

Missing Incident Report: Jury Returns \$9,000,000+ Verdict After Judge Instructs Jury On Spoliation Of The Evidence.

The judge did not err instructing the jury:

“If you find from the evidence -

- that an incident report was prepared by [the nurse] recording material information about [the patient’s] surgery,

- and if you further find from the evidence that [the hospital] intentionally and in bad faith lost or destroyed the incident report,

- you may, but are not required to -

- infer that the information recorded in the incident report would be, if available, adverse to [the hospital] and favorable to [the patient].”

COURT OF APPEALS OF KENTUCKY
January 16, 2009

The patient arrested in the operating room.

She was revived and sent to the ICU where it was discovered she had sustained irreversible hypoxic brain damage.

Life support was later withdrawn and she expired.

The patient’s arrest occurred while surgical personnel were caught up in a difficult, frantic and ultimately unsuccessful effort to locate, obtain, type, cross-match and administer blood transfusions to restore her hematocrit.

A nurse testified she wrote up a detailed incident report chronicling the whole episode and dropped it in the bin on the desk in the surgical department.

However, the hospital could not or would not produce the incident report at the trial.

The Court of Appeals of Kentucky ruled that the factual data in the nurse’s incident report would not be off limits in the lawsuit and it was not inappropriate to allow the jury to reason that those facts, if they could have been unearthed, would implicate the hospital and its personnel for negligence. **University Med. Ctr. v. Beglin, 2009 WL 102800 (Ky. App., January 16, 2009).**