

April 7, 2003

Charles R. Fulbruge III  
Clerk

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 02-11192  
Summary Calendar

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HOWARD NEIMAN; TONYA NEIMAN,

Plaintiffs-Appellants,

VERSUS

CONTINENTAL LIFE AND ACCIDENT CO., doing business as  
Conseco Medical Insurance Company,

Defendant-Appellee.

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Appeal from the United States District Court  
For the Northern District of Texas, Amarillo  
2:00-CV-389

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Before DAVIS, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:<sup>1</sup>

The appellants' notice of appeal is timely to bring up for review only one order: the district court's order of September 30, 2002 denying the appellants' Rule 60 (b) motion for a new trial

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<sup>1</sup>Pursuant to 5<sup>TH</sup> CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

filed on September 25, 2002.<sup>2</sup> In appellants' September 25, 2002 motion for new trial, appellants raised essentially the same issues they raised in their Rule 59 motion, which was filed on August 2, 2002 and which the district court denied on August 27, 2002. The only additional argument the appellants made in this Rule 60(b) motion was one for general equitable relief which argument was available to them when they filed their timely Rule 59 motion on August 2, 2002.

Under these circumstances, the district court did not abuse its discretion in denying appellant's Rule 60(b) motion.

AFFIRMED.

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<sup>2</sup> We consider appellants' September 25, 2002 motion as one under Rule 60 (b) because it was filed long after judgment was entered and after the court denied a Rule 59 motion for a new trial.