



Environmental Liabilities & Captives

What You Need To Know

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David Edwin, Marsh Ltd

Duncan Spencer, Liberty Mutual Ltd

MARSH

Environmental Liabilities and Captives



David Edwin
Senior Vice President
Environmental

Leadership, Knowledge, Solutions...Worldwide.

Environmental Liabilities and Captives

Agenda

- The EIL market
- The Paradigm Shift
- Environmental Liability Directive
- Product Advantages
- Next steps

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The EIL market from 1990 until 2009

- Pre 1990
- Insurance Markets
- Products
- Demand
- GPW
- UK v Europe

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The EIL market from 2009 to Present Day

- Insurance Markets
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The Paradigm Shift

- Bartoline
- ELD
- Product Development
- Casualty Market and Claims

Environmental Liabilities and Captives

The ELD

- Directive 2004/35/CE of 21 April 2004 *on environmental liability with regard to the prevention and remedying of environmental damage*
- Recognises the legal rights of the “environment”
- Prevent environmental damage – an operator whose activity causes an **imminent threat** of environmental damage must “**without delay take the necessary preventative measures**”
- Restore the environment to ‘baseline’ conditions, through ‘Primary Remediation’
- If full restoration is not possible, an operators must undertake **complementary remediation** or **compensatory remediation**
- Directive requires Member States to take steps to encourage the development of **financial security instruments and insurance products** to enable operators to use financial guarantees to cover their responsibilities under the Directive”

Environmental Liabilities and Captives

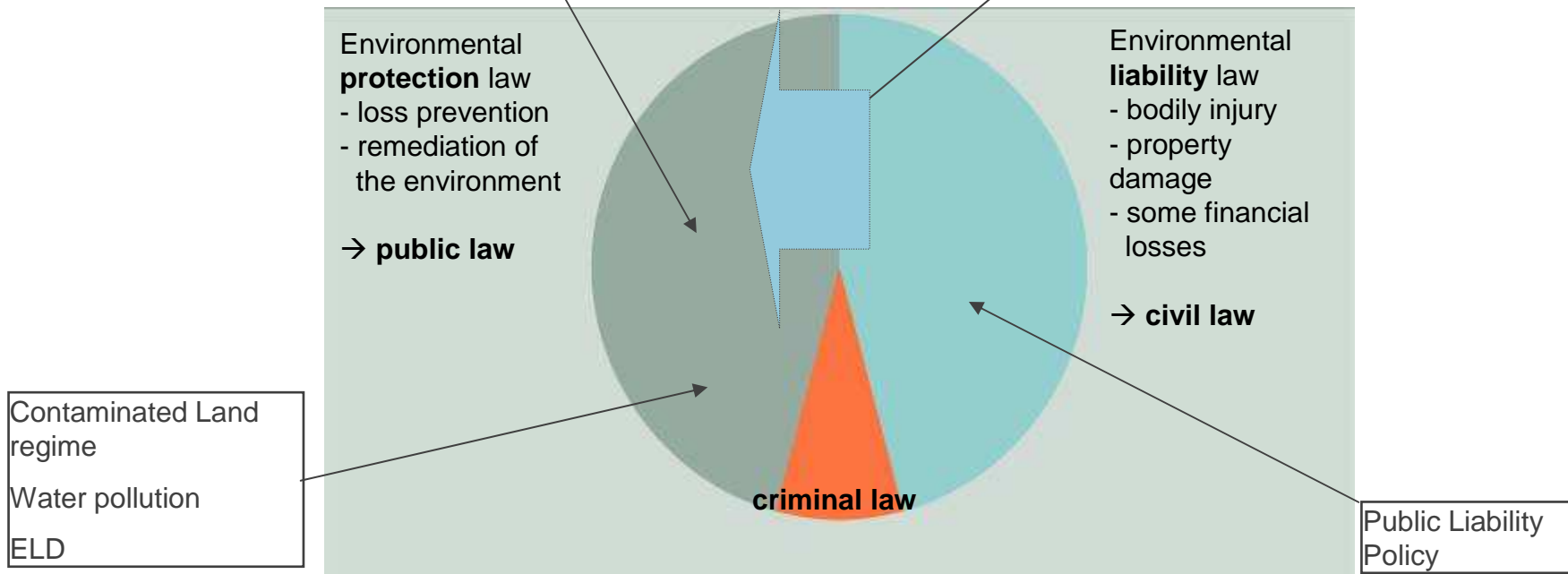
Product Advantages

Statutory liabilities

- Non-pollution “environmental damage”?
- Gradual pollution
- Prevention?
- Flora & fauna?
- Nuisance?
- Complementary and Compensatory Remediation?
- Own-site liabilities

Extension to pollution provision of PL policy

e.g. enforced clean-up costs of non-owned property



Environmental Liabilities and Captives

Message

- Understand your environmental risks
- Understand the nature of your environmental liabilities
- Understand how you manage those exposures
- Understand what insurance protection you currently have
- Understand the benefits of environmental insurance
- Make an informed decision



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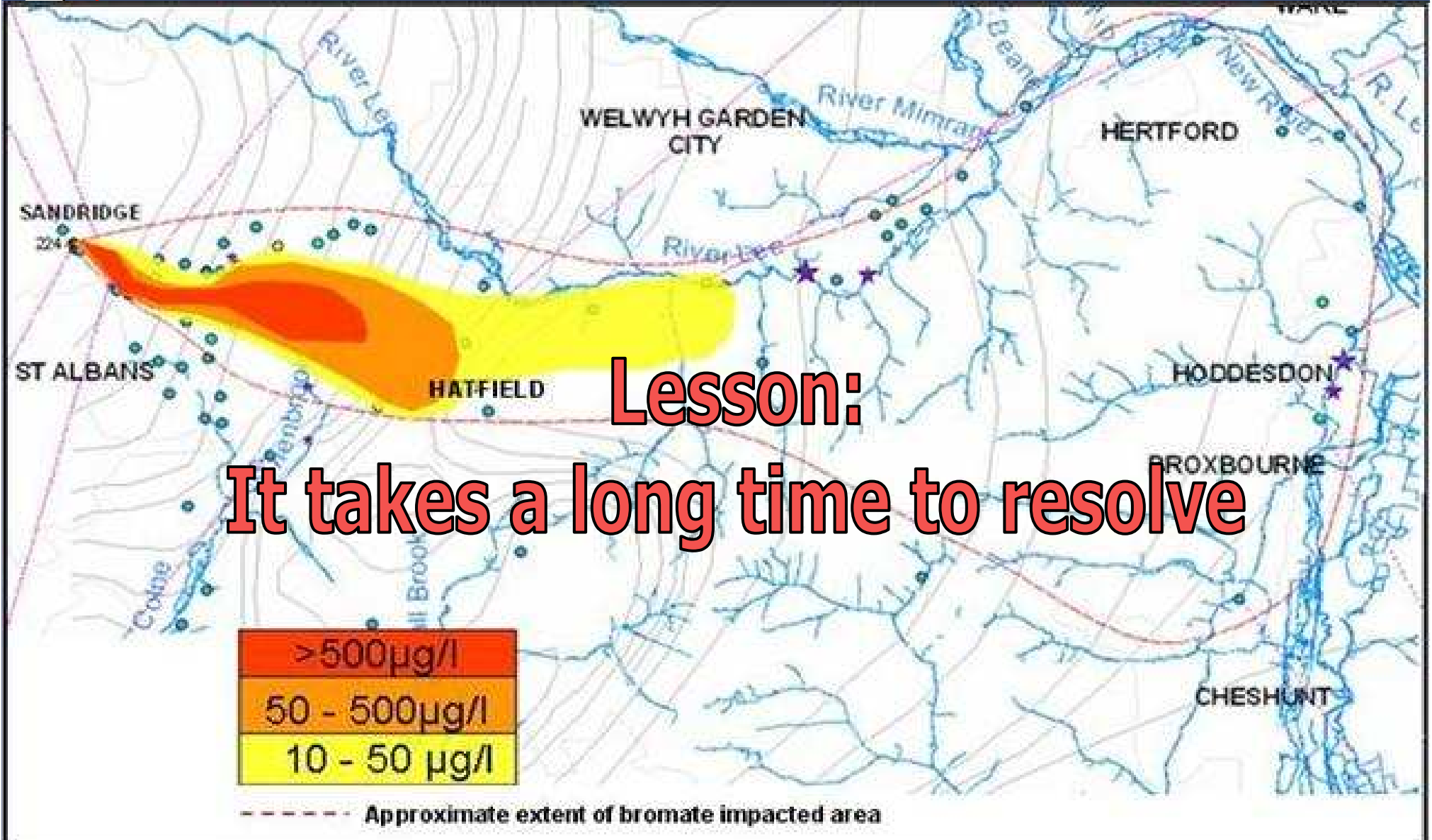
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- Case Studies
- Anatomy of a Claim – isn't it already covered?
- Application to Captives
- The Route to Binding



Case Studies - Wigan





Approximate Extent of the Bromate Plume



Summary –

- Businesses face a variety of Environmental liabilities
- These liabilities are rarely insured

EIL can be used by a Captive

- To provide improved risk management to the Parent
- To increase the premium flow through a Captive
- To ring fence liabilities that the Parent faces



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Company X - Ring Fencing Liability

- Distressed Parent, selling daughter companies
- Many environmental liabilities already identified
- Use of Captive to ring fence liabilities
- Increase value of companies to be sold
- Self insurance of known liabilities
- Risk Transfer for unknown liabilities



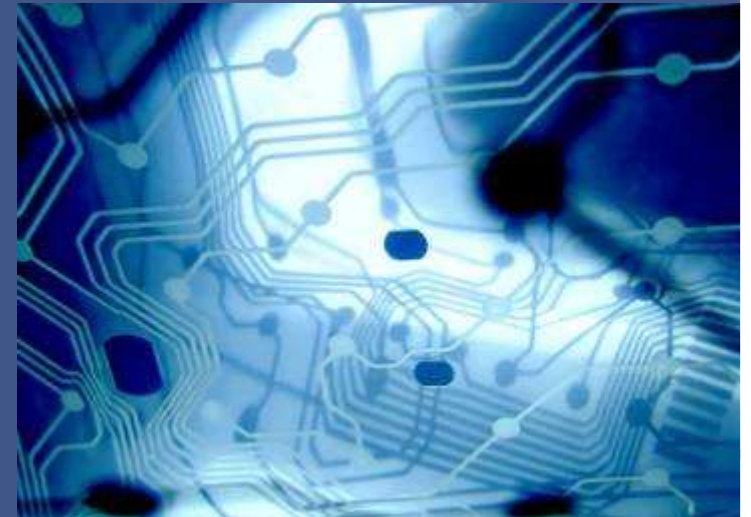
Company Y - Increase Use of Captive

- Large number of small properties
- Each property likely to be polluted, but
- Pollution has not been realised
- Per property liability small (in relation to parent)
- Requirement to increase premium to Captive
- Insurer used to calculate premiums
- Insurer used to co-insure liability



Company Z - NewCo with Captive

- Company created by merger
- NewCo liabilities unclear
- Requirement to invest in Captive at Set Up
- Potential Environmental Liabilities Identified
- Large Value but Low Frequency
- No exclusion policy created with Risk Transfer Cap
- High Premium to Captive
- Low Reinsurance Premium



Route to Binding

- Identification of Objectives
- Selection of Experts (broker – insurer – consultant)
- Collation of existing data
- Data gap filling (if required)
- Underwriting
- Identification of Options



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Thank you!

David Edwin

Marsh Limited, Edinburgh

david.edwin@marsh.com

+44 (0) 131 311 4130

Duncan Spencer

Liberty Mutual Insurance Europe Limited, London

duncan.spencer@libertyiu.com

+44 (0) 207 256 3359



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