



CITY SOCKS AWAY \$1B AMID WTC WORKERS' AID BATTLE

By SUSAN EDELMAN

April 16, 2006 -- The city is locked in battle with thousands of Ground Zero workers who are demanding a piece of a \$1 billion fund created to pay claims against New York City and its contractors arising from the cleanup of post-9/11 debris.

More than 7,000 rescue workers, volunteers and other laborers have joined in a class-action suit, filed in September 2004, that claims they became ill toiling in the toxic ruins.

They charge that the city failed to protect them, to reveal the full extent of the health risks and to enforce safety rules. They seek compensation for their illnesses, some potentially fatal, and medical monitoring for all who worked on or near the pit.

But in a motion to dismiss the lawsuit, city lawyers argue that New York is not liable for the workers' medical problems. They say the city enjoys blanket immunity under New York's Disaster Act and Defense Emergency Act, since it was responding as a municipality to a terrorist attack and disaster.

The city "should be free from second-guessing" and from criticism for any mistakes found in hindsight, its lawyers state in the motion, a copy of which was obtained by The Post.

The city argues "that the government's ability to engage public and private resources to respond . . . to cataclysmic events should not be compromised by concerns about potential future litigation."

Kenneth Becker, the city lawyer overseeing 9/11-related suits, told The Post that the \$1 billion, which is earning interest in an offshore account, is "not a compensation fund" for sick and dying 9/11 rescue and recovery workers.

"It wasn't meant to say to the workers, 'We're going to put out money for you,' " he said. "It was to protect the entities that did something amazing" - the city itself and the companies it hired to remove the mountainous WTC rubble.

The plaintiffs argue that Congress created the insurance fund, with the support of the mayor and the governor, specifically to compensate city employees and others harmed during debris removal.

The city has refused an offer by U.S. District Judge Alvin Hellerstein to let mediators settle the mounting worker claims, lawyers said.

The \$1 billion in insurance was part of \$21.4 billion in federal aid pledged to the city by President Bush after 9/11.

Gov. Pataki and Mayor Bloomberg pushed through state legislation in 2003 to create a "captive insurance fund," a mechanism to reserve the \$1 billion set aside for claims against the city and its contractors for debris removal at Ground Zero.

"This legislation is necessary for the city to expedite the payment of claims relating to this effort," a Pataki press

release read, in part, at the time.

The plaintiffs claim that most rescue workers were neither given nor wore adequate safety gear while inhaling tons of asbestos, glass, heavy metals and other toxic materials pulverized in the towers' collapse.

Hundreds now suffer from respiratory diseases, dozens have been diagnosed with cancer, and more than 40 have died from ailments that the plaintiffs blame on the poisonous dust and smoke.

"We feel the city did everything reasonably possible under the extraordinary circumstances to protect emergency workers and is entitled to have the cases dismissed," Becker said.

Lawyers for the workers say the city ignored or neglected to enforce safety measures in its haste to get rid of the debris.

"It was more important for them to reopen Wall Street than to protect the health, safety and welfare of the cops, firemen and other recovery workers," said David Worby of the law firm Worby, Groner, Napoli, Bern, which represents the plaintiffs.

The court battle is heating up in the wake of last week's announcement that an Ocean County, N.J., autopsy of NYPD Detective James Zadroga, 34, blamed his death on respiratory failure traceable to toxic exposure during his 450 hours working at Ground Zero.

The finding was the first of its kind. Bloomberg said further testing would be done to determine whether the link is conclusive.

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