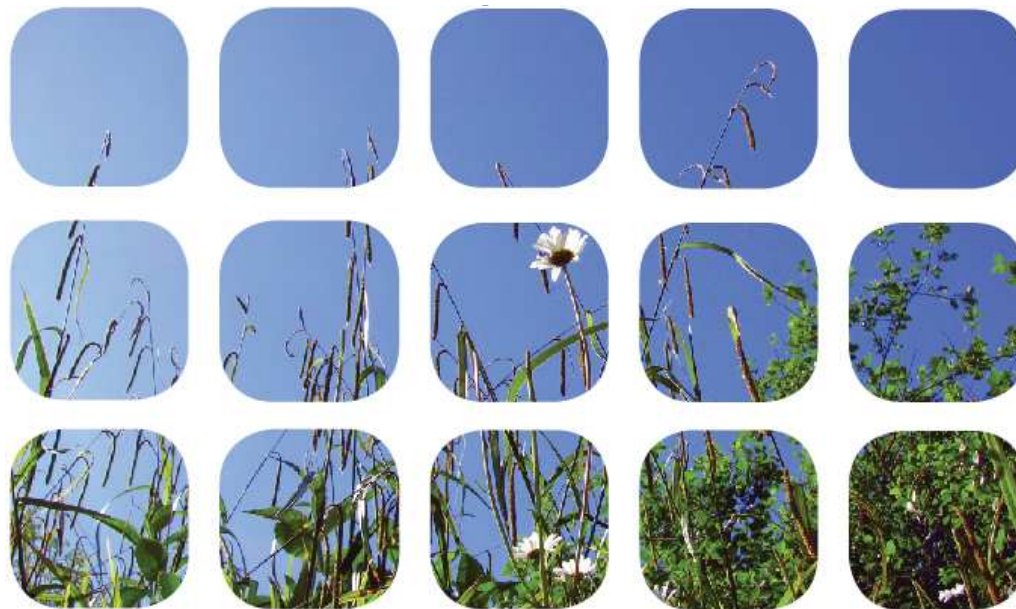


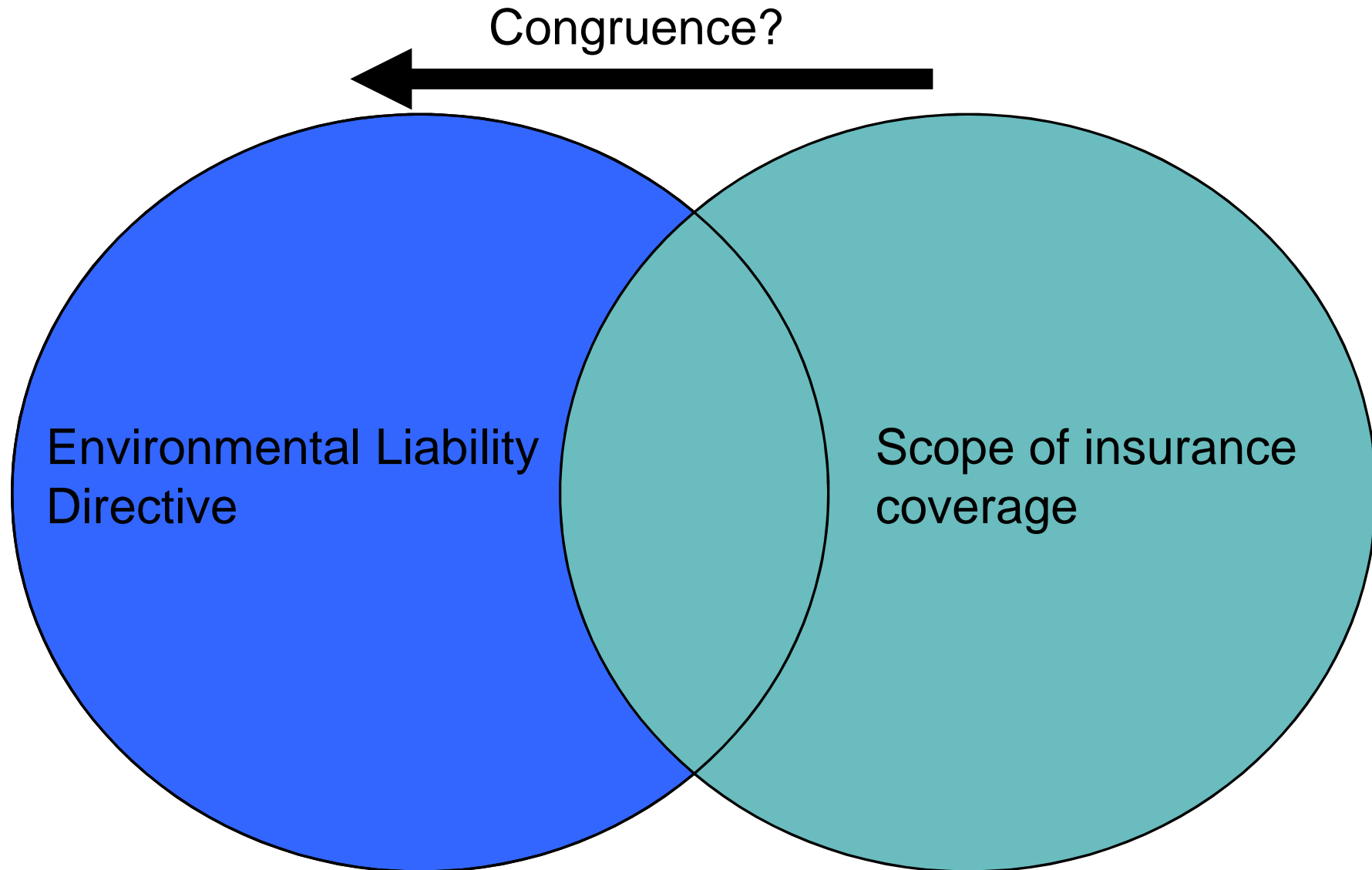
EC Workshop - Financial Security in ELD



- Bernard Tettamanti
 - Director, Swiss Reinsurance Company



- General liability insurance principle
- Key issues
- Transposition status
- Criteria of insurability regarding ELD
- Challenges for (re-) insurers
- Summary



- Insurance is a financial transaction that enables an enterprise to manage risk by transferring it to the insurer – in return for a financial consideration
- Managing the expectations from customers and policy makers
- Development of sustainable insurance products should be preferred

- The insurance industry does not offer insurance products against all of the liabilities
- Insurers will not insure everything
- Insurers must be free to decide which risks they are willing to accept and which not
- Especially for new liabilities often only little information is available initially on the probability of loss and on the amount of losses to be expected
- Usually due to this the insurance market may initially only provide tight capacity. Any comprehensive insurance cover is mostly not immediately feasible

EC ELD: Transposition status quo June 2008

14 MS have
transposed the
ELD ('green')

13 MS still
pending



- Legal clarity and certainty
- Risk management
 - Insurance is not a substitute for proper risk management
- Risk assessment
- Underwriting and pricing
 - Able to assess a risk properly
 - Able to calculate the premium
 - Importance of statistics
- Development of new claims management skills

- The development of appropriate insurance products will take some time
- The transformation of the Directive will accelerate this processes
- As some insurance markets demonstrate insurance products can be developed once legal certainty and clarity exists in the Member States
- CEA favours voluntary financial security
- Compulsory financial security would impede the developing processes

- It is the responsibility of individual insurers to decide whether or not to offer cover and on what basis and terms
- In Member States that have enacted legislation, some insurance solutions are appearing in the market

A clear legal framework and a close relationship to the Directive are key to the development of sustainable insurance solutions

- Jürg Busenhardt
 - Vice President, Swiss Reinsurance Company



General Liability Insurance Market (CGL policies)

- Remains quite conservative and does not offer much pollution coverage on primary policies
- Uses the standard ISO exclusion
- Rarely more coverage offered

Environmental Impairment Liability Insurance Market (EIL policies)

- Offered by six established carriers
- Three newcomers
- Four entered and left the market soon again due to 'bad experiences'

Current pollution exclusion eliminates most kinds of pollution, whether gradual or sudden and accidental

Endorsements/&pollution coverage buy-back:

- Coverage for bodily injury or property damage arising from pollutant out of heat, smoke or fumes from a hostile fire
- Clean-up cost the insured becomes legally obligated to pay as damages because of property damage
- Heating and cooling equipments
- Specific fluids released by contractors
- Materials necessary to maintain or operate buildings

Environmental Impairment Liability Insurance Market - Coverages offered

Pollution legal liability (PLL) policy

- Legal liability of insureds to compensate third parties for injury and damage to property suffered by them as a result of a pollution event (sudden & accidental event or gradually occurring pollution)
- Policy offers multiple options to select including clean-up costs on/off-site
- Comprehensive risk assessment and underwriting process as prerequisite to grant coverage
- Natural resource damage (NRD) are defined as property damage at present
- In the past offered to large clients with liabilities arising from merger and acquisition activity, historical and current operations, traditional waste disposal businesses
- Today widely distributed also to smaller clients in many industries

US pollution/environmental insurance market - The other side of the medal

Considerable coverage litigation regarding historical CGL exposures

- involving the applicability of the absolute pollution exclusion and sudden&accidental exclusion respectively
- examining whether clean-up costs are damages under CGL policies

NRD claims developments might impact insurance market

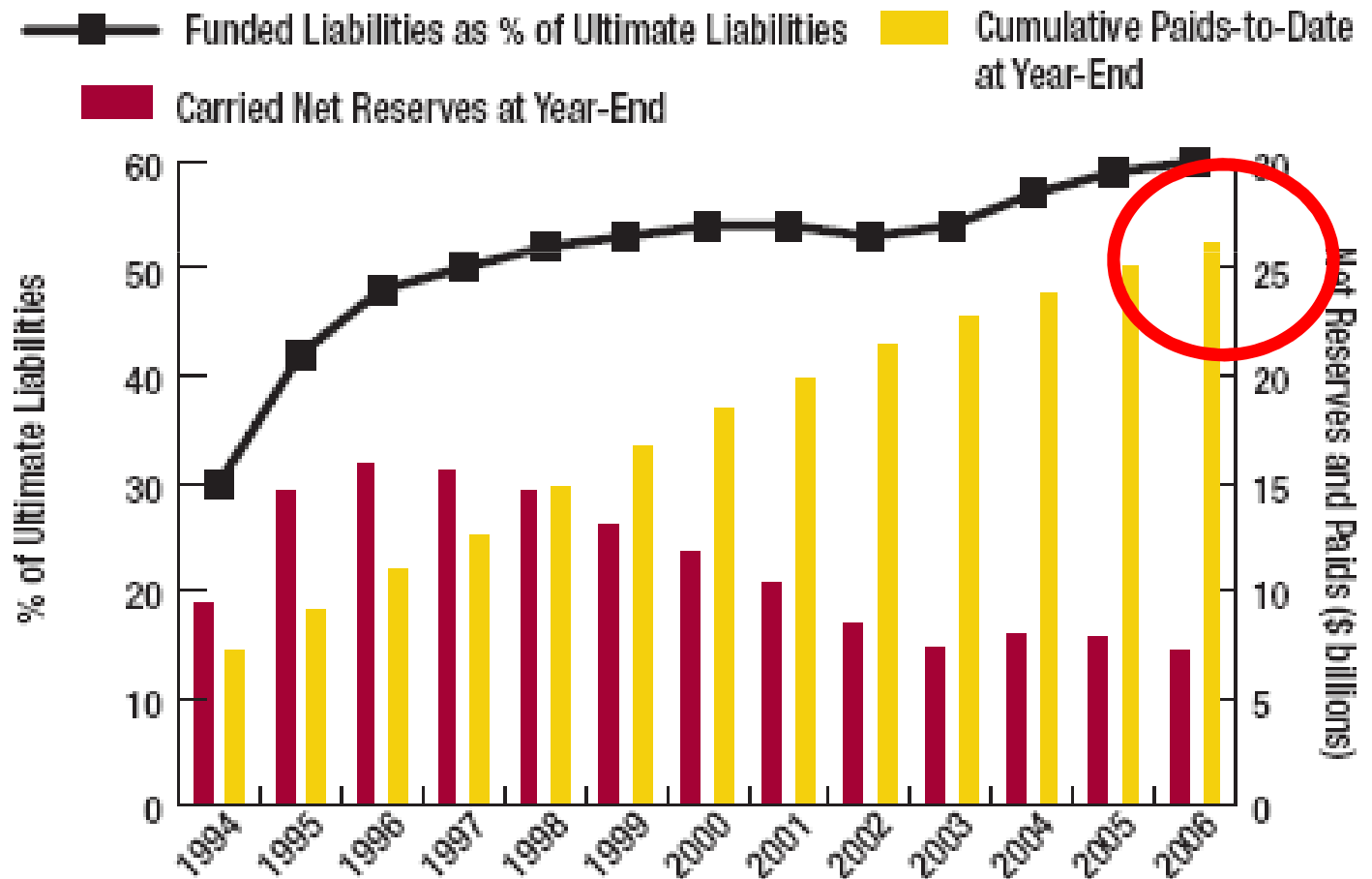
- NRD claims have historically only been assessed after a catastrophic environmental contamination event
- New Jersey has begun aggressively prosecuting claims for NRD's in an unprecedented way
 - => 4'000 NRD cases out of 13'000 identified
 - e.g. Lower Passaic River case: NJDEP is seeking \$950m in NRD from 66 companies

US pollution/environmental insurance market - The other side of the medal (2)

A.M.Best's estimate ultimate losses \$56bn

Exhibit 5

Environmental Liabilities – Estimated Funded as % of Ultimate (1994-2006)



Source: A.M. Best Co.

- José Luis De Heras Herráiz
 - Managing Director, Pool Español de Riesgos Medioambientales



- **General Third Party Liability (GTPL) insurance**
 - Insurance solutions based on the non-binding German Environmental Damage Insurance Model

- **Environmental impairment liability (EIL) policies**
 - Environmental pools like in France, Italy and Spain
 - Insurance solutions of 'American' insurers
 - Insurance solutions of some large international insurers

Basic provisions of German Environmental Damage Law (USchadG)

- Transposition of ELD 1:1, i.e.
 - Liability, under public law, of the responsible operator.
 - Strict liability for occupational activities under annex USchadG (*equivalent to Annex III*)
 - Fault based liability in case of damage to Sp.& Habs. for other occupational activities, not listed in annex USchadG
- Includes liability for product-related environmental damage.
- The federal states can provide for exceptions in the context of Art. 8.4 ELD (permit and state-of-the-art defenses).

Non-binding German Environmental Damage Insurance Model (USV)

- Stand-alone concept due to ELD's public liability.
- Structure similar to the Environmental Liability policy
- Restricted to sudden, accidental, unexpected and unintended incidents.
- Insured liability: legal duty to remediate environmental damage according to USchadG.
- Insured claims:
 - Direct claim of the competent authority and
 - Claims of third party who recourses the emerged remediation costs.

Non-binding German Environmental Damage Insurance Model (USV)

- Scope of cover in time:
First verifiable discovery of damage during the insurance period.
- Insured costs:
 - Restoration Primary.
 Complementary
 Compensatory
 - Prevention imminent damages
 - Minimization costs.
- Not insured: regular maintenance, re-fitting, repair, etc.

Exclusions, e.g.:

- Damage to biodiversity on own premises, own grounds, own waters; (insurable under USV model with specific endorsement)
- Damage to underground water (insurable under USV model with specific endorsement)
- Damage as a result of unavoidable, necessary or accepted environmental impacts
- Intentional acts
- Mining operations, permanent storage of waste
- Asbestos
- Genetically modified organisms (GMO)
- Historical events

- Transposition not yet completed
- The law proposal (“projet de loi”) indicates a transposition close to the scope of the ELD with the following features:
 - State-of the-art defence: yes
 - Permit defence: no
 - No mandatory financial security

(Cadre d'Assurance des Risques Environnementaux)

Guarantees for:

- Environmental impairment liability (standard) including emergency response costs covering traditional damage.
- Financial loss coverage for prevention and remedying of environmental damage costs (new)
 - Remedial measures as stipulated in the Directive
 - Damage to protected species and natural habitats sub limited

Always restricted to fortuitous events caused within the boundaries of the Insured's sites.

- Covered costs:
 - Primary.
 - Complementary
 - Compensatory

- Exclusions, e.g.:
 - Damage as a result of permitted emissions (normal operations)
 - Development risk
 - Intentional acts
 - Asbestos
 - Genetically modified organisms (GMO)

- The Directive 2004/35/CE has been implemented into the Italian Law with the Decree 152/2006.
- Its application is at this moment suspended.
- It is under review by the Government, Possible changes include the Environmental Damage concept.

Insurance model

- Covered costs:
 - Third party pollution dmgs.
 - Prevention and restoration of polluted sites.
 - Sub-limit for own site de-pollution.

- Exclusions, e.g.:
 - Damage as a result of permitted emissions (normal operations)
 - Development risk
 - Intentional acts or willful mis-compliance. Or lack of maintenance.
 - Asbestos
 - Genetically modified organisms (GMO)

E. L. D. 2004/ 35

NATURAL RESOURCES:

- Species and Habitats in Natura 2000.
- Water and soil.

NON ANNEX III ACTIVITIES:

- Only Fault Liability.
- Only for damages to Protected Habitats and Species

SPANISH LAW 26/2007

NATURAL RESOURCES:

- **Species and Habitats in Natura 2000 + national + autonomic catalogues.**
- **Water and soil.**
- **Coast line.**

NON-ANNEX III ACTIVITIES:

- **Strict liability for preventive and minimization measures.**
- **Fault liability for remediation measures.**
- **Liable for all natural resources included in law.**

- ❑ **POSSIBLE OPTIONS:**
 - ❑ **Ad - hoc reserve.** Set up by the operator funds invested in public debt.
 - ❑ **Bank bond.**
 - ❑ **Insurance + ad-hoc fund,** (the last to be managed by the C.C.S., still to be regulated).

- ❑ **Minimum amounts: from 300.000 to 20 Million Euros, depending on “potential damage”**

New structure of insurable liabilities

LIABILITY

BASIC COVERAGE
POLLUTION
ENVIRONMENTAL
LIABILITY



DAMAGED GOOD OR INTEREST

-PROTECTED SPECIES AND HABITATS
-WATER
-SHORE LINE
-SOIL

OPTIONAL COVERAGE
POLLUTION
CIVIL (3RD PARTY)
LIABILITY



PERSONS:

- BODILY INJURY**
- OTHER PERSONAL DAMAGES**

PROPERTIES:

- PRIVATE OR PUBLIC OWNER**

LOSS OF INCOME

- **Players:** Some confusion about the reach of pollution coverage in G.L. insurances.
- **Stand-alone products:**
 - 4 Multinational Players, targeting big risks.
 - Companies associated to the Spanish pool.
- **Stand alone products:**
 - ALL.- Limit coverage to “Pollution” incidents.
 - ALL.- Exclude willful incidents and normal operations.
 - Some.- Mix T.P. Pollution liability+ Env. Liab in one sum insured.
 - Some.- offer independent sums insured for T.P. and Env. Liab.

- **Sharing upstream research** with all stakeholders in order to enhance insurance solutions and take up the challenge from “Niche” to “Mainstream” insurance market (‘mass products’)
- **“Emerging area”** requires a prudent and long term approach: i.e. as experience and knowledge develop, the confidence of underwriters will grow and likely to result in increased market capacity, broader scope of covers and further innovation in claims management
- Each individual re-/insurers to decide whether or not to offer cover and on what terms and conditions

Still a long way to go: there is still – not - a market

- A market needs
 - To be established and stable
 - Sustainable insurance solutions
 - A plentiful of supply of capacity
 - A choice of products and insurers
 - Competition
 - Insurance solutions available to all buyers

- Encouraging start:
 - In countries, where the law is transposed close to the scope of the ELD markets (e.g. Germany)
 - The pools (Spain, Italy, France) and specialised EIL insurers, and
 - International re-/insurers offering EIL coverage features in GTPL solutions

The path for enhancing insurability

- 1. Better and common understanding of liabilities**
- 2. Developing and sharing risk and damage evaluation techniques.**
- 3. Developing and sharing common information**

**Lead
to**

- 1. Wider insurance availability.**
- 2. More comprehensive coverage.**
- 3. Stable market in the long term.**



For more information www.cea.eu



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