

[New Case Law Regarding Right to Cumis Fee Arbitration](#)

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Compulink v. St. Paul Fire Insurance Company: California Court of Appeal Holds Parties Required to Arbitrate Disputes Involving Cumis Counsel Fees

A California Appellate Court has recently clarified the issue as to whether parties are required to arbitrate disputes involving attorney fees owed to an insured for defense by independent counsel. [Compulink Management Center, Inc. v. St. Paul Fire and Marine Ins. Co., 2008 DJDAR 18431](#) (pdf). Specifically, the Compulink court determined that California Civil Code section 2860's mandatory arbitration provision applies even where issues exist in an action apart from attorney's fees. *Id.* The case required the court to interpret a section of California's insurance related statutes, California Civil Code section 2860. That section governs the right of an insured's use of independent, Cumis, counsel where a conflict of interest exists between the insurer and insured as to the defense provided. Cal. Civ. Code § 2860.

The Compulink defendant was an insurance company, St. Paul, that according to the complaint, failed to comply with its duty to defend plaintiff, [Compulink](#), in a third party suit. The complaint stemmed from an underlying suit that arose against Compulink during the policy period, which St. Paul agreed to defend subject to a reservation of rights. Because the insurer believed the reservation of rights created a conflict of interest, it agreed to allow Compulink to select independent counsel to defend it in the third party suit. After the case settled, Compulink filed suit against St. Paul asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief. In total, it sought economic damages in excess of \$1,000,000 as well as a declaration that St. Paul had a duty to pay all outstanding legal fees incurred by Compulink in defending against the cross-complaints.

In response, St. Paul filed a petition to compel arbitration pursuant to section 2860(c). It argued that because the central issue in the case was the amount of Cumis fees allegedly owed, the action was subject to mandatory arbitration under section 2860(c). Compulink argued and the trial court agreed that Compulink's allegations of bad faith took the action beyond the scope of section 2860's arbitration provision.

In reaching this conclusion, the court declined to follow the California Appellate Court's decision in *Fireman's Fund Ins. Companies v. Younesi (Younesi)*, 48 Cal. App. 4th 451 (1996). In *Younesi*, an insurer filed a state court action against its insured's Cumis counsel asserting claims for fraud, malpractice, and conversion in its billing practices. *Id.* at 455. The trial court denied arbitration under section 2860(c) and the Division Four of the Second Appellate District affirmed. *Id.* at 459. While recognizing that attorney's fees were a central issue in the case, it held that because the complaint also included allegations of malpractice and fraud, that section 2860's arbitration provision did not apply to the action at all. *Id.*

The Compulink court disagreed with the *Younesi* court's interpretation and use of the Supreme Court's findings in *Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.*, 15 Cal. App. 4th 800, 804 (1993), as to the scope of section 2860(c). 2008 DJDAR at 18433. In *Caiafa*, the Supreme Court held that federal actions involving Cumis fee issues are not subject to section 2860's arbitration procedure. *Caiafa*, 15 Cal. App. 4th 804-05. While the *Younesi* court interpreted this to mean, regardless of whether held in state or federal court, a trial court is a better forum for

deciding Cumis fee disputes that are pursued in an action that also asserts fraud claims, the Compulink court disagreed. 2008 DJDAR at 18434. It found that Caiafa made no exception for Cumis fee disputes that were intertwined with other non-arbitrable issues. *Id.*

The Compulink court, in declining to follow *Younsesei*, held that the plain language of section 2860 determines that Cumis fees questions must be arbitrated and that all other issues falling outside the scope of section 2860's arbitration provision are to be adjudicated in the trial court. 2008 DJDAR at 18434. It held that the trial court erred in denying St. Paul's petition to compel arbitration in its entirety. 2008 DJDAR at 18435.