

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.

9th Circuit Case Number(s):	11-56579	
District Court/Agency Case Number(s):	2:08-cv-01506-AHM-SH	
District Court/Agency Location:	Central District of California, Western Division	
Case Name:	Celedonia X. Yue	v. Conseco Life Insurance Company
If District Court, docket entry number(s) of order(s) appealed from:	Dkt. #195	
Name of party/parties submitting this form:	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 that particular increase would constitute a breach. The district court's order on the merits is currently being appealed. On March 17, 2011, Yue filed her attorneys' fees motion and the district court granted an order awarding fees of \$1,910,733.83, leading to this separate appeal of the fee award.

Briefly describe the result below and the main issues on appeal.

Yue's counsel requested \$3,414,957.25 based upon a collective lodestar of \$1,737,030.75 and a multiplier of two. The Court awarded attorneys' fees in the total amount of \$1,910,733.83, which is \$1,737,030.75 plus a multiplier of 0.10. The main issues on appeal are: (1) Yue's entitlement to fees under CA. Code Civ. P. Section 1021.5, as well as the applicability of that statute here; and (2) reduction in the number of hours claimed by Yue and elimination of a multiplier.

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

There are no related proceedings in any other tribunals. There are no proceedings remaining below.

Provide any other thoughts you would like to bring to the attention of the mediator.

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.

**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. **To file this form electronically** in Appellate ECF, complete the form, and then print the filled-in form to PDF (File > Print > PDF Printer/Creator). Then log into Appellate ECF and choose Forms/Notices/Disclosure > File a Mediation Questionnaire.

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 September 21, 2011, I served the following document(s) described as:  
6 MEDIATION QUESTIONNAIRE 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](mailto: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](mailto: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)

(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.

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



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