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January 19, 2012

Molly Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Yue v. Conseco Life Ins. Co.*
Nos. 11-55275 (L), 11-55359

Dear Ms. Dwyer:

We represent Defendant-Appellant/Cross-Appellee Conseco Life Insurance Company (“Conseco”) in the above-captioned matter. Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure and Circuit Rule 28-6, we write to submit *Mazza v. American Honda Motor Co.*, No. 09-55376, 2012 WL 89176 (9th Cir. Jan. 12, 2012) as supplemental authority in support of Conseco’s appeal.

In *Mazza*, this Court held that “[n]o class may be certified that contains members lacking Article III standing.” 2012 WL 89176, at *10 (quoting *Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006)). *Mazza* therefore supports Conseco’s argument that all class members must satisfy Article III’s standing requirements, and the district court erred in holding that only Plaintiff-Appellee/Cross-Appellant Yue had to have standing. See Conseco’s Main Brief on Appeal at 35-36 (standing required for all class members) and Conseco’s Third Brief on Cross Appeal at 33 n.19 (same).

We respectfully request that this supplemental authority be brought to the Panel’s attention.

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January 19, 2012

Respectfully submitted,

Harvey Kurzweil

Attorney for Defendant-Appellant/Cross-Appellee

CONSECO LIFE INSURANCE COMPANY

Encl.

cc: Andrew S. Friedman, Esq.

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