

# MARSH

## GLOBAL ENVIRONMENTAL PRACTICE



### Solutions for Managing or Transferring Environmental Liabilities

With environmental risk advisors located throughout the world, Marsh's combined expertise represents a powerful set of consultative and insurance solutions to meet any need.

Environmental liabilities continue to impair corporate performance by burdening balance sheet obligations and negatively affecting earnings and cash flow due to cost uncertainty. Strategically, environmental liabilities also provide obstacles, often "deal killers," to mergers and acquisitions, including asset and unit divestitures or stock spin-offs. These obstacles include:

- Increased frictional costs during deal negotiation
- Erosion of asset value due to discounting for uncertainty with environmental liabilities
- Financial and legal burdening of either the divested assets and/or the remaining corporation through retention of liability obligations

Marsh's Environmental Practice specializes in facilitating environmental liability solutions for both operating companies and organizations involved in mergers and acquisitions activity. A cutting edge option is the completion of "competitive bidding" to manage environmental liabilities one of two ways:

1. The corporation retains liabilities with third-party guaranteed fixed price outcomes:

Marsh facilitates bidding among competing firms to select a company that will guarantee management of environmental liabilities at the most competitive price, based on a "fixed cost" and closure point. Marsh then coordinates placement of environmental cost-cap and PLL insurance to facilitate the outcome. Potential benefits include:

- Competitive cost and terms resulting from competition between firms and insurers.
- Maximized cost certainty and, in certain circumstances, lowered cleanup costs.
- Avoided or minimized transaction and frictional costs.

2. The corporation transfers liability to a third party:

Marsh completes a similar competitive bidding to identify a company that will contractually assume the legal, financial, and regulatory liabilities from the organization. Marsh then coordinates an insurance placement to facilitate the third-party transfer. Potential benefits are similar to those described above and may also include:

- Contractual release of the parent organization and any spun-off assets from the environmental liability going forward
- Strengthened indemnity provisions with A-rated carriers backing the obligations
- Potential time value of money discounting benefits in pre-funding via a finite risk vehicle
- Possible tax benefits

For further information, please contact: Chris Smy at 404-995-2748 (**Atlanta**), Jim Vetter at 215-246-1046 (**Philadelphia**)

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Clients should be aware that "finite risk" solutions consist of a combination or blend of risk transfer and other risk-financing strategies. Under certain circumstances, auditors and regulators such as the SEC, IRS, and various insurance departments have challenged transactions accounted for as a "finite risk" solution—for example, questioning whether, among other things, there is sufficient risk transfer to support the accounting and/or tax position taken by the client. Marsh believes that finite risk can be a valuable risk management tool. Marsh makes no representations concerning the proper accounting, legal or tax treatment for any transaction.

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