

1 John M. LeBlanc (155842)
BARGER & WOLEN LLP
2 633 West Fifth Street, 47th Floor
Los Angeles, CA 90071
3 Telephone: (213) 680-2800
Facsimile: (213) 614-7399

4 Gregory N. Pimstone (150203)
5 MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Boulevard
6 Los Angeles, CA 90064-1614
Telephone: (310) 312-4000
7 Facsimile: (310) 312-4224

8 Attorneys for Defendant and Cross-Complainant
California Physicians' Service dba Blue Shield of
9 California

10 Michael G. Nutter (74853)
LAW OFFICES OF MICHAEL G. NUTTER
11 2021 East Fourth Street, Suite 200
Santa Ana, CA 92705
12 Telephone: (714) 667-1101

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF ORANGE**

17 CINDY HAILEY AND STEVE HAILEY,)
18 Plaintiffs,)

19 vs.)

20 CALIFORNIA PHYSICIANS' SERVICE)
DBA BLUE SHIELD OF CALIFORNIA, and)
21 DOES 1 THROUGH 100, inclusive,)
22 Defendants.)

23)
24 AND RELATED CROSS-COMPLAINT)
25)
26)
27)
28)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAY 28 2009

ALAN CARLSON, Clerk of the Court
C. Henderson
BY C HENDERSON

CASE NO.: 03 CC 01789
Assigned to Hon. Peter J. Polos, Dept. C27

**JOINT STIPULATION OF FACTUAL
AND LEGAL ISSUES; [PROPOSED]
ORDER GRANTING DIRECTED
VERDICT IN FAVOR OF BLUE SHIELD
OF CALIFORNIA**

Trial; May 18, 2009

JOINT STIPULATION RE FACTUAL AND LEGAL ISSUES

1 Defendant California Physicians' Service dba Blue Shield of California ("Blue Shield") and
2 plaintiffs Cindy Hailey and Steve Hailey (the "Haileys") hereby stipulate to the following factual
3 and legal issues:

4 1. Blue Shield completed medical underwriting in this case by making reasonable
5 efforts to ensure that the Haileys' application for coverage with Blue Shield was accurate and
6 complete;

7 2. Blue Shield's underwriting procedures included reasonable checks on the accuracy
8 and completeness of applications;

9 3. Blue Shield acted in good faith;

10 4. Blue Shield's rescission investigation in this case was reasonable and was performed
11 in a timely fashion;

12 5. Blue Shield's rescission investigation procedures were reasonable;

13 6. The Haileys willfully misrepresented and willfully omitted material information on
14 their Blue Shield application for health coverage;

15 7. The Haileys did so in order to obtain health coverage that they knew they would not
16 obtain had they been truthful;

17 8. The Haileys understood the Blue Shield application;

18 9. The Blue Shield application is clear and unambiguous;

19 10. Blue Shield did not breach its contract with the Haileys;

20 11. Blue Shield did not commit post-claims underwriting.

21
22 IT IS SO STIPULATED.
23
24
25
26
27
28

1 Dated: May 28, 2009

BARGER & WOLEN LLP

2
3 By: John M. Le Blanc
4 JOHN M. LE BLANC
5 ANDREW S. WILLIAMS
6 Attorneys for Defendant and Cross-
7 Complainant California Physicians'
8 Service dba Blue Shield of California

9
10 MANATT, PHELPS & PHILLIPS LLP

11 By: Gregory N. Pimstone
12 GREGORY N. PIMSTONE
13 Attorneys for Defendant and Cross-
14 Complainant California Physicians'
15 Service dba Blue Shield of California

16 Dated: May 28 2009

LAW OFFICES OF MICHAEL G. NUTTER

17 By: Michael G. Nutter
18 MICHAEL G. NUTTER
19 Attorneys for Plaintiffs and Cross-
20 Defendants Cindy Hailey and Steve
21 Hailey

22 WE HAVE READ AND UNDERSTAND THE ABOVE JOINT STIPULATION OF FACTUAL
23 AND LEGAL AND VOLUNTARILY AGREE THEM:

24 Dated: May 28 2009

25 Cynthia K. Hailey
26 CYNTHIA K. HAILEY

27 Dated: May 28, 2009

28 Steven W. Hailey
STEVEN W. HAILEY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

Based on the foregoing stipulation of factual and legal issues, the other evidence presented in this case, and the motion of California Physicians' Service dba Blue Shield of California ("Blue Shield") for a directed verdict, the Court hereby rules as follows:

- (1) The Court grants Blue Shield's motion and directs a verdict in favor of Blue Shield and against plaintiffs Cindy and Steve Hailey (the "Haileys") on each and every cause of action alleged in the Haileys' Second Amended Complaint; and
- (2) The Court directs a verdict in favor of Blue Shield as to the first cause of action in Blue Shield's cross-complaint for declaratory relief as to the validity of the rescission.

IT IS SO ORDERED.

Dated: MAY 28 2009

PETER J. POLOS

Hon. Peter J. Polos
Orange County Superior Court Judge