played a substantial role in actually destroying the rung locks.

Conclusion

Therefore, you will likely be able to obtain sanction against Sunrise based on the alleged destruction of the rung locks, in addition to successfully bringing an independent tort action against Advanced based on their destruction of the same rung locks.

Please reach out to our office or me personally if you have any questions regarding the contents of this letter. The legal applicability may be confusing, however based on previous cases, and the broad discretion of the trial court, your success on the two claims is likely.

Respectfully,

Applicant