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Risk Retention Groups

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The Rough Notes Company, Inc.

As has been the case for years, the commercial insurance marketplace continues to be a creature of change. In fact, some may argue that change is about the only constant in the industry.And one of the most dramatic changes occurred in the late 1970s when the product liability market vanished almost overnight.

Needless to say, companies needing this coverage were very concerned and that concern reached legislators in the nation's capital, especially after individual state insurance departments found themselves powerless to resolve the problem.

A new sheriff in town

So, after much discussion and spirited debate, the U.S. Congress decided that what was needed was a federal insurance law to resolve the problem. So in 1981, Congress passed its first major national insurance legislation, the 1981 Product Liability Risk Retention Act (PLRRA). By the time Congress acted, however, the market was back to a soft pricing cycle, and the attention of U.S. businesses waned, showing reduced interest in the newly passed legislation. Predictably, change returned yet again, as did the hard market, thrusting business back into the quandary of affordability and availability of liability coverages.This time, Congress acted and expanded the legislation to incorporate all commercial liability. Adopted in 1986, it was dubbed the Liability Risk Retention Act (LRRA) and after 27 years, the LRRA has continued to be a viable component of the alternative risk transfer (ART) market and risk financing strategy.

The LRRA has not been without its share of "practical" challenges. Lest one believe that the individual state insurance departments wholeheartedly embraced that 1986 Legislation with open arms, it is important to point out that, even after 27 years, the industry continues to experience certain push-back in a number of forms.

"A few of the states continue to this day to resist the legal requirements of this important federal law," says Joe Deems, executive director of the National Risk Retention Association (NRRA). In addition to the traditional insurance industry's lobbying against the legislation, the rumbling and resistance of these states also acted as an impetus for the formation of NRRA in 1987.

Over time, NRRA has become the recognized advocate for the risk retention industry. It supports its efforts through education, communication, networking, government relations and judicial advocacy. Advocacy is an important component since the LRRA was drafted without incorporating any "enforcement mechanism" into the law.It is a federal statute that is not overseen or enforced by any federal agency, allowing the offending states to capitalize upon that missing element. "Moreover," as Deems notes, "the primary regulatory authority for RRGs is their domiciliary states, empowered to charter and regulate the companies to be compliant with the LRRA. But these states can sometimes be up against significant political pressures imposed upon them by other 'non-domicilliary' states within the NAIC. This is not an uncomplicated situation," he adds.

While one might also think from all the media coverage and debate that RRGs are the primary entities enabled by the LRRA, in fact they are not the only offspring of the act.Deems observes that there exists another very successful group of authorized entities that comprise the other sibling in this family created by this important legislation: the Risk Purchasing Groups (RPGs). RPGs have become by many estimates the fast growing segment in the industry. As defined by the LRRA, a purchasing group is an organization that purchases liability insurance on a group basis from an insurance company or an RRG for its members. Unlike an RRG, an RPG is not an insurance company and its members do not underwrite their own coverage. However, like the RRGs, RPGs are subject to similar or related tests Pertaining to membership, exposures, and type of coverages offered.

One way that the NRRA meets its goals regarding education and networking is through its annual conference. Previously these conferences were frequently held in the Washington, D.C. area; however, the 2014 conference will take place in Chicago. It is scheduled for September 30 to October 2, 2014, at the Softel Hotel on Chicago's Gold Coast.

The NRRA always tries to deal with the many hot topics that affect its members. This year, for example, a major session will be devoted to the future direction of RRGs as an industry "in the face of leveled growth with no early end in sight for the soft market," says Deems. He indicates that industry executives, analysts and regulators will assess the outlook and will provide insight on how to navigate the road ahead. Cyber security for RRGs will be another one of the hot topics discussed at the meeting. Of course, there will be continued dialogue on NRRA members' developing plans to cope with the impact of the Affordable Care Act (ACA) on RRGs in the health care sector, because health care-related RRGs make up the largest percentage of the market.

To put everything in context, there are about 250 risk retention groups and more than 900 risk purchasing groups. While this year there were more retirements than start-ups, this could reverse if the soft market begins to harden. One very positive note is the Finding that RRGs overall have been outperforming the commercial industry.

Impact of the ACA

The impact of the ACA is an intriguing issue. On the one hand, the influx of a large number of previously uninsured members of the public could potentially raise the percentage of claims fled against health care industry members, now over 60% of the companies being formed and represented by NRRA. On the other hand, RRGs are particularly well suited to underwrite "stop loss" (excess) coverage. Subject to minimal state regulation under the LRRA and armed with the ability to sell policies in multiple states, stop loss presents an interesting opportunity for RRGs and the industry as a whole.

Of course, NRRA will be on the forefront of such an initiative, as undoubtedly there will be, and already are, certain states that will try to present obstacles to this unique form of business that will benefit many companies and businesses, not just insurance entities. NRRA has a unique weapon in its quiver: the amicus curiae brief.It has been escalating its use of this unique form of pleading in a number of cases pending in multiple venues. "We are regularly using this tool to assist member litigants in their challenges to state regulators and even state laws that are preempted by the LRRA, with a great deal of success," Deems says.

He adds, "We thus have taken a lead role as a participant in litigation That has defined or interpreted the LRRA." He indicates that since 1992, the NRRA has participated as either an amicus or a party in almost every important risk retention case. "We believe that this is an important reason the RRGs and RPGs become members of the association. We are a group that truly steps in and protects the interest of our members wherever we can afford to do so. Bottom line," he says, "we have been aggressive advocates on the legislative, regulatory and judicial level for a number of years now." He points out that the association also lobbies at the NAIC and encourages legislation at both the state and federal levels that will provide for an enforcement mechanism for the provisions of the act.

Conclusion

In recent years, in contrast to the growth of RPGs, the growth of RRGs has been relatively static. Deems does not see any dramatic growth right at this moment, but he says that he wouldn't be surprised if later this year or next year there may be an upswing.For that reason, it is important to "educate the public that this kind of product exists." Regardless of the current market, things can change quickly and valid approaches to risk financing for middle market accounts will need to be available. It is important to continue to support the NRRA in its efforts to enforce the legislation as it was designed.

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