NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 0014

SAM COLLINS AND BARBARA COLLINS, INDIVIDUALLY AND AS REPRESENTATIVES FOR THEIR INTERDICTED SON, SHANE COLLINS; RICHARD JACKSON; NUTMEG INSURANCE COMPANY; AND TWIN CITY FIRE INSURANCE COMPANY

VERSUS

STAR INSURANCE COMPANY; FLEMING & HALL ADMINISTRATORS, INC.; BREAZEALE, SACHSE & WILSON, L.L.P.

Judgment Rendered: SEP 0 1 2006

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On Appeal from the 19th Judicial District Court
In and for the Parish of East Baton Rouge, State of Louisiana
Trial Court No. 518,259, Division "I"

Honorable R. Michael Caldwell, Judge Presiding

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R. Bruce Macmurdo Baton Rouge, LA	Counsel for Plaintiffs/Appellants Sam and Barbara Collins, Richard Jackson, Nutmeg Insurance Company, and Twin City Fire Insurance Company
L. Lane Roy Dawn L. Morris Lafayette, LA	Counsel for Defendant/Appellee Breazeale, Sachse & Wilson, L.L.P.

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BEFORE: PARRO, McDONALD, AND HUGHES, JJ.

HUGHES, J.

This appeal challenges the dismissal, on the basis of peremption, of claims for legal malpractice arising out of tort suits for damages resulting from a vehicular collision. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

The vehicular collision giving rise to the tort suits at issue occurred on January 4, 2000, when an eighteen-wheeler owned by Mike's Trucking Company, Inc. (Mike's Trucking)[1] and driven by Dwight Daigle rear-ended a truck owned by Dixie Electric Membership Cooperative (DEMCO) and occupied by two DEMCO employees, Shane Collins and Richard Jackson. Mr. Collins and Mr. Jackson suffered serious injuries as a result of the accident.

At the time of the accident, Mike's Trucking had liability insurance through Star Insurance Company (Star) with a $1 million policy limit, which also provided for the payment of judicial interest and court costs. DEMCO had UM coverage through Nutmeg Insurance Company (Nutmeg) and Twin City Fire Insurance Company (Twin City), with aggregate policy limits of $20 million.

Tort actions were filed by Mr. Collins (along with his parents, Sam and Barbara Collins) and Mr. Jackson against Dwight Daigle, Mike's Trucking, and their insurer, Star, as well as against DEMCO's UM carriers, Nutmeg and Twin City. During the course of that litigation, Mr. Daigle, Mike's Trucking, and Star were provided legal representation by Breazeale, Sachse & Wilson, L.L.P. (BSW).

[1] The sole shareholders of Mike's Trucking were Michael and Dianne Chauffe.

A tentative settlement agreement was reached between the tort plaintiffs and the tort defendants for Star's policy limits in the Fall of 2001, but was not finalized.[2] On the scheduled trial date in that case, January 22, 2002, and following allegations of a conflict of interest between BSW and the tort defendants, BSW withdrew as legal counsel in the case, and the trial was continued in order for the defendants to secure alternative representation. Thereafter, on March 24, 2003, a jury trial was commenced on the Collins tort claim and a judgment was rendered for damages in the amount of $16,555,000.00. It was stipulated that Mr. Jackson's damages were $1.2 million.

Prior to the March 2003 jury trial, Shane Collins (along with his parents, Sam and Barbara Collins) and Richard Jackson signed a compromise agreement with DEMCO's UM carriers for $10 million and for $1.2 million, respectively. In August of 2003, plaintiffs also released Dwight Daigle and Mike's Trucking, in exchange for an assignment by those defendants to plaintiffs and the UM carriers of any claims Mr. Daigle and Mike's Trucking had against third parties for malpractice and/or bad faith failure to settle the claims.

The instant suit was thereafter filed on October 29, 2003 by: Sam and Barbara Collins, individually, and as representatives of their interdicted son, Shane Collins; Richard Jackson; Nutmeg; and Twin City. Named as defendants were: BSW, Star, and Star's administrator, Fleming & Hall Administrators, Inc. (Fleming).

In this suit, plaintiffs allege that BSW committed malpractice in its handling of the defense of the underlying tort action by continuing to represent the tortfeasors and Star despite a conflict of interest between these

[2] Liability was not disputed; only the terms of the settlement agreement were in contention.

clients, failing to "aggressively" secure the release of the tortfeasors through settlement and instead "haggling" over settlement terms, and by failing to keep the tortfeasors fully informed of the extent of the tort victims' injuries and "their willingness to settle for policy limits." Plaintiffs further allege that Star and Fleming violated their obligations of good faith and fair dealing in failing to settle the claims promptly, thus exposing the insured tortfeasors to an excess judgment. Star and Fleming were also alleged to have been in bad faith in failing to keep the insured tortfeasors apprised of the progress of the tort suits, in failing to adequately protect the interests of the insured tortfeasor, in failing to properly adjust and settle the claims, and in favoring their own interests over that of the insured tortfeasors. The defendants were alleged to be liable for penalties and attorney's fees under LSA-R.S. 22:658 and LSA-R.S. 22:1220, and for the amounts of the awards in the underlying tort actions, less the amounts previously paid by Star.

In its defense of the suit, BSW asserted exceptions of venue, peremption, prematurity, lack of procedural capacity, no right of action, no cause of action, and improper cumulation of actions.[3] Star asserted cross-claims against Fleming and BSW for failure to timely forward information concerning the progress of the case, the extent of plaintiffs' injuries, and details of settlement offers. Fleming asserted numerous exceptions and defenses to the action.[4]

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[3] The suit was originally filed in Iberville Parish but was later transferred by agreement of the parties to East Baton Rouge Parish, and the exception as to venue was withdrawn. The exceptions as to prematurity, lack of procedural capacity, and improper joinder were also resolved and withdrawn.

[4] Fleming's exceptions of no cause of action as to plaintiffs' claims under LSA-R.S. 22:658 and LSA-R.S. 22:1220 were sustained by the trial court and all claims arising out of those statutes were dismissed as to Fleming. Fleming's exception of no right of action as to Star's cross-claim that Star was a beneficiary of a stipulation pour autri in a contract between Fleming and Meadowbrook, Inc. was also sustained, dismissing that claim as to Fleming. Fleming's remaining exceptions as to other causes of action asserted against it were denied. These rulings have not been raised as an issue in the appeals currently before this court.

Following a hearing on BSW's exception of no cause of action, based on its claim of peremption, judgment was rendered by the trial court dismissing all of plaintiffs' claims as to BSW.[5] Plaintiffs appeal this judgment and assert the following assignments of error:

> I. The Trial Court erred by ruling that the insureds' knowledge of a negative consequence (failure of the case to settle as planned) triggered the one year legal malpractice peremptive period even though the insureds were unaware of the negligent acts of their attorney that caused settlement negotiations to fail. Alternatively phrased, the Trial Court erred by ruling the claim had perempted when it did not find that plaintiffs' predecessors-in-interest had acted unreasonably by not filing suit.
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> II. The Trial Court erred by refusing to compel production of [BSW]'s file from the underlying suit prior to conducting the evidentiary hearing on the peremption exception.

LAW & ANALYSIS

Peremption of Malpractice Claim

Plaintiffs/appellants contend that the applicable peremptive period did not begin to run until judgment was rendered in the underlying tort action on March 27, 2003, and therefore the assertion of its legal malpractice claim against BSW was timely filed in October 2003.

The time limitation for filing a legal malpractice action is set forth in LSA-R.S. 9:5605(A):

> No action for damages against any attorney at law duly admitted to practice in this state, any partnership of such attorneys at law, or any professional corporation, company, organization, association, enterprise, or other commercial business or professional combination authorized by the laws of this state to engage in the practice of law, whether based upon tort, or breach of contract, or otherwise, arising out of an engagement to provide legal services shall be brought unless filed in a court of competent jurisdiction and proper venue within one year from the date of the alleged act, omission, or neglect, or within one year from the date that the alleged act,

[5] BSW's claim of peremption as to Star's cross-claim was also sustained by the trial court and Star's cross-claim as to BSW was dismissed. Star has appealed that judgment to this court and our decision in that appeal is also rendered this date under Docket Number 2005 CA 0746.

> omission, or neglect is discovered or should have been discovered; however, even as to actions filed within one year from the date of such discovery, in all events such actions shall be filed at the latest within three years from the date of the alleged act, omission, or neglect.

Subsection B of this statute states that the one-year and three-year periods of limitation provided in Subsection A are *both* peremptive periods within the meaning of LSA-C.C. art. 3458. See also **Robin v. Allstate Ins. Co.**, 2002-689 (La. App. 3 Cir. 2/5/03), 844 So.2d 41, writ denied, 2003-1818 (La. 10/17/03), 855 So.2d 763; **Dauterive Contractors, Inc. v. Landry and Watkins**, 2001-1112 (La. App. 3 Cir. 3/13/02), 811 So.2d 1242; **Broussard v. F.A. Richard & Assocs., Inc.**, 98-1167 (La. App. 3 Cir. 3/17/99), 732 So.2d 578, writ denied, 99-1048 (La. 6/4/99), 744 So.2d 625. Subsection B of LSA-R.S. 9:5605 further states that in accordance with LSA-C.C. art. 3461, these peremptive periods cannot be renounced, interrupted, or suspended.

When a client's legal malpractice claim is, on its face, time-barred by the accrual of the LSA-R.S. 9:5605 peremptive period, the burden of proof shifts to the client to show the claim has not perempted. See **Waldrop v. Hurd**, 39,855 (La. App. 2 Cir. 6/29/05), 907 So.2d 890; **Seaux v. Doucet**, 96-854 (La. App. 3 Cir. 12/11/96), 685 So.2d 537.

The one-year time limitation set forth in LSA-R.S. 9:5605 commences to run when a claimant knew or should have known of the existence of facts that would have enabled him to state a cause of action for legal malpractice. **Paternostro v. LaRocca**, 2001-0333, p. 5 (La. App. 1 Cir. 3/28/02), 813 So.2d 630, 634. In determining when a claimant should have discovered a cause of action, the facts should be considered in light of a reasonable man standard. That is, a claimant who had knowledge of facts that would place a reasonable man on notice that malpractice may have been committed shall

be held to have been subject to the commencement of peremption by virtue of such knowledge, even though he asserts a limited ability to comprehend and evaluate the facts. **Id.** The focus is on the appropriateness of the claimant's actions or inactions. **Carroll v. Wolfe**, 98-1910, p. 6 (La. App. 1 Cir. 9/24/99), 754 So.2d 1038, 1041.

The peremptory period for malpractice can begin to run even when the client does not have *actual* knowledge of facts that would entitle him to bring a suit where there is *constructive* knowledge of same. Constructive knowledge is whatever notice is enough to excite attention and put an injured party on guard and call for inquiry. Such notice is tantamount to knowledge or notice of everything to which a reasonable inquiry may lead. Such information or knowledge as ought to reasonably put the alleged victim on inquiry is sufficient to start the running of the peremptive period. **Atlas Iron and Metal Co. v. Ashy**, 2005-458, p. 5 (La. App. 3 Cir. 1/4/06), 918 So.2d 1205, 1210, citing **Campo v. Correa**, 2001-2707, pp. 11-12 (La. 6/21/02), 828 So.2d 502, 510-11.

The question in this case then becomes: when did the clients have knowledge sufficient to excite the attention of a reasonable man, putting that party on guard and calling for inquiry as to whether malpractice may have been committed?

In ruling that the malpractice action of the defendant tortfeasors was perempted prior to the filing of the instant suit, the trial judge found as follows:

> I have determined ... that the acts of which plaintiffs complain on the part of [BSW] occurred basically before, and no later than ... January 22nd, 2001. And this suit was filed ... in October of 2003....
>
> What is at issue ... is [sic] the other provisions of R.S. 9:5605, which state that a claim must be asserted within one year from the date of the alleged act, omission or neglect, or

within one year from the date that the alleged act, omission or neglect is discovered or should have been discovered. And that is the difficult question in this case, when did the Chauffes, on behalf of Mike's Trucking, and/or Mr. Daigle discover the alleged improper acts by [BSW], or when should they have discovered those acts?

* * *

...They obviously knew in November of 2001 that they faced an excess judgment and that settlement offers had been made which had not been communicated to them. They knew by January 7, 2002, that [plaintiffs' attorney] was asserting that [BSW] had a conflict of interest in representing them and [Star]. By the morning of January 22, 2002, when the motion to enforce the settlement was denied, they knew that a possible settlement which would have dismissed them from the case was not consummated around Christmas of 2001. Also, by their own testimony, they were made aware on January 22, 2002, that [plaintiffs' attorney] was asserting that the case had not settled because of the fault of [BSW]; and that [plaintiffs' attorney] was looking for them to assign their rights against "third parties" as part of a new settlement offer. Mr. and Ms. Chauffe both admit that [BSW's lead defense counsel] told them that the "third parties" referred to him and [BSW]. ...[The BSW attorneys] also testified that [BSW's lead defense counsel]'s explanation went into much greater detail about the allegations.

* * *

...Mr. and Ms. Chauffe and Mr. Daigle ... have no legal training or expertise and, to this day, do not know what is or is not malpractice. But as of January 22, 2002, they knew that they were in an excess judgment situation, that settlement offers had been made of which they were unaware, and that a settlement that would have gotten them out of this nightmare had been agreed upon but never consummated.

* * *

...[T]hey discovered or should have discovered the alleged acts, omission or neglect on that date, and the one year peremptive period under R.S. 9:5605 began to run on that date so that the suit filed in October of 2003 was untimely.

The factual findings of a trial court made in connection with a hearing on a claim of peremption are subject to the manifest error standard of review. If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. **Perez v. Trahant**, 2000-2372, p. 7 (La. App. 1 Cir. 12/28/01),

806 So.2d 110, 116, writs denied, 2002-0847, 2002-0901 (La. 8/30/02), 823 So.2d 953.

After a thorough review of the record presented on appeal of this matter, we are unable to say that the trial court's factual findings on the issue of peremption are manifestly erroneous. The evidence presented during the hearing held in this matter presents a reasonable basis for the findings of the trial court.

The evidence in the record reflects that the Chauffes first gained knowledge of plaintiffs' offer to settle on November 2, 2001 when, during their depositions, plaintiffs' counsel asked the Chauffes if they were aware of the possibility of an excess judgment and of plaintiffs' offer to settle for the policy limits. Upon being instructed by BSW to answer only to the extent of personal knowledge, Dianne Chauffe responded that she had received a letter from Star months earlier informing her that an excess judgment was a possibility and she understood that to mean that they would have to sell company assets to pay the judgment. Dianne Chauffe testified that, in a conversation with BSW attorneys following the depositions, they were informed that there had been a settlement offer but that there were problems with the offer.

BSW's lead counsel testified he discussed with the Chauffes the nature of the offers. He stated that he also discussed with the Chauffes the potential for an excess judgment and what it would mean to Mike's Trucking and them personally insofar as their assets were concerned. He also communicated to the Chauffes his opinion that the offer was an attempt by the plaintiffs' attorney "to drive a wedge" between him and his clients but assured them that he would continue in his attempts to settle the matter. BSW's lead counsel also testified that the settlement offer was problematic,

primarily because of issues related to a workers' compensation intervention and the fact that there were allegations regarding one of the tort plaintiff's mental capacity. Since no interdiction had been accomplished at that time, BSW was negotiating for indemnification provisions to protect the settling parties in the event a settling plaintiff was later found to have been incompetent.

The testimony also shows that the Chauffes received information on January 7, 2002 concerning the status of the case, when BSW's lead counsel spoke to Dianne Chauffe in a phone conversation, which he memorialized in a follow-up letter to the Chauffes. The letter, which was introduced into evidence, stated:

> [P]laintiffs' counsel is trying to suggest that there is a conflict of interest in my representation of Mr. Daigle, Mike's Trucking and Star Insurance Company. I disagree with plaintiffs' position; however, I feel that it is necessary to put you on notice of his allegation. Plaintiffs' counsel has indicated a willingness to speak with you or your separate counsel if you have obtained separate counsel. If you have other counsel, please have him contact me so that I can bring him up-to-date on the issues involving [plaintiffs' counsel] (Diane, I have spoken to Larry).[6]

BSW's lead counsel further testified that the telephone conversation referenced in the letter addressed the issues in greater detail. In addition to what was included in the letter, he told Dianne Chauffe that the plaintiffs' attorney was alleging that a breakdown in settlement negotiations was his fault. He offered to withdraw, but Dianne Chauffe stated to him that she was satisfied with his actions as her attorney. In her testimony, Dianne Chauffe was unable to recall the content of the phone conversation but testified that it caused her no concern as she had complete and total faith in BSW.

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[6] "Larry" was the Chauffes' personal attorney.

BSW's final communication with the insured tortfeasors took place at the courthouse on January 22, 2002, the day scheduled for trial, when BSW's lead counsel discussed with the insureds the firm's need to withdraw from the case due to the conflict presented by the plaintiffs' settlement proposal that day. When the parties arrived for trial on January 22, 2002, plaintiffs' attorney presented a handwritten settlement proposal to BSW's lead counsel. In that settlement proposal, Mike's Trucking and Dwight Daigle were being asked to assign their rights to plaintiffs against "third parties" who allegedly had mishandled settlement negotiations. BSW's lead counsel testified that he told his clients at the time the offer was received and was being reviewed that the reference to "third parties" meant himself and the BSW firm. He testified that during his talk with the insureds he informed them that the plaintiffs were alleging that BSW had mishandled the case and lost the opportunity to settle. During that conversation, BSW's lead counsel testified that he related to them "in some detail" the settlement negotiations that had occurred leading up to December, 2001. He informed them that he could not ethically advise them as to the allegations that had been made but they should discuss it with new counsel. He assured them that he and his law firm had done everything they could to try to settle the case and had not, in his opinion, handled the case inappropriately as plaintiffs were alleging.

We take particular note of the fact that even though represented by BSW as to the tort suit, Mike's Trucking, through the Chauffes, had available to them the advice of a personal attorney, and that attorney communicated with BSW on the status of the lawsuit until BSW withdrew from the case. Further, Mr. Daigle and Mike's Trucking were provided with new counsel after BSW's withdrawal, and this new counsel conferred with BSW in January 2002, as well as with his clients as to the foregoing legal

proceedings by February, 2002. Moreover, the Chauffes knew that their personal attorney and their subsequent attorney in the tort litigation were aware of the allegations of conflict and mishandling and neither attorney recommended to the clients that they consider a malpractice claim.

Nevertheless, it is asserted that peremption did not begin to run on the malpractice claims of Mike's Trucking and its employee, Mr. Daigle, until the March 2003 excess judgment was rendered. However, under LSA-R.S. 9:5605, whether damage has actually been sustained is not the criteria for evaluating a claim of peremption; rather, it is the date on which the injured client has or should have knowledge of the act of malpractice that begins the running of the one-year peremptive period.

In **Reeder v. North**, 97-0239 (La. 10/21/97), 701 So.2d 1291, the supreme court specifically rejected prior jurisprudence holding that the peremptive period for malpractice does not begin to run until the facts ripen into a viable cause of action, noting that "[w]hile the terms of the legal malpractice statute of limitations statute may seem unfair in that a person's claim may be extinguished before he realizes the full extent of his damages, the enactment of such a statute of limitations is exclusively a legislative prerogative." **Id.** at 1296. The supreme court determined that the legislature was "particularly clear" in wording LSA-R.S. 9:5605 "so as to leave no doubt as to its intent." **Id.** at 1295.

This court in **Kennedy v. Macaluso**, 99-3016, pp. 5-6 (La. App. 1 Cir. 2/16/01), 791 So.2d 697, 700, writ denied, 2001-0691 (La. 5/4/01), 791 So.2d 655, citing **Reeder**, specifically rejected the proposition that under LSA-R.S. 9:5605 "appreciable harm" flowing from the attorney's negligent conduct is necessary to establish a cause of action upon which the client may sue, as previously held in **Braud v. New England Ins. Co.**, 576 So.2d 466

(La. 1991). **Kennedy v. Macaluso** distinguished **Braud** by pointing out that it was decided prior to the enactment of LSA-R.S. 9:5605. **Kennedy v. Macaluso** holds that the one-year peremptive period of LSA-R.S. 9:5605 begins to run on the date a plaintiff knows or should know of an attorney's alleged wrongful conduct. **Kennedy v. Macaluso**, 791 So.2d at 700-01.

Mike's Trucking and Dwight Daigle knew or should have known of the facts on which any malpractice action against BSW would have been based, no later than January 22, 2002, when they discovered BSW was accused of wrongful handling of settlement negotiations.[7] Consequently, we are unable to conclude that the trial court lacked a reasonable basis for finding that any malpractice action available to Mike's Trucking and Dwight Daigle, arising out of BSW's representation of them in the tort action at issue, was perempted prior to the filing of the October 2003 malpractice action. Furthermore, that finding was not manifestly erroneous.

Discovery of Attorney's File

Plaintiffs/appellants contend that the trial court erred in failing to order the production of BSW files, pursuant to a discovery request, prior to ruling on BSW's exception of no cause of action raising the issue of peremption. While the motion to compel discovery was granted by the trial

[7] The testimony of BSW's lead counsel was uncontroverted that one cause for concern in completing the settlement from the defense standpoint was the fact that plaintiffs were asserting brain damage arising from the accident, yet no interdiction proceeding had been filed, and there was some question as to the plaintiffs' capacity to contract a compromise. The record reflects that an interdiction proceeding was filed in the 21st Judicial District Court on November 27, 2001 as to Shane Collins, and that his parents were appointed as provisional curator and undercurator on December 27, 2001. However, evidence in the record reflects that plaintiffs' counsel had made a written demand that settlement documents be signed and full payment be tendered by Friday, December 21, 2001, but verbally agreed to an extension until Wednesday, December 26, 2001. BSW attorneys testified that the settlement documents were prepared and submitted to plaintiffs' counsel's office on December 26, 2001, but that plaintiffs' counsel would not return their phone calls on December 26, 2001 or thereafter. BSW attorneys further testified that on January 7, 2002, they appeared in the office of the trial judge on the tort action and solicited a telephone conference with plaintiffs' counsel, during which plaintiffs' counsel essentially refused to complete the settlement. The record further reflects that on January 17, 2002 the 21st Judicial District Court granted authority to Shane Collins' curator to enter into a settlement with Nutmeg and Twin City for $10 million.

court on the day of the hearing of the claim of peremption, the documents were not produced until a later date. Plaintiffs/appellants contend the trial court should not have gone forward with the hearing on peremption without permitting them full discovery.

We agree with plaintiffs/appellants that an attorney's records may be discoverable under LSA-C.C.P. art. 1424, and in accordance with this court's rulings in **Cousins v. State Farm Mutual Automobile Insurance Company**, 258 So.2d 629, 635-36 (La. App. 1 Cir. 1972), and the supreme court's opinion in **Hodges v. Southern Farm Bureau Casualty Insurance Company**, 433 So.2d 125, 131-32 (La. 1983). Further, BSW's clients waived the attorney-client privilege with respect to the production of the requested documents.[8]

Plaintiffs/appellants contend in brief to this court that the BSW file and other documents sought in discovery "had pertinent information to the case [that] might well have illuminated what the insureds were told or not told about the case and may have impeached the [BSW] testimony at the hearing." In response, BSW contends that the file has now been produced and plaintiffs/appellants have "failed to come forth with any evidence from the file which they claim would impeach" the BSW attorneys' testimony. BSW claims that plaintiffs/appellants were not prejudiced by the failure of the trial court to compel the discovery prior to the hearing on peremption.

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[8] Some "work product" cannot be discovered under LSA-C.C.P. art. 1424 unless denial of the discovery request will "unfairly prejudice" the party seeking the production. The "opinion work product" rule is distinct from and broader than the attorney-client privilege. Whereas the attorney-client privilege protects only confidential communications, the opinion work product doctrine may encompass any writing prepared in anticipation of litigation by the attorney. The purpose of the work product doctrine is not merely to assist the client in obtaining complete legal advice, but also to afford the attorney a "zone of privacy" within which he is free to evaluate and prepare his case without adversarial scrutiny. See **Hodges v. Southern Farm Bureau Casualty Insurance Company**, 433 So.2d at 131-32.

We note that plaintiffs did not file a motion for new trial subsequent to the trial court's ruling, which dismissed BSW on the basis of peremption, in order to assert that new evidence bearing on the issue had been obtained upon production of the BSW file. Nor do plaintiffs/appellants cite to this court any way in which the outcome of the hearing on peremption would have been different if they had been in possession of the BSW file in advance of the hearing.

Upon careful consideration of this issue, we find that any error on the part of the trial court in failing to compel production of the BSW documents sought by plaintiffs/appellants prior to the hearing on peremption constituted harmless error.

CONCLUSION

For the reasons cited herein, we affirm the judgment of the trial court dismissing the plaintiffs/appellants' claims for malpractice as to Breazeale, Sachse & Wilson, L.L.P. All costs of this appeal are assessed against plaintiffs/appellants, Sam and Barbara Collins, Richard Jackson, Nutmeg Insurance Company, and Twin City Fire Insurance Company.

AFFIRMED.