

Publisher's Note

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<p style="text-align: center;">ANNOTATED COMMERCIAL GENERAL LIABILITY POLICY by Mark G. Lichty and Marcus B. Snowden Release No. 2, December 2021</p>
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Publisher's Special Release Note 2021

The pages in this work were reissued in October 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the October 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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What's New in this Update:

In this second release, apart from chapter renumbering which is needed given several chapter additions over recent years, readers will find what we hope is helpful graphic depiction of proper coverage analysis. We also provide updated commentary on judicial interpretation of a few discrete areas including:

- Chapter 13 (Exclusions and Exceptions—Purpose and General Structure)—Apart from including updated appellate guidance on the impact of the phrase “directly or indirectly” in a preamble clause, this chapter has been augmented with a graph which shows readers the onus of proof existing at different stages of coverage analysis — our thanks to Ms. Bevin Shores for permission to reproduce this graph.
- Chapter 14 (Intentional Acts)—Includes the latest judicial guidance on how the intentional act exclusion is construed in different contexts: see our further assessment of Justice Chalmers’ analysis in the *Demme v. Healthcare Insurance Reciprocal of Canada* case — touched on in the first release at Chapter 11. See as well, the Saskatchewan Court of Appeal’s decision in *CE Design Ltd. v. Saskatchewan Mutual Insurance Company*, 2021 SKCA 14.
- Chapter 28 (Electronic Data and Data-Related Liability Exclusions)—Discusses the Ontario Court of Appeal’s ruling overturning the lower court judgment in regard to the scope of an insurer’s “data exclusion” in the context of underlying proposed class action litigation for breach of privacy: see *Family and Children’s Services of Lanark, Leeds and Grenville v. Cooperators General Insurance Company*, 2021 ONCA 159.
- Chapter 36 (Pollution Liability Exclusion)—Reviews the Nova Scotia Court of Appeal’s interpretation of the “sudden and accidental” requirement found in pollution clean up cost coverage. This judicial guidance has implications for an extension to CGL coverage some markets offer: see *Zurich Insurance Company Ltd. v. Halifax Regional Municipality*, 2021 NSCA 42. We also repeat our concern stated in the first release regarding a recent trend seeing counsel endeavour to introduce extrinsic evidence in duty to defend applications, a practice threatening to consume if not exhaust court resources where a more straightforward approach was always envisaged by our highest court: see *Hemlow Estate v. Co-operators*, 2021 ONSC 664.
- Chapter 45 (Statutory Conditions and Related Legislative Provisions)—We review the relatively recent legislative trend which seeks to protect the innocent co-insured when criminal conduct committed by another insured would otherwise forfeit coverage, relevant for those CGL forms incorporating a broadly crafted criminal acts exclusion.

We hope this update will assist readers not only in understanding the latest judicial interpretation of CGL policy terms but the approach to assessment and where necessary litigation of coverage issues.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages