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PROPERTY DAMAGE CLAIMS UNDER COMMERCIAL INSURANCE POLICIES

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Release No. 1, February 2026

This is a concise, comprehensive, and practical guide to handling liability and first party claims under commercial insurance policies focusing on property damage claims. It's an ideal resource for assisting lawyers, risk managers, claims adjusters, and others, in dealing with claims of a property nature, and providing a better understanding of property insurance claims in general.

What's New in this Update:

This release features valuable updates to the case law and commentary in Chapters 6, 7 and 9.

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Case Law Highlights

- **Chapter 7—Perils Insured and Excluded—**In *2689686 Ontario Inc. v. Lloyd's Underwriters*, 2025 ONCA 801 (Ont. C.A.), the Ontario Court of Appeal heard an appeal from a trial decision finding that the insured's Builders Risk Policy excluded coverage for certain damage to buildings they owned. The trial judge had determined on summary judgement that the damage to the buildings was due to frost followed by heaving that caused the roof to fail, which was one of the perils that was excluded under the insurance policy. The insured appealed, alleging amongst other things that the trial judge erred in finding that the "frost or freezing" exclusion clause was applicable, and in failing to apply the doctrine of nullification. The court of appeal found that the trial judge had properly considered the evidence with respect to the cause of the damage and gave cogent reasons for his findings in that regard. The court of appeal concluded that based on those findings, the trial judge's determination that the "frost and freezing" applied to exclude coverage was a finding that was available to him. There was no error in his analysis. The court further found that this was not a case of illusory coverage to which the doctrine of nullification applied, as enforcement of the exclusion clause did not effectively negate coverage under the policy. The court of appeal accordingly dismissed the insured's appeal.
- **Chapter 7—Perils Insured and Excluded—**In *Tragger v. Intact Insurance Company*, 2025 ABKB 678 (Alta. K.B.), the plaintiff had hired a company to install and supply stone siding for two buildings they owned. The company and their subcontractor supplied and installed the siding. Seven years later, the plaintiff had to replace all of it because it had delaminated due to faulty workmanship. The plaintiff successfully sued the company and subcontractor for damages but could not collect. Accordingly, they sued the company and subcontractor's insurance companies directly under section 534 of the *Insurance Act*. The insurers' opposed the claims, relying on various exclusion clauses in the respective policies. The first insurance company pointed to an exclusion for damage arising from incorrectly performed work by the company, but the court found that an exception to the exclusion applied for property damage occurring away from the company's premises that arose from their completed work. The second insurance company had two policies that the court found provided coverage. On the first policy the insurer successfully argued an exclusion for damage to property that needed to be restored due to faulty workmanship but was not on the insured's premises. On the second policy, they pointed to an-

other exclusion clause for incorrectly performed work, but the court found that an exception to that exclusion applied. Overall, the court found that both insurers were liable to cover the plaintiff's damages that were awarded against their insured's to the plaintiff.