

National Secondary Professional Liability Insurance Program

Questions & Answers

April 2002

Q. Why was this program set up?

- A. As professionals, engineers and geoscientists take responsibility for their work. If their work subsequently fails, they may be held legally liable (personally) for any resulting costs or damages. Unless they have ample professional liability insurance they may be forced to pay thousands of dollars in damages and legal fees from their own pockets.

Many engineers and geoscientists have insurance coverage, either through their employers or their own policies, to cover most risks. This is especially true for those engineers and geoscientists in the Consulting field. On the other hand, many employed engineers or geoscientists in fields other than consulting do not always appreciate the need for coverage distinct from that provided by their employer, under, say a General Liability policy. There are many situations where these engineers or geoscientists need to call upon additional professional liability insurance.

For many years the Ordre des ingénieurs du Québec has provided this type of program to its members to meet the requirements of the amended Engineers Act. A few years ago other provincial engineering Associations perceived a need for this type of insurance and as a result this program was set up.

Your professional Association has determined that in protecting individual members, this coverage promotes and enhances the value of the engineering profession and its service to the general public. Participation by all members of the Association ensures the program's existence and spreads the overall potential exposure and direct cost so that individual premiums are as low as possible.

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

No. As a member of good standing in one of the Associations that has joined the program, you will automatically be enrolled in the program effective March 31st 2002.

Q. Who is an Insured?

- A. All members in good standing of the Provincial/Territorial Associations participating in this program are insured. These are NAPEGG, APEGBC, APEGGA, APEGS, APEGM, OIQ, APEGNB, APEGN, APENS and APEPEI. The policy does not cover firms.

Q. What type of insurance does this program provide?

- A. This program provides insurance for your individual liability arising out of professional services that 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. Let's deal with this under two distinct categories:

- 1) If you are a sole proprietor or a decision maker in a firm that is engaged in providing standalone engineering or geoscience consulting services, you as a decision maker 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% of the shares of an entity or shares issued 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 policy will respond where you had a role as a designer in the product produced by your firm and a claim relates specifically to that design.

As mentioned before 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. While you are 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.

While you are an employee for a non consulting firm or another entity, you are insured for the professional services you perform in the course of that employment.

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

- A. Yes, as long as you are not a decision maker of a engineering or geoscience consulting firm. If you are decision maker of a non consulting firm or another entity, you only have insurance protection for design as described above.

Q. What protection do I have if my firm ceases operation or goes bankrupt?

- A. 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 if you are a decision maker of a non engineering or geoscience consulting firm or entity would be for design only as described above. If you are a decision maker of an engineering or geoscience consulting firm, some restrictions apply before you receive insurance protection. These restrictions are explained later in this document.

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

- A. Yes, as long as you are a member in good standing with a participating Association. Also, certain restrictions pertain to decision makers as explained below.

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

- A. Yes but only in the context of ‘moonlighting’ or for gratuitous advice you may give.

Q. What if I engage in “moonlighting”?

- A. This program is intended to provide insurance protection for professional services performed outside of your regular employment. However, as this is intended to apply to occasional and not regular activity, additional conditions apply. Compensation received for any one project must have a value of less than \$2,000 and that the total compensation you receive for all such projects must not exceed \$10,000 in any one calendar year.

Q. Is a Member in training considered as an Insured?

- A. Yes.

Q. Am I covered for mentoring?

- A. Yes.

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 (Security Insurance Company of Hartford) must be made within the current policy period. Furthermore, it is a condition that the reporting of the “claim” be undertaken as soon as the insured is aware of it.

A practical example would be where an engineer provided professional services 5 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 specifically 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 geoscience duties.

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

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

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 as a retiree 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 coverage. If the firm is no longer in operation (either cessation of operations, bankruptcy etc.) then 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. Can you explain why the exclusion exists even if the “claim” is not covered in whole or in part by the other policy?

This policy 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 either exhausted other coverage, problems that were excluded under that other coverage, or that may have nothing to do with the intention of coverage by this policy.

Q. Where can I get additional information?

- A. There is a toll free number 800-361-9080 set up for enquiries in all provinces except Quebec. The number in Quebec is 800-665-3742. In addition, your association office has a copy of the Master Policy (number 96700) and can provide a copy at your request. Some Associations have posted a copy of the Master Policy on their website.

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

- A. For immediate verbal notice of the claim, telephone the Insurers claims dept 416-363-2914 or toll free on 1-800-665-2222. Also, by calling this number you can request a CLAIMS REPORT FORM. Fax this directly to the Insurer at 416-363-8038.

Please feel free to forward any additional questions by calling 1 (800) 361-9080. Also, please remember that these Q&A are intended to help you in understanding the program. The Master Insurance Policy contains terms and conditions that determine how and when the Insurance coverage applies and nothing in this Q&A document is intended to or will override alter or eliminate the specific wording of that Master Policy.