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Office of the  
Inspector General  
Commonwealth of Massachusetts

**Gregory W. Sullivan**  
Inspector General

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A Review of Big Dig  
Professional Liability  
Insurance Coverage

June 2005

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The Commonwealth of Massachusetts  
Office of the Inspector General

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June 2005

Matthew Amorello, Chairman  
Massachusetts Turnpike Authority  
Ten Park Plaza; 4<sup>th</sup> Floor  
Boston, MA 02116

Dear Chairman Amorello:

The Office of the Inspector General has examined the professional liability insurance coverage maintained by design firms on the Central Artery/Tunnel Project or Big Dig. Since insurance coverage may play a major role in cost recovery, we recommend that you conduct a more detailed review of project records.

We found a lack of complete and centralized insurance files. We were provided with conflicting information about the firms that have these policies and their respective coverage amounts. We could not identify a comprehensive listing of firms that are covered by insurance. Furthermore, it appears that no clear effort was made to have firms provide their insurance information to the Big Dig even though this insurance was purchased with public funds.

There appears to be no reasonable way to determine if the taxpayers received the protection they paid for and if insurance will be available to pay cost recovery claims.

Our attempts to develop a comprehensive list of firms covered by professional liability insurance were hampered by inadequate records and the unwillingness of many of the insured firms to cooperate.

I recommend that this matter be examined immediately to determine if insurance records can be restored.

Sincerely,

A handwritten signature in cursive script that reads "Gregory W. Sullivan".

Gregory W. Sullivan  
Inspector General

cc: Attorney General Thomas Reilly

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## ***Introduction***

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Cost recovery for the Big Dig has been aggressively pursued since 2003. To date approximately \$4 million has been recovered and millions more are being sought through litigation. The Turnpike Authority has recently transferred its cost recovery efforts to the Massachusetts Office of the Attorney General.

In December 2000, the Office of the Inspector General was the first oversight agency to issue a report critical of the Big Dig's cost recovery program. The Inspector General's office pointed out that the program had been poorly managed and ineffective; recovering only \$30,000 from more than \$80 million in claims.

To be successful, the current cost recovery process may need to rely upon professional liability insurance claims that have been or will be filed against Big Dig designers and the Big Dig's design and construction manager, Bechtel/Parsons Brinckerhoff. The Architects/Engineers Professional Network defines professional liability insurance as follows:

Professional Liability Insurance also known as Errors & Omissions, (E&O) or Malpractice insurance. This insurance provides coverage to defend and indemnify the design professional against claims alleging negligent acts, errors or omissions in the performance of professional services (wrongful acts). Wrongful Acts are not limited to defects in plans and specifications. Coverage usually extends broadly to encompass most of the professional services rendered by A/E [Architectural and Engineering] firms. The policy will pay on behalf of the design professional those damages that the design professional is legally obligated to pay as a result of a wrongful act.

In 2004, the Inspector General's office attempted to identify what insurance coverage the design firms and Bechtel/Parsons Brinckerhoff had in place. The Inspector General's office did this for two reasons:

- 1) To determine if the taxpayers received the protection they paid for.
- 2) To determine if the design firms and Bechtel/Parsons Brinckerhoff complied with their contract requirement to maintain a certain level of insurance coverage.

## ***Background***

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In May 1995, the Massachusetts Highway Department created the Owner Controlled Insurance Policy program, which included professional liability coverage for the design firms. This coverage was paid for through a cost sharing formula called the “Professional Liability Wrap-Up Insurance Premium.” The liability aggregate limit was set at \$35 million dollars with the premium for the first \$30 million in coverage being paid for with taxpayer dollars. The premium cost for the remaining \$5 million in coverage was to be shared by Bechtel/Parsons Brinckerhoff and by the designers in proportion to their total design fees.

The design contracts that pre-dated the Owner Controlled Insurance Policy were not covered by the Policy. Instead, the Big Dig required contract specific policies with specific insurance coverage as recommended by Bechtel/Parsons Brinckerhoff. These contract specific policies were paid for by the taxpayers as well. The designers were reimbursed for insurance premiums paid as a direct expense for each contract.

The Inspector General’s office sought to identify the insurance policies, the coverage amounts, the premiums paid, the names of the insured entities, policy dates, Bechtel/Parsons Brinckerhoff’s risk assessment recommendations, and whether any claims had been made against these policies.

## ***Findings***

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**Finding 1: The Big Dig did not require Section Design Consultants to provide their professional liability insurance information to any Big Dig oversight entity.**

Any firm whose insurance costs are reimbursed by the commonwealth should be required to provide any insurance information upon request.

**Finding 2: The Big Dig has no centralized system for collecting and maintaining professional liability insurance data.**

Proper record keeping is critical to protect the commonwealth's investment. All future public construction projects that require designers to maintain insurance as a condition of a contract should be required to keep copies of policies on file and available on request for cost recovery purposes. A central depository should be established and each firm should have the contractual responsibility for maintaining adequate records. Records should include names of the insured firms; certificates of insurance indicating premiums paid, policy dates and coverage amounts; corresponding project contract numbers and contract dates, risk assessment, relevant correspondence and claims against or costs incurred in connection with said policies.

**Finding 3: More than 80 percent of the files did not contain a risk assessment measurement tool.**

Risk assessment is a crucial factor in determining the amount of professional liability coverage needed on a contract. Coverage should be reviewed and approved on the basis of risk assessment. Each assessment should include a review of the covered firm's internal controls, assessment of control risk, and the extent of audit testing needed based on assessment of control risk. Risk assessment should be included in every contract file and no reimbursement should be paid until coverage is reviewed and approved.

Under its contract, Bechtel/Parsons Brinckerhoff had the responsibility to prepare these assessments. The lack of available records calls into question whether

Bechtel/Parsons Brinckerhoff performed this function for which it was paid. This could be a potential cost recovery issue.

**Finding 4: Files did not contain certificates of insurance or policy declarations to reflect changes in policy dates or coverage.**

Certificates of insurance, including certificates for replacement and extended coverage, should be on file and available on request for any coverage which is reimbursed by the commonwealth. In many cases, changes in policy dates and coverage were often alluded to in broker correspondence but were not found in the files. Correspondence described certificates of insurance which had expired and were replaced by new certificates that could not be found in the contract files.

**Finding 5: Many files did not contain specific design contract information.**

Since some designers had multiple Big Dig contract and since the files were not contract specific, policies could not be matched to the contracts for which they provided coverage. All files should contain contract specific information.



## ***Conclusion***

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Due to the lack of available information, the Inspector General's office cannot reasonably determine whether:

1. The insurance coverage paid for by the taxpayers was purchased and in effect during the applicable contract periods.
2. The firms contacted fully complied with their contractual obligations concerning insurance coverage.

As a result, the Inspector General's office recommends that the Turnpike Authority investigate whether Bechtel/Parsons Brinckerhoff and the Big Dig's insurance consultant Hilb, Rogel & Hobbs (formerly Sheppard, Riley, Coughlin) fulfilled their contractual responsibilities concerning the Owner Controlled Insurance Policy program.

The lack of centralized and complete records could undermine the commonwealth's cost recovery efforts and provides no assurance that the taxpayers received what they paid for under the Owner Controlled Insurance Policy program.

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