

Self-Insurance

at Its Best:

RRGs Insuring RPGs

Written By Karrie Hyatt

Risk retention groups (RRGs) and risk purchasing groups (RPGs) have been helping self-insureds obtain liability insurance for more than thirty years. Yet there is a unique structure that is a product of the Liability Risk Retention Act (LRRA) that has only been utilized by a handful of companies—RPGs forming RRGs to insure their liabilities.

Risk purchasing groups can often find it difficult to obtain the coverage they need, even though they are taking advantage of bulk purchases of liability products. RPGs may have trouble finding insurance products to meet their needs, an insurer could decide not to write their program any longer, or they may find product pricing volatile. As for any individual or group trying to get adequate insurance coverage, self-insurance can provide more stability and cost-effectiveness.

When liability insurance was expensive and hard to obtain, in the late 1970s and early 1980s, Congress passed the *Product Liability Risk Retention Act* in 1981 to address the issue specifically concerning product liability. It was followed five years later by the *Liability Risk Retention Act* of 1986. The LRRRA expanded the scope of the original act by including all forms of liability insurance. The Act enabled businesses, professionals, trade associations, nonprofit organizations, and governmental agencies to establish self-insurance pools which either retain risk—risk retention groups (self-insurance companies), or purchases liability insurance on a group basis—risk purchasing groups (group purchasing entities).

Both RRGs and RPGs must be organized for the sole purpose of providing liability insurance for individuals or organizations that share similar liabilities. RRGs and RPGs are required to be chartered in one U.S. state domicile and to register in the states in which they intend to do business. The LRRRA preempts various aspects of state regulation, requiring that RRGs and RPGs only be subject to regulation by their state of domicile.

This is the most significant legacy of the LRRRA—that RRGs and RPGs can operate across all states as federally legislated entities without being subjected to state-by-

state regulation. Among other key benefits provided by the LRRRA is the ability for RRGs and RPGs to tailor liability coverage to meet the specialized needs of its members.

As much as RRGs and RPGs have in common, there is very little cross over in their businesses. Attorneys that specialize in setting up risk purchasing groups are rarely involved in risk retention group formation. Captive managers rarely are involved with risk purchasing groups, since RPGs are not actually risk-bearing companies.

However, since the inception of the LRRRA, there have been a few RRGs and RPGs that have benefited from a symbiotic relationship where a RRG acts as insurer to its member risk purchasing group or groups. Currently, there are two such RRGs operating in this capacity—Midwest Insurance Group, Inc., A RRG and Allied Professionals Insurance Company, A RRG, Inc. (APIC). Midwest Insurance Group was formed by and insures members of the Midwest Insurance Coalition PG, which offers general and professional liability for nursing home owners and operators, mostly in Indiana.




APIC is owned by and acts as insurer to three risk purchasing groups—all of which formed during the early years of the LRRRA: American Acupuncture Council PG, owned by the American Acupuncture Council; American Massage Council Insurance Buying Group, owned by the American Massage Council; and National Chiropractic Council PG, owned by the National Chiropractic Council. As the association names suggest, APIC provides medical professional liability to chiropractors, acupuncturists, and massage therapists through their trade associations and provides coverage in all 50 states, District of Columbia, and all U.S. territories.

APIC was launched in 2003, after the three RPGs experienced a decade of unstable insurers cancelling their policies. Mike Schroeder, vice president and general counsel for APIC, said that establishing APIC allowed the risk purchasing groups to get,

“Stability and control over our own destiny. Our program was profitable every single year, but what we were exposed to were companies deciding ‘We want to go in a different direction,’ and all of a sudden they weren’t going to write that program anymore or companies getting bought and the new management only being interested in certain aspects of the program.”

It was after losing yet another insurer after September 11, 2001 that the three RPGs decided that they needed control over their liability program. The chance to have the stability of steady liability coverage was the primary motivating factor for creating APIC, said Schroeder, who was involved in establishing the RRG. APIC has done just that. It has created a secure avenue for liability insurance and has allowed each RPG to expand. According to the *Risk Retention Reporter’s annual Risk Retention Group Directory & Guide*, as of 2016, APIC had 148,000 insureds and gross premium of more than \$21 million.





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In addition to allowing the RPGs to grow, APIC also provides the ability to quickly meet insureds needs. "A RRG has much more flexibility [than traditional insurance companies] and it's not subject to rate and form regulation," said Schroeder. "If we have a new coverage that our insureds need, we don't have to wait a year while we go through that process in every single state. We can better customize and adapt to what our markets need much more quickly than a conventional insurer could."

Those were just the benefits that APIC and its RPGs found in the beginning. In the fourteen years since it began operating, the RRG has found additional benefits.

"Over time, we learned that we can include policy provisions that traditional insurers can't," Schroeder continued. "For example, we have a provision requiring arbitration if a third party who is suing one of our insureds wants to also add us to the lawsuit. There are a number of states, New York and Louisiana being examples, with laws stating that insurers can't have arbitration provisions in their policies. As a RRG we can do that, so we can require arbitration of any disputes under the policy. We can set a contractual limitations provision of bringing these claims for one year. There are provisions like that ... Some states have requirements that a third party can ask about our insureds' insurance information. Well, that's not permitted under the Liability Risk Retention Act."

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When APIC was formed, the RRG was meant to be a stepping stone to becoming a traditional insurer. According to Schroeder, "Our original game plan was to form a RRG, and when we became big enough to become non-admitted then admitted [as a carrier]. Now, after we've learned everything that we've learned, we've no intention of doing that ever. This is much better."

Karrie Hyatt is a freelance writer who has been involved in the captive industry for more than ten years. More information about her work can be found at: www.karriehyatt.com.

As beneficial as RPGs self-insuring through RRGs can be, only a handful of companies have taken advantage of this structure during the last 30 years. The fact may be that RPG members and RRG owners may not even be aware that this option exists. "I think a lot of companies went straight to being RRGs and didn't do the intermediate step of being a RPG. Frankly, a lot of RPGs that are out there, they'd really be smart to form their own RRGs. It seems like an overwhelming task to switch over to being an actual risk-bearing entity, and I think that's where the struggle is," said Schroeder.

"If they want to control their own destiny," he continued, "they should look into it. It will cost them a lot less than they think and it will give them a lot more peace of mind knowing they'll have a reliable sustainable source of coverage." ■

