

## Centex Homes v. St. Paul Ins. Co.

Year: 2015 Court: California Supreme Court Case Number: E060057

UP and the Consumer Attorneys of California submitted a letter supporting a petition for review in an important case involving a policyholder's right to independent counsel. A policyholder's right to independent counsel when a conflict arises between the insured and the insurer, both represented by the same defense lawyer, is a bedrock principle of California insurance law. The court in San Diego Federal Credit Union v. Cumis Ins. Society, Inc. (1984) 162 Cal.App.3d 358., relying on the sound approach to conflicts among multiple clients taken by the Rule 3-310 of the California Rules of Professional Conduct, held that an insured's right to independent counsel is triggered by "actual" and "potential" conflicts. California Civil Code section 2860 further provides that if the provisions of a policy of insurance impose a duty to defend upon an insurer and a conflict of interest arises which creates a duty on the part of the insurer to provide independent counsel to the insured, the insurer shall provide independent counsel to represent the insured. The Cumis Court and Rule 3-310 do not differentiate between "actual" and "potential" conflicts because in practice they are often the same. Wrongly decided Court of Appeal cases, chief among the them Dynamic Concepts v. Truck Ins. Exchange (1998) 61 Cal.App.4th 999, have created an un workable situation whereby insurers defending under a reservatio of rights routinely refuse to provide independent counsel until the conflict has ripened into an "actual" conflict, at which time the policyholder's coverage position has already been compromised. By granting the petition for review, the California Supreme Court will have the opportunity to clarify the standard for when a policyholder is entitled to independent counsel.

UP's letter was authored by UP Board Member E. Gerard Mannion, Esq. and Staff Attorney Dan Wade, Esq. and CAOC Amicus Committee Co-Chair Lee S. Harris, Esq. of Goldstein, Gellman, Melbostad, Harris & McSparran, LLP

The information presented in this publication is for general informational purposes and is not a substitute for legal advice. If you have a specific legal issue or problem, United Policyholders recommends that you consult with an attorney. Guidance on hiring professional help can be found in the "Find Help" section of <u>www.uphelp.org</u>. United Policyholders does not sell insurance or certify, endorse or warrant any of the insurance products, vendors, or professionals identified on our website. Source: https://uphelp.org/amicus-briefs/centex-homes-v-st-paul-ins-co/ Date: November 26, 2024