

MOVING THE MARKET

# American Express Legal Deal Unravels

By **ROBIN SIDEL**

It is back to square one for American Express Co. in a long-running legal fight with customers over its travel-related insurance programs.

Nearly two years after the big credit-card issuer agreed to settle a California class-action lawsuit, the pact has unraveled. The judge in the case recently admonished American Express for misleading the court about its practices. And while terms of the original proposed settlement, which covered more than five million cardholders, didn't call for American Express to pay damages, plaintiffs in the case say the company could now be on the hook for more than \$150 million.

The new phase will get under way Monday, when plaintiffs are expected to file an amended complaint in the matter.

Travelers sued American Express in 2001, contending that the credit-card issuer profited by intentionally overcharging them for flight, baggage and travel insurance beginning in 1983. "Billing practices, procedures and computer programs are intentionally designed to regularly and systematically bill customers for services they did not use or did not get..." according to the suit filed in California's Alameda County Superior Court.

"If you charge an insurance premium and have reason to know there was no risk, you have an obligation to give that money back," says Thomas Campbell, a plaintiffs' attorney in the case. The case was awarded class-action status when the two sides entered settlement talks.

American Express has vigorously defended its actions, saying that it already has extensive programs in place to ensure that cardholders are easily reimbursed for coverage that they don't receive. "We feel we have a strong defense and strong programs in place to address refunds," an Amex spokeswoman says.

American Express began selling travel-related insurance in the late 1960s as an accompaniment to its core card business. Cardholders enroll in the programs for free, and then are automatically charged for insurance when they book a flight. According to court filings, American Express collected more than \$920 million in premiums from the program between September 1997 and 2004. The company doesn't disclose those figures.

This isn't the first time cardholders have complained about the company's insurance products. American Express settled two similar class-action lawsuits in 1983; cardholders complained that the company would charge them for insurance premiums automatically even if the traveler

never got on the plane. As a result of that settlement, American Express instituted programs so that cardholders could more easily get their money back if they didn't use the insurance. Monthly statements contain refund coupons; consumers can also call a toll-free number to obtain a refund.

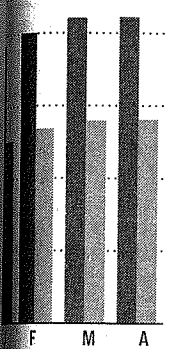
The 2001 suit contended that those programs didn't go far enough. The two sides reached a preliminary settlement in August 2003 under which the company agreed, among other things, to reduce the need for refunds by modifying computer codes so that fewer cardholders would be charged by mistake.

The pact fell apart after some plaintiffs objected to the settlement because "we believed that the losses to the class were substantial and the no-dollar settlement was not warranted," says Max Folkenflik, who was co-lead counsel for the objectors.

As a result of the objection, lawyers discovered that American Express had already adopted alterations to its computer system before the settlement had been reached. "Although the earlier implementation of these programs was arguably beneficial to the class, it was misleading to characterize them as prospective in nature and part of the current consideration for settlement," Judge Ronald Sabraw wrote in an opinion handed down last month.

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