

**DONNA L. WHITTENBURG**

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**NO. 2000-C-2697**

**VERSUS**

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**COURT OF APPEAL**

**ZURICH AMERICAN  
INSURANCE COMPANY**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**BYRNES, J., DISSENTS WITH REASONS:**

I respectfully dissent in part based on my conclusion that the worker's compensation judge erred in part in granting the plaintiff, Donna L. Whittenburg's motion to compel production of relator, Zurich's documents.

Following the fatal accident, Zurich assigned the claim to Glenn Giles, one of its adjusters. Giles hired Stephen Gilbert, whom Zurich characterized as a field adjuster, and who was employed by Zylicz & Associates. Giles and Gilbert were hired and worked for Zurich, and they were Zurich's agents.

The written transcripts of the statements taken from the RMI Inspectorate ("RMI") employees were done in investigation of the fatal accident in anticipation of a worker's compensation claim that ultimately

could result in litigation. The written transcripts of the statements constitute Zurich's work product and they are not discoverable under La. C.C.P. art. 1424. The plaintiff has not met her burden of proving that denial of production of these transcripts will unfairly prejudice her or cause her undue hardship or injustice in preparing either her claim for benefits or her claim for penalties and attorney's fees. See *Sass v. National Fire Ins. Co.*, 96-2332, p. 3 (La. App. 4 Cir. 3/5/97), 689 So.2d 742, 743, *writ denied*, 97-0975 (La. 5/30/97), 694 So.2d 249. La. C.C.P. art. 1424 applies only to writings and does not include tangible things such as videotapes, films or photographs. *Moak v. Illinois Central R.R. Co.*, 93-0783 (La. 1/14/94), 631 So.2d 401, 403.

Accordingly, I would reverse the ruling of the worker's compensation judge in part, and would deny the plaintiff's motion for Zurich's production of any **writings**, prepared by Zurich's agent in anticipation of litigation.