

101.39 EVIDENCE - SPOILIATION BY A PARTY.¹

Evidence has been received which tends to show that (*describe despoiled evidence*) was in the exclusive possession of (*name party*) and has been [lost] [misplaced] [suppressed] [destroyed] [corrupted] even though (*name party*) was aware of (*name other party's*) [claim] [defense].

From this you may infer, though you are not compelled to do so, that (*describe despoiled evidence*) would be damaging to (*name party*). You may give this inference such force and effect as you think it should have under all of the facts and circumstances. (You are permitted this inference even though there is no evidence (*name party*) acted intentionally, negligently or in bad faith.) (You should not make this inference if you find that [the (*describe despoiled evidence*) was equally accessible to both parties] [there is a fair, frank and satisfactory explanation of what happened to the (*describe despoiled evidence*).]

1. *McLain v. Taco Bell Corp.*, 137 N.C. App. 179, 183, 527 S.E.2d 712, 716, *disc. rev. denied*, 352 N.C. 357, 544 S.E.2d 563 (2000).