

# Claimants Against Insured Allowed to Intervene in Rescission Action Brought by Insurer

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January 2008

The United States District Court for the Northern District of California has held that an insurer should not be granted a default judgment against its insured and that parties whose claims are potentially covered under a policy issued to the insured should be allowed to intervene as a matter of right where the insured would not adequately represent their interests. *Houston Cas. Co. v. Int'l Grand Tours, Inc.*, 2007 WL 4249906 (N.D. Cal. Nov. 30, 2007).

An insurer issued an E&O policy to an educational travel agency that cancelled prepaid trips and did not refund fees to a school group. The school group filed suit against the travel agency, which defaulted in that action. After finding false statements in the application for the policy, the insurer cancelled the policy and filed a declaratory judgment action seeking rescission of the policy and an injunction preventing the travel agency from prosecuting proceedings against the insurer with regard to the policy. The travel agency did not respond to the complaint, and the insurer filed a motion for a default judgment.

Shortly prior to the motion for a default judgment, the school group filed a motion to intervene in the insurer's action in order to seek a declaratory judgment that its losses in the action against the travel agency were covered by the E&O policy. The court found that the claimants had an interest in the outcome of the insurer's action because of the probability that the group would obtain a money judgment against the travel agency and become a judgment creditor with the ability to proceed directly against the insurer.

The court further noted that the school group and insurer had conflicting interests and that the insurer, which sought to rescind the policy, could not adequately represent the school group's interests. The court concluded that the only prejudice to the insurer from denying the motion for a default judgment would be that the insurer would be required to prove its allegations against the travel agency. The court thus rejected the insurer's motion for a default judgment after stating its preference for the matter to be resolved on the merits.