

Docket 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,
Plaintiffs-Appellee/Cross-Appellant,

v.

CONSECO LIFE INSURANCE COMPANY,
Defendant-Appellant/Cross-Appellee.

On Appeal from the United States District Court for the
Central District of California
No. 08-CV-01506, HON. HOWARD A. MATZ, DISTRICT JUDGE

UNOPPOSED MOTION FOR EXTENSION OF TIME

Harvey Kurzweil
John M. Aerni
Adam J. Kaiser
DEWEY & LEBOEUF LLP
1301 Avenue of the Americas
New York, NY 10019
Telephone: (212) 259-8000
Facsimile: (212) 259-6333

Matthew M. Walsh
DEWEY & LEBOEUF LLP
333 South Grand Avenue, Suite 2600
Los Angeles, CA 90071-1530
Telephone: (213) 621-6000
Facsimile: (213) 621-6100

UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE BRIEF

In accordance with Ninth Circuit Rule 31-2.2(b), Defendant-Appellant respectfully submits this unopposed motion and accompanying declaration in support of an extension of its time to file the third brief on cross appeal. The second brief on cross-appeal was filed on October 17, 2011. The third brief on cross-appeal is presently due on November 16, 2011 and, with the requested 30 day extension of time, the brief will be due on December 16, 2011.

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

As set forth in the accompanying declaration of John M. Aerni, Defendant-Appellant has exercised diligence and there is substantial need for the requested extension.

Under these circumstances, Defendant-Appellant respectfully requests that the Court grant the requested extension of 30 days so that Defendant-Appellant's third brief on cross-appeal will be due on December 16, 2011.

DECLARATION OF JOHN M. AERNI

I, John M. Aerni, declare and say, as follows:

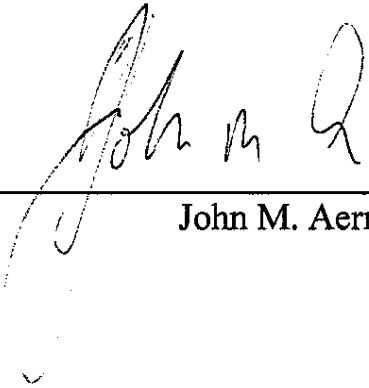
1. I am counsel for Defendant-Appellant Conseco Life Insurance Company in this action. I have personal knowledge of the facts set forth below and, if called as a witness, I could and would competently testify thereto. I respectfully submit this declaration in support of Defendant-Appellant's unopposed motion for an extension of time to file the its brief on cross-appeal in this matter.
2. At present, Defendant-Appellant's brief is due on November 16, 2011. Defendant-Appellant has neither requested nor been granted prior extensions of time for this brief.
3. Defendant-Appellant respectfully requests an extension of 30 days so that the brief will now be due on December 16, 2011. No further extensions of time will be sought for this brief. Defendant-Appellant has exercised due diligence and the brief will be filed within the time requested.
4. There is substantial need for the extension because the third brief will contain both an opposition to the cross appeal and a reply to the direct appeal. Plaintiff-Appellee was permitted an extension of 45 days to

submit her second brief on appeal and raises in her brief a number of legal and factual issues which will require time to address. In addition, my law firm is in the process of converting to a new document management system, which conversion will be ongoing through the beginning of November and which may hinder and delay our ability to prepare the brief within the current deadlines.

5. The brief will be filed within the requested time. No further extensions for this brief will be sought.
6. Counsel for Plaintiff-Appellee, Timothy Dillon, has consented to the relief sought by this motion.
7. The court reporter is not in default with respect to any designated transcripts.
8. In accordance with Ninth Circuit Rule 31-2.2(b), Defendant-Appellant respectfully requests that this Court grant the requested extension of time so that Defendant-Appellant's third brief on cross-appeal will be due on December 16, 2011.

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

Executed on this 25th day of October 2011 at New York, New York.



John M. Aerni

1 PROOF OF SERVICE

2 I declare that I am employed in the County of Los Angeles, California. I am
3 over the age of eighteen years and not a party to the within case; my business address
4 is: Dewey & LeBoeuf LLP, 333 South Grand Avenue, Suite 2600, Los Angeles, CA
90071-1530.

5 On October 25, 2011, I served the following document(s) described as:
6 UNOPPOSED MOTION FOR EXTENSION OF TIME on the following interested
parties in this action:

7 Timothy P. Dillon
8 Law Offices of Timothy P. Dillon
9 1925 Century Park East, Suite 1700
10 Los Angeles, CA 90067
11 Telephone: (310) 553-9400
12 Facsimile: (310) 553-9405
13 timothy@dillonlaw.net

14 Andrew S. Friedman
15 Bonnett, Fairbourn, Friedman & Balint, P.C.
16 2901 North Central, Suite 1000
17 Phoenix, AZ 85012
18 Telephone: (602) 776-5902
19 Facsimile: (602) 274-1199
20 afriedman@BFFB.com

21 [] (BY TELEFACSIMILE TRANSMISSION) at approximately _____ [] a.m.
22 [] p.m., from the telefacsimile transmitting machine at the offices of Dewey &
23 LeBoeuf LLP, 333 South Grand Avenue, Suite 2600, Los Angeles, CA 90071-
24 1530, [facsimile number (213) 621-6100], to the attention of the following
25 interested parties in this action, at addressee's facsimile no. as set forth above.
26 This transmission was reported as complete and without error. The attached
27 transmission confirmation report was properly issued by the transmitting
28 facsimile machine.

[] (BY FEDERAL EXPRESS DELIVERY)

[X] (BY MAIL) I caused to be served on parties in this action the said documents
by placing a true copy thereof in a sealed envelope with postage fully prepaid
and then by sealing said envelope and depositing the envelope in the United
States mail.

[X] (BY ELECTRONIC MAIL) I caused such documents to be served on the
parties via CM/ECF e-mail.

