

Multinational Legal Services, P. C.

## MEMORANDUM

**To:** Tony Andrade  
Jim Boland  
Leo Dryer

**From:** Jim Tozzi

**Date:** July 24, 1995

**Subject:** Bluitt v. R.J. Reynolds Tobacco Co.

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### Issue

Whether any mechanism exists under Louisiana law which would allow for judicial review of a university's refusal to make data underlying a health study available during discovery in anticipation of litigation?

### Facts

The facts underlying this case are rather simple. Alfred Bluitt was a nonsmoker who died of lung cancer, allegedly as a result of exposure to second-hand tobacco smoke (ETS). Of the approximately fourteen studies which have looked at the link between ETS and lung cancer, only one -- the Fonham study -- found a statistically significant correlation between the two. R.J. Reynolds, the primary defendant in the Bluitt lawsuit, sought discovery of the data underlying the Fonham study to determine the validity and reproducibility of the results.

### Procedural History

A U.S. magistrate judge operating out of the U.S. District Court for the Eastern District of Louisiana quashed R.J. Reynolds' subpoena for discovery of the data underlying the Fonham study based upon the fact that no expert witnesses had been identified and that Drs. Fonham, Correa, and Chen, who conducted the Fonham study, would not be testifying at the trial. The magistrate in his order added that should the circumstances of the case change and another subpoena be issued, the court would revisit the need for the information. (The court never reached