

# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>

## MEDIATION QUESTIONNAIRE

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

Any party may provide additional information **in confidence** directly to the Circuit Mediation Office at [ca09\\_mediation@ca9.uscourts.gov](mailto:ca09_mediation@ca9.uscourts.gov). Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

9th Circuit Case Number(s):	<input type="text" value="11-55275"/>		
District Court/Agency Case Number(s):	<input type="text" value="2:08-cv-0156-AHM-SH"/>		
District Court/Agency Location:	<input type="text" value="Central District of California, Western Division"/>		
Case Name:	<input type="text" value="Celedonia X. Yue"/>	v.	<input type="text" value="Conseco Life Insurance Company"/>

Please briefly describe the dispute that gave rise to this lawsuit.

Plaintiff Celedonia X. Yue, owner of a universal life insurance policy issued by Conseco Life Insurance Company ("Conseco"), sued Conseco, alleging that a cost of insurance increase scheduled to take place in the 21st policy year breached the policy terms and violated California Business & Professions Code Section 17200. The plaintiff sued on behalf of herself and a national class of similarly situated policy owners, which was certified under Rule 23(b)(2) in December 2009. The scheduled cost of insurance increase never became effective for the named plaintiff or any other class member, however, because Conseco decided, for reasons unrelated to this litigation, and before the scheduled increase became effective, not to make it effective. Despite Conseco's decision not to make the increase effective, the district court held that the class claims were ripe and issued a declaration that the increase would constitute a breach.

(Please continue to next page.)

**Briefly describe the procedural history, the result below, and the main issues on appeal.**

The court denied Conseco's motion to dismiss the complaint under Rules 12(b)(1) and 12(b)(6) in December 2008. In December 2009, the court granted plaintiff's motion for class certification under Rule 23(b)(2). In October 2010, the court denied Conseco's second motion to dismiss the complaint under Rule(b)(1) and granted Conseco's motion for partial judgment on the pleadings under Rule 12(c). In January 2011, the court granted plaintiffs' motion for summary judgment on the third cause of action for declaratory relief under Rule 56(c). The main issues on appeal will be: (i) whether the court erred in finding this action to be a ripe case or controversy within the meaning of Article III; (ii) whether the court erred by granting summary judgment to the class on plaintiffs' third claim for relief; and (iii) whether the court erred in certifying a nationwide class under Rule 23(b)(2).

**Describe any proceedings remaining below or any related proceedings in other tribunals.**

There are no related proceedings in any other tribunals. The district court will continue to have jurisdiction over plaintiffs' motion for attorneys fees, which has yet to be filed.

*(Please continue to next page.)*

Provide any other information that might affect the suitability of this case for mediation.

Settlement discussions at or around the time the summary judgment motion was decided proved fruitless. Nothing that has transpired since that point suggests that either party's positions have changed since that time.

### CERTIFICATION OF COUNSEL

I certify that:

- ☒ a current service list with telephone and fax numbers and email addresses  
☒ is attached (see 9th Circuit Rule 3-2).

- ☒ I understand that failure to provide the Court with a completed form and  
☒ service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

**Note:** Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **File this document electronically** in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.

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