

# Global Environmental Liability Management

*“In Search of the Global Pollution  
Solution”*

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The Willis logo is a dark blue rectangle with the word "Willis" written in white, serif font. The letters are spaced out, with the 'i' and 's' having a distinctive shape. The logo is positioned in the bottom right corner of the slide, overlapping a yellow and orange gradient background.

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# Agenda

- **Introduction** - *Claude Gallelo, Willis International Practice Leader*
- **Review of new environmental legislative trends and developments** - *John Watson, Global Environmental Practice Group Leader, Baker & McKenzie*
- **Global insurance market solutions** - *Mike Balmer, Willis Environmental Practice Leader*
- **Environmental coverage overseas: practical considerations** - *Karl Russek, Senior Vice President, Environmental Risk, ACE International*



# Review of New Environmental Legislative Trends and Developments

John Watson – Baker & McKenzie

Global Environmental Practice Group Leader

# State of the Global Environment

- **Environmental Disasters Garnering Global Attention**
  - Songhua River Spill - China
  - Toxic Waste Dumping - Ivory Coast
  - Chemical Leak - Ventanas, Chile
  - Pomba River Spill - Rio de Janeiro, Brazil
- **Global Environmental Threats Looming**
  - Climate Change, Deforestation
- **Heightened Publicity Targeted at Alleged Polluters**
  - China's Environmental "Blacklist"

# Evolving Environmental Laws and Regulations

- **EU Liability Directive/Directive on Criminal Law**
- **Brazil – CONAMA Groundwater Resolution**
- **Latin America – Contaminated Site Inventories**
- **China – Regulation of Government Information Disclosure**
- **Mexico – SEMARNAT Soil Clean-up Standards**

# The Green Movement – Corporate Environmental Sustainability

- **Challenges for Multinational Corporations**
  - “Beyond Compliance” Environmental Commitments
  - Greater Disclosure of Environmental Liabilities
  - Comprehensive Corporate Approach to Liability Management

# Global Environmental Risk Exposure – NGOs and Beyond

- **NGO Activism and Class-Action Toxic Tort Claims**
- **Expanded Clean-up Liability (Owner/Operator and Officer/Director) and Emerging Clean-up Standards**
- **Criminalizing Environmental Obligations – Fines and Penalties**
- **Increased Risk of Plant Shutdown/Business Interruption**
- **Emerging Global Environmental Management Challenges – Climate Change**

# Global Insurance Market Solutions

**Mike Balmer – Willis North America**

**Environmental Practice Leader**

# Key Applications for Environmental Insurance

## Environmental Liabilities Associated with:

- **Ownership/Operation of assets**
  - Legacy Liabilities – Sites in Use, Sites Closing and Sites Sold
  - Operational Liabilities – On-going Facility Operations
- **Business Operations or Activities**
  - Contracting Activities or Professional Services
- **Transactions or Investments**
  - M&A, Property Transfer, Corporate Restructuring
- **Balance Sheet Liabilities**
  - Clean-up and Closure Operations

# Who are the Environmental Insurers?

- **US Insurers – many with International Capability:**
  - ACE, AIG, Chubb, XL, Zurich, Liberty
  - Country-by-Country Capability Varies
- **Some Environmental Coverage Available from General Liability Insurers (e.g., AXA, Allianz, Gerling, etc.)**
- **European Pollution “Pools” (e.g., Assurpol)**

# Program Considerations

- **Where are my environmental exposures - which countries?**
- **What is the political and regulatory framework regarding environmental risks in these countries?**
- **What is the nature of our exposures (e.g., facility or contracting)?**
- **Are there any compulsory or contractual environmental insurance requirements?**
- **Is non-admitted insurance allowed in relevant countries? Can insurers provide local paper?**
- **What is the potential for significant claims activity?**
- **Is there any existing coverage available in your program (e.g., under the General Liability)?**

# Conceptual Design Options – Individual Local Programs

## Locally Admitted Policies in Local Territories

Advantages:	Considerations:
– Ensured legal compliance	– Cost /reduced purchasing power
– Local claims management	– Local carrier capability
– No loss payment repatriation	– Potential for coverage inconsistencies



# Conceptual Design Options Global Indemnity Program

## Single Policy with Worldwide Territory Endorsement

<b>Advantages:</b>	<b>Considerations:</b>
– Uniform terms and conditions	– May not comply with local requirements
– Central control/simplest to manage	– Some insurers will not provide non-admitted coverage
– Single currency	– Tax treatment of loss payments

**Global Environmental  
Liability Policy**

# Conceptual Design Options – Controlled Master Program

## Master DIC/DIL Program with Locally Admitted Policies

Advantages:	Considerations:
– Legal compliance/local “ownership”	– Reduced central control
– Consistent terms and conditions	– Possible tax liability for DIC claims on Master policy
– Local tax benefits	– Administrative burden



# Environmental Coverage Overseas: Practical Considerations

**Karl Russek – ACE Environmental Risk**

**Senior Vice President, Environmental Risk – ACE International  
Responsible for all non-North American exposures**

# Think Locally

- **Crossroad of Two Complex Areas: Environmental Regulation and Insurance Regulation**
- **Emerging Environmental Regulatory Schemes**
  - EU + Individual Member States
  - China
  - Many Elsewhere - Early Stages
- **Patchwork of Local Insurance Requirements**
  - Local Admittance Requirements
  - Claims-Made v. Occurrence, Mandatory Terms, etc.
- **DO NOT Assume US Terms and Conditions are a Satisfactory Fit**

# Example – The EU Environmental Liability Directive

- **Sets Minimum Requirements Across European Union**
  - Transposed into Individual National Laws - Some Variety
  - On Top of Various Existing National Regimes (e.g., UK)
  - Process Largely Complete - Little Practical Experience Thus Far
- **Several Unique Aspects**
  - Damage to Land, Water, and Biodiversity
  - Primary, Complementary, and Compensatory Remediation
  - Strict Liability for Many Activities
- **Financial Assurance Requirements**
  - No EU-wide Requirements, but. . .
  - Certain Member States Imposing Requirements

# Challenges to Developing a Comprehensive Global Program

- **Assembling UW Data**

- Global Due Diligence Inconsistent
- Obtaining Local Participation in the UW Process
- Property Submission a Good Place to Start

- **Establishing Coherent/Consistent Terms**

- Policy Triggers (e.g., China v. US v. France)
- Local Standard Wordings (e.g., Germany)
- Meaningful Local Limits/Deductibles

# Questions?

# Contact Us

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