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HEADLINE: 9/11 Contractors Near Agreement On Insurance

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BODY:

The construction companies that excavated the debris from ground zero were near agreement with the city yesterday on a deal to use federal emergency money to buy \$1 billion in insurance, which the companies would use to defend themselves against any lawsuits from residents, property owners and workers connected with the cleanup.

The agreement would protect the companies from a risk that haunted them throughout the cleanup: they did not have the basic liability coverage against injury that contractors typically have on every project, even a single-family house. Ever since the construction companies began removing the tangled steel and smoking debris from the attack on Sept. 11, 2001, they feared that a flood of lawsuits over asthma, asbestos-related illnesses or other respiratory conditions could bankrupt them because they lacked basic insurance. Several construction officials said it was absurd that there was no basic insurance at a construction site widely seen as the most dangerous in the nation.

"I'm happy to say that there has been some movement," said Peter Davoren, senior vice president of Turner Construction Company, one of the four major contractors in the cleanup. "It's critical that we get this issue resolved. If we don't have this insurance in place, it could put us out of business. We don't have a place to go if these claims come in and we have to pay them out of pocket."

In the deal under negotiation, the city would set up a new insurance company to cover these potential claims. It is expected to use hundreds of millions of dollars from the Federal Emergency Management Administration to secure \$1 billion in insurance coverage. That fund, officials in the negotiations said, might cover 20 or 25 years of claims for professional and pollution liability.

Claims covered by this insurance could come from different sources: from victims of respiratory problems, for example, who attribute them to the cleanup, or from owners of a building near the World Trade Center site who conclude that engineering mistakes in the cleanup weakened the building foundations.

In the four months after the Sept. 11 attack, the four major cleanup contractors -- Bovis, Tully, AMEC and Turner -- failed, despite intense efforts, to persuade insurance

companies to provide coverage. The insurers refused to write a policy because they feared a mountain of claims that they said would be impossible to calculate.

Several advisers told the contractors they were unwise to continue the cleanup, but they said it was their patriotic duty to continue.

The four cleanup contractors and 20 subcontractors turned to Congress for help. In approving more than \$20 billion in emergency aid for New York City after the attack, Congress anticipated that some of that money would be used to finance liability coverage for the contractors.

"Even when their own lawyers were telling them to leave, these contractors stayed at the site and continued to work," said Representative Carolyn Maloney, a Manhattan Democrat who pressed the federal government to help create the \$1 billion insurance fund. "It's only right that they are getting the insurance protection they deserve and need."

The construction companies were considered particularly vulnerable to lawsuits because Congress had exempted New York City, New York State, the airlines and the Port Authority, which owned the World Trade Center, from any lawsuits stemming from the Sept. 11 attack.

"I don't think anyone is going to know for a long time what these claims are going to be," said one construction industry official. "I don't want to encourage people to make claims, but if there are justifiable claims caused by this work, they should have some place to go."

The main negotiators were Deputy Mayor Daniel L. Doctoroff, the four construction contractors and the General Contractors Association of New York.

The Bloomberg administration and the contractors association declined comment yesterday, saying it was too early to discuss an agreement because some details had yet to be worked out. Any deal must have FEMA's approval.

Under the agreement, several negotiators said, somewhere between \$600 million and \$900 million in federal money would be used to secure the insurance. The insurance is to be provided by an entity called a captive insurance company, which is essentially a nonprofit company created for this one purpose.

"FEMA has been prepared from early on to provide insurance for the debris contractors," said Brad Gair, federal recovery officer at FEMA. "That's normally done on all of our projects. What was unusual here was because of the potential size of the liability, that insurance wasn't available to the contractors through a traditional mechanism. Now they're relying on New York City to obtain the insurance on their behalf."

One issue still to be worked out, negotiators said, is whether an insurance company or a claims adjustment company would administer the fund to pay and defend against claims.

One official involved in the negotiations said it remained unclear whether the city or the federal government would keep any money that might be left over.

Insurance experts said the fund would not cover claims brought by construction workers because they were already covered by workers' compensation and were largely barred from suing their employers over construction-related injuries.

But several construction officials said they expected claims from firefighters, police officers and other city workers, who are expected to assert that the dust stirred up by the cleanup damaged their lungs.

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GRAPHIC: Photo: Insurers would not cover ground zero contractors for fear of a mountain of incalculable claims. (Richard Perry/The New York Times)(pg. B2)

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