Secondary Professional Liability Insurance Program (SPLIP)
Questions & Answers

March 2016

Q. Why was this program set up?

A. The provincial and territorial engineering regulators are responsible for the regulation of the practice of engineering in Canada and for the licensure of engineers.

As licensed professionals, engineers individually and collectively commit to serve and protect the public. The responsibility of self-regulation also obliges the profession to ensure that only qualified persons practice engineering and that they do so with concern for societal and environmental needs, while at the same time being responsible to their clients, employers, colleagues and subordinates, and to themselves and the profession at large.

The SPLIP assists the engineering and geoscience licensing bodies in their mandate to uphold and protect the environment and the safety and interests of the public. It enhances self-regulation for both the engineering regulators and individual engineers, and enables engineers and geoscientists to seek advice in whistleblower situations. All individual engineers and geoscientists in good standing with a participating provincial or territorial regulator are insured under this program. They are also covered as mentors, helping other less-experienced individuals develop specific skills and knowledge that will enhance professional and personal growth.

Q. Do I need to arrange with my broker to buy this coverage?

A. No. As a member in good standing with a participating provincial or territorial regulator, you will automatically be enrolled in the program.

Q. Who is insured?

A. All members in good standing with a participating provincial or territorial regulator. The regulators participating in this program are APEGA, APEGBC, APEGS, Engineers Geoscientists Manitoba, Engineers and Geoscientists New Brunswick, Engineers Nova Scotia, Engineers PEI, APEY, NAPEG, PEGNL, APGO, OGQ and APGNS.

This program does not cover firms.

Q. What type of insurance does this program provide?

A. This program provides insurance for individual liability arising out of professional services you may provide.

Q. What insurance do I have if I am an “employer”, “principal” or another “decision-maker” in a firm or another entity?

A. There are two distinct categories:

1) If you are a sole proprietor or a decision-maker in a firm engaged in providing standalone engineering or geoscience consulting services, you are not insured for those services. A "decision-maker" is any director, officer or sole proprietor of an entity, or, any associate or shareholder who holds more than 10 per cent of the shares (or shares that include voting rights) of an entity.

2) If you are a decision-maker in a non-consulting firm or another entity that constructs, manufactures, installs, fabricates or engages in some other activity, you as a decision-maker are not insured for those services, with one exception. The program will respond if you had a role as a designer in the product produced by your firm and a claim relates specifically to that design.

There is never coverage under this program for the firm, company or entity itself.

Q. What insurance protection do I have if I am an employee in a firm or some other entity?

A. As an employee for a non-consulting firm or another entity, you are insured for the professional services you perform over the course of your employment.

As an employee for an engineering or geoscience consulting firm, you are not insured under this program for the professional services you provide. Any liability you may incur in providing these services to, or on behalf of, your employer should be protected under conventional professional liability insurance available in the marketplace.

Q. When I change employment, do I have insurance protection for the professional services I provided to my past employer?

A. Yes. Generally you will be protected by the past employer's policy. However, if the past employer does not continue coverage, you will automatically have coverage under this program. No coverage is provided to the decision-maker of the firm.

Q. Do I have insurance protection under this program if my firm ceases operation or goes bankrupt?

A. Yes. You will have insurance protection for your past work for the defunct or bankrupt firm as long as you are not a decision-maker of an engineering or geoscience consulting firm. Your insurance protection as a decision-maker of a non-engineering or geoscience consulting firm or entity would be for design only.

If you are a decision-maker of an engineering or geoscience consulting firm, some restrictions apply before you receive insurance protection (this is explained later in this document).

Q. Do I have insurance protection under this program for my past work if I retire?

A. Yes, as long as you are a member in good standing in a participating provincial or territorial regulator. Certain restrictions pertain to decision-makers as explained above.

Q. Do I have insurance protection under this program for professional activities that I may engage in when I am retired?

A. Yes, you will have insurance protection for past work; for gratuitous advice you may give; and for service receiving compensation not exceeding $15,000 per calendar year.

Q. If I provide professional consulting services, what coverage do I have?

A. As a principal or an employee of a consulting firm, this program does not give you protection when you provide engineering or geoscientist services to another person or firm as a consultant. Protection for that type of activity is provided by another type of insurance and needs to be purchased separately.

If you provide engineering or geoscience services to a firm as an employee, you have protection as long as the firm is not in the business of providing those services as separate, stand-alone services to others. Those services are in fact consulting services for which separate insurance should be purchased.

An exception to this general rule has been made for individuals who have regular employment and who decide to provide consulting services outside of their regular employment activities. The consulting services must be provided by the individual and not in a company name as the program does not provide protection to companies. This protection to individuals for this consulting activity is for fees earned not exceeding $15,000 per calendar year.

Q. Is an engineer-in-training insured?

A. Yes.

Q. Am I covered for mentoring?

A. Yes.

As per the Engineers Canada Guideline for Mentoring Programs, the term "mentor" has several possible meanings:

1) An individual who takes technical responsibility for the work of an engineer-in-training when that engineer-in-training does not have a P.Eng. in their workplace;
2) An individual who guides an engineer-in-training towards licensure during their formation period;
3) An experienced individual who supports the professional and personal growth of a less-experienced individual (the mentee);

Mentoring of students of all ages in outreach activities is covered.

Q. The Insurance Policy is termed as being on a "claims made basis". What does this mean?

A. This means that both the "claim" as defined in the policy and the report of that claim by the

insured individual to the Insurance Company (XL Specialty Insurance Company) should be made within the current policy period. The policy period ends on March 31st of each year. It is a condition that the reporting of the "claim" be undertaken as soon as the insured is aware of it. Claims should be reported by March 31st. However, the policy does have an extended 60 day period to report matters from the previous year.

Practical Example: An engineer provided professional services five years ago. Damage to the building involved is only now apparent and the building owner demands that the engineer rectify the damage.

The trigger for the policy is when the demand or "claim" was first made against the engineer, not when the engineer performed the work.

Q. There are restrictions in this program relating to individuals who are "decision-makers" in a firm. Why is that?

A. Decision-makers hold senior positions that involve both administrative and business duties in a firm. This program is not meant to provide insurance protection for those non-engineering or non-geoscience duties.

Q. What happens if I am a decision-maker and my company goes bankrupt, ceases to operate or is acquired?

A. If you are a decision-maker of a consulting engineering or geosciences service firm, the policy excludes claims against you during the first six-month period following the entry into receivership or bankruptcy of that firm, or during a two-year period following the closure and cessation of operations of that consulting firm. If the firm ceases to operate because it was acquired, the waiting period for coverage for decision-makers is five years.

If you are a decision-maker of a non-consulting firm or entity, you will have continuous insurance protection for your design activities.

Q. What happens if I, as a decision-maker, retire and the consulting engineering firm with whom I was employed continues to operate? Do I have insurance protection from this program following the expiration of a two-year period after retiring?

A. No. If the firm remains in operation after you retire, you should require that the firm provide continuing coverage post-retirement, as this program will not provide it. If the firm is no longer in operation (either cessation of operations, bankruptcy, etc.) you, the retiree, will receive insurance protection once the appropriate waiting periods have elapsed (six months following the entry into receivership or bankruptcy, or two years following the closure and cessation of operations).

Q. There is an exclusion in this program relating to other insurance. Why does this exclusion exist even if the "claim" is not covered in whole or in part by the other policy?

A. This program is not meant to substitute for, nor operate in addition to, other insurance which is or should be in place. There may be efforts by plaintiffs to gain access to this policy as another source of revenue for problems that have exhausted other coverage, or that were excluded under that

other coverage, or problems that may have nothing to do with the intention of coverage by this program.

Q. What is Whistleblower Coverage?

A. Whistleblower Coverage provides insurance coverage to all individual members who may find themselves in a situation where he or she is compelled to report the professional misconduct by another member, whether a colleague or employer. This protection provides legal advice up to $75,000 to the member to help ascertain the course of action to follow and to provide ongoing legal advice with respect to the whistleblowing action. It also provides protection to the member against legal action that alleges wrongdoing or negligence by the member following the whistleblowing action.

Q. What if the Whistleblower's employment is terminated because of whistleblowing? Is there any protection?

A. Yes. The program provides reimbursement for lost income in the event of employment termination of a member due to the whistleblowing action. The maximum reimbursement available is $75,000.

Q. Where can I get additional information?

A. A toll-free number to reach Pro-Form Sinclair Professional, 800-361-9080, is set up for inquiries in all participating provinces and territories. Your regulator office has a copy of the policy and can provide it at your request. Many participating regulators have posted a copy of the policy and Certificate of Insurance on their website.

Q. How do I report a claim and to whom?

A. For immediate verbal notice of the claim, telephone XL Specialty Insurance Company claims department at 416-363-2914 or toll free at 800-665-2222. By calling this number, you can request a CLAIMS REPORT FORM. Fax this directly to the insurer, XL Insurance, at 416-363-8038.

For additional information, contact the Pro-Form Sinclair Professional program hotline 800- 361-9080.

Please note this Q&A is intended to help you understand the program. The Master Insurance Policy contains terms and conditions that determine how and when the Insurance coverage applies. Nothing in this Q&A document is intended to or will override, alter or eliminate the specific wording of the Master Policy.