

INSURANCE PROVISIONS AND ISSUES FOR THE CONSTRUCTION INDUSTRY

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Scope of coverage: Duty to defend vs. Duty to indemnify

The duty to defend: This is an insurer's obligation to provide an insured with defense to claims made under a liability insurance policy. In general, the insured need only establish that there is potential for coverage under a policy to give rise to the insurer's duty to defend. Therefore, the duty to defend may exist even where the duty to indemnify ultimately does not apply. New York law provides that that an insurer's duty to defend an insured is broader than its duty to indemnify.

Duty to Indemnify: If the ultimately liability is covered, this is the insurer's duty to pay for the loss up to the limits of the policy.

Evaluating Exclusions

When an insurer relies upon an exclusion to deny coverage, it has the burden to demonstrate that all allegations in the complaint can be interpreted only to exclude coverage.

The insured is entitled to strict and narrow construction of the exclusion. Any ambiguities must be resolved against the insurer.

If any cause of action in the complaint is covered, the insurer's duty to defend is triggered.

However, if the exclusion conclusively and unambiguously excludes coverage for all causes of action, no duty to defend is triggered and denial of coverage is appropriate.

RISK ALLOCATION

- Risk allocation is necessary to the bidding process. Failure to understand and identify risk, and to properly allocate it, can result in higher costs for the project.
- Prudent contracting parties will anticipate, and plan for, time and legal fees associated with insurance disputes, including property damage and bodily injury.
- When evaluating risk, the contracting party should evaluate hold harmless provisions, indemnification provisions, insurance requirements and bond requirements.
- The proper allocation of risk, and achieving a balance between contractual safeguards, sufficient insurance and sufficient bonding requirements, will allow the contracting party to minimize its risk to the greatest extent.

INSURANCE REQUIREMENTS

- Should be specifically identified in the contract documents at the time of execution. Common practice is to either include them within the body of the contract or in a schedule specifically identified in the contract.
- ✓ Worker's Compensation (New York State minimums)
- ✓ Commercial General Liability (\$1,000,000 per occurrence and \$2,000,000 in the aggregate or greater)
- ✓ Umbrella/Excess (Varies by project from \$2,000,000 to \$10,000,000 +)
- ✓ Comprehensive Automobile (\$1,000,000 single limit, including bodily injury and property damage or greater)

The Indemnification Clause

- An indemnification clause is a contractual provision holding the indemnified party harmless from all liability, costs, damages, etc. from any claims or causes of action arising from the indemnitor's work.
- New York prohibits a party from indemnifying another for its own negligence. *See* General Obligations Law §5-322.1; Itri Brick & Concrete Corp. v. Aetna Cas. & Sur. Co., 89 N.Y.2d 786 (1997).
- Subcontractor may still be required to provide insurance to owner and/or prime contractor to protect against their own negligence. An obligation to insure is not an agreement to indemnify. Kinney v. G.W. Lisk Co., Inc., 76 N.Y. 2d 215 (1990).

“Typical” Indemnification Hierarchy

Remember, in construction
Risk flows down hill:

Owner: Usually will not defend or indemnify anyone. Usually contractually required to be defended and indemnified by everyone below it in the contract chain.

General/Prime Contractor: Agrees to defend and indemnify the owner and tenant (and sometimes the architect and/or engineer). Assures that subcontractors do the same.

Subcontractor: Agrees to defend and indemnify the general/prime contractor, owner, and tenant (sometimes also the architects and/or engineers)

SAMPLE INDEMNITY PROVISION

12.14 Indemnification.

1 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, Lender, Additional Insureds and anyone for whose acts they may be liable, and their respective officers, trustees, partners, members, affiliates, managers, shareholders, directors, agents, employees, successors, and assigns (collectively, **Indemnitees**, individually, **Indemnitee**) from and against all losses, claims (including, but not limited to, those alleging injury to third parties or damage to property of third parties), causes of action, lawsuits, costs, damages, and expenses (including the deductible amount of any insurance and, without limitation, attorneys' fees and disbursements), arising out of connection with: (a) any personal or bodily injury, sickness, disease or death, damage or injury to, or loss or destruction of, property (including tools, equipment, plant and the buildings at the Project Site and adjacent locations, but including the Work itself), including the loss of use resulting therefrom sustained or reported to have been sustained as a result of performance of the Work; (b) any negligent or wrongful act or omission of Contractor, its employees, subcontractors, representatives or other persons for whom Contractor is responsible; (c) any breach of or default under the Contract by Contractor; and (d) any claim asserted, or lien or notice of lien filed, by any subcontractor or supplier of any tier against the Project, source of funding or any Indemnitee in connection with the Work. These indemnification obligations shall arise regardless of any claimed liability on the part of an indemnified party provided, however, Contractor shall not be required to indemnify any Indemnitee to the extent attributable to such Indemnitee's negligence, act or omission. This indemnification obligation shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity which would otherwise exist in favor of any Indemnitee, from any source.

2 In any and all claims against any Indemnitee by any employee of Contractor, or of its subcontractors or anyone directly or indirectly employed by either Contractor or its subcontractors or anyone for whose acts either Contractor or its subcontractors may be liable, the indemnification obligation under Section 12.14 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers' or workmen's compensation acts, disability acts or other employee benefit acts. The obligations of Contractor under this Section 12.15 shall not extend to the liability of the Architect, Owner or their agents or employees arising out of: (a) the preparation or approval of maps, drawings, opinions, reports, surveys, designs or specifications upon which Contractor was entitled to rely, or (b) the giving of or the failure to give directions or instructions by Owner or Architect, their agents or employees provided, that such giving or failure to give is the primary cause of the injury or damage. This Section 12.15 expressly shall survive any expiration or termination of this Contract.

SAMPLE INDEMNITY PROVISION



12.14 Indemnification.

1 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, Lender, Additional Insureds and anyone for whose acts they may be liable, and their respective officers, trustees, partners, members, affiliates, managers, shareholders, directors, agents, employees, successors, and assigns (collectively, **Indemnitees**, individually, **Indemnitee**) from and against all losses, claims (including, but not limited to, those alleging injury to third parties or damage to property of third parties), causes of action, lawsuits, costs, damages, and expenses (including the deductible amount of any insurance and, without limitation, attorneys' fees and disbursements), arising out of or in connection with: (a) any personal or bodily injury, sickness, disease or death, or damage or injury to, or loss or destruction of, property (including tools, equipment, plant and the buildings at the Project Site and adjacent locations, but excluding the Work itself), including the loss of use resulting therefrom sustained or purported to have been sustained as a result of performance of the Work; (b) any negligent or wrongful act or omission of Contractor, its employees, subcontractors, representatives or other persons for whom Contractor is responsible; (c) any breach of or default under the Contract by Contractor; and (d) any claim asserted, or lien or notice of lien filed, by any subcontractor or supplier of any tier against the Project, source of funding or any Indemnitee in connection with the Work. These indemnification obligations shall arise regardless of any claimed liability on the part of an indemnified party provided, however, Contractor shall not be required to indemnify any Indemnitee to the extent attributable to such Indemnitee's negligence, act or omission. This indemnification obligation shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity which would otherwise exist in favor of any Indemnitee, from any source.

2 In any and all claims against any Indemnitee by any employee of Contractor, or of its subcontractors or anyone directly or indirectly employed by either Contractor or its subcontractors or anyone for whose acts either Contractor or its subcontractors may be liable, the indemnification obligation under Section 12.14 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers' or workmen's compensation acts, disability acts or other employee benefit acts. The obligations of Contractor under this Section 12.15 shall not extend to the liability of the Architect, Owner or their agents or employees arising out of: (a) the preparation or approval of maps, drawings, opinions, reports, surveys, designs or specifications upon which Contractor was entitled to rely, or (b) the giving of or the failure to give directions or instructions by Owner or Architect, their agents or employees provided, that such giving or failure to give is the primary cause of the injury or damage. This Section 12.15 expressly shall survive any expiration or termination of this Contract.

Property Coverage

- Also known as first-party coverage.
- Builder's risk insurance: Protects the premises under construction.
 - Builder's risk is available on all risk or named-peril basis
 - All risk is much more common as it pays for losses other than those caused by an excluded peril
 - Common exceptions to all risk:
 1. Asbestos
 2. Collapse
 3. Pollution
 4. Water/Flood
 5. Earthquakes
 6. Subsidence
 7. Theft

The Earth Movement Exclusion

No coverage shall be provided for loss based on earth movement meaning....

Pioneer Towers v. State Farm: 2009 Court of Appeals says earth movement exclusion does not apply to movement of earth by man

Bentoria Holdings v. Travelers: 2012 Court of Appeals says Pioneer not applicable where exclusion specifically includes "naturally occurring or due to man-man...causes"

When to Watch for the Earth Movement Exclusion

- If you are representing an owner you must specify in your contract documents that the general contractor, and his excavation, shoring and underpinning subcontractors, are not permitted to have a policy with an earth movement exclusion
- If you are representing a general contractor or subcontractor that performs, either directly or through others, excavation, underpinning or shoring, you must specify that an earth movement exclusion is not permitted in the insurance policy
- If you are representing an adjacent landowner and defending against an RPAPL §881 application, you must insist that any §881 license prohibit the work from being performed by anyone with an earth movement exclusion
- If you are an adjacent landowner in a license agreement negotiation, you must insist that any contractor with an earth movement exclusion in the policy is prohibited from performing excavation, shoring or underpinning operations

Insurance Considerations In Construction Agreements

Construction agreements should always contain a description of the insurance obligations of the parties. However, the “cross suit”, “cross liability”, “cross claim” and “insured vs. insured” exclusion can be a hidden land mine. Be sure you understand these exclusions and their ramifications for your coverage.



The Employer's Liability Exclusion

EVENT	RESULT
Employee of named insured (subcontractor) is injured	No coverage to subcontractor, general contractor or owner (assuming all were named AI)
Employee of general contractor is injured when tripping over subcontractor's tools	No coverage to subcontractor, general contractor or owner (assuming all were named AI)
Trespasser is injured	Covered event

e. Employer's Liability

"Bodily injury" to:

- (1) An employee of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

Broad Employer's Liability Exclusion

This Endorsement Modifies Your Policy.
Please Read it Carefully.

EMPLOYERS LIABILITY EXCLUSION MODIFICATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART

- A. The Commercial General Liability Coverage Form, CG 00 01 and Products/Completed Operations Coverage Form, CG 00 37, Section I - Coverages, Paragraph 2, Exclusions are amended as follows:

Exclusion e, Employer's Liability, is deleted and replaced with the following:

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee", "temporary worker" or "volunteer worker" of any insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee", "temporary worker" or "volunteer worker" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; or
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- B. The Liquor Liability Coverage Form, CG 00 33, Section I - Liquor Liability Coverage, Paragraph 2, Exclusions, is amended as follows:

Exclusion c, Employer's Liability is deleted and replaced with the following:

c. Employer's Liability

"Bodily injury" to:

- (1) An "employee", "temporary worker" or "volunteer worker" of any insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee", "temporary worker" or "volunteer worker" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; or
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- C. The Owners and Contractors Protective Coverage Form, CG 00 09, Section I - Coverages, Paragraph 2, Exclusions, is amended as follows:

Exclusion f, Employer's Liability, is deleted and replaced with the following:

f. Employer's Liability

"Bodily injury" to:

- (1) An "employee", "temporary worker" or "volunteer worker" of any insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee", "temporary worker" or "volunteer worker" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; or
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- D. The following definition is added to Section V - Definitions of the Liquor Liability Coverage Form, Products/Completed Operations Coverage Form and Owners and Contractors Protective Coverage Form.

"Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

The Cross Liability Exclusion

EVENT	RESULT
Employee of insured (subcontractor) is injured	No coverage to subcontractor, general contractor or owner (assuming all were named AI)
Employee of general contractor is injured by falling debris from subcontractor	No coverage to subcontractor, general contractor or owner (assuming all were named AI)
Trespasser is injured	Potentially covered event

The cross-liability exclusions states that:

This insurance does not apply to any actual or alleged “bodily injury”, “property damage”, “personal injury” or “advertising injury” to:

3. A present, former, future or prospective partner, officer, director, stockholder or employee of any insured.

The Ongoing Operations Exclusion

Description of Ongoing Operations: Any work performed on any building, structure, platform, ladder or scaffold at elevations greater than 2 stories (18 feet) in height. This exclusion also applies to any work performed using any crane, hoist, lift or other similar vertical lifting device at elevations greater than 2 stories (18 feet in height).

EVENT	RESULT
Employee of subcontractor installing plywood for new roof slips and falls from a height of 18+ feet	No coverage for owner, general contractor or subcontractor (regardless of AI status)
Bystander injured when drywall being raised to 3 rd story of project by crane falls and hits her	No coverage for owner, general contractor or subcontractor (regardless of AI status)

Contractual Liability Limitation

- Notice what is missing:
No mention of an agreement under which “you assume the tort liability of another”
- When this definition of “insured contract” is used, beware the employer’s liability and contractual liability exclusions

COMMERCIAL GENERAL LIABILITY
CG 21 39 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of “insured contract” in the DEFINITIONS Section is replaced by the following:

“Insured contract” means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you, with permission of the owner is not an “insured contract”;
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement.

Chinese Drywall Exclusion

- Very broad: applies to all drywall manufactured in China without temporal limitation
- Covers drywall, plasterboard, sheetrock, gypsum board or “like products or materials”
- Like products or materials: Tape? Plaster? Joint compound?

This Endorsement Modifies Your Policy.
Please Read It Carefully.

EXCLUSION - DRYWALL MANUFACTURED IN CHINA

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" related to, arising out of, caused by, or attributable to, in whole or in part, "drywall" manufactured in China.
2. Any loss, cost or expense arising out of the abating, testing, monitoring, removing, containing, treating, remediating or disposing of, or in any way responding to, or assessing the effects of, "drywall" manufactured in China.

For the purpose of this endorsement, "drywall" means drywall, plasterboard, sheetrock, gypsum board, or like products or materials.

Classification Limitation

- Classic example of the need for attorney to be involved at the application stage
- Coverage is limited to classification of operations described (i.e. carpentry, demolition, excavation, etc.)
- When not included, rather than disclaim insurer usually has right to audit policy and charge additional premium

**This Endorsement Modifies Your Policy.
Please Read It Carefully.**

CLASSIFICATION LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

This insurance applies only to a classification that is shown on the policy. If any classification is not shown, it is not insured hereunder.

Contractor or Subcontractor Limitation

- Should never be in a policy obtained by an owner or developer that is intending to perform construction
- Will exclude coverage for all injuries sustained by anyone working for any contractor on the site

This Endorsement Modifies Your Policy.
Please Read It Carefully.

CONTRACTOR OR SUBCONTRACTOR LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., Exclusions of Section 1 - Coverage A - Bodily Injury and Property Damage Liability:

This insurance does not apply to "bodily injury" to:

1. Any contractor or subcontractor hired or retained by or for any insured; or
2. An "employee", "temporary worker" or "volunteer worker" of any contractor or subcontractor who was hired or retained by or for any insured;
arising out of, or in the course of employment by, or performing services for, any insured or any contractor or subcontractor with respect to the development of any real property or the erecting, excavating, demolishing, repairing, altering, painting, cleaning, maintaining or painting of any building or structure; or
3. The spouse, child, parent, brother or sister of that "employee", "temporary worker" or "volunteer worker", contractor or subcontractor, as a consequence of 1. and 2. above

This exclusion applies:

1. Whether the insured may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

A contractor or subcontractor will be considered to be hired or retained by or for any insured if the contractor or subcontractor was hired directly by any insured or was hired by another contractor or subcontractor who was hired by any insured.

Horizontal Exhaustion: Why you should care

What is it? New York recognizes the concept of “horizontal exhaustion.” In short, it means that everyone’s primary policy must pay out first before there is secondary (excess) liability. This includes payment of not only all subcontractor policies, but of the general contractor’s primary policy as well. Many construction contracts require vertical exhaustion, so if you do not address it beforehand, your client may walk into a job being in breach of contract from day 1.

What can you do about it? The first, proactive step, is to have your policy amended and have an endorsement issued that says your excess/umbrella carrier waives horizontal exhaustion and that it will contribute on a primary basis to your additional insureds.

- **No guarantee that the insurer will provide this endorsement**
- **Likely a significant increase to your policy premium (20%+)**

The second thing you can do is make sure that your policy does include contractual liability coverage (and make sure that your insured contract provision of the policy includes contracts where you “assume the tort liability of another”).

- By obtaining contractual liability coverage, there is a reactive step you can use to protect your client against liability in the event of a horizontal exhaustion issue. This is known as circuitry of litigation. However, that step is out of the control of your client. By way of example, the contractual liability coverage can help avoid horizontal exhaustion issues:

Your client works for GC and someone is injured. Injured party (IP) sued your client (Sub) and GC. GC turns to sub and claims it was supposed to provide primary and non-contributory insurance but failed to do so. GC sues sub under the indemnification clause in the contract. GC's claim is covered by contractual liability provision in the policy, carrier picks up the loss and it never flows back to your client the Sub.

PARTY	VERTICAL EXHAUSTION	HORIZONTAL EXHAUSTION
Subcontractor	Primary and excess/umbrella pays to policy limits before anyone else contributes	Primary pays up to policy limit. Excess/umbrella not triggered until primary policy of the general contractor and owner pays out to policy limits
General/Prime Contractor	Primary and excess/umbrella pays after subcontractor's primary and excess/umbrella pays out policy limits	Primary pays out to policy limit upon exhaustion of subcontractor's primary policy limit. Excess/umbrella not triggered until owner's primary policy has been exhausted.
Owner	Primary pays after subcontractor and general contractor have exhausted primary and excess/umbrella limits	Primary pays out to policy limit upon exhaustion of subcontractor and general contractor's primary policy limits.

New York City Insurance Considerations

- Beware 1 RCNY §101-08!
 - (c) For permits requiring proof of insurance under this section, no permit shall be issued or renewed until the permittee has provided the department with proof of insurance in accordance with subdivision (g) hereof.
 - NYC, together with its officials and employees, must be named as additional insureds (unless project specific liability insurance is required)
 - Amount (limits) of insurance require depend upon the project details
 - (j) regardless of insurance, the permittee shall indemnify, defend and hold the city and its officials harmless

What do I need in New York City and How Much?

Criterion 1	Criterion 2 (Tower Crane Y/N)	Criterion 3 (Permit Type)	Criterion 4 (Proposed Height or Height of Tallest Adjacent Building)	Required Project Specific Coverage
1/2 Family Home AND Depth of Excavation < 12' AND Proposed Construction is not on a lot line with an existing structure AND Proposed Height < 35' AND No Tower Crane	N/A	Foundation ¹ , New Building ¹ , Full Demo ¹ , or Major Alteration ^{1,2}	N/A	N/A, but comply with the requirements of (d)(1)(iv)
Not 1/2 Family Home OR Depth of Excavation > 12' OR Proposed Construction is on a lot line with an existing structure OR Proposed Height > 35'	NO	Foundation ¹	Tallest Adjacent Building < 7 stories and < 75 feet	\$5 million
			Tallest Adjacent Building between 7-14 stories and <150 Feet	
			OR Tallest Adjacent Building <=14 stories and between 75-150 feet	\$10 million
			Tallest Adjacent Building > 14 stories or >= 150 feet	\$15 million
		Full Demo ¹	Tallest Adjacent Building < 7 stories and < 75 feet	\$5 million
			Tallest Adjacent Building between 7-14 stories and < 150 feet	
			OR Tallest Adjacent Building <=14 stories and between 75-150 feet	\$15 million
			Tallest Adjacent Building > 14 stories or >= 150 feet	\$25 million
		New Building ¹ or Major Alteration ^{1,2}	Proposed Number of Stories < 7 stories and < 75 feet AND Tallest Adjacent Building < 7 stories and < 75 feet	\$5 million
			Proposed Number of Stories between 7-14 stories and < 150 feet AND Tallest Adjacent Building <=14 stories or < 150 feet	
			OR Proposed Number of Stories <=14 stories and between 75-150 feet	

			AND Tallest Adjacent Building <=14 stories or <150 feet OR Tallest Adjacent Building between 7-14 stories and < 150 feet AND Proposed Number of Stories <=14 stories or <150 feet OR Tallest Adjacent Building <=14 stories and between 75-150 feet AND Proposed Number of Stories <=14 stories or < 150 feet	\$15 million
			Proposed Number of Stories > 14 stories or >= 150 feet OR Tallest Adjacent Building > 14 stories or >= 150 feet	\$25 million
YES	ALL Permits ¹	N/A		\$80 million
ALL OTHER PERMITS				N/A, but comply with the requirements of (d)(1)(iv)
¹ other than a storage shed, garage, or similar accessory use to a residential structure				
² Major Alteration =				
1) Alteration permit involving demolition of more than 50% of the floor area of an existing building, or				
2) Work that will result in the removal of one or more floors of an existing structure, or				
3) Horizontal or vertical enlargement affecting the exterior envelope of an existing building				

Courtesy of the New York City Department of Buildings:
http://www.nyc.gov/html/dob/downloads/rules/1_RCNYS_101-08.pdf

Six Exclusions Prohibited by 1 RCNY §101-08


1. Completed operations (excludes coverage for injury after work is completed)
2. XCU (explosion, collapse and underground)
3. Contractual liability
4. Third party actions over (will sometimes manifest itself as the “statutory liability” exclusion. Excludes Labor Law liability)
5. Where project involves residential construction, a residential construction exclusion
6. EIFS exclusion (for projects involving exterior insulation and finish a/k/a “stucco”)

1 RCNY §101-08 and Policy Cancellation

- In order to obtain a permit in NYC the permittee's policy must contain a provision that says "this policy shall not be cancelled, terminated, modified or changed in a way that affects the city by the issuing insurance company unless thirty (30) days prior written notice is sent to the Named Insured and the Commissioner of the New York City Department of Buildings, except that termination for non-payment may be made on only ten (10) days' written notice"
- Most, if not all, policies will not have this language by default. An endorsement must be obtained.

The Certificate of Insurance

- Most commonly used form is the Acord 25



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSTR. LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPROP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED: <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below				<input type="checkbox"/> JWC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)					

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.


AUTHORIZED REPRESENTATIVE

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The Certificate of Insurance

- Most commonly used form is the Acord 25
- “This certificate is issued as a matter of information only and confers no rights upon the certificate holder”



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES
CERTIFICATE NUMBER:
REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSTR. LTR.	TYPE OF INSURANCE	EFFECTIVE DATE (MM/DD/YY)	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YY)	POLICY EXP. DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPROP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED: RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below					JWC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)						

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PRODUCER	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED	INSURER A:		
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES
CERTIFICATE NUMBER:
REVISION NUMBER:

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INSTR. LTR.	TYPE OF INSURANCE	EFFECTIVE DATE (MM/DD/YY)	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED: RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below					JWC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER


CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
 AUTHORIZED REPRESENTATIVE

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The Certificate of Insurance

- “Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions”
- Many contracts require that the policy provide all AI with 30 days advance notice of cancellation
- 1 RCNY §101-08 requires that NYC be given 30 days advance notice of cancellation



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

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PRODUCER _____ _____ _____	CONTACT NAME: PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____ _____ INSURER(S) AFFORDING COVERAGE <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURER A:</td> <td style="width: 20%;"></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER A:		INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER A:													
INSURER B:													
INSURER C:													
INSURER D:													
INSURER E:													
INSURER F:													

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
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INSTR. LTR	TYPE OF INSURANCE	RISK RISK#	INSR. WORD	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE \$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPOP AGG \$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> Hired AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						EACH OCCURRENCE \$ AGGREGATE \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED. <input type="checkbox"/> COINSURANCE						EACH OCCURRENCE \$ AGGREGATE \$
	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						JWC STATUTORY LIMITS OTHER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. _____ AUTHORIZED REPRESENTATIVE
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Additional Insured Considerations

- A certificate of insurance confers no AI rights – you must obtain an endorsement unless the policy has a self executing/effectuating AI provision.
- Almost all policies issued to contractors in New York require that subcontractors specifically name the general/prime contractor as an AI on its policy and provide the general/prime contractor with a written hold harmless agreement
- Failure to obtain the necessary insurance and hold harmless from a subcontractor can have one of two effects depending on the policy: 1) there is no coverage under the policy; or 2) there is coverage but an audit will be performed and a premium charged at the highest allowable rate

THANK YOU!

*Insurance Provisions and
Issues for the Construction Industry*

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(631) 752-7100

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