

## Federal Insurance Co. v. MBL, Inc.

Year: 2013

Court: California Supreme Court

Case Number: H0369296 & H036578

UP's position in its amicus brief in this case is that policyholders have a right to independent counsel in cases where the insurer has a "potential" conflict of interest as well as in cases where the insurer's conflict is actual.. In support of this position, UP pointed out to the Court that under the California Rules of Professional Conduct, "actual" and "potential" conflicts are treated the same. UP argued that creating a distinction between these two scenarios for purposes of determining whether an insured has the right to hire independent counsel is invalid and unworkable. UP's brief urged the California Supreme Court to reexamine the Court of Appeal's finding that a conflict must be "significant" rather than "theoretical," especially in light of the fact that the Court of Appeal failed to define what the term "significant" means in this context. UP also argued in its brief that where an insurer has issued a "general reservation of rights," it should not automatically be relieved of the obligation to pay for independent counsel. Under the California Fair Claims Practice Regulations, an insurer must disclose all factual and legal bases for denial of a claim. Further, insurers have a common law obligation to assist the insured to recover bargained-for policy benefits. UP points out that both these principles require a fact-based analysis in each situation of whether the insurer has a duty to pay for independent counsel notwithstanding its reservation of rights.

UP's Brief was written pro-bono by E. Gerard Mannion, Esq. of Mannion and Lowe