

Reposa v. Landon, No. 1102-06 CnCiv (Katz, J., Dec. 24, 2007)

[The text of this Vermont trial court opinion is unofficial. It has been reformatted from the original. The accuracy of the text and the accompanying data included in the Vermont trial court opinion database is not guaranteed.]

STATE OF VERMONT  
Chittenden County, ss.:

SUPERIOR COURT  
Docket No. 1102-06 CnCiv

REPOSA

v.

LANDON

#### ENTRY

Plaintiff Anthony Reposa filed this action after an accident in which he alleges that Defendant negligently operated her van, causing him to crash his motorcycle. Plaintiff Reposa died on May 27, 2007, and David Reposa, the administrator of his estate, has been substituted as plaintiff in the case.

In the course of discovery, defendant admitted that she had contacted her insurance company, Allstate, following the accident and had given a statement, which was recorded. Plaintiff's insurance carrier is also Allstate. After learning of the recorded statement, plaintiff requested that defendant produce it, which defendant has refused to do, citing V.R.C.P. 26(b)(3) and claiming that the statement was privileged because it was taken in anticipation of litigation. Plaintiff has now filed a motion to compel.

V.R.C.P. 26(b)(3) allows a party to obtain discovery of documents or tangible things prepared in anticipation of trial "only upon a showing that the party seeking discovery has substantial need of the materials . . .

and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” If the sought-after discovery was not prepared in anticipation of trial, however, the document or thing is discoverable, unless otherwise privileged.

Because Allstate is both plaintiff and defendant’s insurance carrier, defendant’s recorded statement is not privileged. Dari v. Uniroyal, Inc., 353 N.W.2d 298, 301 (Ill. Ct. App. 1976). Prior to litigation, an insurance company representing both parties is viewed as a dual agent — of the party making the statement and also of the “potential adversary.” Id. at 302.

As defendant’s statement to Allstate is not privileged nor otherwise protected by V.R.C.P. 26(b)(3) vis á vis another Allstate insured, plaintiff’s motion to compel is therefore GRANTED.

Dated at Burlington, Vermont, December \_\_\_\_, 2007.

---

M. I. Katz, Judge