



CESA Indaba Risk & Procurement

07 November 2016

Challenges

- **Risk analysis** before the project – sufficient skill to do so?
- Sufficient Limits and affordability of Insurance – **how much is enough**
- Complexity of project and delivery deadlines change **how we are being appointed**
 - Joint Ventures and Sub-consulting
 - design & supervision (new construction regs)

PI Insurance Strategies

**Project Specific
Professional
Indemnity
(PSPI)**

Annual

Fixed

**Rely on
Consultant's
own resources**

Alternative PI Insurance Strategies



**Rely on
Consultant's
own resources**

- Default Position - majority of consultants already carry Professional Indemnity for a number of reasons, which may include:
 - A requirement of their profession.
 - A requirement of the local legislation.
 - A contractual requirement.
 - To protect their balance sheet.
- Consulting firms asset value and use of fees as working capital means it can be very difficult for professional services firms to obtain bonds or surety(s) and balance sheet cannot support large claims.
- Accordingly, the amount of Professional Indemnity Insurance is important when engaging consultants on projects, especially on large and complex projects.

PI Insurance Strategies

**Rely on
Consultant's
own resources**

- early Client engagement important
- It is important that this is enshrined within any contracts/agreements with the consultants.

REASONS FOR USE

- Where the Client is satisfied that consultants' Professional Indemnity cover is sufficient and satisfactory for the risks within the project and they will have no difficulty in procuring Professional Indemnity insurance in future years
- Where Client does not need to cover any 'in-house' design or project management work undertaken by themselves

PI Insurance Strategies



The diagram consists of three green ovals. The largest oval at the top is labeled 'Project Specific Professional Indemnity (PSPI)'. Below it are two smaller ovals, one on the left labeled 'Annual' and one on the right labeled 'Fixed'.

Project Specific Professional Indemnity (PSPI)

Annual

Fixed

- A long period policy effected for the length of the contract plus a 'run-off' period (in case of a fixed term), covering the consultants, purchased by the Client on behalf of all parties.
- Annual / Fixed

Reasons for Use:

- Where the Client favours control over cost
- No need to "point the finger at the guilty party" - albeit legal liability has to be established against one or more of the 'professionals' – pay excess
- Where a 'professional' does not carry its own PI insurance
- Where a Joint Venture requires separate insurance protection - ringfence

PI Insurance Strategies

The diagram consists of three green ovals. The largest oval at the top is labeled 'Project Specific Professional Indemnity (PSPI)'. Below it are two smaller ovals, one on the left labeled 'Annual' and one on the right labeled 'Fixed'.

Project Specific Professional Indemnity (PSPI)

Annual

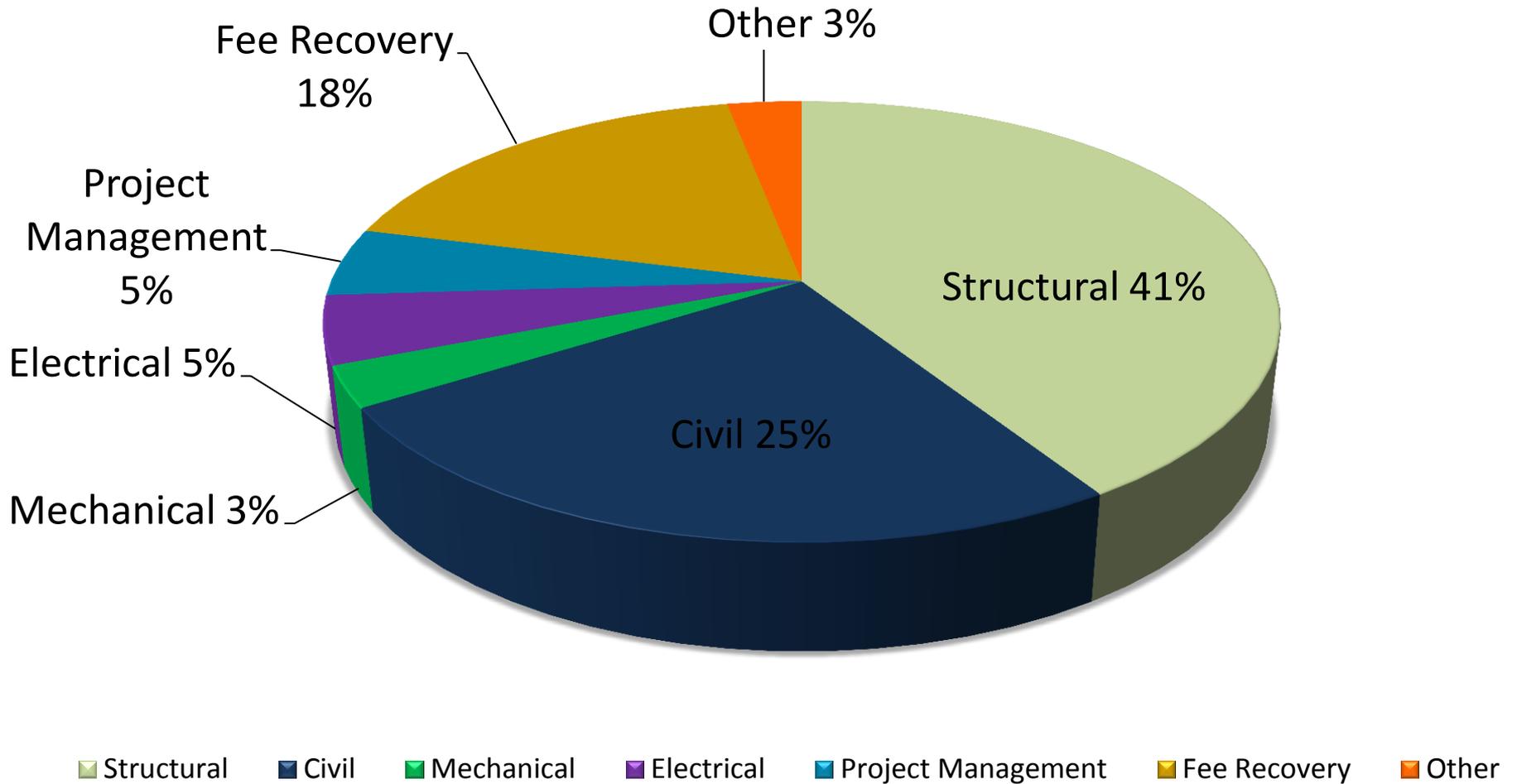
Fixed

Look out for:

- What if liability extends beyond policy?
 - Who pays policy deductible?
 - Duplication of cover
 - Maximum period 9 years
 - Expensive
 - Policy coverage limited – no cost overruns or consequential losses
 - Aggregate limit for period shared for all parties – dilution of cover
- The potential loss of an insurer due to insolvency, change of appetite or potential claim means that this is a very unattractive proposition for the Client.
 - Whether Fixed Period or Annually Renewed - Insurers can be very selective when considering projects in a certain territory, stadia projects and projects which carry any new or prototypical elements.

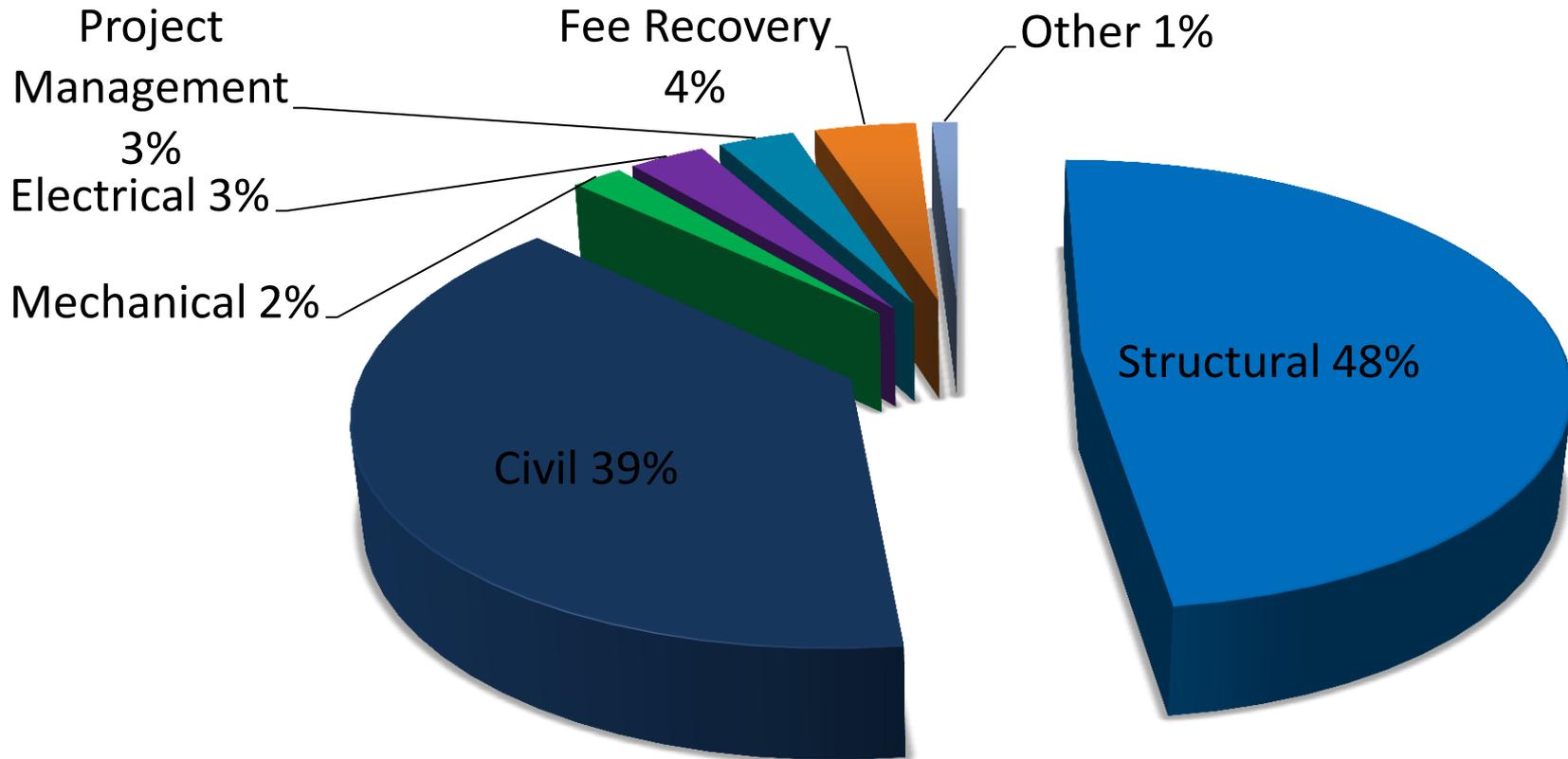
Claims by Disciplines 2006 - 2015

(719 notifications)



Claims by Disciplines 2006 – 2015

(Total Paid R240,130,330)



■ Structural ■ Civil ■ Mechanical ■ Electrical ■ Project Management ■ Fee Recovery ■ Other

Contracting

- **Insurance Provisions MUST be in Contracts/Agreements**
- **Commercial aspects – Payment clauses**
- **Open-ended liability is not an answer for the Client**
- **Limitations of liability** (Do not confuse with Limit of Indemnity)
 - Contained in all Model Form Agreements
 - Duration
 - eg. SA is 3-5 years but negotiable
 - Statute of Limitations
 - Quantum
 - eg. twice fee / fixed amount
- **Dispute Resolution**

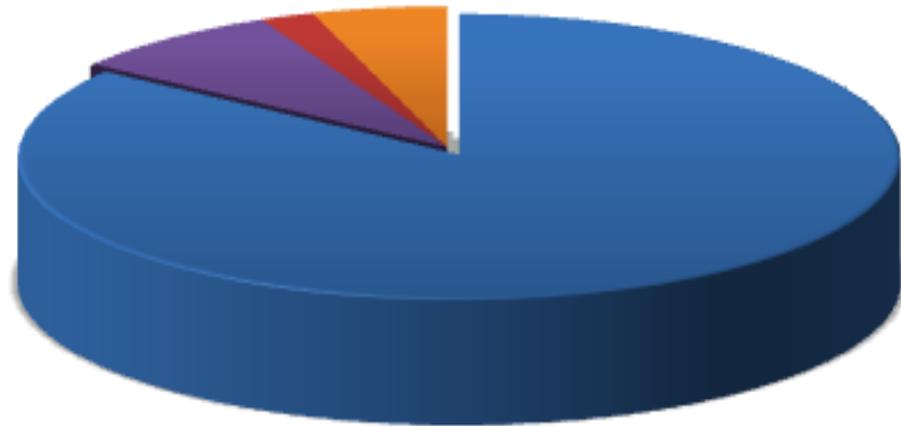
Claims by Method of Resolution

■ Negotiated Settlements 85%

■ Judgements 8%

■ Expert Determination 2%

■ Mediation 5%



Discounting

- Reality of free market vs emerging market with high infrastructure demands
- Costs more in the long run – project delays / delays of usage of facilities
- Inherent danger of undertaking appointment where the client is not prepared to pay for a properly designed and safe project

“It's unwise to pay too much, but it's worse to pay too little. When you pay too much, you lose a little money - that's all. When you pay too little, you sometimes lose everything, because the thing you bought was incapable of doing the thing it was bought to do.”

John Ruskin

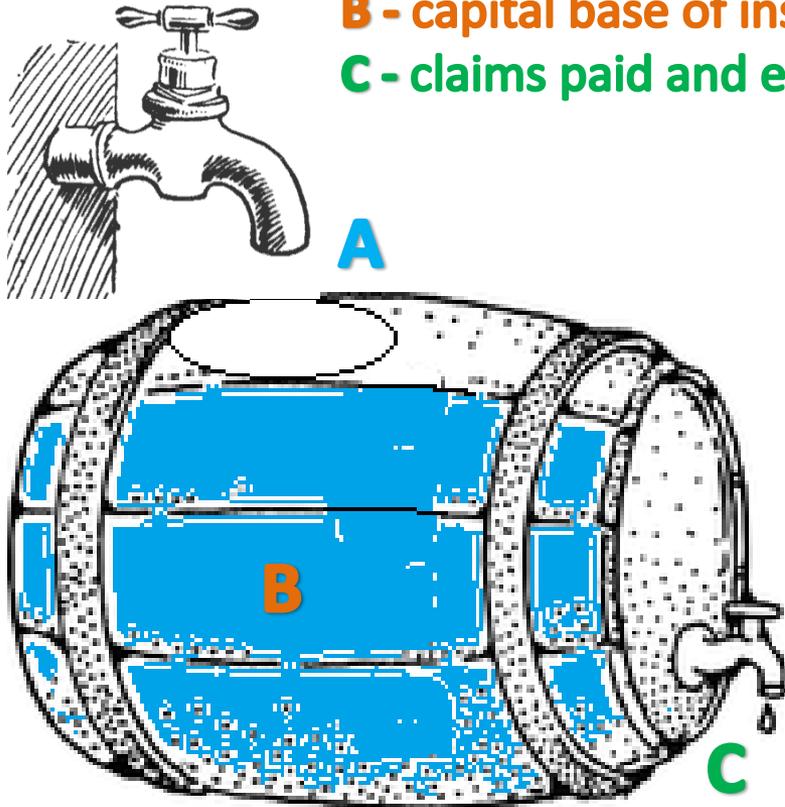
- Cut costs / resources applied to a heavily discounted project:
 - Use of inexperienced staff with lower charge out rates without proper supervision
 - Reduced supervision
 - Reluctance to attend project meetings
 - Overly conservative designs
- Decline in investment in training and innovation

Discounting – insurance impact

A - Premium to insurer

B - capital base of insurer

C - claims paid and expenses

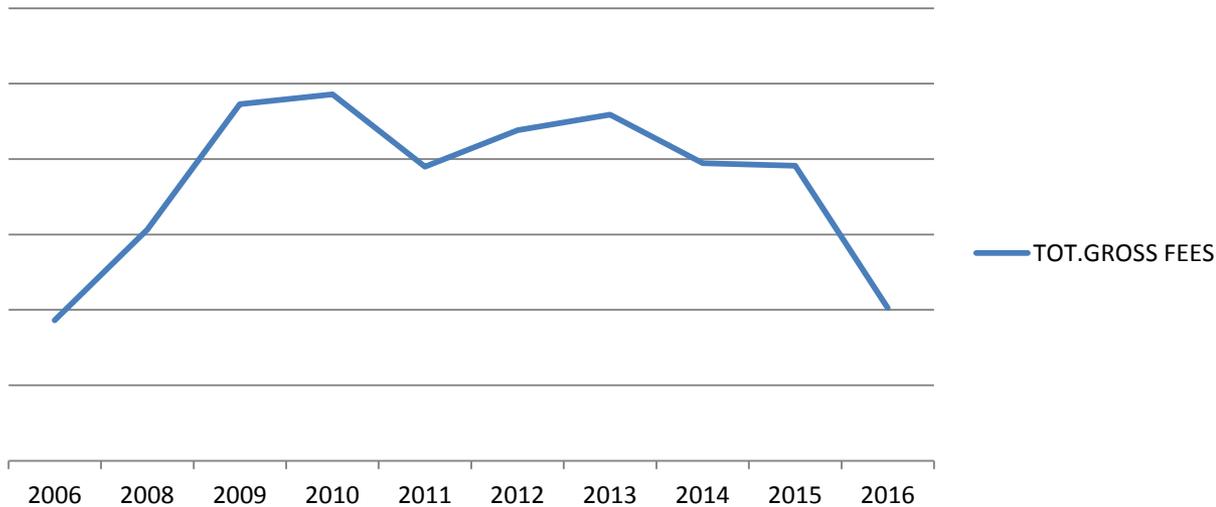


**XYZ INSURANCE
COMPANY**

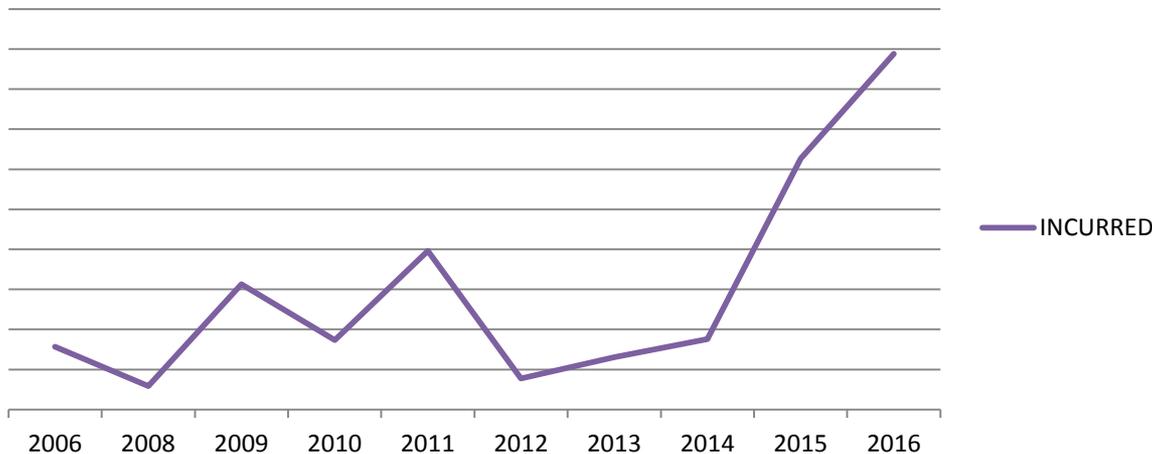
- Obligation is not diminished by fee reduction
- Discounting skews view on risk
- Sustainability of Premium pool
 - Increase in PI claims
 - Decrease in premium collection
- Long term result - crash of PI market

Coincidence?

TOT.GROSS FEES



CLAIMS INCURRED



Total gross fees declared by consultants ↓ 15% and no. of claims ↑

Civil & Structural
65% of no. of claims
& 87% of quantum



Highest discount expectation in this discipline

Coincidence?

Thank You

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Aon Professional Risks

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