

## ICELANDIC VOLCANO

The Icelandic volcano, Eyjafjallajökull, erupted on 20<sup>th</sup> March 2010 (having been silent since 1823) and then began a second, more severe eruption on 14<sup>th</sup> April 2010. On 15<sup>th</sup> April 2010 Eurocontrol, which coordinates air traffic control in 38 countries, recommended the current flight ban, which has affected 313 airports in 20 countries and nearly 7 million passengers, owing to the danger to aircraft engines from the volcanic ash cloud produced by the volcano. According to IATA, the flight ban is costing airlines \$200 million a day in lost revenue. The Icelandic Meteorological Office recently announced that the emerging ash column is now only about 5 kms high, having risen to nearly 10 kms, but it will need to drop to 3 kms before airspace can return to normal and no-one can say when that will happen.

In the meantime, what rights do passengers who have suffered delays and cancellations as a result of the flight ban have to claim compensation from the airlines and tour operators? Under EU Regulation 261/2004, all carriers flying out of EU member states and all Community carriers flying to EU member states are required to offer a full refund of the flight cost within 7 days or, at the customer's choice, an alternative flight at a later date. While waiting for a delayed or alternative flight, passengers should be offered reasonable meals and refreshments and in the case of an overnight delay, reasonable hotel accommodation free of charge. In the case of cancellations, passengers are also entitled to compensation varying between €150 and €600 depending on the length of the delay and distance of the flight. However, the carrier is not obliged to pay this compensation if the carrier can prove that the cancellation was caused by 'extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken'. As an example of such circumstances, the preamble to the Regulation refers specifically to meteorological conditions incompatible with the operation of the flight concerned and many carriers are relying on this exclusion to deny compensation to their customers. In the case of package holidays, the Package Travel Regulations contain provisions for a refund and, if appropriate, compensation when the tour operator cancels the package before the agreed date of departure or when after departure, the tour operator is unable to provide a significant proportion of the services promised or one of its suppliers fails to perform its obligations under the contract. It has been widely suggested in the national press that this means that package holidaymakers are therefore in a better position than other passengers, but there is in fact a similar exclusion provision for unforeseeable circumstances beyond the tour operator's control, which could not have been avoided even by the exercise of reasonable care, in the Package Travel Regulations, except under Regulation 14 which covers the situation where some, but not all, of the services contracted for have been provided and there is very little authority as to how that Regulation should be applied.

The safest option might therefore be recourse to a travel insurance policy. At first sight, it might be thought that this type of disruption is exactly what ought to be covered by a travel insurance policy, but several insurers, including Aviva, have relied on exclusions in the small print of the policy to refuse to indemnify policy holders. Others, like Direct Line and Saga have said they will honour all claims that are properly documented, regardless of the terms of the policy. So, individual policies need to be carefully examined.

In short, the position is complicated, but members of the Chambers Travel Group would be very happy to assist with advice or, if necessary, the drafting of proceedings for clients who have suffered significant losses as a result of the current flight ban.

