

DARRELL B. CHODOROW

Principal

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Mr. Darrell Chodorow is a principal in the Washington, DC office of The Brattle Group. He has twenty-five years of consulting experience in commercial damages, valuation, and tax matters with The Brattle Group. His work has covered a broad array of industries including oil, natural gas, and electricity; biotechnology, pharmaceuticals, and chemicals; commodities and financial services; gaming; consumer products; high technology and media; and transportation.

His expertise includes developing practical insights from detailed analyses of complex business and financial contracts in the context of damages quantification, asset valuation, and the evaluation of economic substance underlying transactions. Mr. Chodorow has been identified as a leading expert witness in arbitration, in quantum of damages, and in construction quantum and delay by the Who's Who Legal Consulting Experts Guide.

Commercial Damages: Mr. Chodorow provides testimonial and non-testimonial consulting on damages in breach of contract, intellectual property, antitrust, and other matters. He has acted as an expert in cases before U.S. state and federal courts, the U.S. Tax Court, and the District Court of Cyprus, as well as arbitrations before AAA, ICSID, ICC, LCIA, PCA, BCCC and ad hoc tribunals.

Business and Asset Valuation: Mr. Chodorow has valued businesses, financial assets, and business assets in litigation and non-litigation matters. He has valued assets in a variety of sectors including agricultural products, cement, chemicals, financial products, gaming, mining, oil & gas, and electricity.

Tax Disputes: Mr. Chodorow has advised the Internal Revenue Service, the U.S. Department of Justice, and taxpayers on matters related to economic substance, research tax credits, transfer pricing, and asset valuation. Cases related to economic substance include BLIPS, Son of Boss, CARDS, DAD, STARS, short-sale, and leasing transactions.

In addition to authoring expert reports and testifying, Mr. Chodorow has worked closely with a number of leading economic and finance academics. They include University of California at Berkeley Professor Daniel McFadden, winner of the 2000 Nobel Prize in Economic Sciences; Massachusetts Institute of Technology Professor Stewart Myers, author of the world's leading corporate finance textbook; and Ohio State University Professor René Stulz, former president of the American Finance Association.

Prior to joining Brattle, Mr. Chodorow was an associate in the Energy, Chemicals and Pharmaceuticals group of Booz Allen & Hamilton and at Global Petroleum clearing trades in the futures trading room. He received a B.A. in economics from Brandeis University and an M.B.A. from the Yale School of Management, where he was invited to be a teaching assistant for courses in financial accounting, decision making, and economics.

REPRESENTATIVE EXPERIENCE

Commercial Damages – U.S. Federal and State Courts

- Mr. Chodorow provided expert testimony assessing the damages analysis underlying the request for a \$50 million bond in a Lanham Act matter.
- In a lawsuit alleging predatory conduct by a market research provider, Mr. Chodorow submitted an expert report in federal court estimating damages to the plaintiff.
- Mr. Chodorow submitted an expert report on damages in a case involving alleged patent infringement in the biotechnology industry.
- In a matter alleging collusion among financial products providers, Mr. Chodorow evaluated the excess profits earned as a result of the alleged collusion.
- On behalf of a pest control company, he submitted an expert report estimating damages arising from the alleged breach of a distribution agreement and patent infringement.
- For an industrial products company, Mr. Chodorow submitted an expert report on damages in a dispute over a distribution agreement and the accompanying option to purchase the supplier.
- In a lawsuit over an exclusive pharmaceutical distribution agreement for the Former Soviet Union, Mr. Chodorow testified on the reliability of a damages claim in excess of \$300 million arising from the supplier's alleged breach of contract.

Commercial Damages – Arbitration Proceedings

- *Permanent Court of Arbitration in The Hague:* On behalf of a minority shareholder in a major financial institution, Mr. Chodorow worked with Professor Stewart Myers to critique the valuation methodologies used to determine the price applied in a mandatory share repurchase.
- *International Centre for the Settlement of Investment Disputes:* Mr. Chodorow estimated damages to foreign investors relating to alleged violations of Chapter 11 of NAFTA by the United Mexican States through the imposition of a tax on high-fructose corn syrup.
- *Arbitration Institute of the Stockholm Chamber of Commerce:* He estimated damages arising from an alleged violation of a license agreement granted to a Chinese chemical manufacturer.

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- *London Court of International Arbitration:* Mr. Chodorow evaluated the economic factors surrounding the alleged breach of a crude oil supply agreement between a large buyer and a state-owned oil company.
- *ICC International Court of Arbitration:* He conducted an assessment of the implementation of a valuation clause in a cross-border joint venture agreement involving the beverage industry.
- *American Arbitration Association:* Mr. Chodorow provided expert testimony on issues relating to market timing, directed brokerage, and damages in the mutual fund industry.

Valuation Matters

- In the oil & gas industry, Mr. Chodorow has:
 - Advised a board of directors on the valuation impact of a proposed refinery upgrade.
 - Evaluated the reliability of the methodology and conclusions reached in an appraisal of a multi-billion dollar petroleum refining and marketing business.
 - Valued crude oil reserves and assessing the impact of changes in prices on reserve values.
 - Assessed the loss in value arising from a proposed injunction on the start of production for a coalbed methane project.
 - Valued lease interests in the Marcellus shale.
 - Analyzed the value of liquefied natural gas (LNG) sale and purchase agreements.
- In a dispute over a gaming license in an Asian market, he valued the gaming business resulting from a multi-billion dollar investment program relying on the license.
- Mr. Chodorow advised on the fair market value of the assets during negotiations over the sale of a controlling stake in a large cement, aggregates, and ready-mix concrete business.
- For an entrepreneur considering the purchase of hydroelectric generating assets, Mr. Chodorow estimated the fair market value of the target assets.
- Mr. Chodorow advised a client on the valuation of online gaming assets that generated net gaming revenues of nearly \$1 billion per year.
- On behalf of a potential acquirer, he assisted in the valuation of transmission assets being offered for sale by a vertically-integrated electric utility.
- Mr. Chodorow has valued a wide variety of financial instruments.

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Tax Matters

- In *Roy E. Hahn and Linda G. Montgomery v. Commissioner of Internal Revenue*, Mr. Chodorow testified on the potential for economic profit and non-tax business purpose of the CARDS transaction.
- For both the U.S. Government and taxpayers, Mr. Chodorow has evaluated issues related to economic substance and business purpose for transactions including: BLIPS (*Klamath Strategic Investment Fund LLC v. U.S.*); “Son of Boss” (*United States v. Woods*); CARDS (*Country Pine Finance, LLC v. Commissioner of Internal Revenue*); Distressed Asset/Debt (*Southgate Master Fund LLC. W. United States*); STARS (*Salem Financial Inc. v. United States*); corporate restructurings; and sale-leaseback transactions.
- In a variety of matters, Mr. Chodorow advised clients on transfer pricing issues both for advance pricing agreements and in the course of litigation. Industries analyzed include liquefied natural gas, mining, commodities trading, insurance, and pharmaceuticals.
- In multiple cases, Mr. Chodorow assessed the reasonableness of claimed valuations of performing and non-performing debt instruments.
- Mr. Chodorow submitted an expert report valuing crude oil reserves worth nearly \$1 billion in a tax basis dispute and presented before an IRS Appeals panel.
- On behalf of a taxpayer, Mr. Chodorow evaluated whether a company bore the economic benefits and burdens of research costs for which it claimed research tax credits.
- In multiple cases, Mr. Chodorow has evaluated the economic reasonableness of a taxpayers’ claimed tax treatment of hedging transactions conducted using exotic derivatives.
- Mr. Chodorow advised a promoter of alleged abusive tax shelters on potential damages in a class action lawsuit by its customers.

PUBLICATIONS AND PRESENTATIONS

“Valuing Natural Resources Investments,” in *Contemporary and Emerging Issues on the Law of Damages and Valuation in International Investment Arbitration*, (with R. Caldwell and F. Dorobantu), May 2018.

“An Economic Evaluation of ‘Funding’ for Research Tax Credits”, (with S. Ledgerwood). *Tax Notes*, Volume 144, Number 13 (September 29, 2014): 1593.

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Credit, Where Credit is Due: An Economic Approach to Evaluating the Issue of “Funding” in Research Tax Credit Claims, (with S. Ledgerwood), February 2014.

“The BP Royalty Trust: Warning of Impending Price Declines or a Failing Economic Indicator,” Notes at the Margin, (with P. Verleger), September 2012.

“The Economic Implications of the Texas Waiver on Petroleum Markets and the Broader Economy,” (with P. Verleger), June 2008.

University of Virginia School of Law, Guest Lecturer in Regulation and Deregulation of U.S. Industries, February 2008.

“Standards for Consulting Firms Working with Academic Experts,” presented at Law Seminars International’s Expert Testimony in Litigation Conference, Reston, VA, December 2004.

“The FERC, Stranded Cost Recovery, and Municipalization,” *Energy Law Journal*, Vol. 19 (2), pp. 351-386. (with others).

“Stages of Power Plant Development – A Survey,” (with F. Graves), presented at “*Boom-Bust*” in the *Electric Power Industry*, Cambridge, MA, August 2000.

“What’s in the Cards for Distribution Companies,” (with P. Hanser and J. Pfeifenberger), presented at *The Electricity Distribution Conference*, Denver, CO, April 1998.

“Distributed Generation: Threats and Opportunities,” (with P. Hanser and J. Pfeifenberger), presented at *The Electricity Distribution Conference*, Denver, CO, April 1998.

TESTIMONY AND EXPERT REPORTS

Agrizap, Inc. v. Woodstream Corp., et al., U.S. District Court, Eastern District of Pennsylvania. Civil Action No. 04-3925. Expert Report.

Bilcon of Delaware Inc. et al v. Government of Canada, Permanent Court of Arbitration CA Case No. 2009-04. Expert Report, Reply Report and Hearing Testimony.

City of Ontario v. City of Los Angeles, Los Angeles World Airport, and Los Angeles Board of Airport Commissioners, Superior Court of California. Case No. RIC 1306498. Expert Report and Deposition Testimony.

Confidential AAA arbitration involving a claim on an insurance policy covering the alleged breach of representations and warranties in an energy industry acquisition (New York). Expert Report.

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Confidential AAA arbitration involving the mutual fund industry (New York). Expert Report, Deposition Testimony, and Hearing Testimony.

Confidential Brazil-Canada Chamber of Commerce arbitration over economic losses in an insurance dispute involving assets in the pulp and paper industry. Expert Report.

Confidential ICC arbitration of alleged misrepresentations in a cosmetics industry acquisition (Singapore). Expert Report and Hearing Testimony.

Confidential ICC arbitration relating to the construction contract for a hydroelectric dam in Central America (New York). Expert Report, Rebuttal Report, and Hearing Testimony.

Confidential LCIA arbitration regarding the delivery of allegedly defective solar modules (Singapore). Expert Report.

Confidential tax dispute over the value of crude oil reserves. Expert Report and Presentation to IRS Appeals Panel.

Coverings Space NJ, Inc. v. Adele, et al., Superior Court of New Jersey. Civil Action HUD-L-3730-06. Expert Report and Deposition Testimony.

Embrex, Inc. v. Avitech, L.L.C. U.S. District Court, Middle District of North Carolina. Civil Action No. 1:04CV00693. Expert Report.

Enel Green Power S.p.A. v. Republic of El Salvador, International Centre for Settlement of Investment Disputes, Case No. ARB/13/18. Expert Report.

ErinMedia, LLC v. Nielsen Media Research, Inc., U.S. District Court, Middle District of Florida. Civil Action No. 8:05-CV-1123-T24-EAJ. Expert Report and Deposition Testimony.

Hydro-Fraser Inc., Société d'énergie Columbus Inc., Ayers Ltée v. Hydro Québec, ad hoc arbitration. Expert Report, Rebuttal Report, and Hearing Testimony.

Kayat Trading Ltd. v. Genzyme Corporation, Cyprus District Court, Nicosia District. Expert Report and Court Testimony.

Laboratorios Haymann S.A. v. Ivax Pharmaceuticals, Inc. and Teva Pharmaceuticals USA, Inc., International Chamber of Commerce International Court of Arbitration, Case No. ICC 18589/CA. Expert Report, Deposition Testimony, and Hearing Testimony.

Norfolk Southern Railway Company v. Drummond Coal Sales, Inc., U.S. District Court, Western District of Virginia. Civil Action No. 7:08CV00340. Expert Report.

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Perfetti Van Melle USA and Perfetti Van Melle Benelux v. Cadbury Adams USA LLC, U.S. District Court for the Eastern District of Kentucky, Civil Action No. 2:10-CV-35-DLB. Expert Declaration and Court Testimony.

Petroplast Petrofisa Plasticos S.A. and Petrofisa Do Brazil, Ltda v. Ameron International Corp., Delaware Court of Chancery, Civil Action No. 4304-VCP. Expert Report, Deposition Testimony, and Court Testimony.

Robert Rockwood and Roxanna Marchosky v. SKF USA, Inc. U.S. District Court for the District of New Hampshire, Civil Action No. 1:08-CV-00168. Expert Report.

Roy E. Hahn and Linda G. Montgomery v. Commissioner of Internal Revenue, U.S. Tax Court, Docket No. 1910-14. Expert Report and Court Testimony.

SCS Interactive, Inc. and Whitewater West Industries Ltd v. Vortex Aquatic Structures International Inc., U.S. District Court of Colorado, Civil Action No. 09-cv-01732-REB-KLM. Expert Report.

SoBe Entertainment International, LLC v. Paul Wight a/k/a "The Big Show," Bess Wight f/k/a Bess Katramados, and World Wrestling Entertainment, Inc., Circuit Court for Miami-Dade County, Case No. 09-45461 CA 09. Expert Declaration.

The Northern Cheyenne Tribe v. Gale A Norton, Secretary of the Interior and Fidelity Exploration and Production Company, U.S. District Court, District of Montana, Billings, Civil Action No. CV-03-00078-RWA. Expert Declaration.