

RETIRED ENGINEERS: HOW THE OSPE SECONDARY PROFESSIONAL LIABILITY INSURANCE PROTECTS YOU

Are you an OSPE member and engineer that is now looking to retire or have retired already? Have you thought about the possible implications and liabilities that you are still holding as a retired professional and how this could impact your plans for the future? Do you know what actions are required in order to ensure that you are mitigating the risk of liability to the best of your abilities? By being an OSPE member and having access to the Secondary Professional Liability insurance (PLI), you are on the right track, but there are other things to consider.

What is Claims-Made Based Insurance?

Professional liability insurance is typically provided on a “claims-made and reported” basis and will respond to claims made during the active policy period. This means that the policy which is in place when a claim is made will be the policy to respond – regardless of when the incident occurred. Therefore, it is extremely important there is no lag or gap in coverage between policy periods or that coverage is not cancelled without having a proper run-off coverage in place. Coverage needs to be continuously in place to ensure you are continuously protected.

If your business or your past employer’s business is no longer active or delivering services, a run-off policy would be needed to protect the business name and the engineers that previously delivered services on behalf of that business, in order to be adequately protected for claims that could arise in the future from past services rendered.

I am a retiring employee

If you have been working as an employee of an engineering firm, it is more likely than not that you are covered under your employer’s primary professional liability insurance (PLI). Most primary PLI policies contain a definition of insureds that extends to employees of the firm (past and present). As the Certificate of Authorization holder, your employer is responsible to ensure that its firm and its professional engineering employees are protected and primary (PLI) insurance is a major component of this.

Many retiring engineers are concerned that their employer may choose to eventually discontinue the firm’s insurance or that the ongoing insurance does not extend to them as a retired employee. This is a valid concern, as how your previous employer manages the insurance for the firm is out of your control, leaving the possibility that coverage may be non-existent or inadequate should a claim arise in the future.

It is always recommended that prior to retiring, you have a conversation with your employer to understand exactly how the firm’s insurance protects you and how it is anticipated to protect you in the future. If a claim were to arise against you for services that you rendered while working on their behalf, the firm’s primary PLI insurance would be the first to respond to protect you.

The Secondary PLI policy offers contingent protection in the amount of \$125,000 per claim and \$125,000 aggregate per member.

I am a retiring decision maker / business owner

As a business owner and Certificate of Authorization holder, you are responsible to carry the insurance required to protect your business in the event of a claim. Seeing that the Primary PLI insurance is on a claims-made form, business owners will typically select to carry run-off coverage to protect the business and all engineers working under that firm, against a claim that could arise after the closure of the business.

The Secondary PLI Insurance provides protection to yourself as an individual engineer that has delivered professional services but will not provide any coverage for the business itself or for your function as a decision maker.

Claims against you where you are or were a decision maker of a firm is excluded, however, this exclusion shall not apply to claims first made after the following waiting periods:

- Six-month period following the entry into receivership or bankruptcy of your firm.
- Two years following the closure and cessation of operations of your firm, providing that the closure and cessation of operations was not the result of that firm, or some or all of its assets, being purchased by or merged into another firm.
- Five years following the closure and cessation of operation of the firm, provided you are no longer employed by that firm or by a firm into which it has been merged, or by any firm which has purchased the business or assets of the firm to which the services were originally provided.

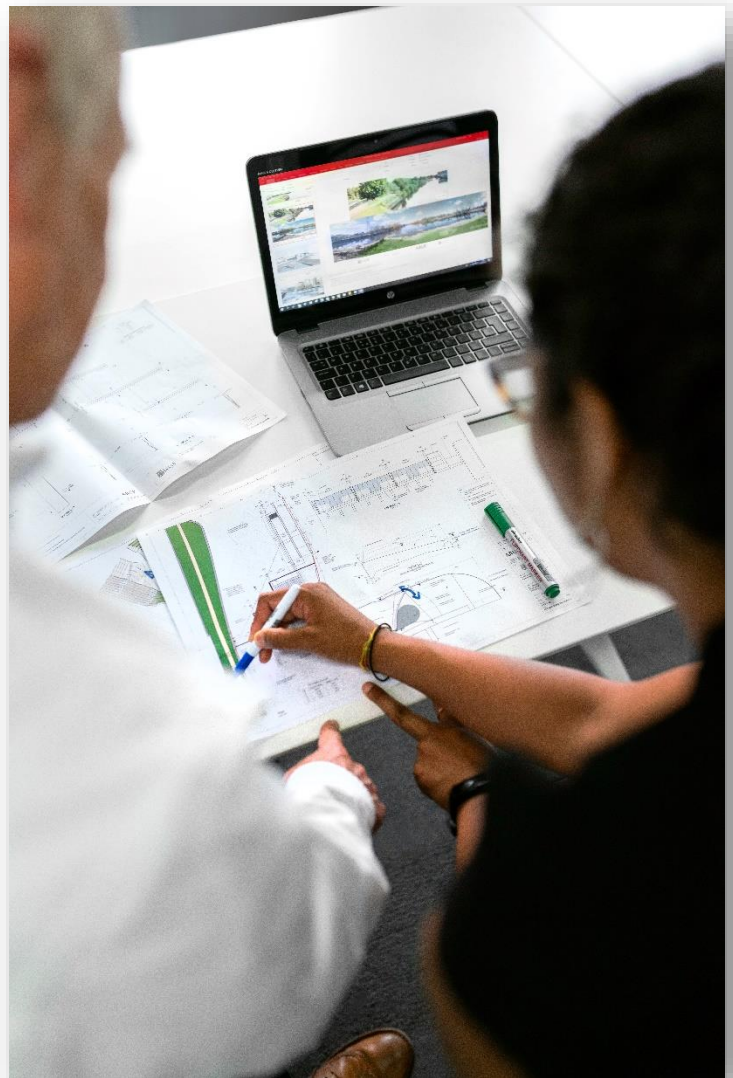
I am a retired but plan to work on the occasional project.

As a retired expert, you may be provided with the opportunity to work with a firm for a small project or may want to engage in some minor independent work.

If working temporarily with a firm, the firm's primary PLI insurance may extend to you as an "employee on loan". If engaging in this type of activity, it would be recommended that you verify with the firm to confirm that this is the case.

The Secondary PLI policy offers contingent protection in the amount of \$125,000 per claim and \$125,000 aggregate per member.

If you are working independently as a consultant, you have direct access under the Secondary PLI insurance for these activities, provided that the per project gross fees do not exceed \$5,000 and that the total gross fees for a 1-year term does not exceed \$20,000. If your activities exceed this threshold, it is advisable that you consider securing a Primary PLI insurance to be adequately protected. When working independently, it is always important to contact the Professional Engineers of Ontario (PEO) to ensure that you are compliant with the regulations to be followed while delivering engineering services.



If you are not yet a member of OSPE and would like to join, please contact them directly at 1-866-763-1654.

For more information regarding both Primary PLI and Secondary PLI, please visit the [BMS Canada Risk Services website](#).

BMS is the exclusive broker for OSPE's liability insurance program. Contact us for more information.