

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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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_meditation@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): 11-55275 and 11-55359

District Court/Agency Case Number(s): CV 08-1506 AHM (SHx)

District Court/Agency Location: United States District Court - Central District of California - Western Div.

Case Name: Yue v. Conseco Life Insurance Company

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

Plaintiff and members of the national certified class of approximately 50,000 policyholders owned universal life policies known Valulife and Valueterm policies ("Policies") administered by defendant Conseco Life Insurance Company ("Conseco Life"). Plaintiff alleged that Conseco Life unlawfully purported to increase the cost of insurance ("COI") rates on the Policies in violation of the language contained in the Policies. Ultimately, by order dated January 19, 2011, the Court granted Plaintiff's motion for summary judgment holding that the contested COI rate increase violated the terms of the Policies.

(Please continue to next page.)

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

On March 4, 2008, Plaintiff filed this action. On October 1, 2008, the Court denied Conseco Life's motion to transfer venue. By decision dated December 8, 2008, the Court denied Conseco Life's motion to dismiss this action. By order dated December 7, 2009, the Court certified a national class of policyholders on the breach of contract claim and a California class of policyholders on the claim under Business and Professions Code section 17200, et seq.

By order dated April 14, 2010, the Ninth Circuit denied Conseco's petition for permission to appeal the district court's December 7, 2009 order granting class action certification.

By order dated October 8, 2010, the Court denied Conseco's motion to dismiss, but granted Conseco Life's motion for judgment on the pleading dismissing Plaintiff's section 17200 claim on statute of limitation grounds.

On January 19, 2011, the Court granted Plaintiff's motion for summary judgment holding that the contested COI increase violated the terms of the Policies. Subsequently, on February 3, 2011, the Court entered a final declaratory judgment against Conseco Life.

Plaintiff appeals from the dismissal of her section 17200 claim in the order dated October 8, 2010.

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

Plaintiff's motion for attorneys fees.

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

Plaintiff has sought to engage in settlement discussions, but there have been no meaningful discussions.

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/Timothy P. Dillon

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

Counsel for Plaintiff, Celedonia X. Yue, M.D.

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.

Attorneys for Defendant Conseco Life Insurance Company:

Matthew M. Walsh, SBN 175004
DEWEY & LEBOEUF LLP
333 South Grand Avenue Suite 2600
Los Angeles, CA 90071-1530
Telephone: (213) 621 6000
Facsimile: (213) 621 6100
mwalsh@deweyleboeuf.com

John M. Aerni (admitted *Pro Hac vice*)
Adam J. Kaiser (admitted *Pro Hac vice*)
DEWEY & LEBOEUF LLP
1301 Avenue of the Americas
New York, NY 10019-6092
Telephone: (212) 259-8000
Facsimile: (212) 259-6333
jaerni@deweyleboeuf.com
akaiser@deweyleboeuf.com

Attorneys for Plaintiff Yue, on behalf of the class of all others similarly situated and the general public:

Timothy P. Dillon
LAW OFFICES OF TIMOTHY P. DILLON
361 Forest Avenue, Suite 205
Laguna Beach, California 92651
Telephone: (949) 376-2800
Fax: (949) 376-2808
timothy@dillonlaw.net

Andrew S. Friedman (admitted *Pro Hac vice*)
Francis J. Balint, Jr. (admitted *Pro Hac vice*)
BONNETT, FAIRBOURN,
FRIEDMAN & BALINT, P.C.
2901 N. Central, Suite 1000
Phoenix, AZ 85012
afriedman@BFFB.com
Telephone: (602) 776-5902
Fax: (602) 274-1199