

Appeal Nos. 11-55275, 11-55359

In the

UNITED STATES COURT OF APPEALS

for the

Ninth Circuit

CELEDONIA X. YUE, M.D.,
on behalf of the class of others similarly situated,
Plaintiff-Appellee,

v.

CONSECO LIFE INSURANCE COMPANY,
Defendant-Appellant.

*Appeal from the United States District Court for the Central District of California,
No. 08-CV-01506 • Honorable A. Howard Matz*

UNOPPOSED MOTION FOR EXTENSION OF TIME

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UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE BRIEF

In accordance with Ninth Circuit Rule 31-2.2(b), Plaintiff-Appellee respectfully submits this unopposed motion and accompanying declaration in support of an extension of her time to file the second brief on cross appeal. The second brief on cross-appeal is presently due on August 31, 2011 and, with the requested 45 day extension of time, the brief will be due on October 17, 2011.

Defendant-Appellant has consented to the relief sought by this motion. No further extensions of time for this brief will be sought and Plaintiff-Appellee will file the second brief on cross-appeal within the requested time.

As set forth in the accompanying declaration of Timothy P. Dillon, Plaintiff-Appellee has exercised diligence and there is substantial need for the requested extension.

Under these circumstances, Plaintiff-Appellee respectfully requests that the

Court grant the requested extension of 45 days so that Plaintiff-Appellee's second brief on cross-appeal will be due on October 17, 2011.

Respectfully submitted,

Dated: August 15, 2011

LAW OFFICES OF TIMOTHY P. DILLON

By: s/Timothy P. Dillon
Timothy P. Dillon

Dated: August 15, 2011

BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, PC

By: s/Francis J. Balint, Jr.
Andrew S. Friedman
Francis J. Balint, Jr.

Attorneys for Plaintiff-Appellee

DECLARATION OF TIMOTHY P. DILLON

I, Timothy P. Dillon, declare and say, as follows:

1. I am co-counsel for Plaintiff-Appellee Yue and the certified nationwide class of policyholders in this action. I have personal knowledge of the facts set forth below and, if called as a witness, I could and would competently testify thereto. I respectfully submit this declaration in support of Plaintiff-Appellee's unopposed motion for an extension of time to file the second brief on cross-appeal in this matter.

2. At present, Plaintiff-Appellee's brief is due on August 31, 2011. This is the first due date for this brief as there were no prior extensions of time. Plaintiff-Appellee respectfully requests an extension of 45 days so that the brief will now be due on October 17, 2011. No further extensions of time will be sought with respect to this brief. Plaintiff-Appellee has exercised due diligence and the brief will be filed within the time requested. There is substantial need for the extension.

3. Since mid-July 2011, my law firm has been in the process of moving our offices from Laguna Beach to Los Angeles and, during this period, we have been operating with a reduced temporary staff. In July, I moved my residence from Orange County to Los Angeles. Due to several unforeseen circumstances, the process of closing our Laguna Beach office, securing suitable office space in Los Angeles, and hiring staff in Los Angeles has taken much longer and been materially more time consuming than originally anticipated. We have finally secured suitable office space in Los Angeles and we are now in the process of negotiating a sublease with the landlord in Los Angeles. We are also now making arrangements with various vendors and suppliers of services, and others so that we

may successfully move our practice in Los Angeles.

4. Given the distance from Laguna Beach to Los Angeles, we need to hire new staff in Los Angeles and we are also in the process of interviewing new staff to support our office in Los Angeles. Given the uncertainty in the economy, our Laguna Beach office staff was presented with other employment opportunities after the move was announced and secured other employment in Orange County. We are presently operating with only a reduced temporary staff from Laguna Beach and I have been spending my time in Los Angeles attempting to work remotely from my new residence in Los Angeles.

5. We hope our new office in Los Angeles will be fully operational with new staff in Los Angeles on or about September 15, 2011. Our firm has the laboring oar and primary responsibility in preparing and finalizing the second brief on cross-appeal and the circumstances described in this declaration have substantially hindered and delayed our ability to prepare the brief within the current time deadlines and will continue to do so.

6. Under these circumstances, we respectfully submit that the extension is necessary in that we have exercised diligence and there is substantial need for the extension of time to file the brief. The brief will be filed within the requested time. No further extensions for this brief will be sought.

7. Counsel for Defendant-Appellant Conseco Life Insurance Company, Adam Kaiser, after being apprised of the situation described in this declaration, consented to the relief sought by this motion.

8. The court reporter is not in default with respect to any designated transcripts.

9. In accordance with Ninth Circuit Rule 31-2.2(b), Plaintiff-Appellee respectfully requests that this Court grant the requested extension of time so that Plaintiff-Appellee's second brief on cross-appeal will be due on October 17, 2011.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 15th day of August 2011 at Los Angeles, California.

s/Timothy P. Dillon

Timothy P. Dillon

9th Circuit Case Number(s) 11-55275, 11-55359

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 15, 2011.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/Timothy P. Dillon