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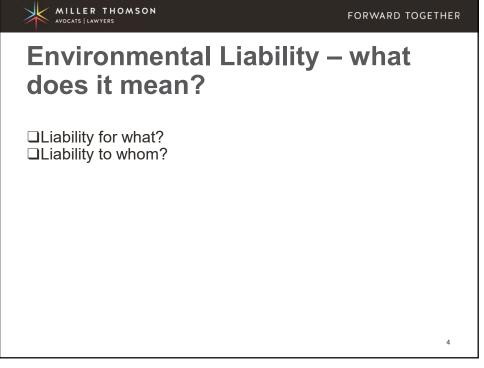


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Water - Liabilities

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Some facts	
☐There might be contamination on any of A,	B or C
□Should buyer care?	
□Why?	
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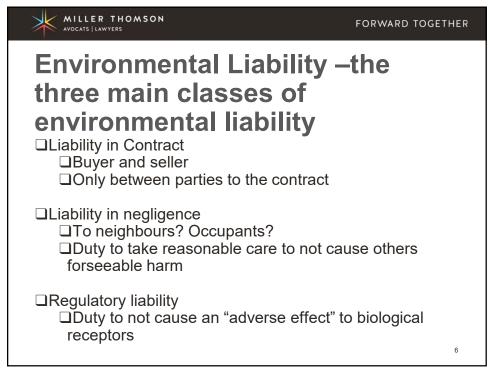
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Liability in Contract	
□Liability in Contract □Buyer and seller □Only between parties to the contract	
□"buyer agrees to buy property B fron	n seller for \$10m?
□Does contract need to say anything □What information might purchase wa environmental condition of the site? □How does purchaser obtain informat □What time is needed? □Who pays for the investigations? □What does buyer do with the informations obtained?	ant about the tion?

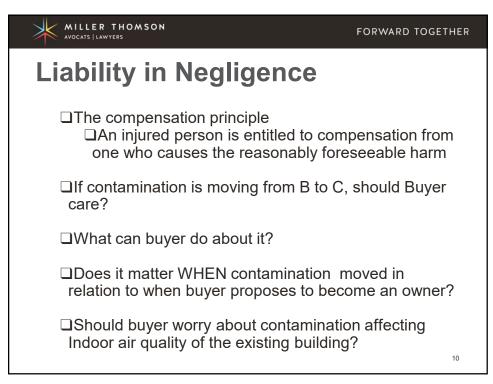
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Managing Liability in Co	ntract
□Contamination at the site	
□Where did it come from?	
□Is it going anywhere?	
□What are options for managing it? □Remediate? □Risk manage?	
□Does this impact price? □How is this measured?	
□Risk of neighbours suing? □Indemnities?	8

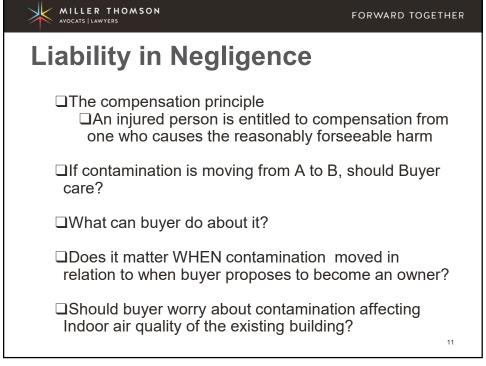
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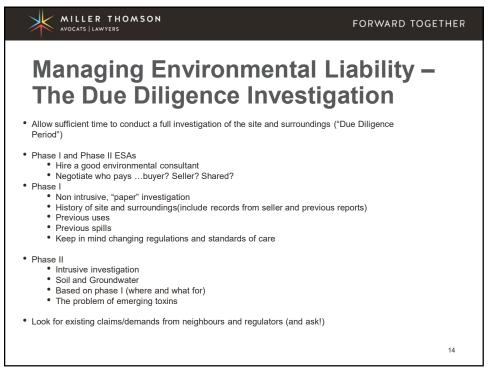
MILLER THOMSON AVOCATS LAWYERS	FORWARD TOGETHER
Regulatory Liability	
□Ontario's Environmental Protection	Act
□Provincial Officers' powers: □Investigate □Issue orders to protect the national content of the protect the national content of the protect the national content of the protect of the pr	had charge
□Issue charges seek fines □"Cause or permit" the "escap "contaminant" into the natura "may cause an adverse effec	I environment that

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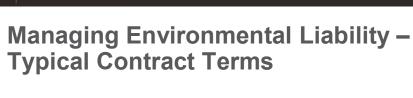
Water - Liabilities

MILLER THOMSON AVOCATS LAWYERS	FORWARD TOGETHER
Regulatory Liability	
□Ontario's Environmental Protection	Act
□Issue charges seek fines □"Cause or permit" the "escape "contaminant" into the natural "may cause an adverse effect □ "persons who have or had che management or control" □Seller could still be liable after sa □How can seller protect thems □Contract?	environment that " narge ale
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• Allocate the risks through the contract

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- Purchase price
 Reduction in price?
 Risk of over or underestimating cost
 Fixed reduction vs holdback
- Sellers' representations and Warranties
 No claims
 No Spills
 No regulatory Orders
 All reports disclosed
- Buyers' reps and warranties?
 To redevelop to residential
 To remediate
 To obtain a record of Site Condition
- Rep and Warranty Insurance? D&O insurance? (but this has limits!)

Indemnities ("private insurance" between sellers and buyers)
 Claims arising before closing
 Claims arising post closing but dealing with pre-closing contamination movement
 Claims arising post closing but dealing with post-closing contamination movement

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FORWARD TOGETHER

FORWARD TOGETHER

Managing Environmental Liability - some final considerations for consultants' reports

- Understand the client's reasons for asking for Phase I and Phase II and (perhaps) a remediation cost options report

 - RSC?Internal DD?Possible sale?Possible Purchase?
- · Would you give each one of the above the identical report?

 - Should you consider
 Potential contaminants not listed in Reg 153/04?
 Risk of plume moving offsite?
- Reliance letters?
 - When should you negotiate their terms?

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