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Evan.Cohen@brattle.com

Mr. Cohen is a valuation and damages expert with extensive experience in complex business litigation, tax controversy, transfer pricing, valuation, state tax, and mass torts.

With 20 years of experience in the standard valuation of corporations and assets, as well as the complex valuation of subsidiaries and financial instruments, Mr. Cohen can adeptly serve as a testifying expert and lead multi-expert case teams in support of a wide variety of high stakes litigation. He has provided testimony in various venues, including US District Court Court, the Court of Federal Claims, and state regulatory bodies on valuation, economic substance, and damages.

Mr. Cohen has been involved in some of the seminal economic, tax, and mass tort cases of the last two decades, including economic substance issues decided in Long-Term Capital Management, Historic Boardwalk Hall, BB&T, Fifth Third, Pritired, Buyuk, RARE, and Cross Refined Coal; transfer pricing disputes between the United States and GlaxoSmithKline, Boston Scientific, Eaton, and Facebook; state tax issues involving Comcast, Home Depot and Uber; and mass tort litigation involving the New York City Housing Authority and Toyota.

Prior to joining The Brattle Group, Mr. Cohen worked for several years as a finance consultant, focusing on litigation involving tax shelters, leasing transactions, transfer pricing, and valuation matters. He also worked as an investment banking analyst in corporate finance at Dillon Read and UBS, specializing in debt offerings and mergers and acquisitions in housing, construction, and building products. He is a Chartered Financial Analyst (CFA) charterholder. Additionally, Mr. Cohen leads a team of consultants analyzing large data sets in nutrition, publishing on nutritional trends in diet and obesity, as well as impacts of poverty on diet and health.

EDUCATION

- MIT Sloan School of Management (2001)
 MBA, Concentration in Financial Engineering
- Cornell University (1996)
 BA, Economics (magna cum laude)

PROFESSIONAL EXPERIENCE

• The Brattle Group (2008–Present)

Principal (2013–Present)

- o Co-Chair of Associate Development Committee (2013–Present)
- o Practice Leader: Tax and Restructuring (2013–2019)

Senior Associate (2008–2012)

Recipient, the Bill Moss Award for Excellent in Mentorship and Development, 2012



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Cambridge Finance Partners (2002–2008)

Consultant

NextCourier Networks, Inc. (2001–2002)

Chief Financial Officer

Dillon, Read & Co./UBS (1997–1999)

Financial Analyst

TESTIMONY & AFFIDAVITS

Estate of Connelly v. United States

Federal District Court for the Eastern District of Missouri

On behalf of the United States: Expert report and deposition testimony (2020)

• Jeffrey W. Herrmann and Mina Gerowin Herrmann v. United States

US Court of Federal Claims

On behalf of the Herrmanns: Summary witness testimony (2017)

Confidential Arbitration

On behalf of a private client: Joint declaration to international arbitration panel (2017)

• Georgia House Ways and Means Committee

On behalf of Uber Technologies: Tax affidavit (2017)

 Steven A. Stender, Harold Silver and Infinity Clark Street Operating, L.L.C, et al. v. Archstone-Smith Operating Trust, et al.

Federal District Court for the District of Colorado

On behalf of plaintiffs: Expert report, rebuttal report, and deposition testimony (2015)

Confidential Bond Valuation

On behalf of a private client: Valuation affidavit (2013)

Robert J. Nagy v. United States of America

Federal District Court for the District of South Carolina

On behalf of the United States: Summary witness testimony (2010)

SELECTED CONSULTING EXPERIENCE

Tax Controversy

Confidential expert witness retention on economic substance

Currently retained to offer expert testimony regarding the economic substance of certain transactions linked to the federal ethanol excise tax credit.



Tax consequences, valuation, and investor behavior regarding over 100 transactions involving donation of conservation easements

For the Department of Justice (DOJ), leading a case team supporting three experts on the economic and tax consequences of syndicated easement transactions. Supporting real estate development expert opining on the feasibility of proposed development scenarios, a valuation expert opining on the fair market value of the land before and after the easement donations, and an economic and finance expert opining on investor behavior. Also providing summary witness testimony regarding the flow of easement claims through the partnerships to thousands of taxpayer entities.

Reasonable rate analysis on related party loan

For the Canadian Department of Justice, providing consulting and expert support on case involving the reasonable rate and related interest deductions of several billion dollars in related party loans inside the real estate portfolio of the Ottawa Teachers Pension Plan.

Evaluation of captive insurance arrangements in providing bona fide coverage

For taxpayer in a currently pending US Tax Court case, investigating the economic substance including both tax and non-tax effects of the captive insurance arrangements undertaken by the company. Providing both consulting and expert support in analyzing whether or not this arrangement provides bona fide insurance.

Analysis of transactions related to refined coal tax credit

For taxpayer in a case in US Tax Court involving the refined coal tax credit, provided consulting and expert support for attorneys and trial team. Supported testimony included analysis of the risks and economic substance of transactions involving clean coal. Led a team implementing a Monte Carlo approach to assessing the risks taken on by each party in the transaction. The judge issued a bench ruling after trial in 2019 in the taxpayer's favor, relying in part on the risks the taxpayer was exposed to in the transactions.

Economic Substance analysis of oil and gas drilling partnerships

For the DOJ, analyzed the economic substance of hundreds of syndicated drilling partnerships, requiring analysis the expected and actual profitability of the transactions, and an opinion on any non-tax economic effects on the transactions including the claimed intangible drilling costs. Based partly on our consulting work, settled favorably for the government.

Analysis of non-tax economics of financing transactions

For the DOJ in a case in the Southern District of New York, conducted analysis examining the non-tax economics of several financing transactions termed "foreign tax credit generator transactions" by the government, which were undertaken by a major international insurance company. Settled favorably for the government in 2018.



Analysis of qualified written notices of allocation and patronage notes

On behalf of the DOJ, examined the debt and equity attributes of qualified written notices of allocation, and later patronage notes. The key issue was the economic attributes of the notes and their classification for tax purposes as debt or equity. Case settled favorably for the government in 2018.

Financial analysis of Fortune 500 joint venture

On behalf of a Fortune 500 consumer products company, examined the economics of a partnership transaction which created a joint venture involving several hundred thousand acres of timberlands, which the IRS alleged was a disguised sale. Examined the risks undertaken and the economics of the partners, including the financing arrangements of the partnership. Settled favorably for the company in 2018.

• Summary testimony on foreign partnership cash flows

On behalf of an individual taxpayer, examined the cash flows from a foreign partnership and the flow of funds to each partner to conclude how much the taxpayer received from the partnership in the tax year at issue. Provided summary testimony in the Court of Federal Claims, including cross examination by attorneys from the Tax Division of the DOJ attorneys. In a written opinion from June 2017, Judge Lettow found in favor of the taxpayer. Mr. Cohen's testimony survived a Motion in Limine to exclude filed by the DOJ.

• Expert witness on historic rehabilitation tax credit

Retained by the IRS as an expert witness on economic substance involving the historic rehabilitation tax credit. Analyzed transaction and structure of partnership transaction, which the IRS claimed lacked economic substance and non-tax business purpose. Settled favorably for the government in 2016.

Evaluate fraudulent conveyance and unjust enrichment claims in tax shelter transactions involving a major international investment bank

For the DOJ attorneys in a case in the Southern District of New York, evaluated the government's claims inside an alleged tax shelter of fraudulent conveyance and undue enrichment due to hundreds of millions of dollars in loans and related options and hedging transactions involving an effectively insolvent entity. Required economic analysis of several transactions whose economic viability relied solely on tax avoidance. Settled favorably for the government in 2016.

Analysis of financials regarding coal-fired electric plants

For Exelon in its tax dispute regarding Section 1031 like-kind exchanges and Exelon's purchase of coal-fired electrical plants, analyzed the non-tax economic effects of the leases, options, and assets involved in the transaction. Supported the testimony of MIT Professor and Brattle co-founder Stewart Myers, including his work in one of the first instances of concurrent testimony in the United States. US Tax Court ruled against taxpayer in 2016.



Expert reports on hedge fund capital gains

For the IRS in an appeals hearing, supported four experts, including a Nobel Laureate and a Stanford Business School professor, in preparing two reports regarding a hedge's funds claim of conversion of billions of dollars in trades from short-term to long-term capital gains through options underwritten by two investment banks. Examined the risks taken on by the investment banks or retained by the hedge fund, and critiqued the analysis of the hedge fund's experts, including a Nobel Laureate, in assessing the probability of a loss event and the magnitude of potential losses if such an event were to occur.

Investigation of Instant Tax Services

On behalf of the DOJ, examined the business practices of Instant Tax Services (ITS), including their fee structure, their refund loan business, and their ability to follow industry standard practices to properly monitor franchises from filing false or misleading taxes on behalf of individuals. Federal District Court ruled in favor of the government in granting an injunction against ITS, barring them from filing others' taxes, which eventually led to the owner's criminal conviction and the business's shutdown.

Economic Substance of Distressed Asset Debt (DAD) and Distressed Asset Trust (DAT)
 For the IRS, in the Buyuk transaction, considered economic substance issues and incentives
 of the parties in promoted tax shelter transactions involving tax benefits claimed based on the
 purchase of a portfolio of distressed Russian business receivables. In ruling for our client, the
 US Tax Court judge relied heavily on testimony sponsored by Brattle.

In a separate DAD/DAT case on behalf of the DOJ, examined the transaction's structures and supported the government in their contention that the transactions were abusive tax shelters. Supported experts opining on the economic substance of the structures and the industry norms in the consumer receivable secondary market. Case settled favorably for the government.

Valuation of residual interests in IRS dispute

For the IRS in US Tax Court regarding the valuation of residual interests in long-running dispute with the IRS centered around using the applicable federal rate in the donative valuation of residual interests for tax purposes. The analysis turned on assessing the different risks of near-term and long-term cash flows and how to properly apportion value. The matter was decided favorably for the IRS with heavy reliance on opinions supported by Brattle.

Expert support on hedging techniques

For the DOJ in a case involving an alleged Ponzi scheme centered around the effectiveness of the hedging program and the implications of improper hedging techniques, including the determination of sale versus loan and its impact on tax reporting of various parties. Supported various experts in separate court venues, including Stanford professor Paul Pfleiderer's testimony on the sufficiency of the hedging portfolio in protecting against the risks sold to investors. Mr. Cohen provided summary testimony to the Federal District Court in South Carolina, contributing to a jury ruling in favor of the government.



Financial analysis in economic substance dispute over leases

For Wells Fargo in a dispute with the IRS and DOJ, supported several internal rebuttal experts related to an economic substance dispute over several leveraged lease transactions and the expert report of Dr. Thomas Lys on behalf of the taxpayer. Rebuttal analysis revealed material flaws in Dr. Lys's assessment of risk and computation of the present value of cash flows related to the transactions. Led team on the production of two rebuttal reports, and helped prepare expert and attorneys for trial.

Analysis of historic tax credits

For the IRS, provided analytical evaluation of economic substance of a partnership designed to transfer historic tax credits in the case against Historic Boardwalk Hall. Led team developing the cash flow model necessary for the evaluation of risk transfer and economic substance in light of the Congressional mandate of the historic rehabilitation tax credit. The Appeals Court overturned the trial court in providing the ultimate ruling for the government, buttressed by Brattle-supported testimony.

Financial analysis of LILO transactions

For the DOJ on three cases involving Lease In/Lease Out (LILO) and Sale In/Lease Out (SILO) transactions, aided the attorneys in developing evidence to support arguments on economic substance, substance over form, and pre-tax business purpose. Supported multiple experts in different venues to analytically show that the transactions were fully defeased and left the parties with no pre-tax economic risks. Analyzed cash flows to support opinions on circularity, and examined option exercise scenarios and their sensitivity to various parameters, including interest rates and the value of the underlying assets, as well as potential default scenarios. Our work contributed to three rulings in the government's favor: summary judgment in BB&T, and jury verdicts on all counts in the government's favor against Fifth Third in Federal District Court in the Southern District of Ohio (2008) and Altria in the Southern District of New York (2009).

Analysis and modeling of tax consequences of contingent liability

For the DOJ in a dispute involving the tax consequences of a contingent liability in the coal industry, examined underlying contracts, and produced econometric models to measure the likelihood of the various contract contingencies arising.

Economic substance analyses of STARS foreign tax credit disputes

For the DOJ and IRS in cases involving the STARS transactions, analyzed the economic substance of the transaction from the perspective of the US taxpayers. Resulted in favorable outcomes for our clients in the Bank of New York, Wells Fargo, Salem, and Santander cases.

Insurance company foreign currency tax matter

Consulted for the investment division of a major insurance company involved in a tax matter over foreign currency options. Examined underlying documents to develop a cash model, which provided insight into the sources of pre-tax returns to meet economic substance and form over substance standards. Documented and presented the results to the client and legal team and consulted over negotiation and settlement strategy.



Foreign tax credits in Pritired

For the DOJ in the *Pritired* case, analyzed the economic substance of international structured finance transaction involving investment by Principal Life Insurance and Citibank. Resulted in a favorable ruling for our client.

Financial analysis for DOJ in cross-border leasing transaction

For the DOJ in a case involving a basis pump fueled by cross-border leasing transactions, examined issues involving the step transaction doctrine, economic substance, substance over form, and pre-tax business purpose. Resulted in landmark economic substance ruling in favor of the government by the Federal District Court in Connecticut in 2003.

Transfer Pricing

Dispute involving buy-in payment and intangible development costs

For the IRS, analyzed Facebook's 2009 licensing agreement and 2010 transfer of its intellectual property to its Irish subsidiary in a dispute over the buy-in payment due to Facebook US. Developed critique of transaction and framework for arm's length valuation of the platform, installed user base, and marketing intangibles. Currently pending in US Tax Court.

Cancellation of Advanced Pricing Agreement and de novo transfer pricing analysis

In a dispute with the IRS, worked with tax, transfer pricing, and litigation team for Eaton Corporation, an electric supply manufacturer from 2007 through the completion of trial in 2015. Helped counsel develop framework for understanding the sources of value along the electrical manufacturing supply chain and what the sources of profitability were for Eaton. Supported UC Davis Professor Shannon Anderson in her testimony about the cancellation of the advanced pricing agreement with the IRS. Working with multiple experts, developed testimony on the industry and the proper arm's length transfer pricing methodology. In a novel transfer pricing ruling bolstered by Brattle-supported testimony, the US Tax Court ruled in favor of Eaton.

Favorable settlement with IRS in transfer pricing dispute

On behalf of a Fortune 500 client, examined the termination of the manufacturing relationship between the company's domestic and international units and developed an analytical framework to consider whether or not the parties transacted with each other on an arm's length basis. Supported the testimony of Boston College Professor Cliff Holderness, who considered the range of potential relationships from joint ventures to joint ownership and examined the specificity of assets within the contractual relationships in his opinion, which helped the client settle favorably with the IRS.

Medical device R&D transfer pricing dispute

For taxpayer's expert, helped to develop rebuttal testimony to IRS experts in a major transfer pricing dispute regarding the manufacture of medical devices. Analysis required novel valuation techniques for in-process R&D and a detailed functional analysis of the business.



Novel analytical approach in pharmaceutical transfer pricing dispute

For the IRS in a transfer pricing dispute where the IRS alleged a major pharmaceutical company was overpaying its R&D arm at the expense of its domestic marketing and distribution operations, supported the testimony of Dr. Josh Lerner from Harvard Business School in examining the sources of value in the pharmaceutical industry using a novel analytical approach. The analyses involved an econometric approach to estimating business and technological progress between venture capital rounds, and a financial model of the drug development process that showed that the majority of the residual profit belonged with the marketing and distribution function in the United States. Resulted in a settlement for the government after the filing of opening reports in 2006 on approximately the terms of our analysis.

Valuation

Estate tax dispute involving corporate-owned life insurance in the valuation of a privately-held corporation

For the DOJ, provided expert testimony regarding the fair market value of a building supply distributor after the company received life insurance proceeds following the death of one of the owners. In the context of generally accepted corporate valuation principles, considered the arm's length valuation of the company and the deceased owner's shares. Submitted expert report, deposition testimony, and an affidavit in support of summary judgment. Currently pending in federal court in the Eastern District of Missouri.

Confidential arbitration regarding breach of contract damages

Retained as an expert by a private client to analyze damages due to lost profits and inability to access financial markets from a breach of contract. Filed affidavit resulting in favorable settlement for our client in arbitration.

Balance sheet treatment during financial crisis

For a private consumer products company, examined their capital structure through acquisitions and reorganizations before, during, and after the global financial crisis to assess the debt and/or equity characteristics of their balance sheet. The dispute involved whether or not some of the company's debt should have been accounted for as equity at some stages of the company's operating history.

Expert report and testimony in multibillion-dollar REIT case

For the Class A-1 Shareholders of the Archstone-Smith Trust UPREIT, provided testimony as a valuation and damages expert in class-action litigation by the A-1 Shareholders against the REIT managers and the banks who oversaw their \$22 billion leveraged buyout (LBO) in 2007. The A-1 Shareholders needed to ascertain if a common damages methodology could be applied to all shareholders to certify the class. The A-1 Shareholders alleged that they were forced to exchange for either cash, which would trigger a significant tax liability, or shares in the new REIT, which were. Provided an expert report and deposition testimony for the federal court in the District of Colorado estimating damages to the A-1 Shareholders.



Valuation of bonds and intracompany indebtedness

For a private Fortune 500 client, provided affidavit analyzing the value of the company's bonds and other internal, intracompany indebtedness. Analyzed market rates, comparable indebtedness, and modeled cash flows from specific debt tranches.

Subsidiary valuation for corporate restructuring of Eaton

For Eaton Electric, working with Professor George Foster of Stanford University, provided valuation opinions at dozens of different subsidiary levels to aid in the multi-level restructuring of the company. Working with an antiquated and inconsistent accounting platform, created financial statements for each legal entity, and performed discounted cash flow (DCF) and comparable company valuation analyses.

Creditworthiness of corporate subsidiaries

For a private client, supported an outside expert in developing an opinion on the creditworthiness of several corporate subsidiaries, providing analysis and opinion as to the implied credit rating of each as stand-alone entities.

Analysis of Chicago Tribune LBO

Evaluated the accuracy of valuation models used by investment banks and other firms in the *Chicago Tribune* LBO and bankruptcy. Reverse engineered an LBO valuation model to help the client develop legal and negotiation strategies.

Bankruptcy analysis saved client \$25 million

For a private creditor in a bankruptcy, provided economic scenario analysis and advice on various settlement offers. Advised client to reject an \$840 million payout to other creditors, eventually saving them \$25 million in the final negotiation.

Damages estimation related to bonds

Analyzed the pricing and market response to a client's bonds, including general obligation bonds, those secured by credit card receivables, and those involving a provision that allowed the client to call the bonds in the event of a large decline in receivables. Helped to formulate methodology for estimating damages from the analysis.

Damages estimate based on stock price analysis

For an investment bank involved in class action securities litigation related to Enron, prepared damages estimate based on stock price analysis and event study utilizing contemporaneous equity analyst reports.

State Tax

Assessment of state tax transfer pricing policies for Home Depot

For Home Depot, analyzed the company's treatment of related party payments and profit calculations in a transfer pricing dispute with the Indiana Department of Revenue. Considered Home Depot's actual transfer pricing and developed and implemented methodology for arm's length pricing of related party payments that contributed to Home Depot's settlement on favorable terms with Indiana.



Calculation of tax revenue on behalf of Uber in GA

On behalf of Uber Technologies, filed an affidavit with the Georgia House Ways and Means Committee on the fiscal impact of a proposed sales tax on for-hire and ride-share trips. Examined the impact of the proposal, which would have removed the sales tax on such trips and replaced it with a specific per ride tax. Concluded that eliminating the sales tax and imposing the proposed tax would raise almost \$4 million in revenue for the state of Georgia.

Examination of SC state tax apportionment for Fortune 500 company

On behalf a Fortune 500 consumer products company, examined the state tax apportionment scheme of the state of South Carolina on the company. Specifically, looked at the value of instate business activities in South Carolina, and analyzed the potential distortion between the state's sales-only apportionment approach and the actual economic activity generated by the company, whose manufacturing and headquarter operations were domiciled outside the state. Company settled its case before reports were filed.

Developed arm's length methodology for pricing related party debt in state tax dispute
 On Comcast's behalf, examined certain intercompany financing arrangements and the
 company's request to Massachusetts that it be allowed an exception to deduct interest for
 state tax purposes on centralized corporate debt imputed to the local operating subsidiaries.
 Case was tried before the Massachusetts Appellate Tax Board, who disagreed with Comcast's
 arguments in ruling in favor of the state.

Mass Torts

US v. New York City Housing Authority

For the DOJ and Department of Housing and Urban Development, lead a case team examining the effectiveness of the New York City Housing Authority (NYCHA), the largest provider of public housing in the country with over 175,000 units, in complying with federal law and mandate to provide decent, safe, sanitary housing that is in good repair. Case team investigated NYCHA's responsiveness and effectiveness in addressing issues related to lead paint, mold, heat, elevators, and pests. Provided recommendations for ongoing responsiveness levels and providing metrics to assess the effectiveness of NYCHA in dealing with these issues and satisfying federal law.

Confidential damages calculations for emissions violations

For the EPA and DOJ, analyzed disclosures of emissions violations by a major car company in order to assess propriety and effectiveness of company's compliance function and emissions recalls. Formulated methodology and calculated benefit to the manufacturer for not complying with federal emissions laws. Analyses included conjoint survey, but-for car sales and prices under the alternative hypothesis of average industry compliance, direct benefits of delayed or avoided repairs through DCF analysis, as well as the development of damages in a penalty theory regarding making non-compliance more costly.

DOJ support in lead-disclosure violation investigation

For the DOJ, provided support into the investigation into more than a dozen landlords accused of violations with lead disclosures and abatement. Worked with attorneys to examine



thousands of documents and provide actionable information for attorneys to enforce lead laws and provide tenants with lead-free housing.

Examination of market incentives in liquid fuel markets

On behalf of a liquid fuel blender, coauthored whitepaper on the liquid fuel markets, including the effects of the trading system of Renewable Identification Numbers (RINs) for ethanol under the Renewable Fuel Standard. Examined market design, information disclosure, and comparisons of the ethanol trading market to other commodity markets.

PUBLICATIONS & PRESENTATIONS

"Demystifying the Current Landscape of Transfer Pricing: Best Practices Explored," panelist, The Knowledge Group (January 28, 2021).

"Recent Trends and Developments on the Organization for Economic Cooperation and Development's (OECD) Transfer Pricing Guidelines: What You Need to Know," panelist, The Knowledge Group (February 15, 2018).

"Caloric Sweetened Beverage Taxes: A Toothless Solution," with Richard McGowan and Jehan deFonseka, *The Economists' Voice*, Vol. 14 (June 2017).

"Statistical review of US macronutrient consumption data, 1965-2011: Americans have been following dietary guidelines, coincident with the rise in obesity," with Michael Cragg, Jehan deFonseka, Adele Hite, Melanie Rosenberg, and Bin Zhou, *Nutrition* (2015).

"Corporate Inversion Transactions: Valuation Considerations," with Michael Cragg, Jehan deFonseka, and Ryan Tholanikunnel, *Tax Notes International*, (July 20, 2015).

"Public Disclosure versus Confidentiality in Liquid Fuel Markets," with Michael Cragg, David Hutchings, and Bin Zhou, *Brattle Whitepaper* (January 23, 2015).

"Experts in the Trenches: Risk, Fair Rewards, Economic Substance, and Shams," panelist, ABA 2014 Joint Fall CLE Meeting, Denver, Colorado (September 19, 2014).

"Asset Value Trumps Discounted Cash Flow in Another Bankruptcy Valuation Dispute," with Yvette Austin Smith, *Brattle Client Alert* (July 29, 2014).

Contributor for the *Wiley Encyclopedia of Management*, 3rd Edition (2013).

"Grass is Always Greener When It's Legal: Policies for State Regulated Marijuana," with Richard McGowan, *The Economists' Voice*, Vol. 9, Issue 1 (October 2012).

"Tax Policies for Legalized Marijuana in California," SSRN abstract 1626985 (August 2010).



"Can the U.S. Congressional Ethanol Mandate be Met?" with Metin Celebi, Michael Cragg, David Hutchings, and Minal Shankar, *Brattle Discussion Paper* (May 2010).

PROFESSIONAL ASSOCIATIONS & ACCREDITATIONS

- Chartered Financial Analyst (2013–Present)
- Trustee, Cambridge Montessori School, Finance Committee Member (2018–Present)
- Member, CFA Institute
- Member, Boston Securities Analyst Society
- Member, American Bar Association
- Member, Boston Bar Association

