

Secondary Professional Liability Insurance Program

October 2020





Program Purpose

Individual engineers and geoscientists have:

- Professional liability insurance arising out of professional services that they provide outside of regular employment. Specifically, covering moonlighting if professional fees total less than \$15,000 per year;
- Coverage as mentors helping other less-experienced individuals develop specific skills and knowledge; and
- The ability to seek advice in whistleblower matters.



Program Purpose (continued)

Coverage is mandated to members in good standing with the following associations:



Northwest Territories and Nunavut
Association of Professional Engineers and Geoscientists



A P E G S
*Association of Professional Engineers
& Geoscientists of Saskatchewan*



Ordre des géologues
du Québec



**ASSOCIATION OF PROFESSIONAL
GEOSCIENTISTS OF ONTARIO**



**ENGINEERS
GEOSCIENTISTS
MANITOBA**



Engineers Yukon



**ENGINEERS
GEOSCIENTISTS**
New Brunswick



**INGÉNIEURS
GÉOSCIENTIFIQUES**
Nouveau-Brunswick



Engineers
NOVA SCOTIA



**ENGINEERS &
GEOSCIENTISTS**
BRITISH COLUMBIA

GEOSCIENTISTS
NOVA SCOTIA





Understanding your Coverage



Video Link: <https://youtu.be/162fCLRU45Y>





Coverage Details

- Per Claim Limit: \$250,000
- Per Project Limit: \$500,000
- Annual Policy Aggregate Limit: \$20,000,000
- No Deductible
- Legal Costs: in addition to the limit (unlimited in Canada) - new
- Sublimits
 - Whistleblowing
 - Legal Advice \$75,000
 - Loss of Income \$75,000
 - Outplacement Services \$10,000 - new



Coverage Details (continued)



- Full limit for Cyber Network Security – **new**
- Disciplinary proceedings - \$30,000 sublimit – **new**
- Loss of documents - \$5,000 sublimit – **new**
- Crisis event management - \$15,000 sublimit - **new**



Coverage Details (continued)

- Whistleblowing
 - Legal Advice \$75,000
 - Loss of Income \$75,000
 - Outplacement Services \$10,000 – **new**
 - Video Link: <https://youtu.be/EHsyzr3Bw7c>





Program Features

- Protection for claims resulting from actions undertaken as an employee in an engineering position in a firm whose main business is not to provide consulting engineering services;
- Protection for former employees of firms that no longer carry insurance (Follow me coverage); and
- Protection and assistance for members with “Whistleblower” matters;



Program Features (continued)

- Protection during retirement for past professional acts when previous employment coverage is not available;
- Including coverage to the legal representative of a deceased member;
- Protection for gratuitous or incidental advice to others outside of normal employment; and
- Protection for small consulting jobs (\$15,000 or less in fees) undertaken outside of normal employment.



You are not covered if...

- You are a firm, company or entity and employ engineers and/or geoscientists.
- You are a member who is not in good standing with an insured association.
- You are a decision maker (director, officer, sole proprietor or shareholder with more than 10% of shares) within the following waiting periods:
 - 6 months after the firm goes bankrupt or
 - 24 months after the firm ceases to operate.
- You are a decision maker of a non-consulting firm that designs and builds, installs or fabricates – except for claims related to your professional judgment on engineering and geoscience matters that the decision maker has personally provided.



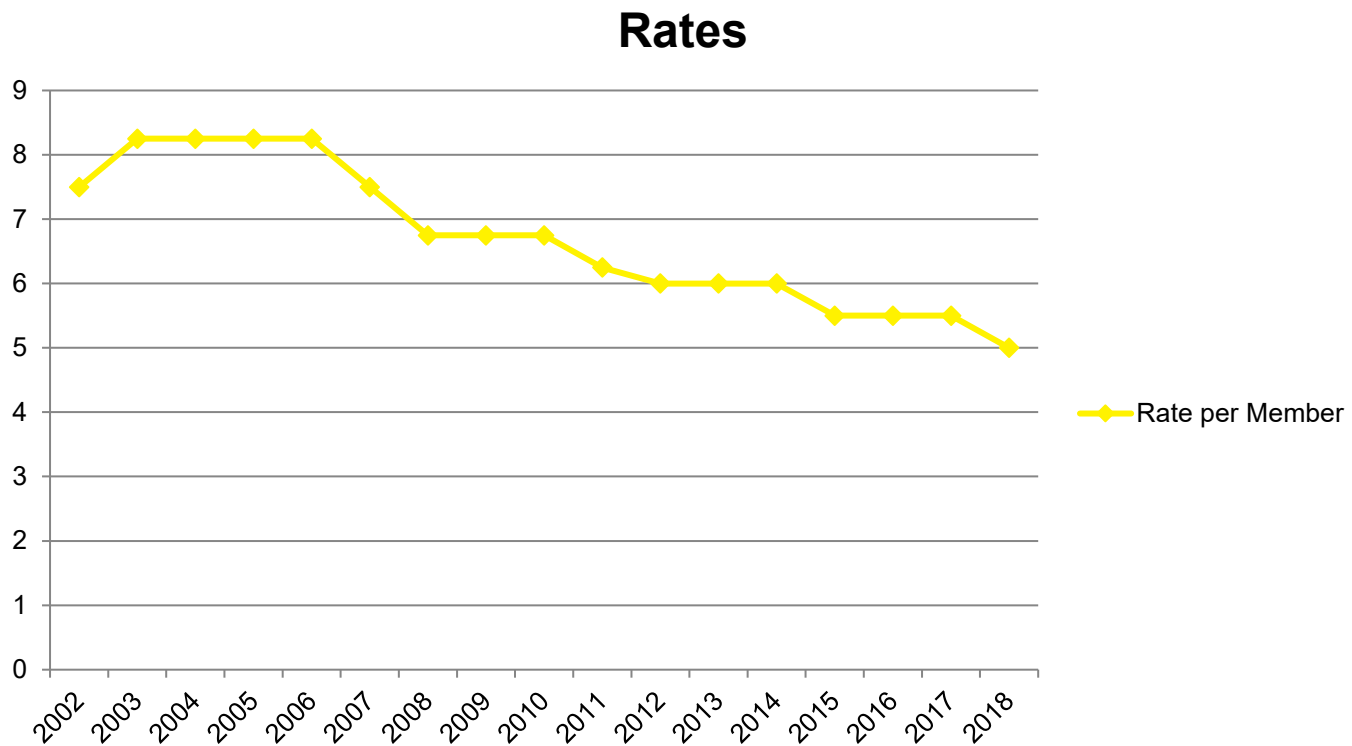
You are not covered if... (continued)



- You make more than \$15,000 per calendar year by moonlighting.
- The claim is due to infiltration of precipitation into a building envelope for a building located in British Columbia for which professional services were performed prior to August 1, 2000.
- The suit is brought against you by an entity in which you maintain cumulative ownership interest greater than 25%.
- Dishonest, fraudulent, malicious or criminal acts.



Historical Rates





Did you know?



Statistic	Fact
\$50,000	Average claim paid by XL Catlin
3.2 years	Length of time a claim takes to settle; if it is not settled during the first year
\$5.00	Rate per member

The secondary professional liability program saves engineers and geoscientists both time and money!



Claims Examples – Incidental Employment



Employee for General Contractor

- An engineer worked as an employee of a general contractor and held the title project manager.
- Client thought that the employee had additional responsibilities related to engineering.
- The building was not erected at the proper location and there were structural engineering problems.
- XL Catlin defended the engineer and found that the employee did not have any professional engineering responsibility.
- Member was not negligent.



Damages Paid: \$40,000 | Defense costs: \$30,000



Claims Examples – Design Error



Design Error

- An engineer was hired to design the foundations of a residential home and to perform construction observation.
- Six years later, the residence suffered slope settlement failure.
- Homeowner claimed that design of the foundations were deficient. The wrong unit of measurement (imperial versus metric) was used for loading calculations of foundations resulting in sloping.
- Engineer did not procure or use a geotechnical analysis of the soil.
- Work completed in 2006. Engineering firm closed in 2007. Claim made against engineer in 2015.



Damages Paid: \$150,000 | Defense Costs: \$50,000



Claims Examples – Retired Engineer



Retired Sole Proprietor - Work done prior to retirement.

- An engineer designed a retaining wall to provide a home with flood protection, as the home was built next to a river.
- Home was damaged by flood ten years after retaining wall was built.
- Homeowner claimed that the engineering design was deficient and the wall was built in the wrong place, compromising the home's flood protection.
- Work completed in 1987. Engineering firm closed in 1990. Claim made in 1997 against retired engineer.
- Coverage: available to decision makers of firms that have ceased to operate after a two year waiting period. Coverage is for design work only.



Damages Paid: \$100,000 | Defense Costs: \$20,000



Claims Examples – Estate of Retired Engineer



Estate of Retired Engineer - Work done prior to retirement.

- An engineer performed a structural site review for a building owner and engineer did not use a contract.
- Owner sold the building to a third party five years later.
- New owner relied on engineer's site review and comments that there were no major structural issues.
- New owner discovered major structural issues after detailed inspection and sued former building owner and engineer.
- Work completed in 1993.
- Engineer passed away and his estate closed the firm in 1996.
- Claim made in 1998 by new owner against the retired engineer's estate.



Damages Paid: \$150,000 | Defense Costs: \$50,000



Claims Examples – Negligent Design



Negligent Design – Retired Engineer

- Engineer designed electrical system for condo in 2000.
- Engineer retired and closed firm in 2001.
- Fire occurred in the client's building in 2004.
- Fire investigator determined cause of fire to be an under-capacity electrical system which overheated.
- Building sued engineer for negligent design in 2004.

Damages Paid: \$100,000 | Defense Costs: \$20,000





Claims Examples – Whistleblowing



Whistleblowers

- An engineer works at a large mining company.
- He believes there is a possible contravention of the firm's ethics.
- Engineers called XL Catlin to obtain the name of their lawyer.
- XL Catlin paid for the legal consultation with their lawyer up to the limit (which has since increased to \$75,000).



Defense Costs: \$7,070

Loss of Income: \$50,000



Fifteen Years of National Claims Experience



PROGRAM YEAR	CLAIM PAID	NUMBER OF CLAIMS
2005 – 06	\$295,145	18
2006 - 07	\$422,409	14
2007 - 08	\$660,079	19
2008 - 09	\$801,551	30
2009 - 10	\$476,982	18
2010 - 11	\$4284,946	20
2011 - 12	\$69,559	9
2012 – 13	\$68,471	7
2013 – 14	\$125,927	7
2014 - 15	\$204,890	13
2015 - 16	\$499,272	9
2016 - 17	\$47,327	14
2017 - 18	\$2,799	9
2018 - 19	\$30,000	5
2019 - 20	\$2,658	11
TOTAL	\$7,992,015	203
AVERAGE	\$532,801	14



Claims Summary by Employment Type



Secondary Professional Liability Insurance Program Claims Summary By Type of Employment – Excludes 2017-2018 claim details							
Discipline	Type of Employment						
	Sole Prop Retired Past Work	Other Retired Past Work	Consultant Past Firm Not Insured	Employed in Non-Consulting Current Work	Moonlighting	Other	TOTAL
Structural	12	6	29	21	10	13	91
Civil	3		8	6	10	5	32
Geotechnical	3		3	2	2	1	11
Process	1	1		1	2		5
Multi				2			2
Non/Engineering	1		1	1		1	4
Inspection			3		11	1	15
Electrical/Mechanical	3	3	7	10	1	3	27
Engineering	5	2	1	3			11
Qual.Cntrl Eng.			1				1
Water Ingress	3		4				7
Misc.	3	3	4	3		2	15
TOTAL	34	15	61	49	36	26	221



Spotlight on Cyber



Coverage

- Liability coverage for
 - Causing a network breach or
 - Preventing a third party from gaining access to their network





Spotlight on Cyber (cont'd)



Exclusions

- Claims arising from failure to install security-related software patches
- Claims related to failure or malfunction of electrical or telecommunications infrastructure, power surges, brownouts
- Claims from natural disasters (i.e. earthquake)
- Claims from emission of discharge from electromagnetic fields and radiation





Spotlight on Disciplinary Expenses



Coverage

- Reimbursement up to \$30,000 for legal fees and expenses
- If a member must respond to a federal, provincial or municipal disciplinary action
- Written notification required in policy period
- No coverage for damages, fines, taxes and penalties





How do I make a claim?

For immediate verbal notice of a claim,
call the XL Catlin claims department:

416-363-2914 or toll-free at **800-665-2222**

Request a Claims Report Form and fax this directly to the insurer,
XL Catlin, at:

416-363-8038



Ongoing Service

- Hub cares, as reflected by:
 - Providing ongoing service via the 1.800 number
 - Focusing on member education (in person seminars and webinars)
 - Collaborated with Engineers Canada staff who developed two animated videos
 - Refreshed the questions and answers in collaboration with Engineers Canada staff



Questions?



Contact Pro-Form Sinclair Professional at

800-361-9080

Or contact your association office for a copy of the Policy.