

For Immediate Release
July 10, 2007

**American Express Faces Multi-Million Dollar Class Action Law Suit
After Making False Statements to Court and Consumers**

*Court quickly rejects attempt to force plaintiffs to individually arbitrate claims
after deception in attempted settlement is revealed*

San Francisco, CA—The California First District Court of Appeal speedily rejected Amex's attempt to make millions of cardholders individually arbitrate claims concerning Amex's fee-paid flight insurance programs, in *Aviation Data, Inc. v. American Express Travel Related Services Co., Inc.* The Court of Appeal concluded that American Express waived its right to arbitration when it sought court approval of a class action settlement based upon misleading and false statements in court filings, to plaintiffs' counsel and the cardholder class. In its strongly worded opinion, the Court of Appeal also rejected Amex's assertions that its outside counsel, and not AMEX, were responsible for the misrepresentations. The case was argued June 27, 2007 and decided on July 6.

The decision will force American Express to go forward and defend a nationwide class action concerning some of its travel insurance programs, which gross hundreds of millions of dollars. Amex promised to charge cardholders an insurance premium "only when you fly."

The case commenced in September 2001 when William Hoffman filed suit alleging that Amex was cheating their customers by systematically charging card members for travel insurance whether or not a trip was taken.

A proposed nationwide class action settlement was reached in 2003, which Amex said would have required Amex to make extensive changes to its computer system for processing insurance charges. Amex promised in sworn statements and other filings to "begin using" a new computer system code that would fix the problem in exchange for a release of claims. Amex additionally sent a notice to all members of the class that repeated these assertions.

Following objections, the settlement was terminated after it was revealed that Amex had implemented the computer changes in 2002 before settlement negotiations even commenced. Amex then asserted that even though it had proposed a class settlement, once the settlement was terminated, it had a right under its contract to make each customer arbitrate individually. However, the Superior Court and Court of Appeal held that Amex had waived arbitration due to its misrepresentations concerning the settlement.

Judge Ronald M. Sabraw, presiding over the case, remarked, "the Court is deeply troubled at the notion that a party could appear before the Court, seek and obtain Court approval for a class settlement, mislead the Court, send out a misleading class notice, and then, when the settlement fails... require each putative class member to arbitrate his or her own claims individually."

The Court of Appeal affirmed, holding: “Public policy concerns support the rule that parties must indeed be free to attempt to settle their disputes without losing their arbitration right if settlement fails. We perceive, however, no policy justification to extend this principle to encompass attempts to secure judicial imprimatur and finality on settlements obtained through misleading or deceptive tactics. We will not take such a remarkable step.” Noting the absence of other cases addressing the issue of waiver through attempts to deceive the Court, the Court of Appeal concluded: “The dearth of cases construing such deceptive settlement tactics... is, we hope, a testament to the rarity of such behavior.”

David Fried, one of the plaintiffs’ lawyers, said: “Amex sought a ruling that corporations get to take one shot at cheating a national class of consumers in court, and if that fails, consumers lose their right to proceed in court. AMEX wanted consumers to individually arbitrate claims for small amounts of money, which it knows that few will do. The Court’s rejection of that argument is not surprising; what is shocking is that Amex ever took such a position and thought the court would rule otherwise.”

The decision will force American Express to go forward with a nationwide class action. Amex’s motion for summary judgment was also recently rejected. “This is hardly the kind of conduct that one would expect from a company. from a company that prides itself on its integrity,” said Max Folkenflik, of Folkenflik & McGerity, Chairman of the Plaintiffs’ Steering Committee, and counsel for Aviation Data, one of the objectors. “Neither is the conduct at issue in the case itself. Amex has kept many millions of insurance premiums it knowingly charged to customers improperly.”

Decision: <http://www.courtinfo.ca.gov/cgi-bin/opinions.cgi?Courts=A>

Counsel Contacts:

FOLKENFLIK & McGERITY
Max Folkenflik, Esq.
1500 Broadway, 21st Floor
New York, NY 10036
(212) 757-0400
mfolkenflik@fmlaw.net

LAW OFFICE OF DAVID M. FRIED
David M. Fried
1975 Adams Av.
San Leandro, CA 94577
(510) 562-8906
dmfried@sbcglobal.net

###