

107TH CONGRESS
1ST SESSION

H. R. 3549

To provide indemnification and liability protection to, and facilitate the procurement of insurance for, contractors responding to the World Trade Center attacks.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2001

Mr. SWEENEY introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide indemnification and liability protection to, and facilitate the procurement of insurance for, contractors responding to the World Trade Center attacks.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “World Trade Center
5 Worker and Contractor Protection Act”.

1 **SEC. 2. INDEMNIFICATION, LIABILITY LIMITATION, AND FA-**
2 **CILITATION OF INSURANCE PROCUREMENT**
3 **FOR CONTRACTORS FOR THE RESPONSE TO**
4 **THE WORLD TRADE CENTER ATTACKS.**

5 (a) IN GENERAL.—Regardless of any other provisions
6 of law or any contract, the United States Government
7 shall, subject to the limitations contained in this section,
8 indemnify Contractors as defined herein against claims as
9 defined in this section.

10 (b) COORDINATION WITH INSURANCE.—Indemnifica-
11 tion under this section shall apply only to the extent that
12 a claim is not otherwise covered and compensable by insur-
13 ance procured for the risks involved in the response to the
14 World Trade Center attacks. However, all or part of the
15 indemnification under this section may, pursuant to the
16 terms of insurance procured after the effective date of this
17 Act, be payable before such insurance is applicable.

18 (c) LIMITATION IN CASE OF WILLFUL MISCONDUCT
19 OR LACK OF GOOD FAITH.—When a claim arises from
20 willful misconduct or lack of good faith, intended to cause
21 injury to persons or damage to property, on the part of
22 any of the Contractors' principal officials, the Contractor
23 shall not be indemnified.

24 (d) CONTROL OF CLAIMS MANAGEMENT.—The Con-
25 tractor shall, to the extent that such claim is reasonably
26 expected to involve indemnification under this section—

1 (1) promptly notify the Federal Emergency
2 Management Agency of any claim against the Con-
3 tractor that may reasonably be expected to involve
4 indemnification under this section;

5 (2) immediately furnish to the United States
6 Government copies of all pertinent papers Con-
7 tractor receives;

8 (3) furnish evidence or proof of any claim cov-
9 ered by this section in the manner and form the
10 United States Government requires; and

11 (4) comply with the United States Govern-
12 ment's directions and execute any authorizations re-
13 quired in connection with settlement or defense of
14 claims or actions.

15 (e) PROCEDURE.—The United States Government
16 may direct, control, or assist in settling or defending any
17 claim to the extent that such claim involves indemnifica-
18 tion under this section.

19 (f) PAYMENT AUTHORITY.—This section constitutes
20 budget authority in advance of appropriations Acts and
21 represents the obligation of the United States Government
22 to provide for the payment of amounts for indemnification
23 under this section.

24 (g) LIMITATION ON LIABILITY AND INDEMNITY.—
25 Notwithstanding any other provision of law or contract,

1 the total aggregate liability of Contractors for claims shall
2 not exceed \$350,000,000. Insurance coverage shall not in-
3 crease this limit of liability and shall reduce the indemnity
4 commitment provided by this section. Insurance coverage
5 procured for Contractors after the effective date of this
6 Act may, by its terms, be payable for claims at liability
7 coverage levels below the total aggregate liability limit.
8 This limit of liability shall not preclude a Contractor from
9 being paid or reimbursed for work performed, services pro-
10 vided, or materials and equipment utilized or consumed.

11 (h) LITIGATION MANAGEMENT.—Any claims for
12 damages against a Contractor that may result in Federal
13 indemnification as provided in this section shall be
14 brought under section 408(b) of the Air Transportation
15 Safety and System Stabilization Act (49 U.S.C. 40101
16 note), as amended by section 201(b)(2) of the Aviation
17 and Transportation Security Act (Public Law 107–71),
18 and shall be subject to the following limits:

19 (1) No punitive damages may be awarded ex-
20 cept in case of willful misconduct, nor shall any
21 party be liable for interest prior to the judgment. No
22 punitive damages may be awarded against the
23 United States Government.

24 (2) Each Contractor against whom a claim is
25 brought shall be liable only for the amount of dam-

1 ages allocated to such Contractor in direct propor-
2 tion to the percentage of responsibility of the Con-
3 tractor for causing the harm to the plaintiff.

4 (i) EXCLUSION.—Nothing in this section shall in any
5 way limit the liability of any person who—

6 (1) attempts to commit, knowingly participates
7 in, aids and abets, or commits any act of terrorism,
8 or any criminal act related to or resulting from such
9 act of terrorism; or

10 (2) participates in a conspiracy to commit any
11 such act of terrorism or any such criminal act.

12 (j) RIGHT OF SUBROGATION.—The United States
13 shall have the right of subrogation with respect to any
14 claim paid by the United States that results in federal in-
15 demnification as provided in this section. Such right of
16 subrogation shall not be applied against a Contractor.

17 (k) DEFINITIONS.—In this section:

18 (1) The term “response to the World Trade
19 Center attacks” means all acts or failures to act by
20 Contractors or volunteers in connection with their
21 work at the World Trade Center site on the rescue
22 and evacuation, recovery of bodies, clean up, envi-
23 ronmental remediation, removal of debris, transpor-
24 tation of debris, control of pollutants, securing of
25 public and private property, and protection of the

1 public health, safety and welfare; provided that such
2 term shall not include efforts to build or rebuild new
3 buildings or other activities on the site of the World
4 Trade Center attacks occurring subsequent to the
5 foregoing acts or failures to act.

6 (2) The term “Contractor” means any person
7 or entity involved in providing work, labor, equip-
8 ment, materials, or services in connection with the
9 response to the World Trade Center attacks,
10 including—

11 (A) contractors, subcontractors at any tier,
12 construction managers, engineers, design pro-
13 fessionals, and their parents, affiliates, officers,
14 directors, partners, and employees; and

15 (B) the persons or entities, including
16 States or political subdivisions thereof, con-
17 tracting for such work, labor, equipment, mate-
18 rials or services.

19 (3) The term “Contractor’s principal officials”
20 means directors, officers, managers, superintendents,
21 or other representatives supervising or directing—

22 (A) all or substantially all of the Contrac-
23 tor’s business;

24 (B) all or substantially all of the Contrac-
25 tor’s operations at any one plant or separate lo-

1 cation in which work in response to the World
2 Trade Center attack is being performed; or

3 (C) a separate and complete major indus-
4 trial operation in which work in response to the
5 World Trade Center attack is being performed.

6 (4) The term “claims” or “claim” shall mean
7 claims, actions, losses, settlements or damages (in-
8 cluding reasonable expenses of litigation and defense
9 thereof) arising out of or resulting from the response
10 to the World Trade Center attacks, whether arising
11 prior to or subsequent to the enactment of this legis-
12 lation, for death, personal injury, or loss of, damage
13 to, or loss of use of property.

14 (l) SEVERABILITY.—If any provision of this section,
15 or the application hereof to any person or circumstances,
16 is held invalid, the remainder of this section, and the ap-
17 plication of such provision to other persons or cir-
18 cumstances, shall not be affected thereby.

○