

Insurance Law

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California District Court Grants Summary Judgment to Life Insurer in Rescission Case

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Salkin v. United Services Auto. Assoc., 2011 U.S. Dist. LEXIS 146324 (December 19, 2011)

Judge Virginia Phillips of the United States District Court, Central District of California, granted summary judgment to USAA Life Insurance Company, finding that Dr. Marshall Salkin made material misrepresentations regarding his health history when he applied for life insurance coverage with USAA Life, and that rescission of his policy was proper. The Court held that inquiry into the adequacy of USAA Life's initial underwriting of the policy was not relevant to the rescission inquiry, nor was Dr. Salkin's intent or his belief regarding the significance of his condition.

In his telephonic application for insurance, which was tape-recorded, Dr. Salkin represented that he had a family history of heart disease, underwent an EKG in connection with an earlier USAA Life application, and treated himself for high blood pressure. When asked if he had ever seen a doctor for a mental disorder, had undergone diagnostic tests during the prior five years, or had medical records of his self-treatment, he replied "no." When asked to authorize USAA Life to obtain his medical records, he affirmatively stated that no such records existed. Dr. Salkin submitted a claim for accelerated benefits under the policy when he was diagnosed with prostate cancer, and USAA Life conducted a routine contestable investigation.

During the course of its claim investigation, USAA Life requested the name of Dr. Salkin's health insurance company and obtained copies of its records, which revealed claims for medical treatment received by Dr. Salkin from various doctors. None of those doctors had been disclosed by Dr. Salkin in his application. USAA Life then requested and obtained the medical records of those doctors. The medical records revealed that Dr. Salkin had been treated by a psychiatrist since 2003 for recurrent and severe obsessive-compulsive disorder and manic-depressive disorder, and had been prescribed five different medications for these conditions; that he consulted with a neurologist and had an MRI of the brain with abnormal results; that he had been treated by a cardiologist, who ordered a stress test, EKG, and echocardiogram, all of which had abnormal results; that he was being treated for high cholesterol with medication prescribed by his cardiologist; and that he had been advised by his cardiologist to have a coronary angiogram as a result of his other abnormal test results, but had not done so. Based upon these misrepresentations, which were material to USAA Life's decision to issue coverage, the policy was rescinded.

Dr. Salkin and his wife, Ellen Salkin, argued that Dr. Salkin had no

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obligation to disclose the withheld medical history because he believed it to be insignificant. The Salkins relied on the seminal case *Thompson v. Occidental Life Ins. Co.*, 9 Cal. 3d 904, 916 (1973), which holds that if an insured has no present knowledge of the facts sought, or failed to appreciate the significance of the information related to him, his incorrect or incomplete responses cannot constitute grounds for rescission. The Court found the *Thompson* holding to be unduly broad, and noted that its holding “collides with the principle that under California law, even an unintentional misrepresentation can be the basis for rescission of an insurance policy.” The Court reconciled this conflict by limiting the application of *Thompson* to situations where the application asks general questions regarding whether the applicant has had or been treated for any disease or ailment, and fails to ask specific questions regarding particular illnesses or conditions. In support of its ruling, the Court relied on *San Francisco Lathing Co. v. Penn Mut. Life Ins. Co.*, 144 Cal. App. 2d 181, 186 (1956), a case that predates but was not overruled by *Thompson*, which holds that the failure to refer to temporary or minor indispositions will not be excused when an applicant is asked specific questions as to his medical history. The Court reasoned that specific questions regarding one’s health history, as opposed to general questions, do not call for the exercise of one’s judgment. “Answering whether one has medical records is not a question that calls in any realistic way for the exercise of one’s judgment; either the records exist or they do not.”

The Salkins also argued that USAA Life waived its right to rescind the policy because it did not properly underwrite Dr. Salkin’s coverage in the first place. The Salkins alleged that there were multiple inconsistencies in the application that should have been investigated prior to issuing coverage, such as a rise in Dr. Salkin’s PSA levels between his two applications, a prior suspended driver’s license for a dropped foot injury, and a self-reported change in weight. However, the Court found that “the rigors of USAA Life’s underwriting procedures, or what it would have, could have, or should have done, are not at issue.” The Court distinguished the statutory scheme and case law pertaining to healthcare service plans, which expressly preclude rescission where initial underwriting is insufficient, and found that no such requirements govern rescission of the instant life insurance policy. The Court further found that even if such a duty existed, it would not apply here because “(1) a material misrepresentation in an application, whether intentional or not, is a sufficient basis to rescind an insurance policy; and (2) at least one of the misrepresentations in this case (i.e., that Dr. Salkin had no medical records) had the effect of stymying further investigation.”

Read the full text of the opinion [here](#). The Salkins filed a Notice of Appeal, and the case is now pending in the United States Court of Appeals for the Ninth Circuit.

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