

Update: 2015 New York Construction Market

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New York Construction Activity Quite Strong

We've seen strong construction activity in New York over the past year as evidenced by new business submissions and substantial payroll increases on audits. The Northeast, and New York in particular, has led Nationwide with significant policy audit premium growth. We believe this is a good economic sign for the health of the construction market as new buildings go up and a great number of repairs and renovations are undertaken. It is also an opportunity for agents to work closely with clients to ensure their renewal policies reflect their anticipated work for the coming year. It is in everyone's best long-term interest to ensure reasonable payroll estimates on the policy. In the long run, it helps keep our rates competitive.

Loss Results Edging Up

We see some pockets of construction pricing becoming somewhat competitive, while other areas, such as New York Metro, continue to need pricing increases based on loss experience.

The ongoing challenge continues to be losses generated by New York Labor Law. Nationwide seeks to capitalize on our relationships with some of the best educated agents in the country who understand the exposures and who work with our insureds to minimize their risk to this onerous law.

Our claims staff continues to run into situations where there is no written contract, leaving our insured responsible for their subcontractor's employee's labor law claim. This is a recipe for an otherwise quality account ending up with either a significant renewal increase, or worse, in surplus lines.

Our claims team also reports another major issue related to subcontractors being insured with carriers known to provide non-standard ISO exclusionary forms. These forms are intended to exclude New York Labor Law claims. It is frustrating to our insureds, agents and to Nationwide when we are unable to tender a legitimate labor law claim back to the responsible subcontractor. Awareness of these carriers and exclusions is imperative if we are to avoid the avoidable.

Educated contractors who pay attention to their New York Labor Law exposures and site safety are our best clients. Our loss control consulting team, claims business development manager and CLTMs are always ready to assist.

What You Can Do

Continue to educate your general contractors (GC) and subcontractors on the importance of working exclusively with a written contract when hiring a subcontractor. Your efforts are worth their weight in gold.

Why? Most quality contractors have blanket additional insured forms on their policies that are only available to the hiring contractor if there is a written agreement. Coach everyone in the agency, from producer to CSR, to emphasize the critical nature of always using written contracts. Encourage them to seek legal counsel or provide them with sample AIA or ConsensusDoc forms. Then, follow up to ensure they're using them ... all the time.

In addition to coaching your clients to use written contracts, it is equally important that insureds closely monitor the quality of the coverage provided by the subcontractors they hire. Many of our construction-expert agents demonstrate their greatest value to their clients when guiding the insured with proper subcontractor selection. It's a great way to retain your best customers.

Also, when screening potential subcontractors, insureds should adequately pre-qualify the subcontractor's ability to do the work correctly and safely. The subcontractor's financial strength is also a valid concern.

Lastly, discuss certificate of insurance management with your clients. The contractor should appoint someone to review both the coverage in force as well as policy expiration dates. Subcontractors should not be allowed on the job site unless they have an up-to-date certificate on file with our insured. Too often, subcontractors are permitted on the job prior to signing a contract or providing a certificate of insurance. When losses occur prior to securing these essential documents, it is the insured (and their insurer) who suffer the consequences of large labor law claims.

Our Contractors and New York Labor Law brochure (CMR-0504AO) was created as a guide to contractors and subcontractors whose business is impacted on a daily basis by New York Labor Law. Please contact your Nationwide Loss Control Services representative to obtain a supply of this brochure for your clients.



Educate your customers on the importance of written contracts when hiring subcontractors.

Additional Insured Forms

In 1985, the world was a much simpler place. The primary additional insured (AI) form available was the CG 2010 (11-85). By default, the form provided scheduled AI status for both ongoing and completed operations. Then the world changed, and now both an "ongoing" and "completed ops" form are required. Plus, primary/non-contributory wording and sometimes "arising out of" language is required by all large, sophisticated GCs and project owners.

Nationwide's coverage forms have evolved in line with the growing insurance needs of GCs and risk managers. Our goal is to provide our policyholders with the coverage they need for a fair premium to satisfy their contract, while reserving our paying customers' limits for them. Our offerings are comprehensive, and we're prepared to meet almost any need our policyholder has. We can provide AI status for ongoing, completed ops, with "in whole or in part" or "arising out of" language on a scheduled or blanket basis. Please contact your CLTM or underwriter if/when you need to discuss requirements.

One note: We can also provide two of ISO's latest forms, which we believe are very helpful: Form CG 2001 to provide primary/non-contributory coverage, and Form CG 2038 Additional Insured – Owners, Lessees, or Contractors – Automatic Status for Others When Required in Written Construction Agreement. The latter form provides blanket AI status to all parties required in a written contract and eliminates the privity concern found in CG 2033.

Risk Transfer Best Practices

The intent of this communication is to provide you with information on our view of the New York construction market, rather than a full program of risk transfer education. Most of you, as well as our underwriting and claims staff, understand risk transfer. That said, here is a quick review of the most common items your underwriter wants to see from contractors:

- Consistent use of written contracts with all subcontractors
- Indemnification agreements with “saving language” (more below)
- Indemnification agreements with waiver of workers compensation immunity (more below)
- Contract specifying AI status for insured, for both ongoing and completed operations
- Contract requiring subcontractors’ coverage to respond on a primary and non-contributory basis for CGL and umbrella
- Subcontractors’ limits equal to or > insured’s
- Contract including waiver of subrogation in insured’s favor for CGL, BA, WC and umbrella
- Contract requiring the sub to provide notice of cancellation
- Contract requiring the sub to provide a per project aggregate
- Certificates required before the sub is allowed on the work site
- Subcontractors insured with carriers that provide standard ISO coverage (no labor law exclusions)
- Subs of subcontractors required to comply with the same standards listed above



Our goal is to provide our policyholders with the coverage they need to satisfy their contract, while reserving our paying customers’ limits for them.

A Word on Indemnification Agreements

When working with contractors, it is helpful to have a basic understanding of the construction agreements being used. In particular, one of the critical elements attorneys, courts (and underwriters) look for is what is called the “saving language” to be included in the indemnification agreement part of the contract. This language is required in New York.

Below is an example:

1. INDEMNIFICATION:

To the fullest extent permitted by law, the party performing the work under this agreement, hereby known as the subcontractor, shall defend, indemnify and hold harmless the contractor, property owner or their agents for whom work is performed, for any liability, loss, or other claim for damages for death, bodily injury or property damage arising out of the performance of the work by the subcontractor or any of its agents, servants, employees, subcontractors or suppliers, except to the extent of any fault attributed to the contractor.

In addition, the subcontractor agrees the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the subcontractor under workers compensation acts, disability benefit acts or other employee acts.

Why is “saving language” needed? It is against the General Obligations Law in New York for an entity to be indemnified for its own negligence. The phrase “to the fullest extent permitted by law” works around this indemnification bar. If the phrase **is not in the contract** and the GC or project owner (the party attempting to be indemnified) bears some negligence, then the indemnification clause is vitiated/ineffective and the GC or project owner will not be granted indemnification from the named insured (i.e., the subcontractor) — not even partial indemnification.

With the “saving language” built into the contract, the GC/project owner will be eligible for partial indemnification should the GC or project owner be partially at fault. Without such language, there can be no indemnification for the sole negligence of the GC/project owner, as New York law does not allow a party to indemnify another for sole negligence. With the “saving language,” a GC/project owner can expect to be at least partially indemnified by the subcontractor. Diligent GCs and project owners will look to have this wording built into their contracts.

Note that Nationwide also requires that this wording be built into indemnification agreements our insureds use with their subcontractors.

As always, contracts should be reviewed by a competent licensed attorney.

[ACORD-855 New York Construction Certificate of Liability Insurance Addendum](#)

A blessing or a curse? We’ve had mixed emotions about this new ACORD form that seeks to clarify the quality of a subcontractor’s coverage. On the one hand, we love it when our policyholders require this from their subcontractors. On the other hand, it’s a challenge when our insured needs one from the agent, as it requires an in-depth review to accurately answer all questions. We believe our agents are in a good position with our forms as we generally seek to provide the coverage needed by our clients to fulfill their contracts. The jury is out regarding the long-term benefits of this relatively new ACORD form.

[Our Selective Appetite for Contractors Continues](#)

We see 2015 as another challenging year for contractors. Nationwide still seeks to write contractors who have a track record of good management and hiring practices. These can be demonstrated by having:

- Effective risk transfer practices in place with **careful monitoring of subcontractors’ CGL coverage** (i.e., using ISO equivalent coverages without non-standard contractual liability limitations)
- Solid financials
- Low employee turnover



By using an agreement with ‘saving language’ built into the contract, the general contractor/project owner will be eligible for partial indemnification should they be partially at fault.

- Favorable loss history
- A commitment to working with our loss control team to maintain a safe work site

In general, we ask for 5 years of business ownership/management along with 5 years of loss runs to accompany the signed application. Our underwriting will strongly favor those agents with good acumen in the construction market and who possess the skills to proactively manage their clients.

We've been a consistent market for both residential and commercial contractors, and we write a fairly broad spectrum of classes in New York. Classes for which we have a favorable appetite include:

- Carpet installers and cleaners
- Electricians
- Floor covering installers
- HVAC
- Plumbers
- Tile, stone, mosaic or terrazzo installers

These are just a few examples. Our pricing levels and program eligibility (CPP, CustomPak or Monoline GL) vary by territory. You may wish to contact your CLTM or underwriter to discuss specific risks.

As a result of New York Labor Law, we continue to underwrite against contractor classes that have a higher-than-average exposure to work at heights. Prohibited classes include:

- Carpentry – all other
- Carpentry – interior
- Carpentry – new construction
- Ceiling or wall installation
- Drywall/wallboard installation
- Masonry
- Painting, decorating or paperhanging
- Plaster or stucco work
- Prefab building erection
- Siding installation including gutter and downspouts

Risks in all classes with above-average exposure to height will not be considered for any of our programs. And as stated earlier, those contractors who use subcontractors who do not carry ISO equivalent CGL policies are not acceptable.

New York Metro – Managed Appetite

As mentioned earlier, New York Metro has been a challenge. While we believe we insure some of the best contractors in the business, the loss results have deteriorated as New York Labor Law judgments continue



Our company has been a consistent market for both residential and commercial contractors, and we write a fairly broad spectrum of classes in New York.

to escalate. As other carriers have restricted their writings in this market, we have grown significantly to the point where it is becoming a disproportionate part of our New York portfolio. Our goal is to manage our concentration in this book, and we will strongly seek to balance it by writing other market segments such as retail, distributors, service, light manufacturing, food processors and property owners. We will work with our agents to build specific plans in this respect.

A related challenge is proper pricing for contractors, particularly those who are located outside of New York Metro, **but who do substantial work in that territory**. You can help by completing our supplemental application, U-1075, Contractors—Past Work History. Our goal is fairness. We want the proper premium for the exposure, but do not want to give contractors outside of New York Metro an unfair bidding advantage. You can help us identify those border contractors.

Supplemental Construction Applications

In support of Nationwide's strategic goal of being a long-term, effective writer of construction business, we have developed supplemental applications to better meet our informational needs in underwriting this market segment.

These revised supplemental applications **will save you time** by reducing the number of phone calls and emails typically needed between your staff and our underwriters.

- IL-7200 New York Contractors (excluding residential contractors)
- IL-7154 Residential Contractors
- U-1075 Contractors—Past Work History (Job list)

All three of these applications can be located on **our agent portal—accessHarleysville®**. For additional help or information, please contact your CLTM or underwriter.

Comment on Products

The Commercial Package Policy (CPP) tends to be our agents' package policy of choice. We also write a substantial amount of monoline GL for contractors.

Harleysville CustomPak®—Our hybrid product, replacing the Contractor's BOP product

CustomPak combines the flexibility of the commercial package policy (CPP) with the broad, built-in protection of a Harleysville businessowners policy. As a result, your agency has an ideal alternative to the CPP in meeting the coverage needs of your small to mid-sized commercial accounts with a comprehensive product that's packaged and priced for maximum insurance value. CustomPak is competitively priced, and only one minimum premium applies for all base coverage parts—compared to a separate minimum premium for each coverage part with the CPP product. Tailored endorsements have been designed for our construction clients. For coverage and eligibility details, refer to our CustomPak product guide or contact your underwriter.



The Commercial Package Policy (CPP) tends to be our agents' package policy of choice.

Workers Compensation

In general, our company has not been a market for workers compensation coverage for contractors. You may have seen bulletins indicating our increased appetite for small workers compensation. This appetite has generally been for four-walled risks, such as retail, offices and services. Two classes of construction business that we have considered selectively (with GL support) are: 1) commercial and residential electricians, and 2) plumbing contractors. We believe these two classes tend to have more highly skilled, higher-wage employees. Please check out the workers compensation online resource center available on Harleysville's website at: <http://harleysvillegroup.com/wc/index.html>.

Other lines of business

- **Workers Compensation** (Classes other than preferred electricians and plumbers) — This line continues to be a challenge for contractors. We generally wish to avoid this coverage for contractors in New York with the exceptions noted above.
- **Business Auto** — For risks where we are unable to consider the general liability or workers compensation, we frequently are open to write adequately priced business auto and inland marine coverage. We wish to avoid monoline auto for heavy and extra-heavy trucks in congested urban areas.
- **Blanket Excess** — In general, the maximum limit we will write for contractors' renewals is now \$5 million. Contractors with height exposures are prohibited. For high-hazard venues such as New York Metro, our maximum for new business is \$1 million with a \$2M/\$4M CGL.



Our inland marine expertise in construction can help your agency build its bottom line.

Inland Marine and Specialty Property Hardhat Advantages

Our inland marine construction writings add profit to Nationwide's bottom line. Put our inland marine team's expertise to work building your profit, as well.

- **Contractors Equipment** prospects include excavators, builders, pavers, landscapers, municipalities and water well drillers. Automatic \$100,000 coverage for equipment rented from others, \$10,000 coverage for unscheduled equipment, \$10,000 for employee tools, \$250,000 for newly purchased equipment, and \$50,000 for construction trailers and contents. Available options include replacement cost valuation on equipment five years or newer (with partial loss waiver of depreciation for older equipment), equipment borrowed from others, and annual adjustment. This is exceptional coverage with competitive rates and commission. Do your water well drillers have "down hole" coverage?
- **Builders Risk** insureds may be contractors or property owners. Covered property encompasses buildings under construction (including foundations), materials (on site, in transit, or at temporary storage locations), and temporary structures (scaffolding, office and storage trailers, cribbing or false work, and jobsite fencing). Additional coverages are available for scaffolding re-erection, site prep and debris removal. Think of us for masonry noncombustible or better construction for buildings up to 15 stories. Soft costs, loss of rents, ordinance or law, and contract penalty coverage endorsements are available. Equipment breakdown is an important coverage option for

commercial projects. Is the lender requiring flood and earthquake coverage? We write renovation exposures. We enjoy a high hit ratio on frame buildings valued up to \$2 million, subject to underwriting approval (Upstate only). Let us provide your clients with first-class coverage at the right price.

- **Installation** policies are usually written for trade contractors. We can give electricians, plumbers, heating and air conditioning contractors blanket coverage for all their job sites, or individual policies covering specified projects. Expert underwriting and proper coverage proposals lead to a win-win scenario: Your client either: 1) invests in the best coverage and we pay you 20% commission, or 2) they opt for a limited “boilerplate” package or BOP endorsement. Plus, our inland marine proposal protects your E&O exposure.
- **Portable Tools** are covered under our Contractors Equipment product, but if your client has no mobile equipment, we can still provide a Small Tools Floater policy. Tools can also be covered under our Installation Floater – Contractors’ Form product (along with installation coverage suitable for artisan subcontractors).
- **Monoline Property** – If we are writing only commercial property and/or inland marine, our IM&SP unit provides you with one-stop shopping. Contractors have computers, cameras, radios and phones, valuable papers and records, accounts receivable, and even office works of art.



Nationwide offers contractors equipment, builders risk, installation, portable tools and monoline property coverages to provide you with one-stop shopping.

Let us help you to construct comprehensive insurance protection while enhancing your agency’s growth, retention and profit.

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