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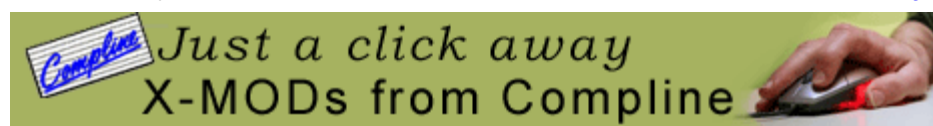
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FLASH REPORT!

Vermont Bans Applied Underwriters' SolutionOne

The Vermont Insurance Department declared Applied Underwriters SolutionOne workers' comp program illegal because of its use of unfiled documents to skirt state approval. Applied Underwriters and its affiliates including Continental Indemnity Company have been ordered to stop writing SolutionOne, to make refunds, to forego collection attempts on some uncollected premium, to pay a fine, and to reimburse the state for its investigation as part of a settlement agreement. Applied Underwriters is a unit of Berkshire Hathaway (NYSE: BRK.A).

The State's action follows a lengthy investigation by the Vermont Department of Financial Regulations, an investigation prompted by consumer complaints. In Vermont, the Department of Financial Regulation has oversight authority for the insurance industry. Applied Underwriters' did not admit wrongdoing as part of the stipulation but did agree not to dispute the Department's finding that it had broken the law.

As with the California Department's on-going case against Applied Underwriters' EquityComp program, Vermont found that the SolutionOne program used an illegal, unfiled reinsurance participation agreement (RPA) to bypass governmental oversight and to charge higher premiums than otherwise allowed. In Vermont, like in California, the SolutionOne program was sold with a guaranteed cost workers' compensation policy issued by an Applied Underwriters affiliate. The investigation found that the RPA was the governing document.

"[T]he Department has concluded that all SolutionOne Profit-Sharing transactions in Vermont – each effected via a separate 'Reinsurance Participation Agreement' (RPA) with AUCRA – materially modified the terms of Continental [Indemnity Company's] approved and filed guaranteed-cost workers' compensation policy, bypassing the required review and approval of the Department," Commissioner Susan Donegan wrote for the Department.

Applied is not allowed to sell the product again until it is filed and approved.

Donegan says the Department's investigation found that Applied Underwriters' was selling several flavors of the SolutionOne program in the state, but all were in violation of state law. She also notes that all "were misleadingly characterized" as a profit sharing arrangement and as a valid reinsurance transaction.

***SolutionOne programs "were misleadingly characterized"
 as a profit sharing arrangement and as a valid reinsurance transaction.***

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– *Hon. Susan Donegan, Vermont Commissioner*

"In the case of the pooled and single risk products, the Department asserts that SolutionOne de facto operated as a retrospective rating plan, replacing Continental's guaranteed-cost workers' compensation Insurance policy with an unfiled, unapproved retrospective rating plan which had the potential for higher and unpredictable assessments should a certain level of claims occur," the department notes. "In the case of the fixed cost/capped loss program, SolutionOne resembles a dividend plan, replacing Continental's guaranteed-cost workers' compensation Insurance policy with an unfiled, unapproved plan holding out the promise of a refund of premium in the future depending on experience."

Under the agreement, Applied Underwriters' and its affiliates has to pay \$300,000 in administrative penalties to the Department and another \$35,000 for its investigative costs. In cases where SolutionOne subscribers paid more in workers' comp premium than could be charged under their Continental guaranteed costs policy, Applied is being ordered to reimburse the difference. Where employers paid less under the program, Applied is also barred from seeking the difference. Applied is also blocked from applying any short rate penalties for policies that are still in force but cancel early.

Applied Underwriters affiliates mentioned in the decision include Applied Underwriters, Inc., Continental Indemnity Company, Applied Risk Services Inc., and Applied Underwriters Captive Risk Assurance Company, Inc.

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Note: Applied Underwriters' has sued Worker' Comp Executive and lawyer Larry Lichtenegger for trademark violation asserting we can't use its name to describe a webcast specifically about them. A motion to dismiss is pending.

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