

# 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): 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

If District Court, docket entry number(s) of order(s) appealed from: 195

Name of party/parties submitting this form: Plaintiff-Appellee Yue

### 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. By post-judgment motion, Plaintiff sought attorneys' fees under CCP section 1021.5 and, on September 9, 2011, the Court granted Plaintiff's motion.

### Briefly describe 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.

Defendant appealed several of the Court's substantive rulings (Appeal No. 11-55275).

Plaintiff also appealed from the dismissal of her Section 17200 claim in the order dated October 8, 2010 (Appeal No. 11-55359).

By order dated September 9, 2011, the Court granted Plaintiff's motion for attorneys' fees in the amount of \$1.9 million and Defendant now appeals from the order granting attorneys' fees.

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

None.

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

Settlement of attorneys' fees issues is unlikely as Defendant contests the District Court's underlying rulings that resulted in the declaratory judgment against Defendant.

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.



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