

RISK PURCHASING  
GROUP Brings

# Cyber Liability

to  
Small  
Businesses

Earlier this year, a risk purchasing group (RPG) was formed to provide cyber liability protection to the restaurant and hotel industries. In the last few years, several RPGs have begun providing cyber liability to small businesses and franchises, as well as for insurance professionals, real estate agents and educators. The flexibility of RPGs in set-up and management is proving to be a unique and effective way to reach entities which may not have access to cyber liability coverage.

Written by Karrie Hyatt

## Small Businesses Facing Cybercrimes

As cybercrimes become more commonplace, the need for cyber security liability insurance increases. While many large and national companies have been taking advantage of the cyber liability products that are increasingly becoming available in the marketplace, most medium and small companies are being left behind.

According to Daniel V. O'Leary, of counsel with Chicago-based law firm Mandell Menkes, LLC who has been responsible for dozens of RPG formations, "Large capitalized corporations with in-house risk management personnel can access markets offering cyber security coverage, but small to mid-size businesses without in-house risk management personnel may find it more difficult to obtain this coverage independently."

Another reason smaller companies may not be purchasing cyber coverage is that they think they are at less risk of exposure than a large company – especially if they don't obtain or store a lot of consumer data. However, the size of the company does not matter. One of the fastest growing segments of cybercrimes is the use of stolen credit card information. Any company that collects credit card information as part of the payment process is potentially at risk. Another cybercrime that many small businesses are unaware of is the theft of employee data. Even for companies with only a dozen employees could take a big hit if that private information is stolen.

Leib Dodell, the former CEO of Media/Professional Insurance, is an insurance professional who has been at the forefront of developing cyber liability products – helping to set

up one of the first products in the late 1990s. He has found that the outreach for getting cyber products to small businesses is incredibly difficult. "One of the challenges with cyber is trying to figure out how to make it relevant to small businesses, smaller buyers. The big companies and financial institutions have access to a robust market that specialize in cyber. But the smaller buyers are a challenge because they typically work with small, local, retail brokers who have no experience with cyber and small budgets for insurance products. So trying to figure out how to get cyber to those smaller buyers has been a big challenge for the industry."

Insurers have been trying to find an efficient way to make their cyber liability products available to companies that likely don't have cyber liability in their insurance budget and have been trying a number of different delivery methods. According to Dodell, "There are a lot of different distribution strategies and I think RPGs is one of those."

## What are Risk Purchasing Groups?

RPGs are entities that were enabled by the Federal 1986 Liability Risk Retention Act (LRRRA) along with their more well-known counterparts, risk retention groups (RRGs). The LRRRA preempts some aspects of state regulation regarding RPGs, which also includes their members, their insurers and the agents and brokers that work with them. RPGs can operate in multiple states but must have a state of domicile and they are required to register in each state in which they intend to do business. Unlike RRGs which are actual insurance companies who retain their own risk, RPGs are collective buyers of existing insurance products from insurance companies.

RPGs typically represent a trade association or some other form of homogenous group and get the discount benefits of group insurance purchases. These entities are much quicker to set-up than a RRG, most taking only a few months to set in motion. While many RPGs offer coverage to members through a trade association, equally as many RPGs are introduced by agents or brokers who see a niche in the marketplace that could be best served by this type of alternative risk transfer mechanism. Real estate professionals, educators, hospitality and, of course, healthcare are some of the sectors that benefit from the RPG structure.

Currently, there are over 900 RPGs registered to operate in the United States (compared to only 235 RRGs), according to the Risk Retention Reporter. Only a small number, at this time, are offering cyber products to their members, but those RPGs are "members of a regional restaurant association, or regional retail group; franchisees of a particular franchise operation; really, any group of small businesses or small retailers," said O'Leary.

The most recent addition to RPGs offering cyber coverage and one managed by O'Leary's law firm, is Restaurant and Hospitality Businesses Data Security and Media Liability RPG. Domiciled in Illinois, the RPG was formed primarily for small to medium-sized restaurants and other hospitality businesses in California to cover the risk of obtaining customer information, such as credit card or other personal information.

## The Benefits of RPGs

While savings on premiums is one of the advantages in the use of the RPG mechanism, in the case of

cyber liability, it is less so. The benefit that RPGs can offer to the product are distribution channels that make it available to smaller buyers.

Cyber liability products is still considered an emerging coverage. The expertise to underwrite the product lies in larger companies with better access to actuarial data. Local and regional agents and brokers offering services to small to medium-sized companies don't necessarily have the expertise in underwriting cyber security liability, but by using a RPG they can offer cyber to their customers through larger insurers.

Using an RPG, small businesses or individual professionals can band together to get access to this increasingly important coverage. RPGs, said O'Leary, "[Can] provide access to the markets providing the coverage, until the smaller retail brokers become more familiar with the need for the coverage and can understand the complexities involved in providing the coverage."

### Using RPGs for Other Emerging Coverages

The opportunity for wide distribution to smaller buyers that RPGs offer can be applied to other emerging coverages as well. O'Leary, who has been working with RPGs since the late 1980s believes that, "Any new or emerging coverage could be marketed through a purchasing group to small and mid-size businesses until the coverage becomes more readily available."

"I could imagine a purchasing group could be used to provide D&O coverage to condo association boards or to any group of smaller companies at less premium than any one individual entity could purchase the coverage independently," he continued. "Coverage for claims of sexual or

gender discrimination could also be marketed to groups or associations."

Dodell has one specific type of coverage in mind, "There is an exposure that I haven't seen covered by an RPG yet, but that is media exposure. I've been on the soapbox for a while that small business need media insurance. It's been an insurance product for a while, but it's only been bought by media companies – publishers, broadcasters, ad agencies."

Media coverage could offer copyright and trademark infringement, plagiarism and privacy/defamation coverage. It is seen as a very specific type of errors and omissions coverage and any business with a website or social media presence could be at risk for these types of exposure. Like with cyber, most small businesses don't see themselves at risk. Dodell continued, "Nowadays every business has a website with pretty sophisticated content. They're creating and disseminating content in ways that in the past only media companies would have been able to accomplish." The general liability policy, Dodell said, was not designed for this type of exposure and won't respond to most types of media and intellectual property claims. For this reason he is advocating media liability coverage. ■

*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](http://www.karriehyatt.com).*



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