

[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 unworkable situation whereby insurers defending under a reservation 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