

Owner's due diligence on contractor's insurance coverage shouldn't end at the project's completion, NYREJ

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As an owner of a construction project, it is imperative that you ensure that your contractors, and their subcontractors, procure general liability insurance which protects you from claims arising out of the work being performed on your property. Such coverage is imperative because under New York's Labor Law, owners of projects are strictly liable for many types of incidents that result in workers being injured at their projects, and are liable if the work of their contractors causes damage to neighboring properties. Most owners believe that the most effective way for an owner to ensure protection is to ensure: (i) that the owner's agreement with the general contractor requires the general contractor to defend, indemnify and hold you harmless against claims "arising out of" (not "caused by") its work; (ii) that the agreement requires the general contractor to procure general liability insurance naming the owner as an additional insured on a primary, non-contributory basis; (iii) that the agreements between the general contractor and its subcontractors contain the same indemnification and insurance procurement provisions as the owner's agreement with the general contractor and include the owner as an indemnitee and additional insured; and (iv) that the owner insists that the general contractor and its subcontractors provide copies of the declarations pages of their respective insurance policies (rather than a certificate of insurance) before they commence work at the project.

Unfortunately, while taking the above steps prior to the commencement of the work undoubtedly will eliminate many of the pitfalls to proper insurance coverage that an owner of a construction project can face, these steps alone may not be enough to adequately protect an owner throughout the course of the project. Indeed, numerous issues can arise during the course of a project that can jeopardize an owner's entitlement to additional insured coverage. This could be problematic because while losing additional insured coverage alone would be harmful to an owner, many owners' general liability policies contain provisions which require them to ensure that their contractors' policies provide for additional insured coverage or else face a significantly higher deductible or, in extreme cases, the complete loss of coverage under their own policies.