

Join the Debate!

Stand Alone Captive or Cell

Presenters



Patrick Theriault

Managing Director
Strategic Risk Solutions

Email: Patrick.Theriault@strategicrisks.com

Phone: 802-861-2630



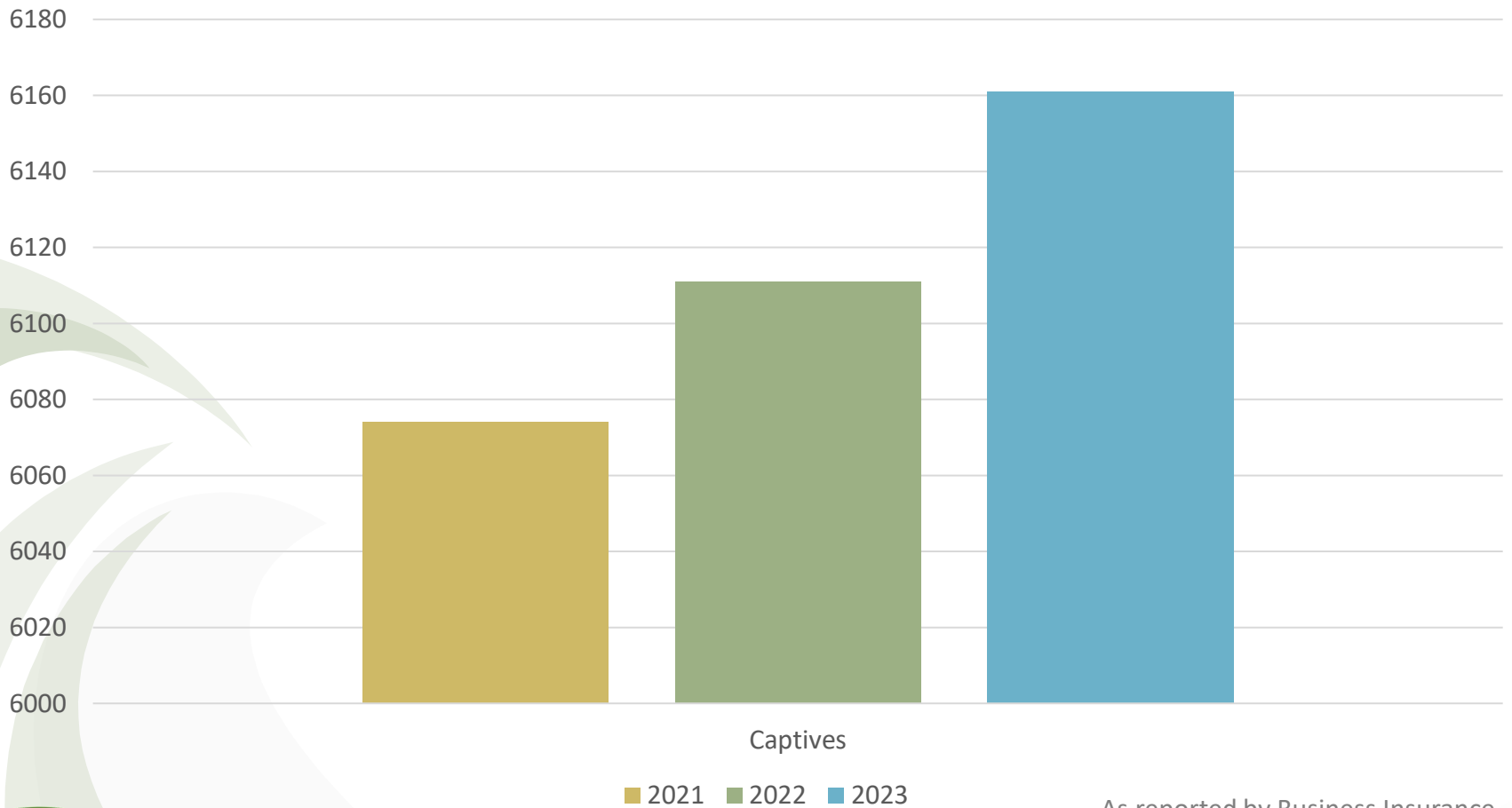
Doug Butler

Partner
Womble Bond Dickinson (US) LLP

Email: Doug.Butler@wbd-us.com

Phone: 404-879-4718

Total Worldwide Captives per Business Insurance



Captive Types

Single Parent Captive

1. Pure Captive

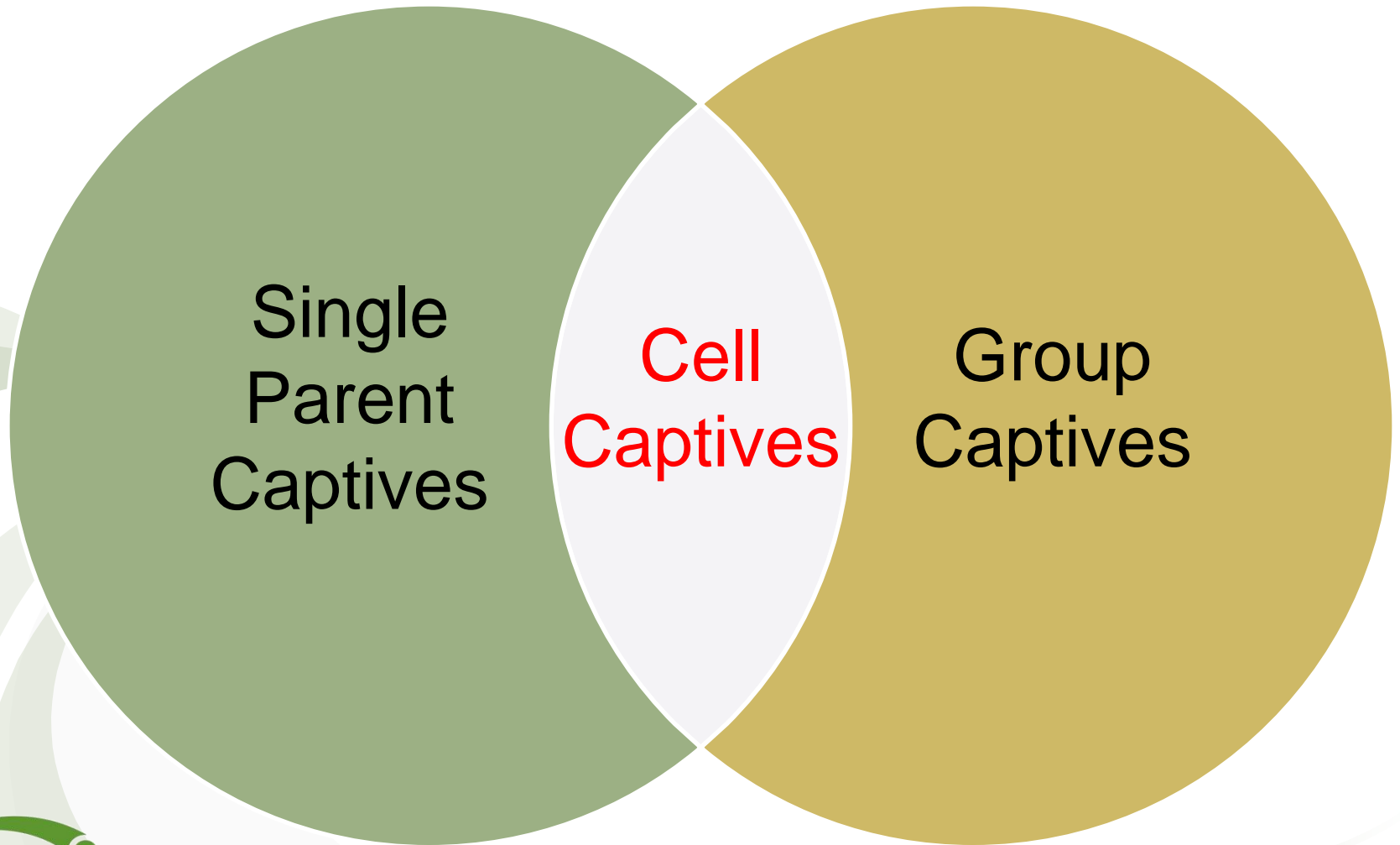
Group Captive

1. Traditional Group Captive
2. Association Captive
3. Industrial Insured Captive
4. Risk Retention Group

Other

1. Cell Captive/
Sponsored Captive
2. Branch Captive
3. SPFC
4. Agency Captive
5. Special Purpose Captive

Captive Universe



Single
Parent
Captives

Cell
Captives

Group
Captives

Cell Captive Concept

What is a cell captive?

The concept of condo or apartment complex structure

You own/control the inside (your cell), but...



- No ownership/control in the building or anything outside your 4 walls
- Some limitation on what you can do within your unit as determined by the condo bylaws (participation agreement)
- You need to pay dues (access fee) for the upkeep of the facility (core operation) and to access the common areas (cell captive capital/license)

Cell Captive Key Facts



Organized to insure or reinsure the risks of unrelated shareholders; the insureds are “renting” the license and/or capacity of the captive insurer capitalized by outside sponsors

Each insured utilize an underwriting “cell” within the overall company

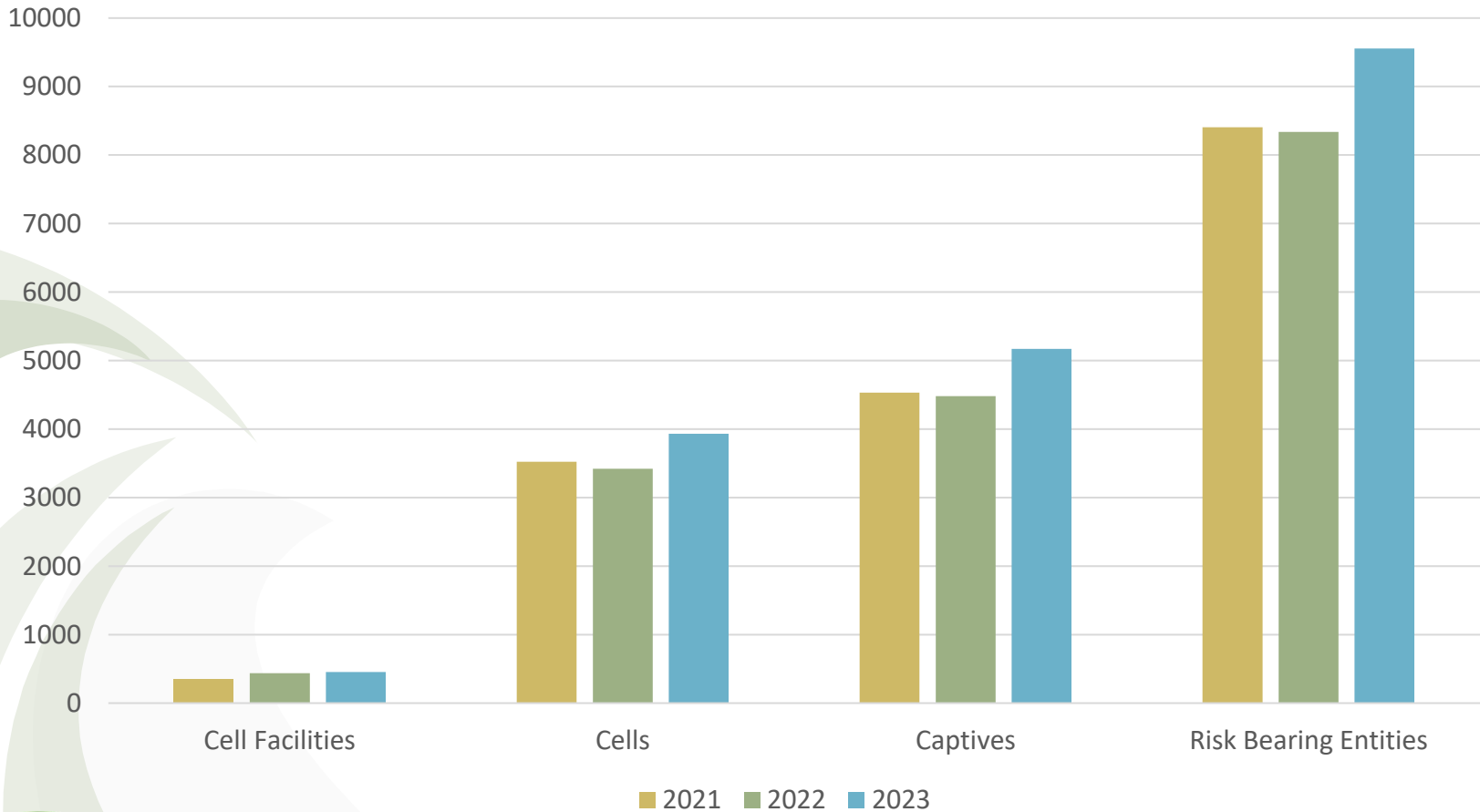
Activity in cell is governed by a participation agreement or preferred share arrangement

- No legal entity formed by the insured (traditional protected cell captive)
- Other legal arrangements are available (incorporated cell)

Critical tax and collateral issues need to be considered

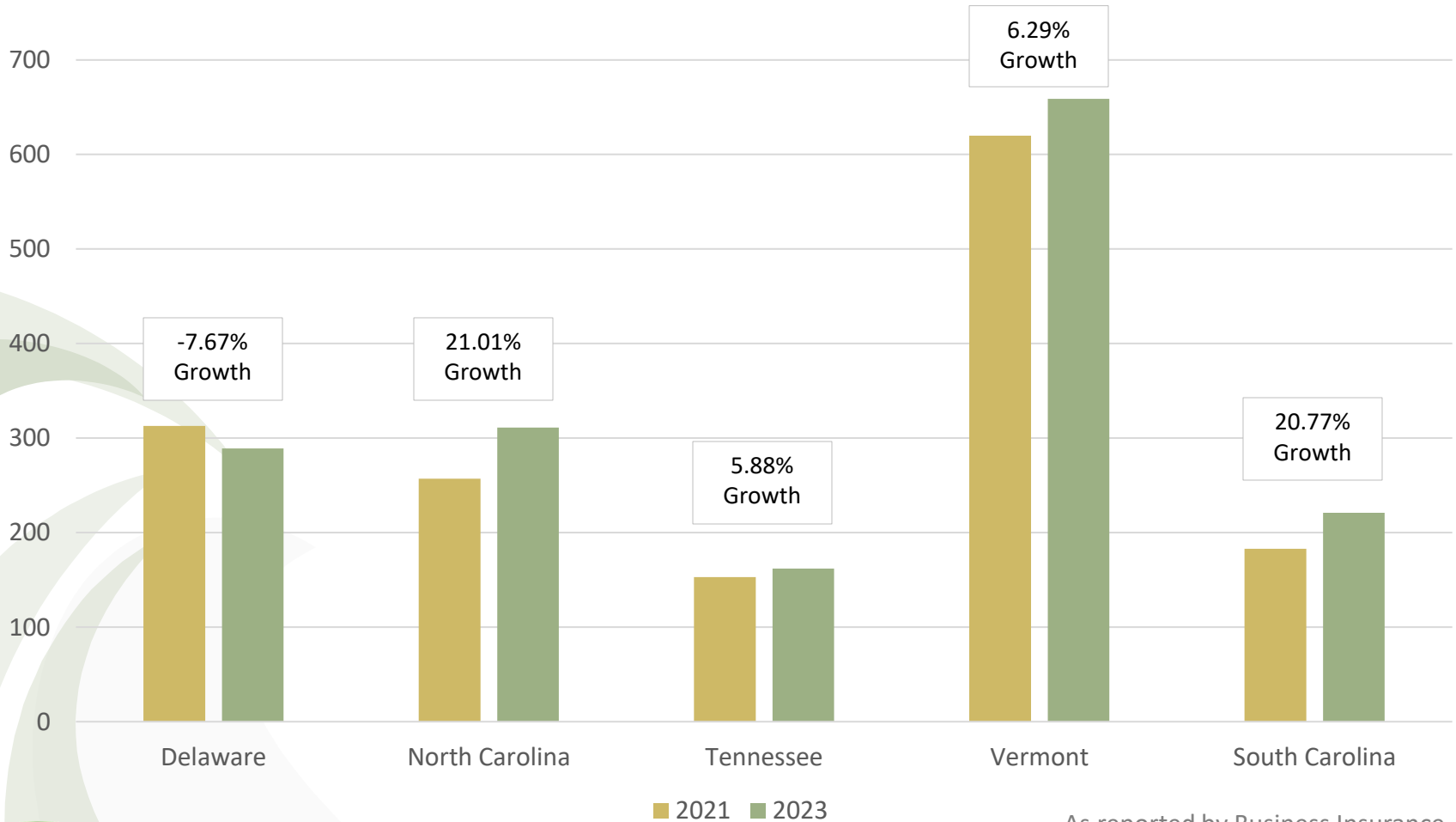
Often used by smaller organizations (but this has evolved)

Top 10 Captive Managers Worldwide Captives by Type



As reported by Business Insurance

Top 4 U.S. Cell Captive Domiciles + South Carolina Number of Licensed Captives (2023 vs. 2021)



As reported by Business Insurance

Top 4 U.S. Cell Captive Domiciles + South Carolina Number of Cells (2023 vs. 2021)

	Cell Captives 2023	Cells 2023	Cells 2021	# Growth	% Growth
Delaware	40	340	466	-126	-27%
North Carolina	46	758	667	91	14%
Tennessee	54	539	341	198	58%
Vermont	64	534*	485	49	10%
South Carolina	8	45	15	30	200%

*includes separate accounts

Why or Why Not a Rent-a-Captive?

Pros:

- Typical lower initial capital requirement and ongoing operating costs
- Ease of formation and dissolution
- Reduced time commitment for operation and management for the Insured
- Can be used as an incubator for a specific short-term projects or as a way to get your feet wet before forming a wholly owned captive
- A way to legally segregate risks within or between organizations without the costs of forming and operating multiple captives

Cons:

- A certain level of control is relinquished to the cell captive owner (investment flexibility, service providers, dividends, etc....)
- Ability to expand program might be restricted or subject to cell captive owner approval
- Contractual and captive laws regarding risk segregation have been reviewed on a limited basis
- Taxation is not as clear

Choosing a Facility

There are three main forms of cell captives:

- Traditional cell captive (formed by contract)
- Incorporated cell captive
- Series LLC

Key issues to consider in choosing a cell captive structure include:

- Indicia of separateness
- Who acts?
- Flexibility for governance

Standalone Captives

- Formed under state entity law (Corporate Code, LLC Act)
- Secretary of State Filing for Formation (often needing pre-clearance from insurance regulators)
- Can obtain Certificate of Good Standing
- Can participate in statutory mergers
- Dissolved via filing with Secretary of State

Protected Cell Captives (Traditional)

- Creatures of insurance code, not state entity law (see e.g. South Carolina Insurance Code at §38-10-10, South Carolina Captive Code §38-90-215)
- A sponsor forms a Sponsored Captive Insurance Company
 - may be corporation or LLC, but can be owned by Sponsor or Participants
- Protected Cells are established for Participants
- Participation Contract governs the relationship between Participant and Sponsor
- Assets and liabilities of protected cells are segregated from each other and the Sponsor (Core)
- But an unincorporated protected cell is not a “legal person” separate from the Sponsor
- IRS guidance points toward each cell being treated as a separate taxpayer, eligible for treatment as an insurance company for tax purposes.

Protected Cell Captives (Incorporated Cells)

- Relies on entity law AND insurance code
- Participant forms a separate legal entity (corporation, LLC) or series to serve as the incorporated cell
- Participation Contract or Incorporated Cell Agreement governs the relationship between Incorporated Cell and Sponsor
- In some jurisdictions, default is that directors and officers of the Incorporated Cell are the directors and officers of the Sponsor
- Incorporated Cells may contract, sue, and be sued in their own names

Series LLCs

States with LLC Statutes:

- Delaware
- Montana
- Nevada
- Oklahoma
- Tennessee
- Texas
- Utah

- In most jurisdictions, series are NOT formed via Secretary of State filings and cannot get Certificates of Good Standing from the Secretary of State
- Core and the owner of the Series (Series Member) enter into a Series Agreement, which is a supplement to the operating agreement for the Core and governs the relationship between the Series Member and the Core
- Management of a Series may be delegated to the managers and officers of the Core, or the Series may establish its own Board/Officers

Cell Captive Types at a Glance

Description	Protected Cell Captive	Incorporated Cell Captive
Regulatory Governance	Captive insurance laws	Captive insurance laws
Ownership	None (preferred shares might be issued)	Direct (common shares)
Cell structure/ Created through	Contractual	Contractual and Corporate
Corporate Governance	None – contractual rights only	Standard corporate governance – limited by contract
Governing Documents	Participation agreement	Participation agreement + corporate documents
Ease of Formation	Quickest	Similar to standalone corporation
Process of Formation	Change of Business Plan	Change of Business Plan + new incorporation
Liability Protection/ segregation	Minimal historical reference	Should follow corporate law

Stand-Alone Vs. Cell

Let's Debate!

Topic #1

Cells are More Cash Flow (i.e. capital funding) and Time Efficient to Establish

Topic #2

Cells Are Cheaper to Operate

Topic #3

Standalone Captives Are Much More Complicated to Administer

Topic #4

Regulation Favors Cells

Topic #5

Cells Expose you to Greater Legal/Tax Complexities

Topic #6

Easier to Exit a Cell Program

Your Questions