

SMITH DUGGAN

SMITH DUGGAN BUELL & RUFO LLP

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Dear Friends and Clients,

Since 2012, the U.S. Department of Transportation's full-fare disclosure requirements have prohibited "opt out" provisions in the advertising of tour and travel products which include any interstate or international air transportation.

When offering a package including air transportation, under these DOT regulations, the tour operator or travel agent may not offer additional optional services in connection with the package if the price of the optional service is automatically added to the purchase unless the consumer takes affirmative action to "opt out." In addition, many states for years have taken the position that selling travel insurance products on an "opt out" basis violates state consumer protection laws.

Partially in response to this regulatory regime, the practice of including trip cancellation or evacuation insurance in a package is increasing. Some tour operators now include travel protection insurance as an integral, mandatory part of a tour package, as if it were no different from including hotel accommodations or ground transportation services, and not allowing deletion if the service is not wanted. Under this theory, consumers would not be "opting out" of insurance coverage, as it would be a mandatory part of the package, and the resulting

advertised package price would be the amount paid by the consumer, presumably avoiding the restrictions in the DOT regulations.

But by doing so, travel insurance companies, as well as tour operators and travel agencies, have left themselves open to potential attack by state insurance commissions, many of whom view the inclusion of insurance products within a travel package – without affirmative consent – to be a violation of state consumer protection and insurance regulations, regardless of whether the insurance product is characterized as “opt out” or “mandatory.”

Indeed, recently a number of travel insurance underwriters entered into regulatory settlement agreements with numerous states, including Missouri, Minnesota, Ohio, Pennsylvania, and Utah, in which the underwriter agreed, among other things, to prohibit its distribution vendors (i.e., tour operators or travel agents) from requiring or mandating the purchase of travel insurance or any travel insurance product as a condition for the purchase of a trip or travel package.

While much could be said that this policy makes little or no sense because consumers are not making any additional payment for the provided insurance coverage, the result of this interaction between federal and state laws and regulations means that tour operators and travel agents for the most part are left with offering travel insurance products only on an “opt in” basis, after disclosure of the insurance product’s terms, conditions and premiums.

As always, we remain available to discuss these issues with you.

With Best Regards,
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About Smith Duggan Buell & Rufo LLP

Smith Duggan Buell & Rufo LLP was founded in 1989 as Smith & Duggan. The firm has grown and now has over 20 attorneys, with offices in Boston and Lincoln. More information regarding the firm’s history and the services it provides can be found at www.smithduggan.com.

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