

Secondary Professional Liability Insurance Program (SPLIP) Questions & answers

March 2018

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, as well as 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, Engineers and Geoscientists British Columbia, APEGS, Engineers Geoscientists Manitoba, Engineers and Geoscientists New Brunswick, Engineers Nova Scotia, Engineers PEI, Engineers Yukon, NAPEG, PEGNL, APGO, OGO and APGNS.

This program does not cover consulting engineering firms.

Q. What is the program limit and deductible?

A. SPLIP provides each member with a limit of \$250,000 per claim plus defense costs for claims made in Canada. The aggregate limit per project is \$500,000, and this limit would be triggered if two or more members made a claim about the same project. There is no deductible per claim.

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. You should be protected under conventional professional liability insurance available in the marketplace.
- 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 the product’s 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. There are two distinct categories:

- 1) 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.
- 2) 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 (See page 4, Q 15, 16 and 17 for details).

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 (See page 4, Q 15, 16, and 17 for details).

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 conventional professional liability insurance available in the marketplace.

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 to others. Those services are in fact consulting services for which conventional professional liability insurance is available in the marketplace.

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 which cannot exceed \$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. What is the policy territory?

A. The SPLIP program provides coverage for professional services rendered worldwide. Suits against members must be made in Canada or in the United States.

When a claim is made in Canada the program will provide legal costs in addition to the policy limit. When a claim is made in the United States of America the policy limit will be eroded by legal costs.

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, two years following the closure and cessation of operations, or five years following sale of the firm).

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 that 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 any individual member in a situation where he or she is compelled to report the professional misconduct by any person, whether a colleague or an 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. Does the program cover pollution claims?

A. SPLIP will respond if you receive a professional services claim alleging that pollution has occurred.

Q. Does the program cover copyright and patent infringement claims?

A. SPLIP will respond if you receive a professional services claim alleging copyright or patent infringement.

Q. Where can I get additional information?

A. A toll-free number to reach Hub International, 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, call the 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 Specialty Insurance Company, at 416-363-8038.

It is important that claims be reported in a timely manner. A claim must be reported in the policy period that it is first received. The policy period runs from March 31 to March 31 of the following year. An extended reporting period of 60 days to report matters from the previous policy year is provided to give members time to act on claims that have been received during that policy year.

Q. Are estates covered if there is a claim for work performed by a deceased engineer?

A. Yes. Estates and legal representatives are protected by policy terms and conditions.

NEW – As of March 31, 2018

Q. The policy provides outplacement services for Whistleblowers. What does this mean?

A. The policy includes outplacement services up to \$10,000 for individuals who have been terminated due to a whistleblowing action. This coverage will assist members with seeking new employment by providing services such as resume writing, interview preparation, developing networks, and negotiating employment agreements.

Q. The policy provides an extension for cyber network security coverage. What does this mean?

A. The policy includes cyber network security coverage insurance. If a member, in providing professional services, causes unauthorized access to a third-party computer network that results in:

- destruction, deletion or corruption of electronic data on a network
- a data breach from a network
- a denial of service attacks against internet sites or computers
- personal injury
- the transmission of malicious code from a network to third-party computers

then the policy will respond to provide legal defense and damages up to the policy limit of \$250,000.

Q. The policy provides an extension for legal expense reimbursement for disciplinary proceedings. What does this mean?

A. The policy includes a \$30,000 sublimit for reasonable legal fees and expenses incurred by a member in responding to any Federal, Provincial or Municipal action, including disciplinary hearings, regulatory action, or administrative action commenced directly against a member. You must report this to XL Specialty Insurance Company, in writing, during the policy period, provided that the action arises out of professional services you performed or were alleged to have performed prior to the end of the policy period. Please note that XL Specialty Insurance Company will not pay any other amounts under this coverage for actions including, but not limited to, damages, fines, taxes and penalties.

Q. The policy provides an extension for loss of documents. What does this mean?

A. The policy includes a \$5,000 sublimit for loss of documents. This means that XL Specialty Insurance Company will reimburse you for expenses incurred to replace lost documents that have been destroyed, damaged, lost, or mislaid after a diligent search is completed. Please note that XL Specialty Insurance Company will not pay damages related to loss of documents.

Q. The policy provides an extension for crisis event and reputation management. What does this mean?

A. The policy includes a \$15,000 sublimit for expenses related to crisis event management. This means that XL Specialty Insurance Company will reimburse you for expenses incurred, with prior consent from XL Specialty Insurance Company, for crisis management and public relations consulting services.

For additional information, contact the Hub International program hotline at 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 Insurance Policy.