

**TRAVEL STRATEGIES IF AIRLINE FAILS**

A law passed shortly after 9/11 to protect consumers in the event of an airline bankruptcy has expired, leaving travelers exposed during the holiday season unless a pending bill is approved by Congress.

Under the Aviation and Transportation Security Act, other airlines were required to honor unused tickets from a bankrupt airline flying the same route, although only on a standby basis, and airlines could charge no more than a fee of \$25 each way. Still, the provision helped



**Airline bankruptcies could strand business travelers and cost credit card companies millions of dollars**

promote consumer confidence in the use of airlines, although it also had the unintended consequence of reducing credit card refunds because passengers still had a way to use their tickets.

A travel consultant has advised the following to protect yourself in the event that an airline becomes bankrupt before you use your ticket:

- **Pay for your ticket with a credit card.** According to the Fair Credit Billing Act, you may be able to get your money back from the credit card company if you do not receive services that you have paid for.
- **Make sure that the charge for the ticket is made directly to the airline.** Charges made through consolidators will not be as easy to reclaim.
- **Request a paper ticket instead of an electronic ticket (e-ticket).** E-tickets are less likely to be accepted as proof of a ticket purchase by another airline. Alternatively, because some airlines no longer issue paper

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tickets, you can ask your airline for a printout of the passenger receipt coupon.

- **If your airline doesn't completely cease operations but just cancels your flight, contact the airline as soon as possible.** Alternate arrangements due to a canceled flight are generally on a first-come, first-serve basis, and contacting the airline early increases your odds of finding acceptable alternatives.

**With the airline ticket consumer protection law having expired, taking steps now can help you make your business meetings on time. ▣**

**SUPREME COURT AFFIRMS TILA DAMAGES CAP**

In an 8-1 decision issued yesterday, the U.S. Supreme Court rejected arguments that a 1995 change to the Truth in Lending Act allows borrowers to recover damages from lenders in excess of the statutory \$1,000 cap for faulty loan disclosures. As a result, the limit on damages for consumer loans remains at \$1,000, with the limit for real estate loans at \$2,000.

The case, reported in a previous issue of this newsletter, involved a consumer's attempt to purchase a vehicle from a car dealer using a

trade-in. Due to a series of events, the consumer was unable to qualify for a loan for the new vehicle. At the same time, no payments were being made on the car loan for the trade-in, and so that vehicle was repossessed. The consumer sued in federal court, alleging a violation of the Truth in

**THE DAMAGE CAP UNDER THE TRUTH IN LENDING ACT STILL APPLIES DESPITE THE CHANGES IN THE LAW**

Lending Act, and sought damages of twice the finance charges. The federal court, as well as the federal court of appeals, agreed with the consumer that the 1995 law change allowed over \$24,000 in damages, despite a \$1,000 cap under the statute. The Supreme Court disagreed, however, and limited the damages to \$1,000.

**Even with the Court's decision, lenders are still subject to class action claims and also, in the case of financial institutions, to federal bank regulatory action. ▣**

## SEC EXTENDS SECTION 404 REPORTING REQUIREMENT

Yesterday, the SEC issued a special order granting certain public companies 45 more days to comply with the new Section 404 internal control report requirements under the Sarbanes-Oxley Act. This is intended to give smaller companies more breathing room.

Under Section 404, both management and independent auditors of "accelerated filer" companies must report on the effectiveness of internal controls beginning with their first year ending after November 15, 2004. The reports must be included in the companies' annual Form 10-K reports filed with the SEC 75 days after year-end.

Many companies are finding it

difficult to comply in time because of limited staff. Also, public accounting firms have reportedly stated that the work necessary to help these companies comply with Section 404 may not be able to be completed by the deadline.

### SOME COMPANIES NOW HAVE 45 MORE DAYS TO FILE THEIR SECTION 404 REPORTS

The SEC's action does not change the due date of the Form 10-K. However, it allows the Section 404 reports to be omitted from the Form 10-K, provided they are filed within 45 days after the original 75-day deadline. Note that only those

companies with a public float of less than \$700 million at the end of their second quarter of 2004 are eligible for this postponement. See <http://www.sec.gov/rules/exorders/34-50754.htm> for more details.

The Public Company Accounting Oversight Board is expected to issue a conforming rule delaying the Section 404 auditing requirements for accounting firms as well.

**Only the filing of the Section 404 reports is being postponed. The Form 10-K will still need to be filed within 75 days after year-end and then amended once the Section 404 reports are ready to be filed. ■**

## NO RIGHT TO REST FOR SERVICE MEMBERS UNDER USERRA

A federal court recently held that the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) does not create a right to rest for returning service members. In the case, a reservist was allegedly forced to work his shift after stopping at his place of



**A recent court decision ruled that USERRA gives service members a right to return to their jobs but not necessarily to rest before doing so**

employment on the way home from reserve military exercises. After his shift, he was killed in a car accident after losing consciousness.

USERRA provides that service members have a right to return to their place of employment, and that they have a specified amount of time after the completion of the period to notify their employer of such return. However, according to the court, USERRA does not require that employers prevent employees from returning prior to the end of such specified period of time.

**Non-compliance with the provisions of USERRA may subject employers to government-assisted court actions and private court actions, which may include double damages. ■**

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