

Real Estate Risk Phases



Common Environmental Exposures and Losses

1st Party Cleanup

- Cost overruns for pre-existing conditions
- Discovery of unknown pre-existing conditions
- Re-opener of “closed” issues

Third Party

- Offsite cleanup
- Property Damage
- Bodily Injury
- Loss of value

Regulatory and Legal

- Natural Resource Damage
- Toxic Tort Claims
- Legal Defense Costs *
- Off-site Disposal Legacy
- Fines and Penalties
- Governmental re-openers

Business Risks

- Business interruption
- Loss of Rents
- Increased development costs
- Divested Properties
- Counter party credit risk

Defense can be important defending against frivolous and non-meritorious actions

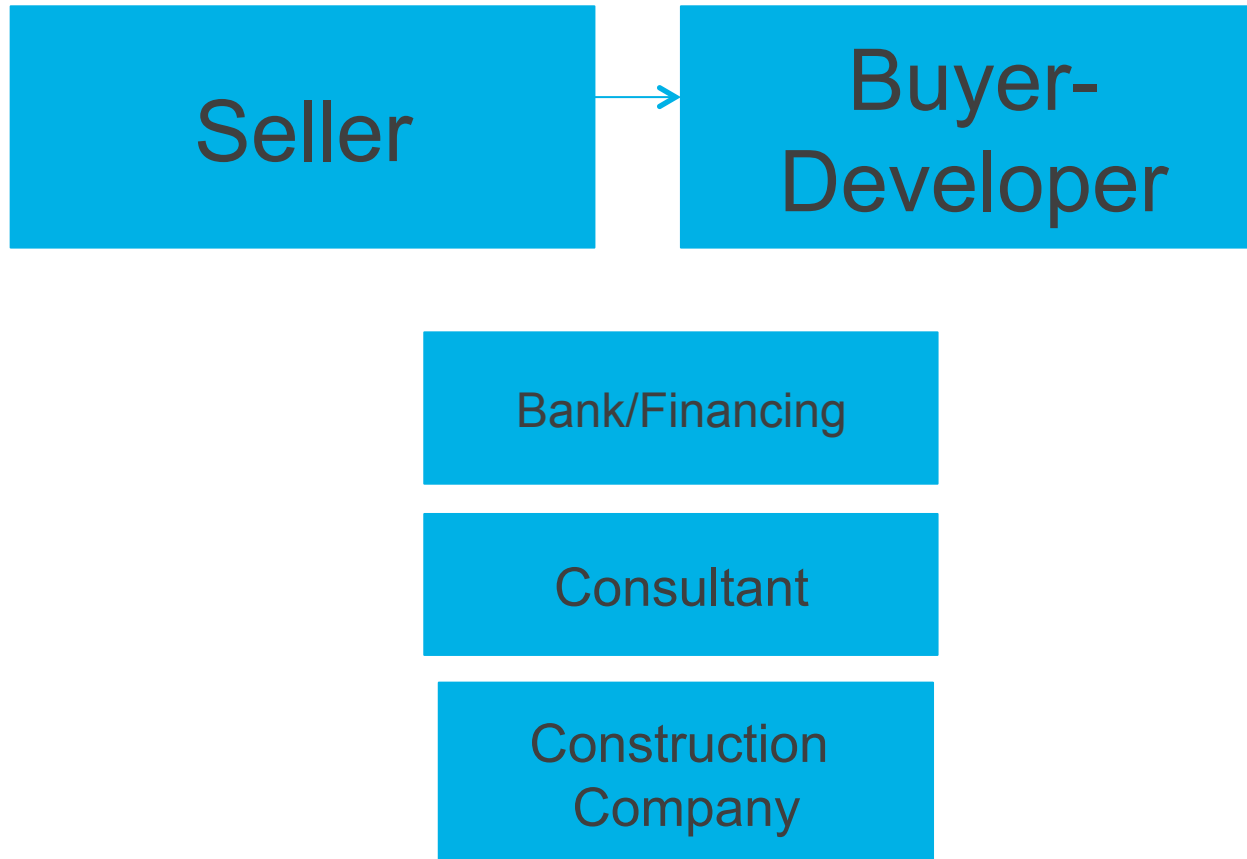


Typical Coverage Forms and Gaps

	General Liability	Property	D&O	Business Auto	Site Pollution/ Environmental Liability
Underground Storage Tanks	Likely excluded	Likely excluded	Likely excluded	Likely excluded	Scheduled primary or excess of UST policy
Waste Disposal	Likely excluded	Likely excluded	Likely excluded	Likely excluded	Add optional Non Owned Disposal cov.
Material Transport	Limited coverage possible	Likely excluded	Likely excluded	Limited coverage	Add optional 1 st Party or Contingent Trans.
Hostile Fire	Limited coverage possible	Likely excluded	Likely excluded	Likely excluded	Pollution coverage is all peril risk policy
Business Interruption	Likely excluded	Likely excluded	Likely excluded	Likely excluded	Add optional loss of rents / extra expense
Fuels/Chemical Storage	Likely excluded	Limited coverage possible – named peril	Likely excluded	Likely excluded	Liability coverage is provided for releases
On-Site Clean-Up/ Remediation Costs	Likely excluded	Limited coverage possible, sublimit \$25k	Likely excluded	Likely excluded	Covered unless specifically excluded due to known liability
Waste Storage On-Site	Likely excluded	Likely excluded	Likely excluded	Likely excluded	Liability coverage is provided for releases
Prior Environmental Claim/ Loss/Violations	Likely excluded	Likely excluded	Limited coverage for shareholder suits	Likely excluded	Covered unless specifically excluded due to known liability



Real Estate Stakeholders



Contractor's Pollution Liability

- **Operations and Activities** that
 - result in a new pollution incident (release of new contaminants)
 - exacerbate a current known condition (spread a current contaminant)
- Contractor OR Project

Covers:

- Cleanup costs
- Third-party claims for bodily injury and property damage
- Natural Resource Damage claims
- Diminution of third-party property value
- Mold
- Defense costs



Contractor's Pollution Liability

- Claims-made and reported form and the only pollution form that offers possible occurrence-based pollution coverage
- Self Insured Retention starts at \$10,000 – typically \$25,000 to \$50,000
- Defense costs included in the limits
- Used in construction, renovation and expansion projects



Contractor's Pollution Liability

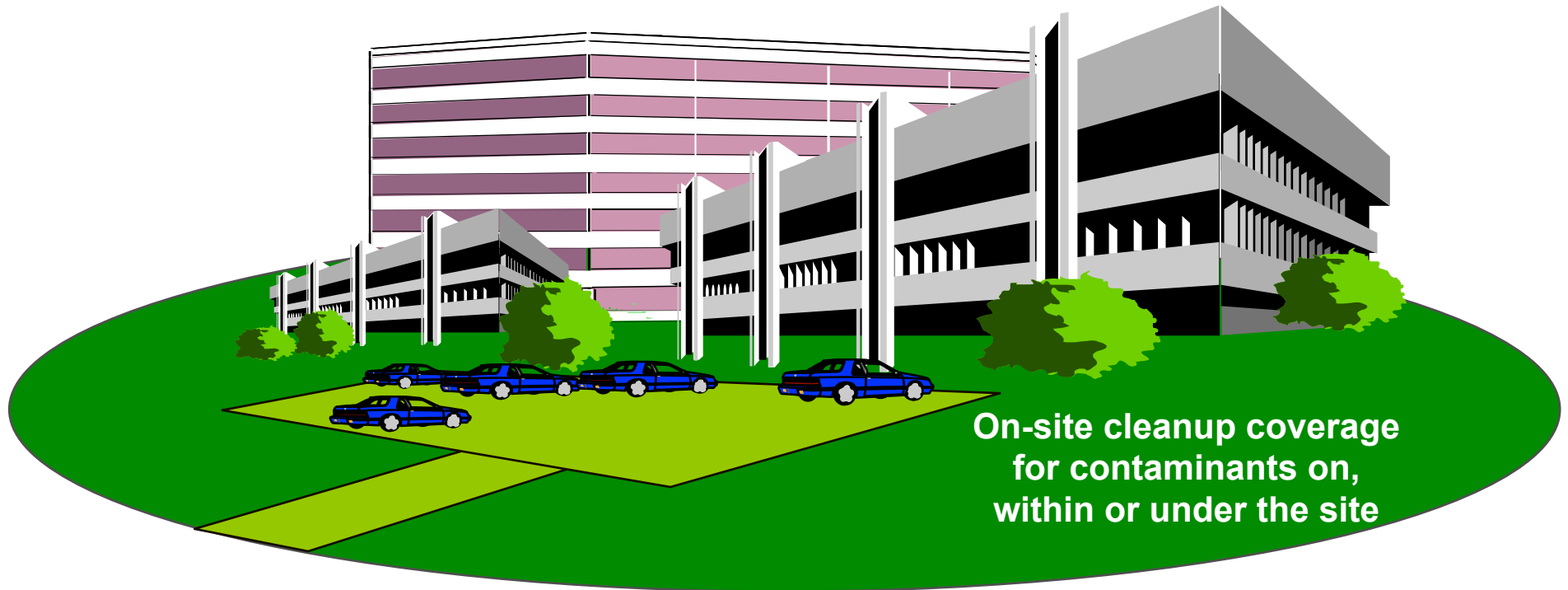
- **Operations and Activities** that
 - result in a new pollution incident (release of new contaminants)
 - exacerbate a current known condition (spread a current contaminant)
- Used commonly with demolition, construction and renovation
- Contractor versus Project

Covers:

- Cleanup costs
- Third-party claims for bodily injury and property damage
- Natural Resource Damage claims
- Diminution of third-party property value
- Mold
- Defense costs



Pollution Legal Liability... Covers Sites or Property



Timeline of Coverage*



Covers Unknown
Pre-existing
Contamination

Policy Inception

Covers Ongoing
Pollution Events

* Discovery or Third-Party Trigger

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Pollution Legal Liability

Overview

- Insures against risk of “unknowns” not scheduled
- Know conditions excluded
- Reduces financial uncertainty and impact from unforeseen events
- Common uses:
 - Portfolio management
 - M&A
 - Real Estate Transactions

Coverages

- Clean-up of new releases
- Clean-up of unknown pre-existing conditions
- Divested Properties
- Excess of Indemnity
- Third party liabilities (e.g Bodily Injury/ Property damage)
- Business Interruption
- Non Owned Disposal Sites
- Fines and Penalties
- Natural Resource Damages
- Transportation



Pollution Legal Liability

- Technical negotiation critical to maximize value
- Claims-made and reported form
- Self Insured Retention typically \$100K- \$250K. Can be as low as \$25k for simple real estate.
- Defense costs included in the limits
- Can cover single sites or portfolios of properties
- EXCESSSS OF INDEMNITY
- Pricing- softest market in past 10 years.



Pollution Legal Liability

Underwriting Information

- Phase I
- Phase II
- Environmental reports
- Reported losses
- Purchase and Sale Agreements
- Site Schedule and property limits
- Business Interruption



Environmental Insurance Marketplace

More Competitive than Ever

Limits: \$1MM to well in excess of \$200MM

Term

New Conditions: 1 to 3 years. 10 possible on some limited risk

Legacy: 10 years max.

AM Best A Rated

- | | | |
|-------------------|------------------------|-----------------------|
| – AWAC | ACE | AIG |
| – Berkley | Beazley | Catlin |
| – Arch | Chubb | Great American |
| – Hudson | Ironshore | Liberty International |
| – Navigators | Philadelphia Insurance | |
| – Starr Indemnity | XL Environmental | Zurich Environmental |



Historical- Remediation Stop Loss (Cost Cap)

Manages “known” risk and exposures

- Traditional application is cost overruns for remediation/cleanup
- Can be used for other environmental risks and exposures

Typical coverage response

- **Actual extent of contamination is greater than estimated**
- **Actual degree of contamination is greater than anticipated**
- **Previously unidentified contaminants have been discovered**
- **Increased time for remediation (capital implementation and O&M)**
- **Offsite cleanup of contamination adjacent to the covered site is assumed**
- **Changes in Cleanup Standards**
- **Governmental change in cleanup requirements**



Remediation Stop Loss (Cost Cap)

- Previously offered by ACE, Chartis, XL and Zurich
- Markets exited due to losses:
 - Unapproved work plans
 - Change in remedial approach
 - Unexpected conditions too frequently exceeded negotiated buffer and overwhelmed the business model
 - Engineering costs to monitor and manage programs
 - Probability analysis versus nodal analysis for contingent liabilities
- And now.....



Manages Cleanup Cost Overruns

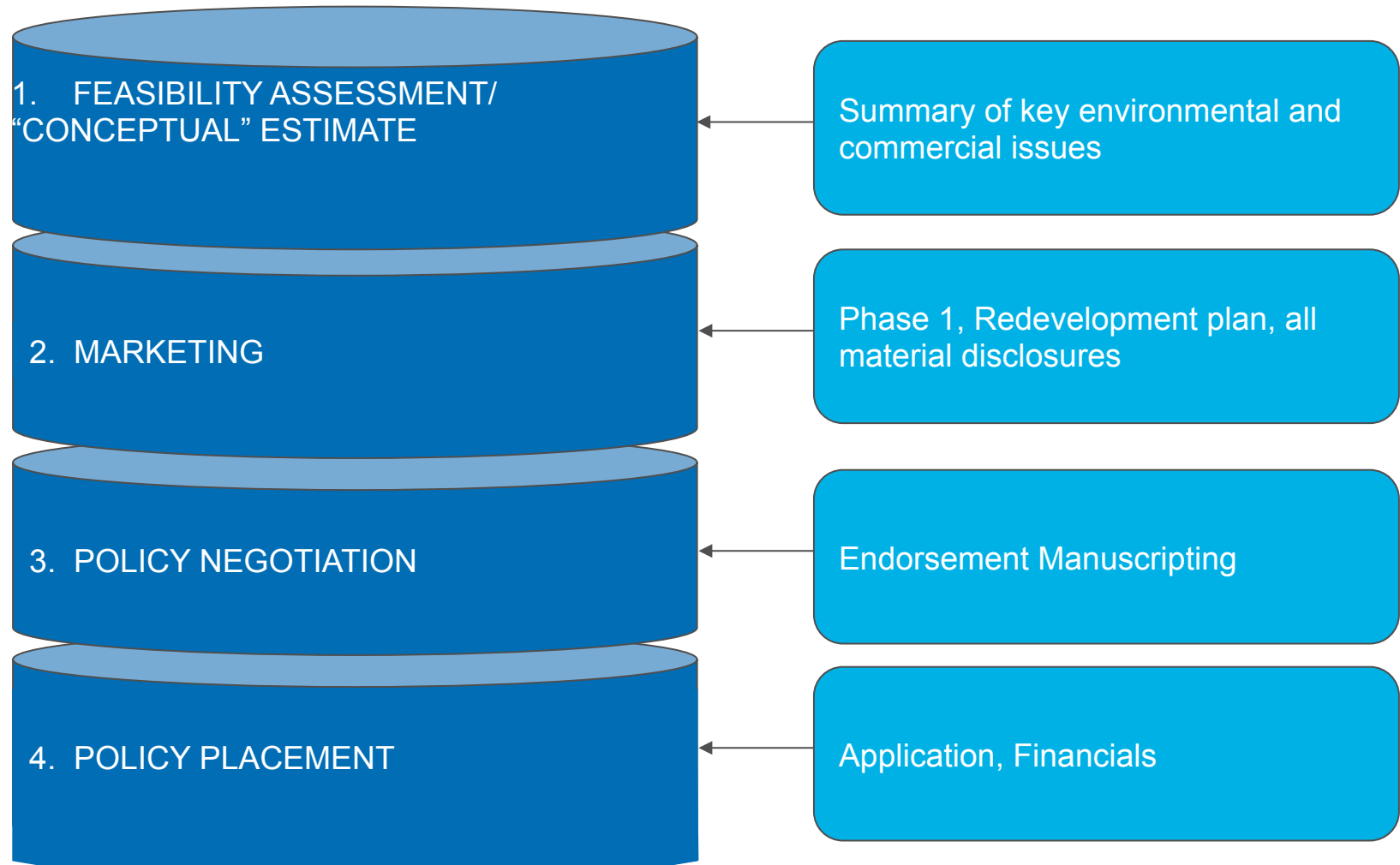
- Extent of contamination
- degree of contamination
- Unidentified contaminants
- Increased time for remediation (capital implementation and O&M)
- Changes in Cleanup Standards
- Governmental change in cleanup requirements

Axis and Beazley now offering coverage

- \$10 MM to \$15MM in coverage
- Policy term up to 10 years
- Work Plan...approved or near approval
- Self Insured Retention. 25% to 35%
- Cost. 15% ROL
- Breakeven is 40% to 50% of the remediation cost



The Placement Process



Environmental Liability Buyout (ELB) or Guaranteed Fixed Price Remediation (GFPR)

Environmental Liability Buyout (ELB)

- is the contractual transfer of cleanup obligation and other liabilities to a third party contractor
- Contractor also assumes liability with agencies
- Environmental insurance covers the third party and client
- Requires full funding of remedial costs and associated risk transfer elements at the time of the transaction

Guaranteed Fixed Price Remediation (GFPR)

- Client retains environmental liability
- Third party contractor provides fixed costs bid to achieve end-point for cleanup
- Insurance covers client and the third party
- Initial out of pocket costs is the insurance and associated taxes.



Joint and Several Liability considerations and distancing from risk

A company can never be out of the chain of liability (except for some instances in bankruptcy)

It is possible to put distance from risk through a combination of:

- Selecting the right contractor with a diversified income stream
- Getting a parental guarantee. NOT an LLC
- Have pre-funded amounts put in a auditable, segregated escrow that is drawn down as works is completed
- Use PLL insurance to cover both parties for unforeseen risks
- Use PLL insurance for corporation to cover counter-party credit risk using an EXCESS OF INDEMNITY-FAILURE TO PERFORM endorsement
- Do a GFPR instead of an ELB

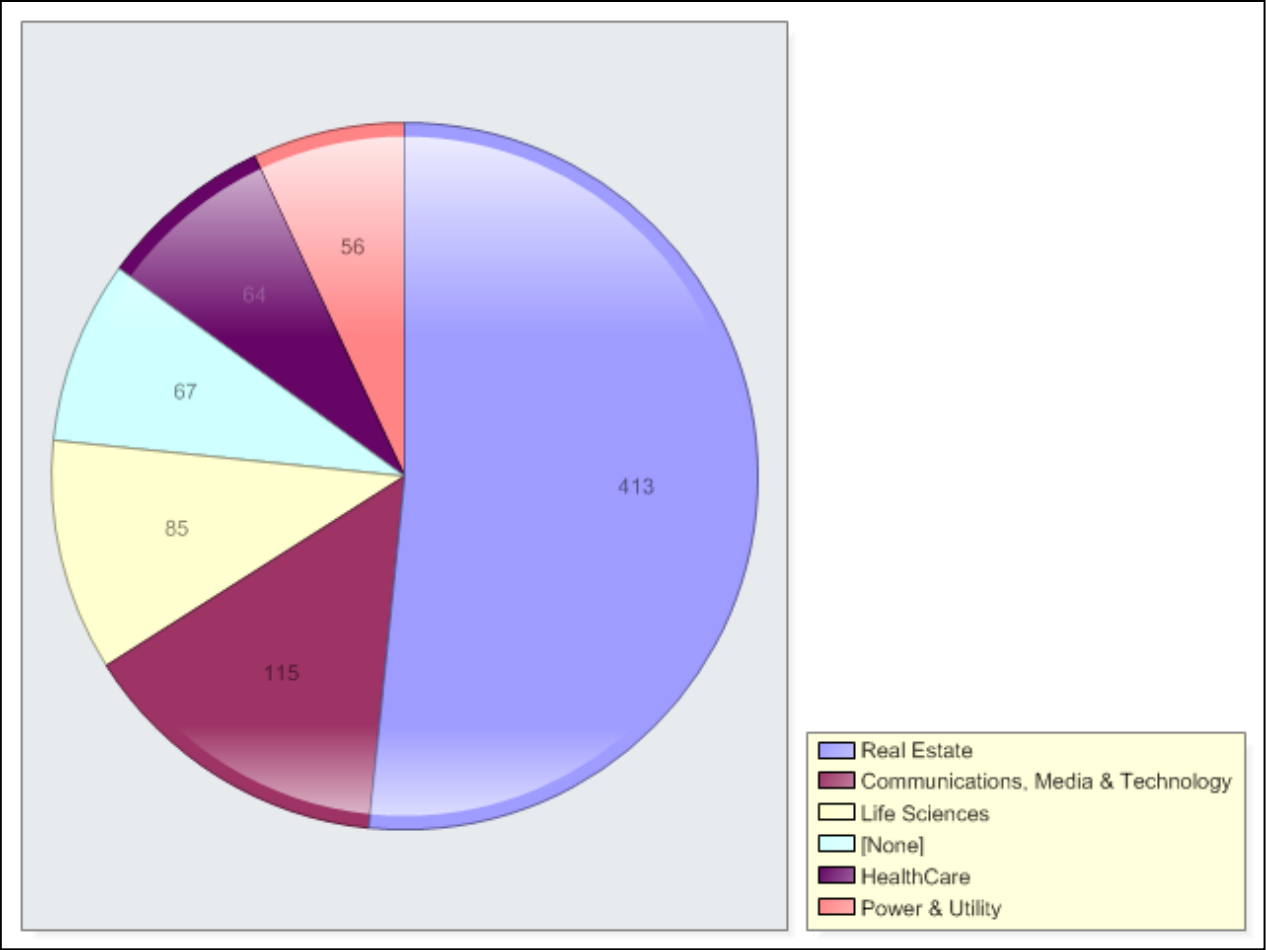


Real Estate Risks with Corporate M&A



SITUATION	CHALLENGE
<ul style="list-style-type: none">• Client going through a sale. As an ESOP they sold assets and are looking to dissolve in the Delaware Courts• Requires that environmental liabilities be addressed to the courts satisfaction	<ul style="list-style-type: none">• 6 Sites with known cleanup liabilities• 3 sites with real estate• 45 formerly divested properties• Numerous waste disposal locations used in past• Client called three weeks ago to inquire about asbestos claims loss portfolio transfer
APPROACH	OUTCOMES
<ul style="list-style-type: none">• Engaged a liability buyout company for the known liabilities. This includes the six sites and the real estate.• Half-way through the deal it included a side negotiation with another company they had sold a property to and provided an indemnity. We had to get this company to buy into the process and the associated financials• PLL the divested properties and disposal sites and to wrap around the environmental liability buyout deal• PLL for the environmental liability buyout company <p>Marsh—Leadership, Knowledge, Solutions...Worldwide.</p>	<ul style="list-style-type: none">• PLL just bound for the divested properties and NODs• Buyout consummated with two transfer agreements and 4 different access agreements• 2nd PLL bound to cover the buyout related risks• Asbestos loss portfolio transfer assessment in progress. 

Environmental Claims Experience



Claims Management Best Practices

- Legal advice in crafting policy language. A tight policy is the best defense.
- Reporting
- Cooperation



For more information



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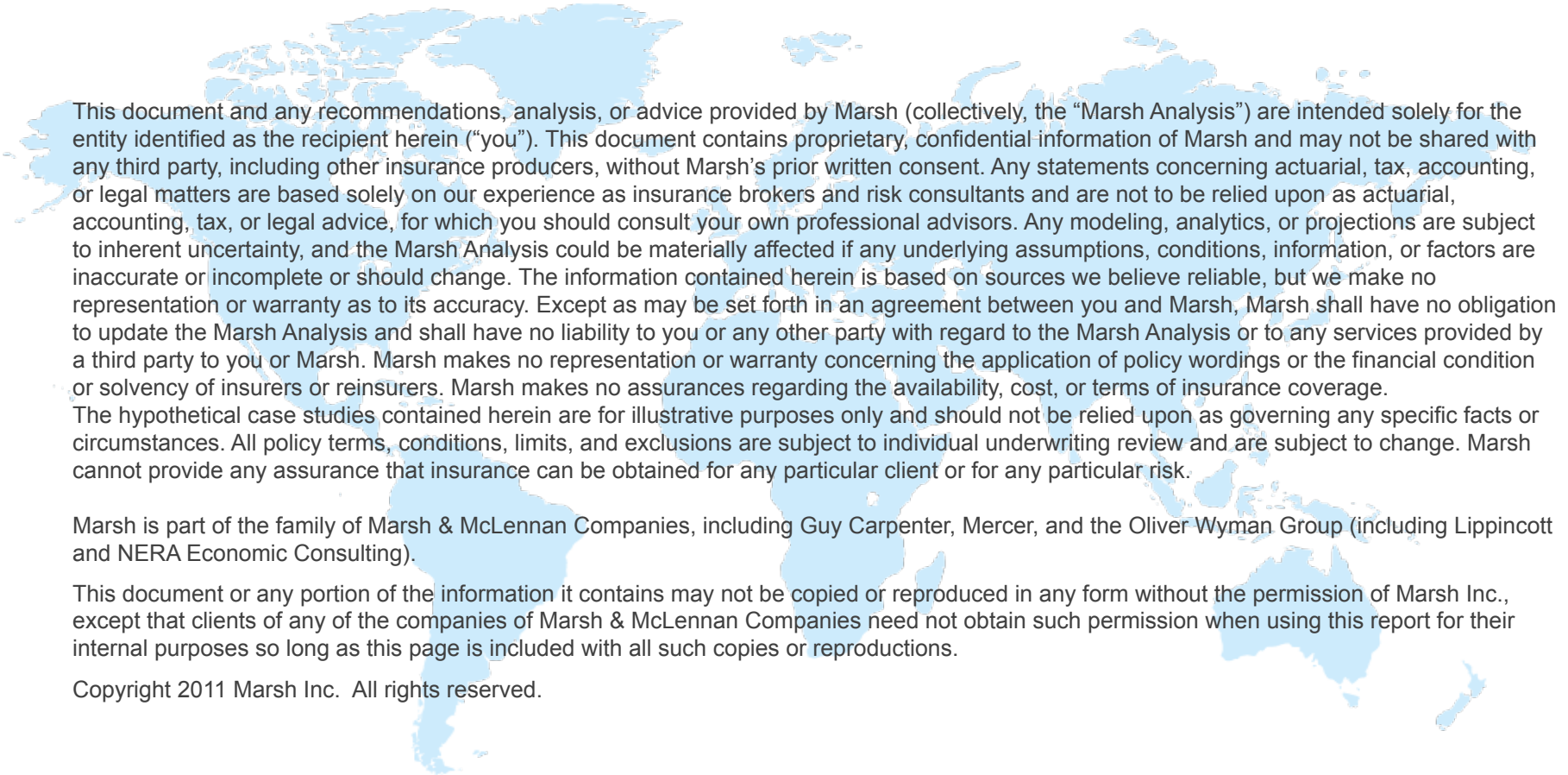
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