

## **Mount Vernon Fire Ins. Co. v. VisionAid, Inc.**

Year: 2016

Court: Massachusetts Supreme Judicial Court

Case Number: SJC-12142

Under Massachusetts law, an insurance company's duty to defend is broad and encompasses the prosecution of a policyholder's counterclaims. UP reminded the court that the rule in Massachusetts is "in for one, in for all." By including counterclaims that are "inextricably intertwined" which the litigation for which the defense is sought, policyholders may be able to minimize or eliminate liability. UP reminded the court that the Massachusetts Rules of Civil Procedure specify certain compulsory counterclaims, including the ones here for which insurance is sought, so it is logical that they fall within the broad duty to defend. Further, liability insurance policy language, like the language at issue in this case, contemplates the prosecution of compulsory counterclaims. Finally, UP urged the court to find a right to independent counsel in scenarios where the insurance company may have an incentive to devalue or impair a policyholder's counterclaim. UPdate 9/5/17: The Court unfortunately did not find a duty to prosecute the insured's counterclaims. However, the 1st Circuit did invite supplemental briefing on the conflict of interest issue. UP argued that consistent with the rules of professional conduct and Massachusetts law, the policyholder should choose its own attorney, not the insurance company, where the insurer has a clear interest in releasing or devaluing the counterclaim per the terms of the tort claimant's settlement release. UP's supplemental amicus brief was prepared and submitted with assistance from David Burgess, Esq. of Wilchins Costentino & Novins LLP.

UP's brief was authored pro bono by Marshall Gilinsky, Esq. and Edward J. Stein, Esq. of Anderson Kill PC