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<b>ANNOTATED COMMERCIAL GENERAL LIABILITY POLICY</b> by <b>Sébastien Kamayah, Marcus B. Snowden and Mark G. Lichty</b> <b>Release No. 2, December 2025</b>
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This release updates the case law and commentary in Chapters 22 (Damage to “Your Work”), 23 (Damage to “Impaired Property”), 27 (Abuse Exclusion), 28 (Electronic Data and Data-Related Liability Exclusions), 31 (Advertising Injury Insuring Agreement Coverage B: Personal and Advertising Injury Liability), 34 (Tenants’ Legal Liability Insuring Agreement), 36 (Pollution Liability Exclusion), 37 (Asbestos), 39 (Fungi or Spores), 40 (War Risks), 41 (Supplementary Payments and Obligations), 42 (Who Is an Insured), 44 (Commercial General Liability Conditions) and 45 (Statutory Conditions and Related Legislative Provisions).

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### What's New in this Update:

- **Chapter 23—Impaired Property:** — References several recent American appellate decisions interpreting the exclusion.
- **Chapter 27—Abuse:** — Reference to New Brunswick Court of Appeal decision broadly applying sexual misconduct exclusion to wrongful termination action.
- **Chapter 28— Electronic Data exclusion:** — Commentary on recent Ontario case *Aviva Insurance Co. of Canada v. 8262900 Canada Inc.* holding that a narrowly drafted data exclusion could engage the duty to defend claims of data breach under the CGL policy. Reference to a U.S case clarifying that the loss of payment information will trigger the “loss of use” condition in the Data exclusion clause.
- **Chapter 31—Advertising Injury:** — Commentary on recent U.S. case law discussing what constitutes “disparagement” and an “advertising idea” for the purpose of triggering an Advertising Injury insuring agreement.
- **Chapter 34—Tenants’ Legal Liability Insuring Agreement:** — Commentary on Ontario Superior Court of Justice decision *Greenwin Inc. v. St. Paul Fire and Marine Insurance Company* which held the pleaded facts did not satisfy this coverage grant.
- **Chapter 36—Pollution Exclusion:** — Commentary on the latest Canadian decisions, including Ontario case *Construction Distribution & Supply Co. v. Continental Casualty Company*, assessing what types of business activities may reasonably give rise to an expectation of pollution coverage under a CGL policy and Alberta case *Paramount Resources Ltd. v. Chubb*, discussing the detection requirement in a pollution clean-up endorsement. Reference to recent U.S. case law on what constitutes a “pollutant”.
- **Chapter 37—Asbestos Exclusion:** — Commentary on recent Louisiana Court of Appeal decision *Choice Foundation v. Law Industries, LLC*, which applied exclusion to claim arising out of alleged asbestos contamination due to construction work at charter school. The Court rejected the policyholder’s attempt to isolate passages of the pleadings that did not mention asbestos, and held instead that, when properly read as a whole, the pleaded claims involved asbestos contamination and were thus excluded.
- **Chapter 39—Fungi/Spores:** — Reference to recent Quebec and US appellate decisions interpreting the exclusion and exception language. In one case, the exception reinstated coverage in relation to a claim for contaminated food products and a resulting vaccination campaign.
- **Chapter 40—War Risks:** — Reference to new and rare Ontario Superior Court of Justice decision interpreting the

exclusion, *The Estate of Arbabbahrami v. MSH International (Canada) Ltd.*

- **Chapter 41—Supplementary Payments:** — Commentary on a recent U.S. case where the insurer was held liable for all post-judgment interest and plaintiff costs, even after exhaustion of the insurance limits due to a broad supplementary payments clause. Also includes reference to the latest amendments to Quebec’s Civil Code, permitting some insurers to derogate from the province’s mandatory cost-exclusive policy limit structure.
- **Chapter 42—Who Is An Insured:** — Commentary on a recent British Columbia Court of Appeal decision *Honeywell International Inc. v. XL Insurance Company Ltd.*, wherein the Court interpreted the “Insured” definition, including “sub-contractors” broadly as capturing a supplier that had manufactured a component in a construction project but was not involved in any work on the site.
- **Chapter 44—CGL Conditions:** — Discussion of new Canadian cases, including *Loblaw Companies Ltd. v. Royal & Sun Alliance Insurance Co. of Canada*, holding that voluntary payment clauses for pre-tender costs operate independently from notice provisions. Also includes reference to recent Nova Scotia and Ontario decisions considering relief from forfeiture and the enforceability of “no action” clauses, as well as the U.S. Supreme Court’s latest clarification of an insurer’s right to participate in its insured’s bankruptcy or reorganization proceedings.
- **Chapter 45—Statutory Conditions and Related Legislative Provisions:** — This update focuses on several recent decisions from the Ontario Court of Appeal. *Furtado v. Lloyd’s Underwriters and Kestenberg Siegal Lipkus LLP v. Royal & Sun Alliance Insurance Company of Canada* reaffirmed the rule from *Stuart v. Hutchins* that relief from forfeiture is unavailable for late notice under claims-made-and-reported policies.

The authors hope this update will assist readers to assess and stay informed of the latest judicial interpretation of CGL policy terms in the context of the facts presented.