

# No Insurance = No Entry

A guide to protecting your building when hiring contractors.



## Edward J. Mackoul, CPCU, CIC

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As the CEO of Mackoul Risk Solutions, **Ed Mackoul** is responsible for running all facets of the business. As a Certified Insurance Counselor and Chartered Property Casualty Underwriter (CPCU), he brings nearly 30 years of experience in insurance and risk management to Mackoul. Specializing in personal, commercial, business, real estate, and employee benefits, Mackoul Risk Solutions is recognized as one of the finest personal insurance agencies in the New York Metropolitan area.

## Cheryl Fitzpatrick, CPCU, ACSR

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In her 34 years at Mackoul Risk Solutions, **Cheryl Fitzpatrick** has developed many longstanding relationships with her clients while handling our larger, most complex accounts. As our Director of Operations/Construction Division, Cheryl heads our Contractor Insurance Review department and mentors our Commercial Lines staff. She obtained her Chartered Property Casualty Underwriter (CPCU) designation in 2015 and was named Outstanding CSR of the Year for the state of New York in 2020.

# New York Labor Law

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- New York Labor Laws can be an onerous burden for property owners and property managers, making them financially liable for virtually any work-related accident on their premises. Prevention is always the best medicine, as a Labor Law claim on record is a big red flag and could prevent an insured from getting a reasonable quote, especially if the claim is still open. Having just one Labor Law Claim on record can result in a much higher premium for as long as five years!



# New York Labor Law

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- Section 240 (1): Commonly known as the “Scaffold Law” makes the property owner “absolutely liable” for all gravity related construction accidents on their property with almost no exceptions. The property owner is liable even if they did not hire the injured worker or his employer, even if he did not know they were working on premises and even if the worker was partially or fully responsible for their injury.
- Section 241 (6): Makes property owners strictly and vicariously liable for worker injuries on their premises if improper or inadequate safety equipment causes a worker's injury. Damages from resulting lawsuits can be reduced or eliminated if the property owner can show that the injured worker was partially or fully responsible for their injuries, but this is rare.

# How Do You Manage the Risk?

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- Insurance
- Contracts
- Hold Harmless Agreements
- Certificates of Insurance

# Insurance

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- Never hire an uninsured contractor!
- OBTAIN A FULL COPY OF THEIR POLICY. Have your insurance broker review the contractor's insurance policy to see if there are any endorsements or exclusions that should be removed or added, such as...
  - Contractual Liability: If the contractor's policy excludes this, get a different contractor!
  - Injury to Employee/Third-Party Action Over Exclusion: Without this coverage, there will be no protection for the property owner if an employee of the general contractor or subcontractor gets injured on the job. Because of the Worker's Compensation law, an employee can't sue their employer in most instances, but they can sue the property owner. Even though the contractor agrees to indemnify and hold the property owner harmless, since his coverage will not respond in this scenario, the building will ultimately be held responsible under New York Labor Law 240.
  - Exterior Work Exclusion
  - Designated Operations- Classifications
  - Height Restriction Exclusion
  - Multi-Unit Residential Exclusions
  - Exclusion for Work in NYC Boroughs
  - Subcontractor Warranties or Hard Hammer Clauses
  - Exterior Insulation and Finishing Systems (EFIS)
  - Work on Roofs Exclusion



# What Coverages Should the Contractor Maintain?

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- **General Liability**
  - \$1,000,000 per Occurrence, \$2,000,000 Aggregate Including Products and Completed Operations (defective product or faulty workmanship).
- **Workers Compensation** – As required in New York State
  - The building owner is responsible if the independent contractor they hire does not maintain Workers Compensation coverage.
  - When the Building Owner's Workers Compensation policy is audited, they will be charged for payments made to the contractor if no Certificate is maintained.
- **Auto Liability** – \$1,000,000
  - If any autos are owned
  - If not, Hired/Non-Owned Auto Liability should be maintained.
- **Commercial Umbrella/Excess Liability**
  - Provides Excess General Liability, Workers Compensation, and Auto Liability. Limits in case the award is greater than the coverage of the underlying insurance. A \$5MM Commercial Umbrella on most projects and \$10MM or higher limit for height-related jobs/projects.

# Have a Contract

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- **Must be drafted by an attorney!**
- **Should detail the contractor's responsibilities**, including written agreements with all subcontractors that contain indemnification language in the property owner's favor and require that the owner be an Additional Insured under the sub-contractor's insurance policies.
- **CRITICAL!! Additional Insured** must include verbiage that the building owner and property manager are required to be listed as an additional insured. This also applies to all Shareholders and Unit owners. Automatic Additional Insured Endorsements require this.
- **Who is an insured?** Is amended to include any person or organization that you agree in a 'written contract requiring insurance' to include as an additional insured on this coverage part.



# Have a Contract

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- **Should Specify Minimum Acceptable Insurance Coverages and Limits**
- **Waiver of Subrogation** – Waives the contractor/contractor's insurance company's right to subrogate against the property owner for damages caused by the contractor. Should be in the Property Owners favor.
- **Primary & Non-Contributory** - This requires that the contractor's policy must pay before other applicable policies (primary) and without seeking contribution from other policies that also claim to be primary (non-contributory).



# Have a Contract

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- Ensure that all contracts and subcontracts explicitly state that all contractors and subcontractors are responsible for the supervision of employees, for the means and methods of their own work, and for the safety of their own employees and/or subcontractors' employees of any tier.
- Never allow subcontractors on your property that you do not know and/or do not have certificates of insurance from.
- While you may interact with your contractors for scheduling and cosmetic issues, do not direct or control the means and methods of the contractors' work.

# Hold Harmless Agreements

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- Should be in the contract. If not have one separately, but have one!
- Must be in the building owner's favor!!

## *Sample Wording*

“To the fullest extent permitted by law, contractor shall indemnify and hold harmless the Owner and Property Management firm from and against claims, damages, losses and expenses, but not limited to attorneys’ fees, arising out of or resulting from performance of the contractor’s work, provided that such claim, damage loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (other than the work itself), including loss of use resulting therefrom, cause in whole or in part by negligent acts or omissions of the contractor, contractor’s subcontractor or any one directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.”

This is a sample wording obtained from an insurance company legal department. Please refer to your attorney for proper wording of your specific agreement.

# New York Construction – Certificate of Liability Insurance Addendum

- The Certificate of Insurance must list the Property Owners and Property Manager as Additional Insured. Being an Additional Insured provides a defense and indemnifies the Additional Insured parties.
- If possible, obtain an Accord 855, which is like a Certificate of Insurance “on steroids.”
- The Acord 855 provides additional information on the contractor’s policy and some of their exclusions and/or limitations.



## 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.

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



**NEW YORK CONSTRUCTION  
 CERTIFICATE OF LIABILITY INSURANCE ADDENDUM**

DATE (MM/DD/YYYY) \_\_\_\_\_

THIS ADDENDUM SUMMARIZES SOME OF THE POLICY PROVISIONS IN THE REFERENCED INSURANCE POLICIES AND IS ISSUED AS A MATTER OF INFORMATION ONLY; IT CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. ALL TERMS, EXCLUSIONS AND CONDITIONS IN THE ACTUAL POLICY SHOULD BE CONSULTED FOR A MORE DETAILED ANALYSIS OF COVERAGE, AS THIS ADDENDUM DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES.

AGENCY		NAMED INSURED(S)	
POLICY NUMBER	EFFECTIVE DATE	CARRIER	NAIC CODE

ADDENDUM INFORMATION      CERTIFICATE NUMBER: \_\_\_\_\_      REVISION NUMBER: \_\_\_\_\_

**A. Insurer**

- Admitted / authorized
- Excess line or free trade zone

**B. General Liability (GL) policy form**

- ISO / ISO modified
- Other

**C. Specific operations excluded or restricted (GL policy)**

- Location: \_\_\_\_\_
- Type of construction: \_\_\_\_\_
- Building height: \_\_\_\_\_
- Classifications [see attached declarations / endorsement]
- Designated work [see attached endorsement]

**D. Additional insured endorsement (GL policy)**

- CG 20 10     CG 20 26     CG 20 32     CG 20 33     CG 20 37     CG 20 38
- Other: # \_\_\_\_\_ Title: \_\_\_\_\_

**E. According to the terms of this GL policy, the additional insured has primary and noncontributory coverage**

- Yes     No and     no other option is available with this insurer

**F. Additional insured will receive advance notice if insurer cancels (GL policy)**

- Yes     No and     no other option is available with this insurer

**G. Blanket contractual liability located in the "insured contract" definition (Section V, Number 9, Item f. in the ISO CGL policy) is removed or restricted**

- Yes and     no other option is available with this insurer     No changes made

**H. "Insured contract" exception to the employers liability exclusion is removed or modified (GL policy)**

- Yes and     no other option is available with this insurer     No changes made

**I. GL policy (including endorsements) does not cover the additional insured for claims involving injury to employees of the named insured or subcontractors (not workers' compensation)**

- Yes and     no other option is available with this insurer     No changes made

ADDENDUM INFORMATION (continued)

**J. Earth movement, excavation or explosion / collapse / underground property damage is excluded or restricted (GL policy)**

- Yes and     no other option is available with this insurer     No changes made

**K. Insured vs. insured suits (cross liability in the ISO CGL policy) are excluded or restricted (other than named insured vs. named insured)**

- Yes and     no other option is available with this insurer     No changes made

**L. Property damage to work performed by subcontractors (exception to the "damage to your work" exclusion in the ISO CGL policy) is excluded or restricted**

- Yes and     no other option is available with this insurer     No changes made

**M. Excess / umbrella policy is primary and non-contributory for additional insureds**

- Yes, by specific policy provision     Yes, by endorsement     No and     no other option is available with this insurer

\_\_\_\_\_  
 AUTHORIZED REPRESENTATIVE SIGNATURE

\_\_\_\_\_  
 DATE (MM/DD/YYYY)

# Obtain a Certificate of Insurance

- Additional Insured Endorsements

**Name Of Additional Insured Person(s) Or Organization(s)**

Any person or organization where the Named Insured has agreed in a written contract or agreement to name as an additional insured provided that the contract or agreement was executed prior to the loss or occurrence.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Any person or organization where the Named Insured has agreed in a written contract or agreement to name as an additional insured provided that the contract or agreement was executed prior to the loss or occurrence.	All Locations at which the Named Insured is performing on-going operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:**

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance; whichever is less.

This endorsement shall not increase the applicable limits of insurance.

# No Side Jobs

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- A super who is paid by residents to do side jobs is like having an uninsured contractor working in the building.
- **CONTRIBUTING FACTORS:**
  - If injured, the super could conceivably not be eligible for Workers Compensation benefits, as they are not performing work on behalf of their employer.
  - If the super causes damage or injury to someone and is sued by the damaged party, they will not be covered by the property owner's General Liability policy, as they would not be considered an employee at the time.
  - Either the super should maintain their own insurance or the work should be authorized and paid by the property owner.

## REAL-LIFE EXAMPLE:

- **The Scenario:** A Unit Owner hired the building's Porter to stain their floors. The Porter put polyurethane in a sealed bag that exploded and caused a fire.
- **The Result:** The building does not allow a Super or Porter to do these types of side jobs, so this was done under the table. The building sustained \$500k in damages and now cannot subrogate.

# What About Our Handyman?

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- **Minimum Payroll Workers Compensation Policy**

- Primarily for maintenance workers at smaller buildings with no super. He or she comes once or twice a week to sweep, take out the garbage, etc. He or she gets paid by check, with no deductions made, and gets issued a 1099 at the end of the year. Though that person is technically not an employee, the co-op or condominium should be maintaining a minimum payroll Workers Compensation policy to protect themselves.



## Use of Equipment

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- **Contractors Are Not to Use the Property Owner's Equipment**  
(Ladders, Tools, etc.)



# Summary

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**Taking the Necessary Steps To Properly Manage Contractor Risk is Critical Because:**

- Contractor-related claims are filed against the contractor's insurance, not the property owners or shareholders.
- Less exposure to building - superior claims history.
- Lower insurance costs - savings could be significant.
- The insurance company will know the property owner is hiring uninsured contractors and probably will not want to insure them.



# Questions?

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