



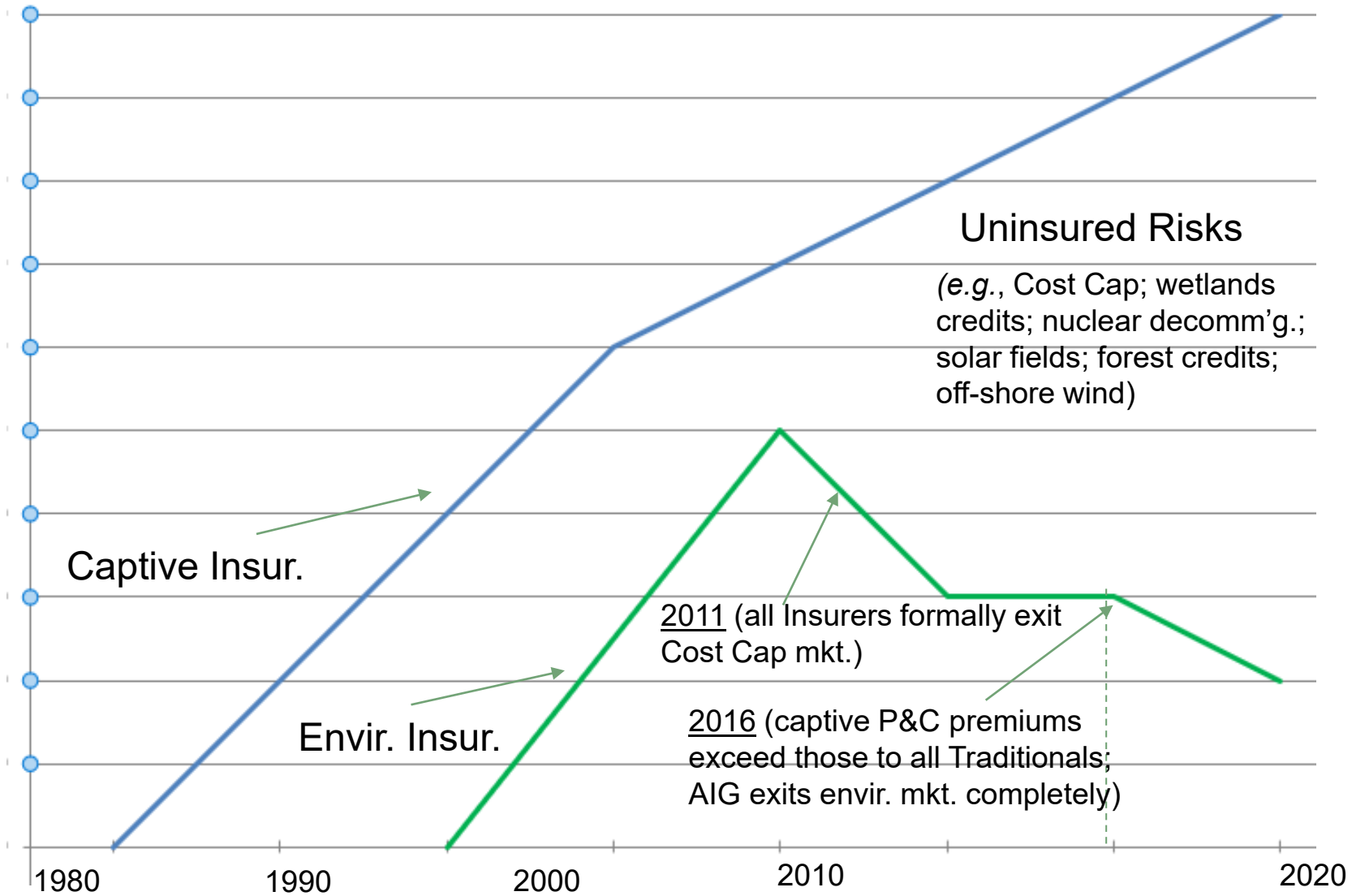
Climate-Supporting Insurance

Presentation to
Society of Environmental Insurance Professionals
(October 9, 2019; updated May 13, 2020)

Michael O. Hill, Esq.



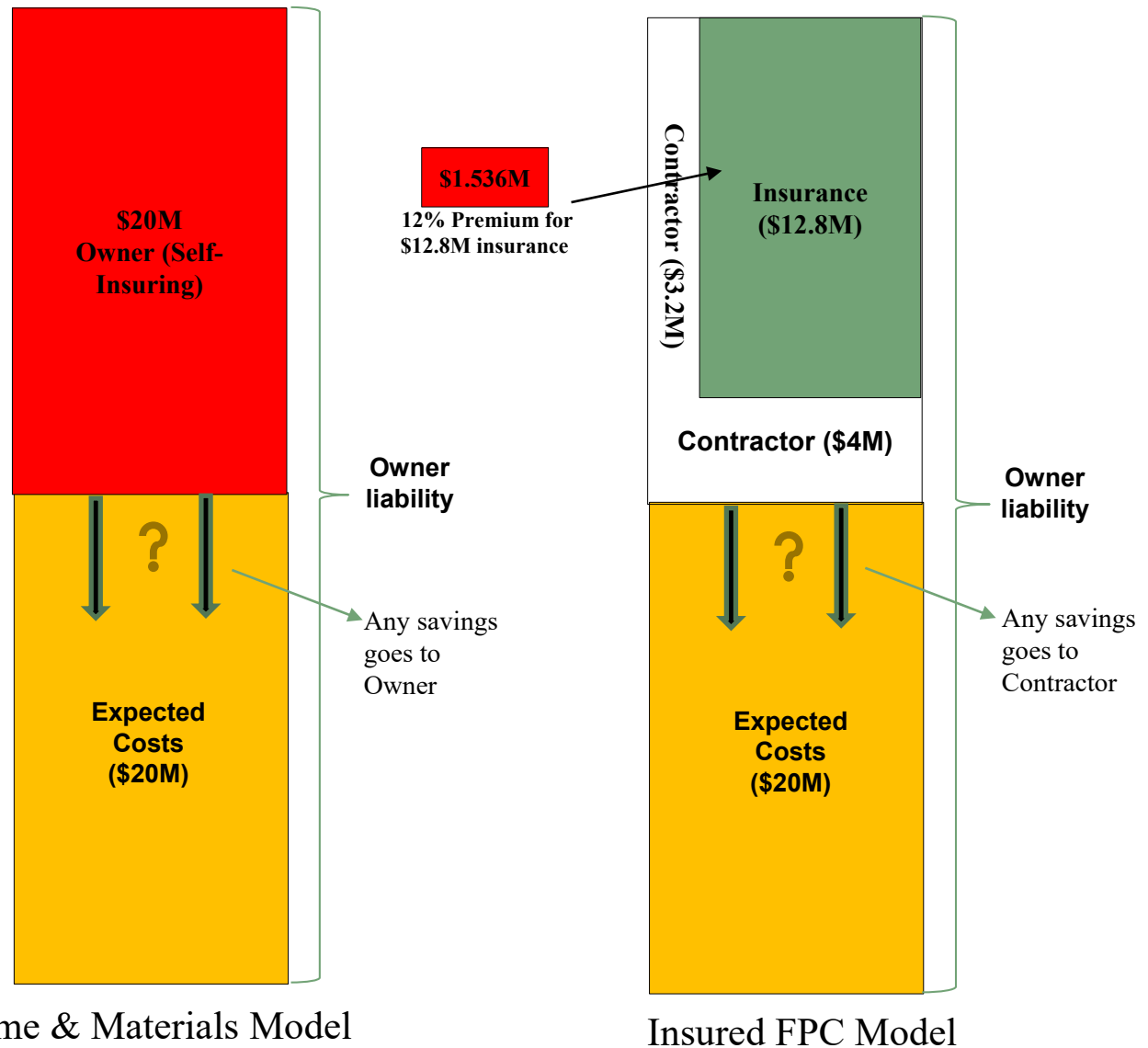
Captives Can Fill Climate-Supporting Insurance Gaps



Brownfields Alone

- 450,000 Brownfields remain. www.epa.gov/brownfields
- 1,335 NPL sites remain. www.epa.gov/superfund
- Envir. Liabilities of U.S. Gov't. alone = \$465B
 - GAO, *High Risk Series*, GAO-19-157SP, at 138-39 (March 2019) <https://www.gao.gov/assets/700/697245.pdf>. (Grew 220% 1997-2017; GAO cites need for better quantification and control)

Insured FPCs Reduce Costs, Risks and Delays



US Army, *Tracking Performance on Performance-Based Contracts* (2006) (FPCs reduce costs >21% on average, without sacrifice to schedule or quality). Accord EPA IG, *EPA Should Increase Fixed-Price Contracting*, 13-P-0208 (2013).

FPCs Also Help Contractors

- 70% chance of profit of 13% to >40%
- Max. loss = 5%

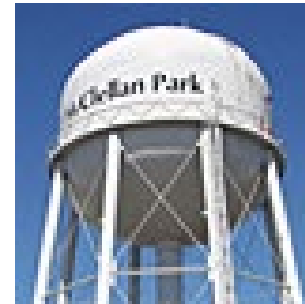
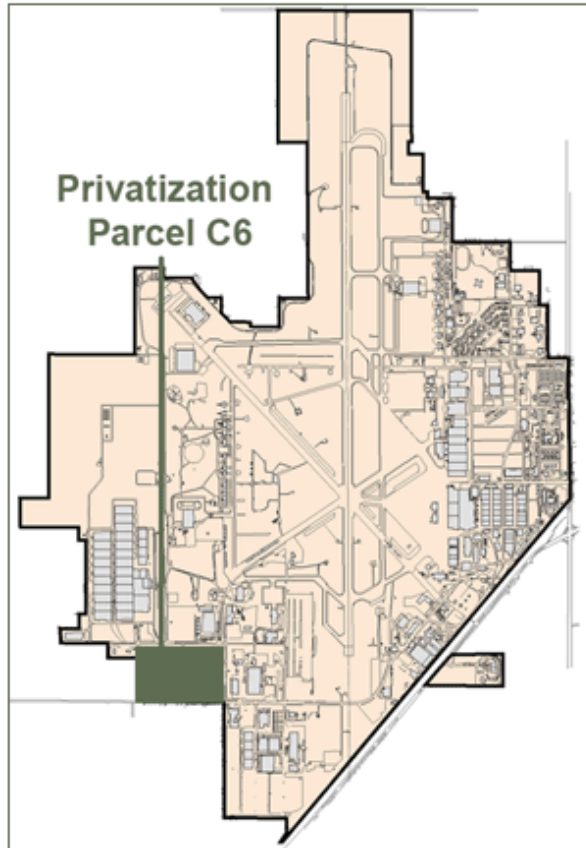
<u>Contractor's Incentives/Risk Profile*</u>				
	<u>Cleanup Cost Ranges</u>			
	\$6M to \$8M	\$8M to \$10M	\$10M to \$12M	\$12M to \$20M
Profit/Loss:	\$4.78M - \$3.04M	\$3.04M - \$1.3M		
Profit/Loss:			\$1.3M - (\$.44M)	(\$.44M) - (\$1M)

*With FPC set to allow 13% margins on work

Break-even Point:
\$11,494,253

First Use of Cost Cap Alternative (Led to EPA's 1st Annual Site Reuse Award)

McClellan Air Force Base Site Background



- Parcel C6 (\$11M; 62 acres) 1st privatized cleanup at NPL via FOSET, and 1st completed (2007, 2009)
- FOSET #1 (\$14M; 545 acres) (2010)
- FOSET #2 (\$16M; 528 acres) 1st use of Cost Cap Alternative. EPA approved and applauded. (2012)
- FOSET #3 (\$20M; 207 acres) (2015)

Award: <https://www.afcec.af.mil/News/Article-Display/Article/1653015/epa-honors-afcec-team-at-former-mcclellan-air-force-base-with-national-site-reu/>

1st Major FPC (1998)

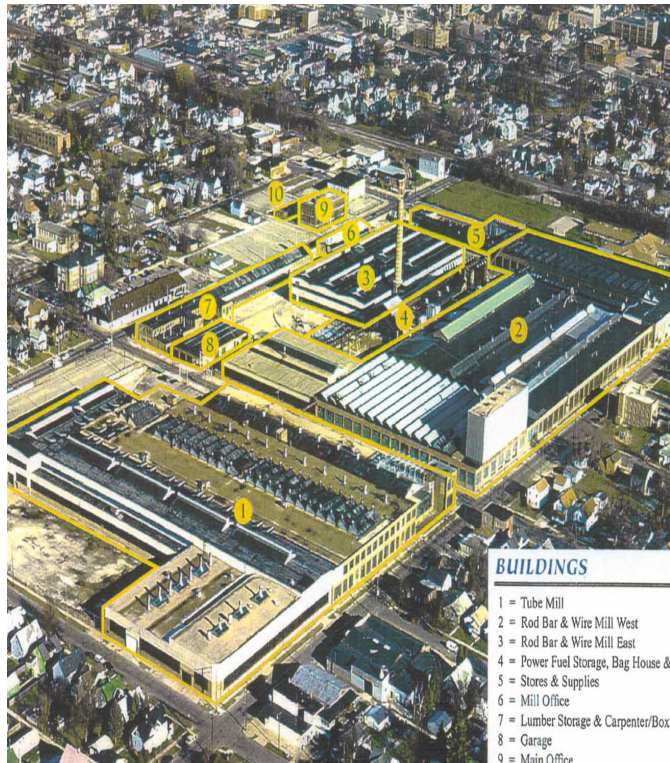
(PBWO Site, Maine)



3,000 PRPs. \$15M FPC (v. \$25M estimate). Reception:

- “Maine Experiment May Point The Way To Ending Tangle Of Litigation Around Superfund Law” (**WSJ** Headline, Apr. 29, 1998); “Sounds like good old American ingenuity to me;” (*Id. quoting EPA Adm’r.*); “A great idea.” (*Id. quoting Chair, Senate Envir. & Public Works Comm.*)
- “[T]he government should consider adapting industry strategies to achieve its goals [of remediating BRAC properties.]” **Lockheed Martin & Inst. for Defense Analysis**, *Site Remediation & Rdvpt.* (March 23, 2000)

Best Years of Envir. Insur. (1998-2004) (e.g., 2002 FPC for BP & City of Kenosha, WI)



- \$10.1M FPC (v. conventional estimates of \$15-\$20M)
- \$5M paid via Brownfield grants and Tax Incremental Financing.
- BP's costs reduced to \$5.1M; City obtained jobs- and tax-generating 30 acre urban center.

*Reference: C. Olson, R. Bursek, and M. Jones, *Urban Renaissance: From Brass Manufacturing To Uptown Brass Center*, Air & Waste Mgt. Ass'n. (Dec. 2005).

Captives and Environmental

- **Particularly suited to environmental** in light of Traditionals' 1984 full exit; 2011 Cost Cap full exit; and 2016 hardening of PLL and other.
- **Greater regulatory protections** (Traditionals have no regulatory review of terms, nor access to guaranty funds).
- **Added credibility w regulators** (espec. when fronted).
- **Terms known up front** (*e.g.*, at time of FPC bid).
- **Customizable** (*e.g.*, periods >10 years).
- **Premiums lower.**
- **Premiums likely return to Owner.**
- **Direct access to Reinsurers and Fronting Insurers.**

PLL-Alternative Allowed \$1.8B Brownfield Rdvpt. (2018)

www.ngawest.com



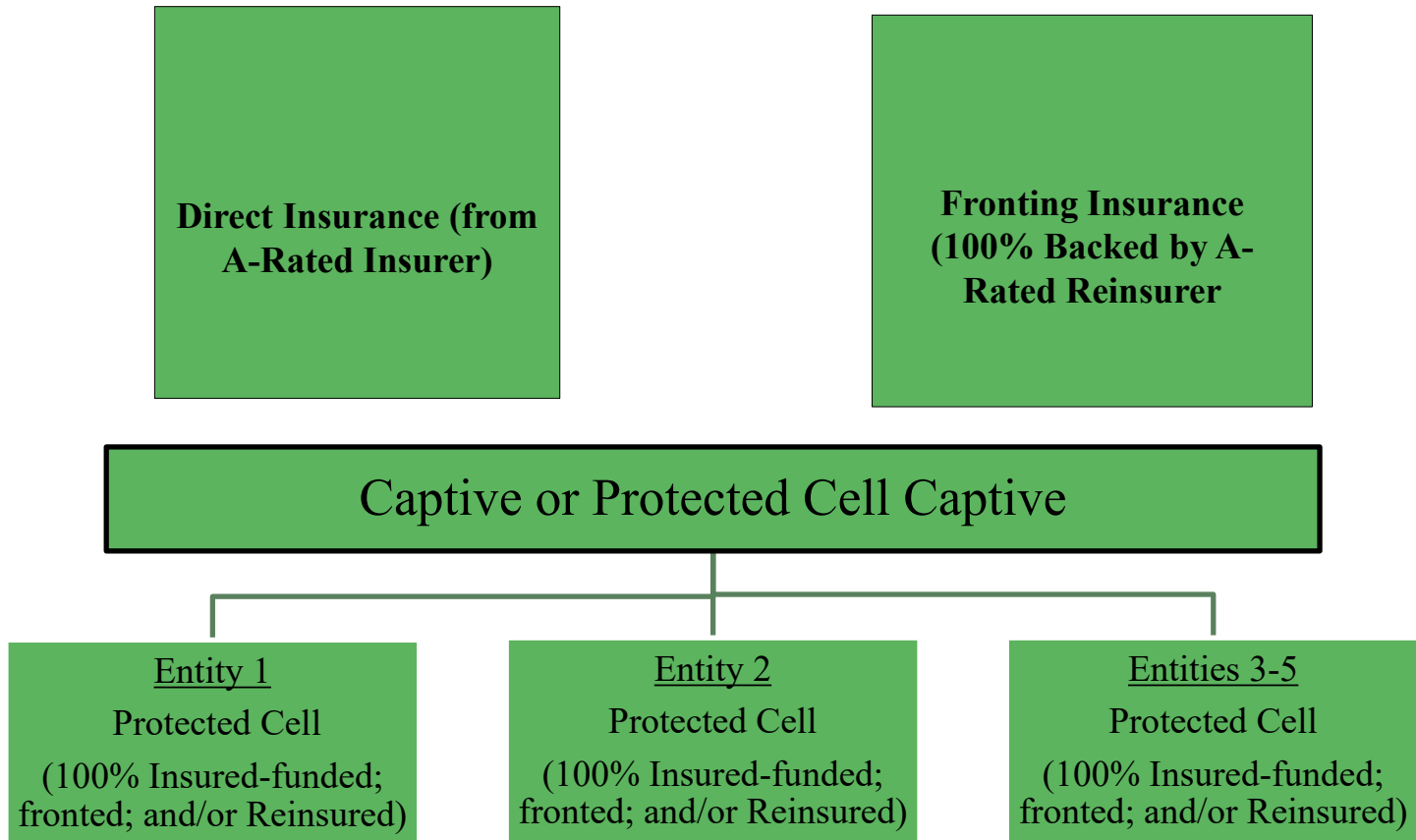
City purchased PLL and proffered to USG to encourage \$1.8B (3,000-job) redevelopment of 97 acres. PLL excluded all pollutants in fill, discovered during redevelopment; and/or already known to exist even if only at safe levels.

USG rejected City's policy and obtained separate PLL without the above exclusions and supplemented with Alternative covering remaining PLL risks.

Early Market Leaders

- TRC (1st successful FPC contractor)
 - Stock price rise from \$4 to \$56/share ('98-'02)
- Cherokee (1st successful Brownfield developer):
 - IRR >60% for over 10 years
- 2020 Insurer (direct or reinsuring) of Cost Cap and other Climate-Supporting products. Likely to dominate and expand the roughly \$2B environmental insurance market.

2020 Options



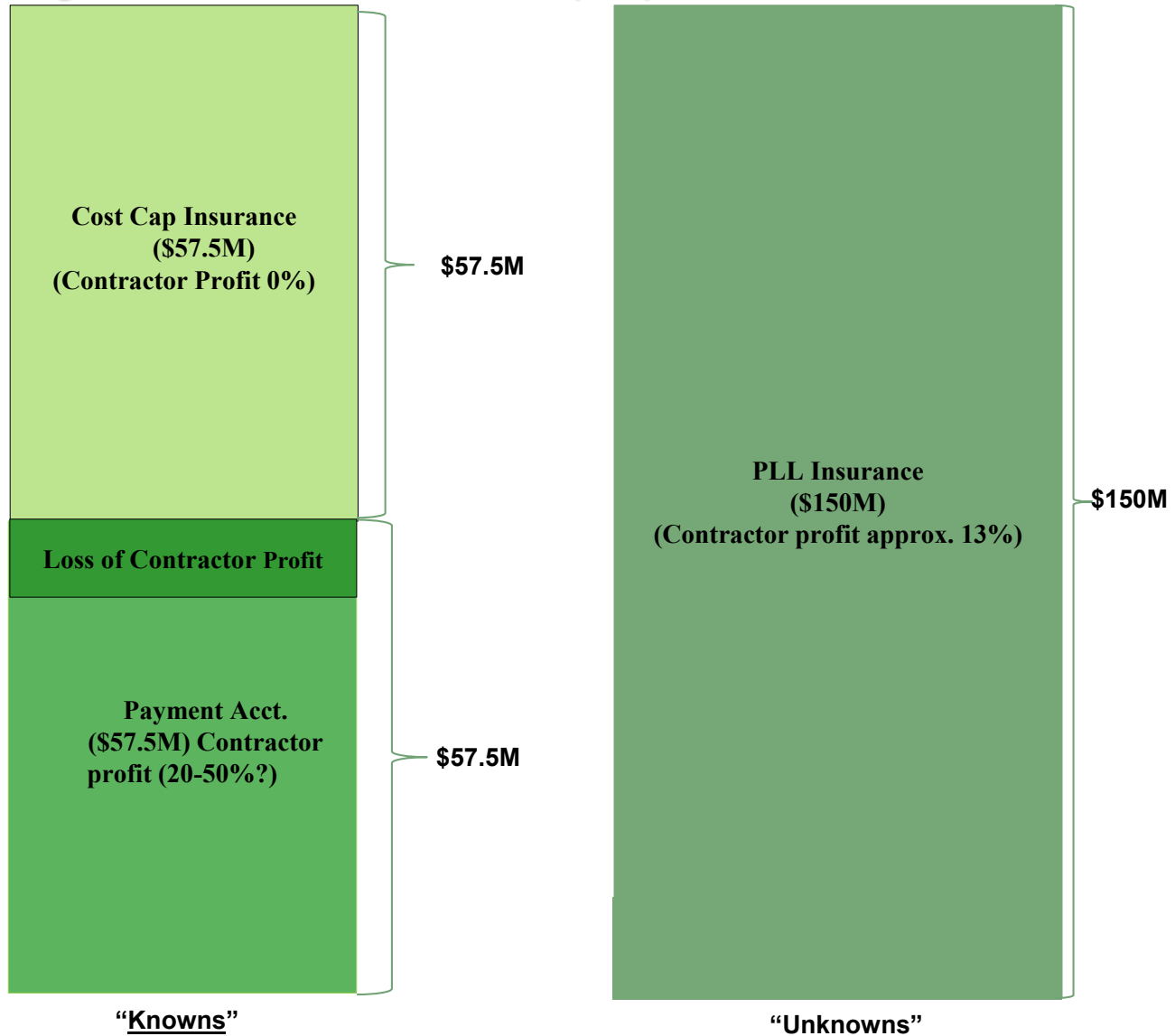
Each cell

Climate-Supporting Insurance (3 Areas to Grow; ≥ 3 to Create)

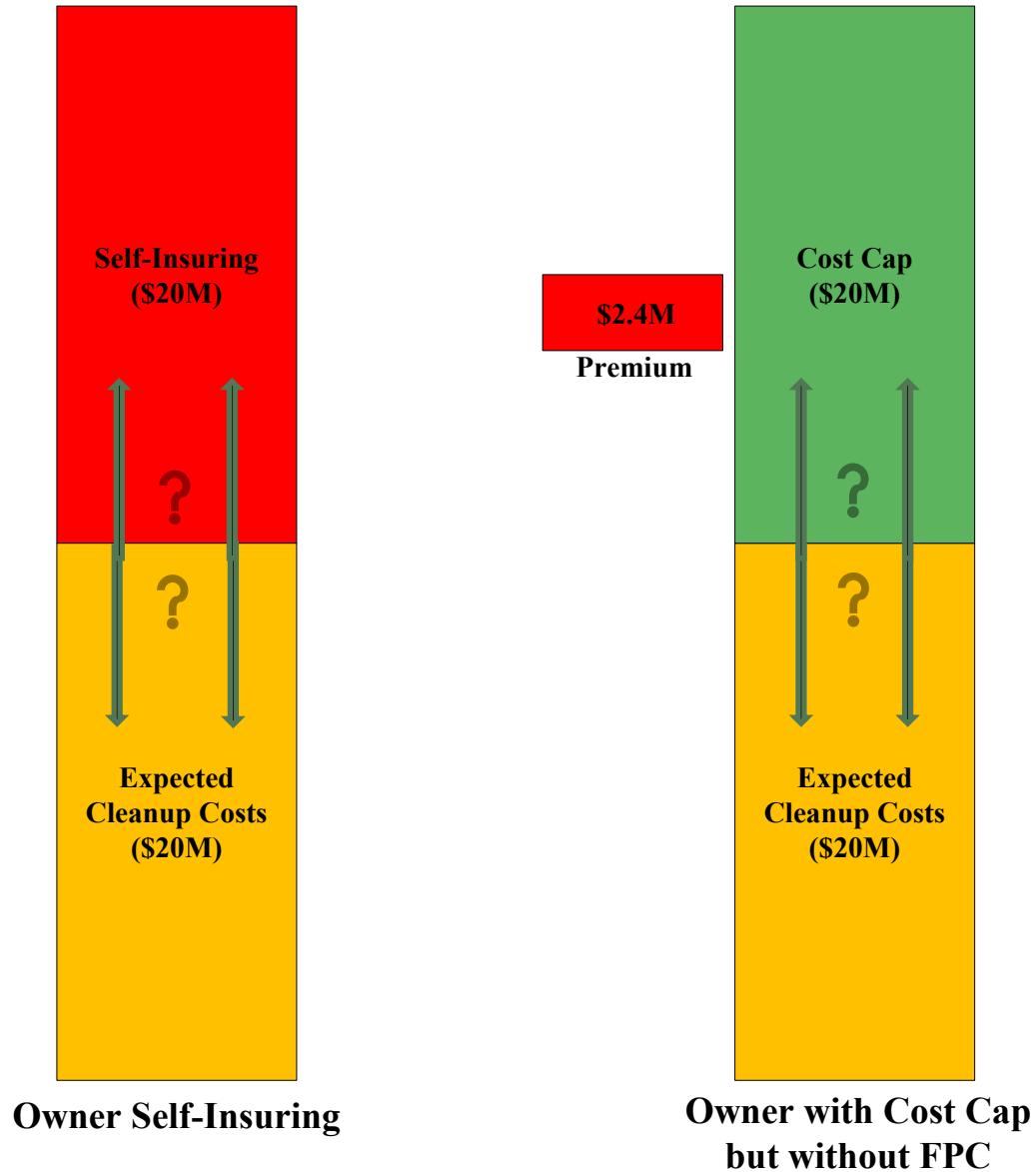
- **Brownfields** (cleanups reduce VMTs 32-57%)
- **Wetlands Enhancement**: (current policies weak/illusory)
- **Nuclear Plant Decommissioning**: (1st envir. liability transfer in 2018; grossly uninsured; >10 others proposed or anticipated)
- **Solar-on-Brownfields** (current policies weak/illusory)
- **Forest-Related Carbon Credits** (since 2010, CAR has called for private insurance to replace “Buffer Pool”)
- **Off-Shore Wind** (exists at scale only in places that lack hurricane and other risks present in the U.S.; as with nuclear, gov’t. support will be required)

Errors In Cost Cap Sales (ex. 1 of 3)

(selling with FPCs that lacked proper Contractor incentives)



2000-2010 Errors In Cost Cap Sales (ex. 2 of 3) (selling outside of context of FPCs)



Michael Hill

- Environmental Attorney (1986-present)
 - DOJ Trial Attorney (1986-1990);
 - Associate and Partner in large firm (1990-2000) (clients included largest EI purchaser, pioneer of FPCs);
 - Principal at Alba (law firm & brokerage) (2004-present).
- Environmental Insurance Broker (2002-present)
 - National Leader then Chair of Marsh's Envir. Practice (world's largest);
 - Principal at Alba (2004-present).
- Environmental Client (1998-2002; 2010-2012)
 - Counsel for, then Senior Vice President of, TRC (1998-2002)
 - COO & General Counsel of \$773M GM Trust (world's largest envir. remediation and rdvpt. Trust) (2010-2012, while also at Alba)
- U.S. Gov't. Contractor (2005-present):
 - Created the Cost Cap Alternatives discussed today. Represents no Contractors