

RESPONSE TO FEMA "BOARD OF EDUCATION PROJECT WORKSHEET INSURANCE ANALYSIS" DOCUMENT

ECF/DoE has reviewed the above-titled document, which was distributed at the meeting with FEMA on 6/24/03, and has reservations concerning its contents and implications. There is a potential liability to ECF/DoE of nearly \$600,000 if FEMA's analysis is not challenged. There are three main concerns that would contribute to such a shortfall; they are:

- FEMA has made it clear--contrary to our operating expectations--that it considers there to be an acceptable insurance settlement, and that if ECF/DoE does not achieve that figure (despite all, even extraordinary, due diligence), FEMA will *not* make up the difference between what is received and the "acceptable" settlement figure.
- FEMA considers there to have been two "occurrences" for purposes of the insurance policy: damages due to the initial collapse of the Towers; and damages due to the use of the facility by emergency workers. FEMA therefore believes that, since the "policy has a per occurrence deductible of \$100K," that there is in total a \$200,000 deductible. This can hurt ECF/DoE, because if the insurance company does not consider there to have been two occurrences, but rather only one (as is likely), then ECF/DoE will have to absorb the cost of the "second" \$100,000 deductible (in accordance with the principle articulated in the first bullet point). We need to argue with FEMA that there was only one occurrence.
- FEMA indicates that it considers the ECF/DoE environmental testing services (ATC, Inc.) to be covered under the "Hazardous Substance Coverage" in the "Boiler and Machinery Endorsement," for which "there is a \$250k maximum coverage." FEMA therefore is allowing ECF/DoE "to keep that [amount FEMA has already reimbursed us] which exceeds \$250k"--i.e. ECF/DoE must absorb the first \$250,000 of ATC costs and get back from the insurer whatever it can of this amount (e.g., potentially nothing). However, we believe that the policy provisions cited clearly do not apply to environmental testing--only, as the policy reads, to cleaning, repair, replacement, or disposal. These ATC invoices were for none of these, nor were these activities inextricably bound to such activities. Hence ECF/DoE should not "up-front" be held responsible for the mentioned \$250,000, which should be eligible for FEMA reimbursement.

These are general points that need to be discussed with FEMA before we can say that we agree with FEMA's analysis.

What follows is a PW-by-PW analysis of the FEMA spreadsheet given out at Tuesday's meeting, with the goal of establishing what ECF's/DoE's exposure is should this spreadsheet represent FEMA's final position.