

## [Blue Shield Wins Summary Judgment in Rescission Case](#)

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On September 20, 2010, the [Lake County Superior Court](#) granted summary judgment in favor of [Barger & Wolen](#) client [Blue Shield of California Life & Health Insurance Company](#) in the health insurance rescission action titled *John M. Hagan v. California Physicians' Service, et al.*

Blue Shield Life was represented by Barger & Wolen partners **John M. LeBlanc** and [Sandra I. Weishart](#) and senior associate **Ophir Johna**, and by [Gregory N. Pimstone](#) from [Manatt, Phelps & Phillips, LLP](#).

In 2006, Blue Shield Life rescinded a health insurance policy issued to the Hagan family after discovering that they misrepresented and omitted Ms. Hagan's ongoing, serious medical problems and treatment in their insurance application. Had it known about Ms. Hagan's true medical history, Blue Shield Life would not have issued the policy.

The Hagans asserted several claims against Blue Shield Life, including breach of contract and bad faith. They contended that the rescission was improper and that it amounted to illegal "post-claims underwriting."

On Monday, the court rejected all of the Hagans' arguments, granting summary judgment as to the entire action and thereby confirming that Blue Shield Life was legally justified in rescinding the Hagans' policy.

In granting summary judgment, the court agreed with the Court of Appeal's decision in [Nieto v. Blue Shield of California Life & Health Insurance Company](#), that the underwriting standard delineated by the appellate court in [Hailey v. California Physicians' Service](#), a case also handled by Mr. LeBlanc and Barger & Wolen, was inapplicable to health insurers such as Blue Shield Life.

Applying the correct legal standard, the court found that Blue Shield Life completed all legally required underwriting prior to issuing the Hagans' policy, and that it was not required to obtain the Hagans' medical records because their insurance application gave no indication of any potential underwriting issues.

The court further found no triable issues of fact as to whether the Hagans misrepresented and failed to disclose material medical history information requested by the application. (In fact, although not required to support the rescission, the court noted the existence of strong evidence that the Hagans' misrepresentations and omissions were willful.) Accordingly, the court held that the rescission was proper as a matter of law and dismissed all of the Hagans' claims.

Blue Shield Life's parent company, California Physicians' Service, which was named as a defendant in the suit although it did not issue the Hagans' insurance policy, also obtained judgment in its favor.