

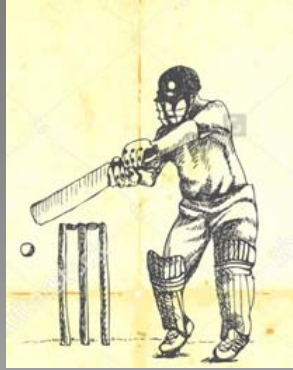


**CBA CLE REAL ESTATE
SPRING UPDATE**

**STICKY WICKETS IN
BROWNFIELDS
DEVELOPMENT**

**Presented by
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The Game



Managing cleanup costs



Avoiding regulatory action



Avoiding third party claims

The Equipment

Statutory defenses

NFAs and regulatory comfort letters

Contractual terms

Environmental covenants



Voluntary Cleanup Program

Environmental insurance

Sticky Wickets

Sites with sources of groundwater contamination

Contractual terms affecting price and conditions to close



Exclusions from coverage under environmental Insurance policies

Sites with sources of groundwater contamination

Long unpredictable cleanup

Must meet standards

Exit strategy is more difficult



Alternatives

“Comfort letter” alternatives

- ▶ Covenant not to sue
- ▶ Conditional closure
- ▶ Media-specific NFAs

Site-specific standards

Retained ownership



Contractual issues



Agreements to agree

Conditions to closing

Tips:

Clarity

Methodology and dispute resolution provisions

Time of the essence clauses

Observe the formalities



Environmental insurance: what it doesn't do

Pollution legal liability coverages

- ▶ **Terms and conditions**
- ▶ **Common exclusions**
- ▶ **Site-specific exclusions**

Contractor's pollution legal liability



When does environmental insurance make sense?



Check the market

Unknown conditions

Lenders

Bodily injury and property damage claims

Financial assurances

Coupled with contractor's pollution

Questions?

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