

Welcome!

DC Arbitration Club

May 15, 2018

THE **Brattle** GROUP

COVINGTON

Agenda

Welcome to Brattle & Outline of Tonight

Introducing the DC Arbitration Club

ICCA-ASIL Task Force on Damages – Sneak Peak

Talk on Valuing Natural Resource Investments from
*Contemporary and Emerging Issues on the Law of
Damages and Valuation in International Investment
Arbitration*

Q&A on any and all topics

Socialize!

ICCA ASIL Task Force on Damages

In December 2016, ICCA and ASIL joined forces to establish the ICCA-ASIL Task Force on Damages to address an issue of particular importance, but too often overlooked, in the field of international arbitration: **quantification of damages**. The Task Force brings together a blue-ribbon panel of leading legal and economics experts from jurisdictions across the globe to think **creatively** about how **to promote consistency and rigor** in the field's approach to damages.

ICCA-ASIL Task Force on Damages in International Arbitration

The Task Force's mandate included fostering the development of a more robust and uniform approach to damages analyses in international arbitration. To that end, the Task Force have analyzed the legal, economic, and policy issues underpinning damages in the field of international arbitration, with a view not only to achieving consensus on the fundamentals, but also to identifying and disentangling the procedural, legal and financial principles related to damages.

The Task Force has decided to forego a more traditional written report in favor of developing an interactive, electronic web Application of practical application, to be used by arbitrators and practitioners alike. The web Application guides users through the key procedural, legal and quantitative issues implicated by the calculation of damages in international arbitration.

[DEMO](#)

Demo: ICCA-ASIL Web Application

Procedural

Legal

Valuation

Links to view the various procedural, legal, and valuation issues that arise in damages in international commercial arbitration

Topic

Legal

Procedural

Valuation

Procedural Checklist for Damages Issues

Organization of Proceedings

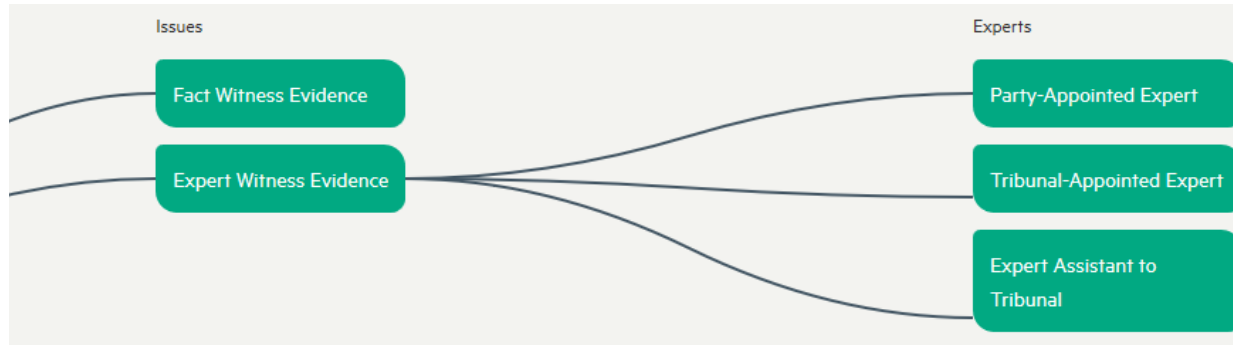
Documentary Evidence

Witness/Expert Evidence

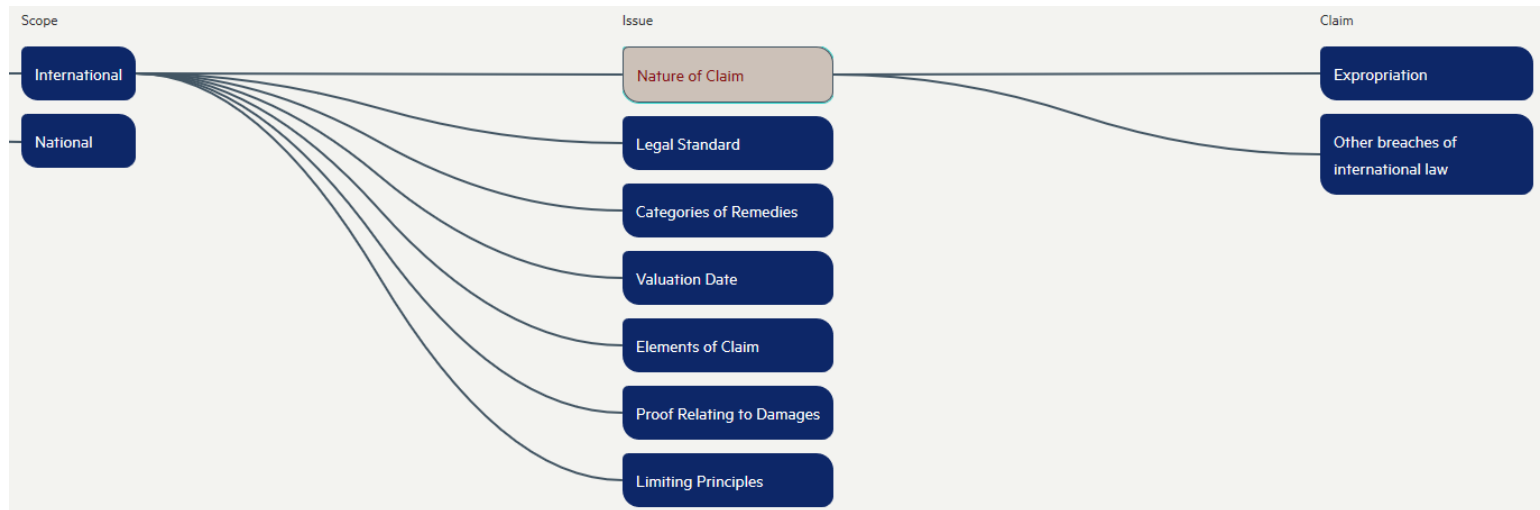
Hearing

Procedural checklist for damages issues

Demo: ICCA-ASIL Web Application (continued)

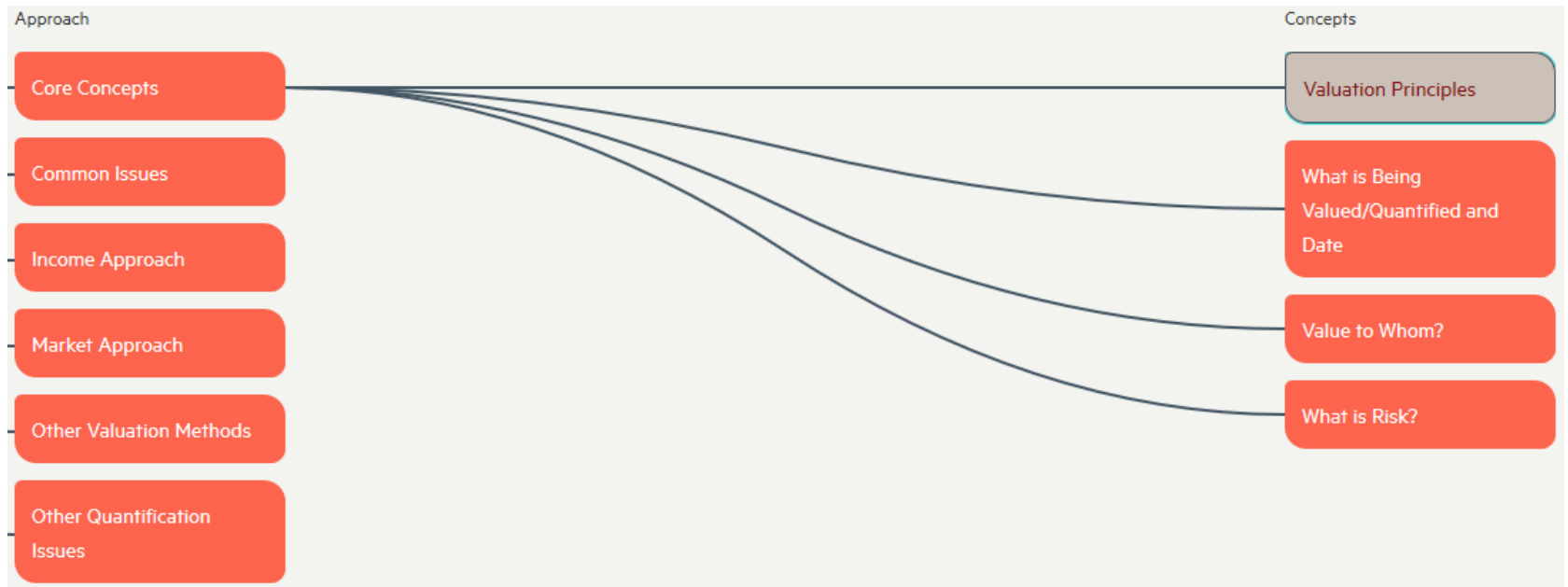


Issues that arise for each **procedural** checklist item, with experts



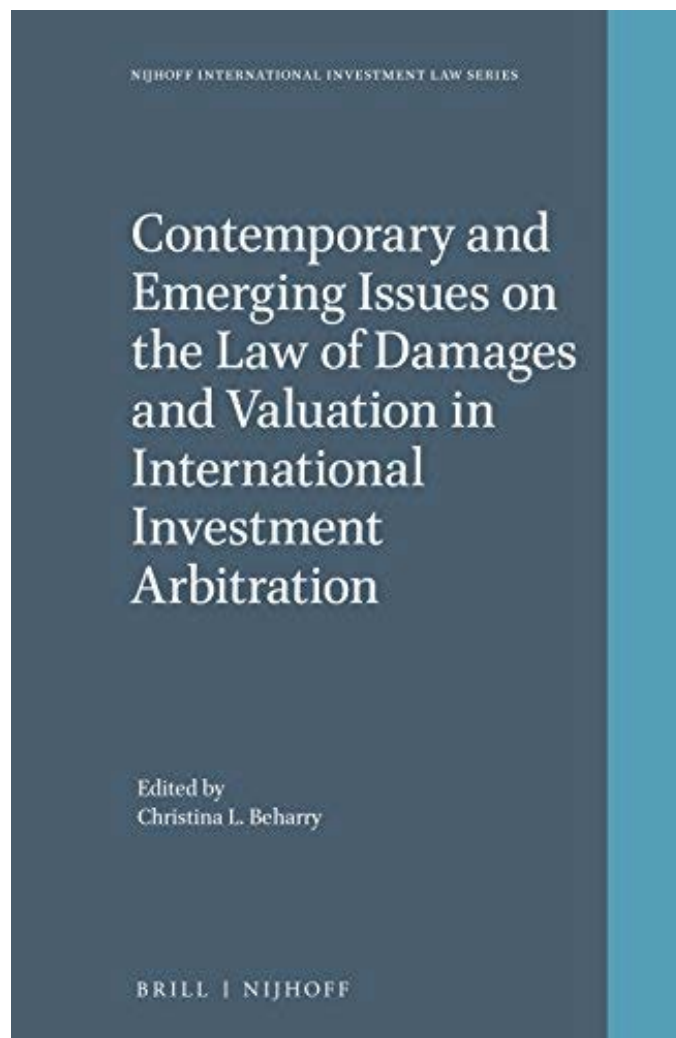
Legal scope, issue, and claim

Demo: ICCA-ASIL Web Application (continued)



Valuation approach and concepts

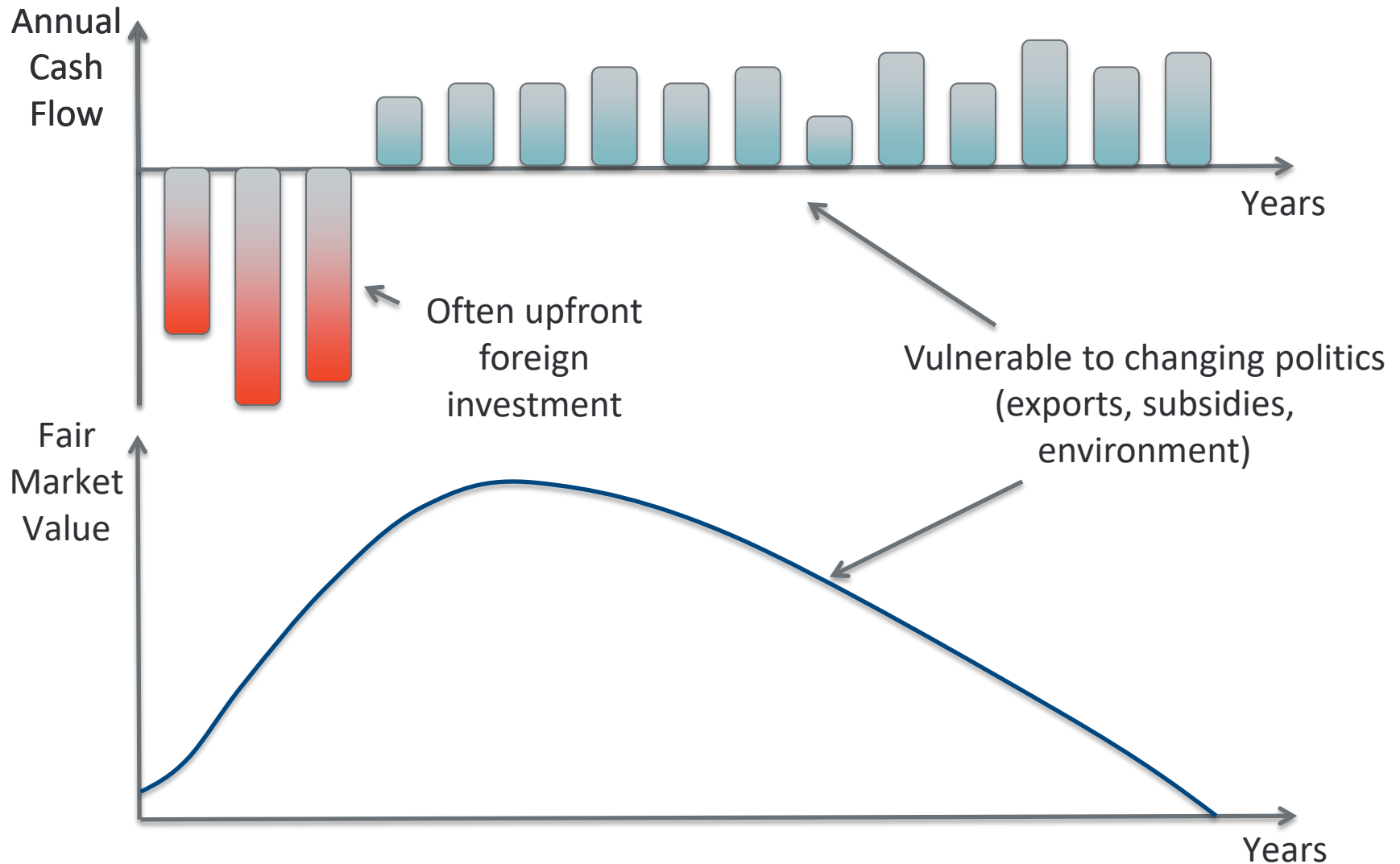
The Book



Valuing Natural Resources Investments

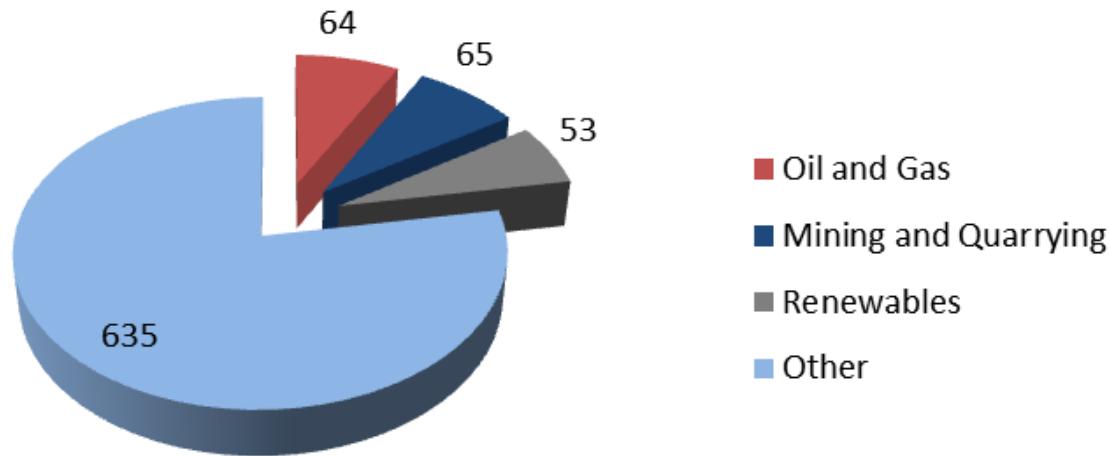
Richard Caldwell, Darrell Chodorow, and Florin Dorobantu

Why Extraction and Renewables?



Heavy Natural Resources Case-load

22% of Investor-State Cases Through July 2017

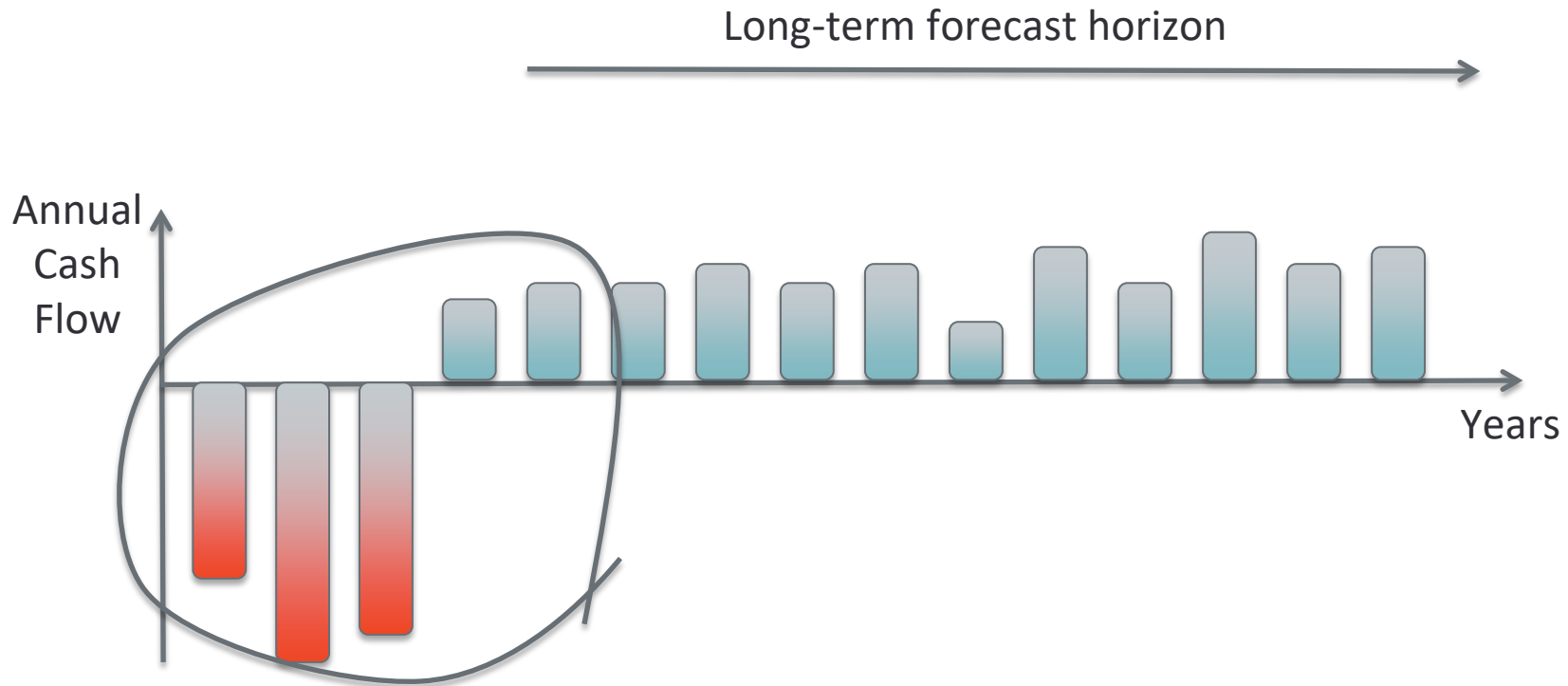


Source: UNCTAD

129 of 449 cases (29%) filed since 2010

49 of 146 cases (34%) with damages claims > \$500 mm

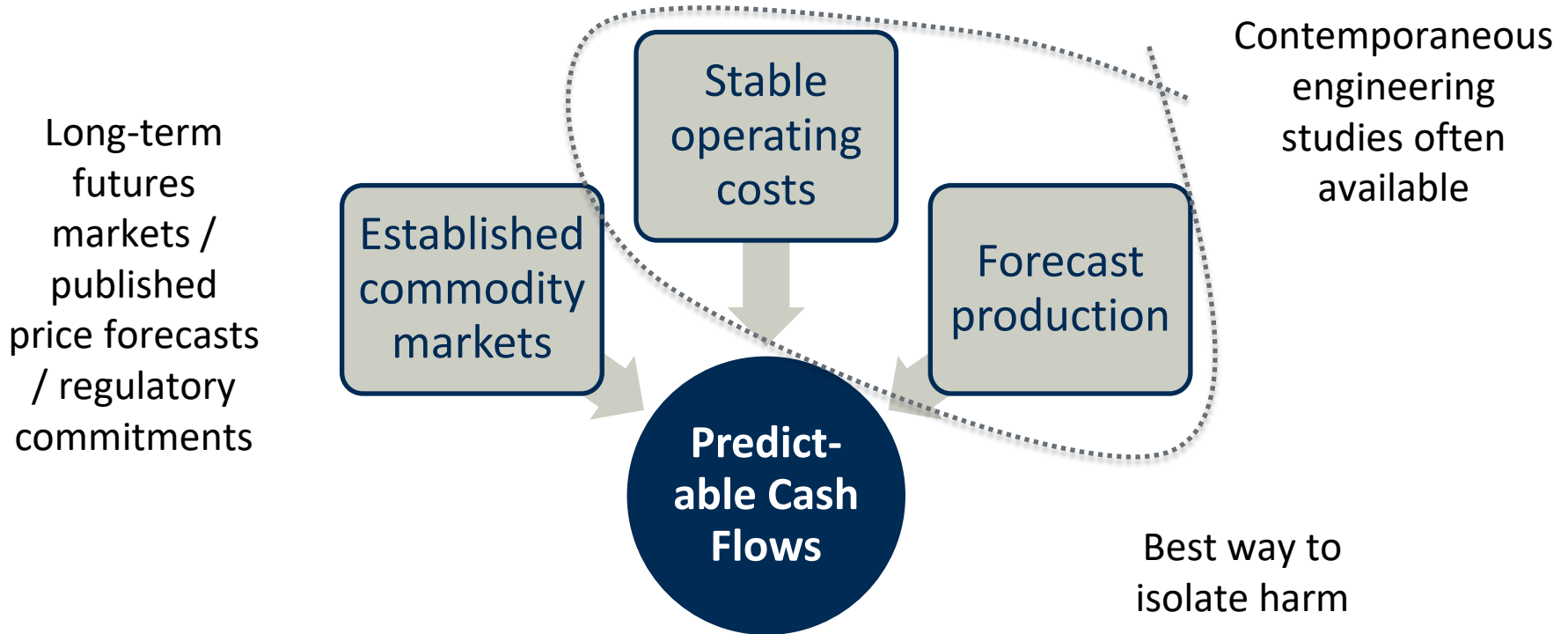
Typical Characteristics of Quantum



Breach(es) often occur early in investment life

Often allegations of “speculation”

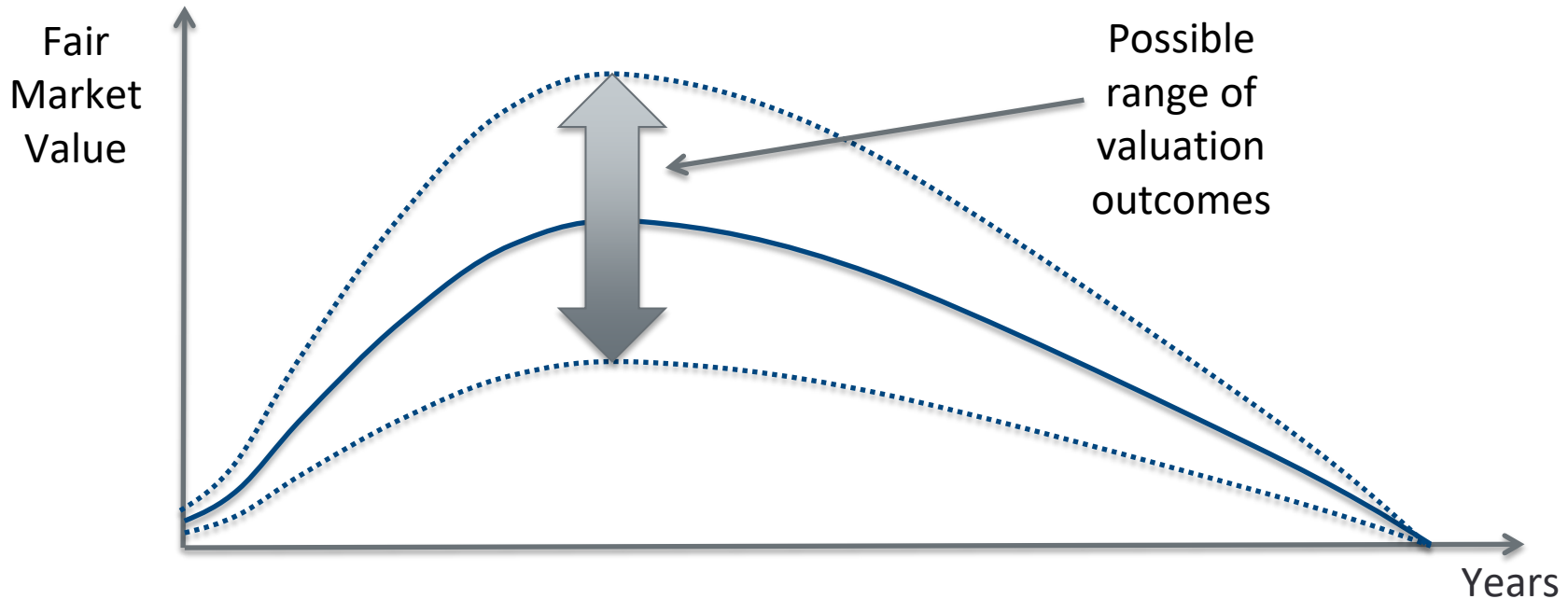
DCF Likely to Be Best Approach in Many Cases



Expert debates revolve around:

- Assumptions (date of valuation, tax burden, subsidy entitlement)
- Valuation approach (country, regulatory and counterparty risks)

Divergence between FMV and Sunk Costs



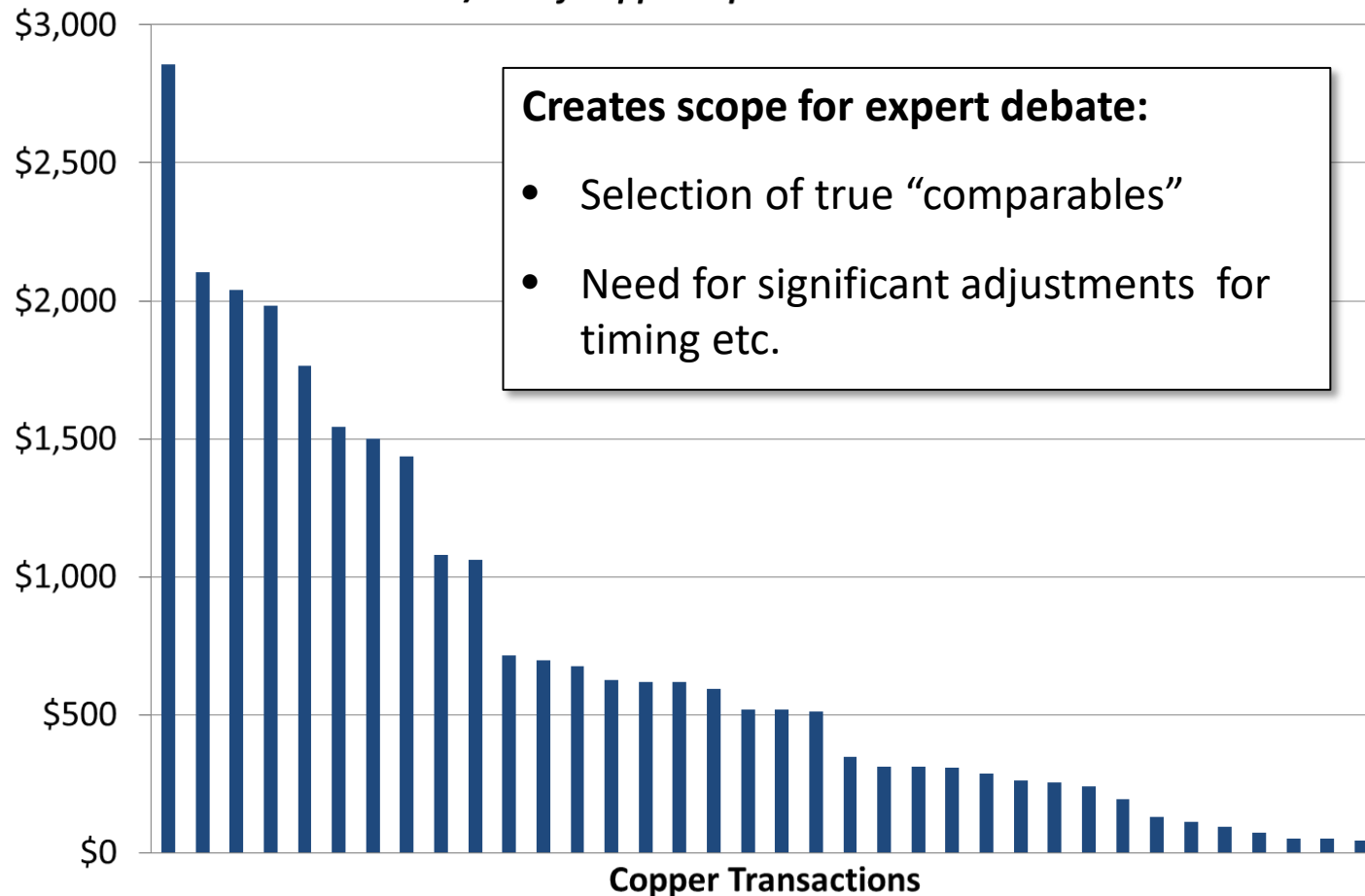
FMVs fluctuate relative to initial expectations because

- More (less) resource / production
- Selling prices higher (lower)
- Risks may resolve over time (increase)
- Interest rates may decline (rise) affecting discounting

“Comparables” Often Widely Dispersed

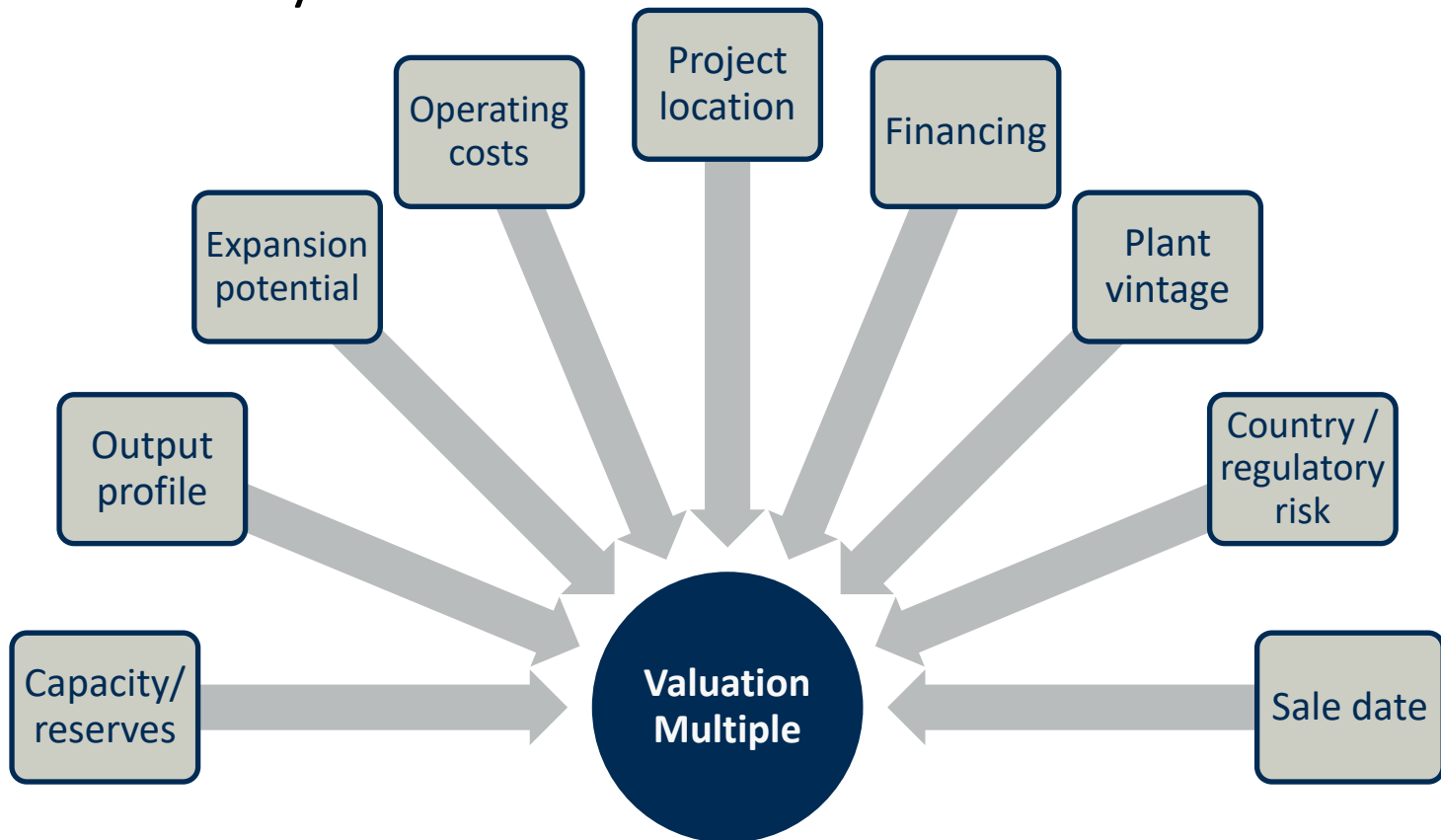
Multiples come from asset transactions and publicly traded firms

Multiples from Copper Transactions in 2010 and 2011
USD/MT of Copper-Equivalent Reserves



True Comparability is Hard to Find...

...involves many dimensions



...may require many adjustments

Share Prices can be Informative...

**Historical Stock Price of Junior Miner
(USD/Share)**



...but interpret with care

Q & A