

Mr. David Hutchings is a Principal in Brattle's litigation and finance practice where he specializes in conducting economic analysis in complex tax, securities, and antitrust matters. He testifies, supports experts, and leads case teams in analyzing and developing economic and financial evidence to support attorneys.

Having assisted experts and attorneys for both taxpayers and taxing authorities, Mr. Hutchings has extensive experience in tax disputes and transfer pricing matters. He has worked on cases such as *Cross Refined Coal LLC*, *Eaton*, and *Salem*. He focuses on developing innovative economic analyses to assess the best method, economic substance, substance over form, and the business purpose doctrine for use in all stages of tax controversy and tax planning. Clients have retained him to serve as an expert and to author expert reports on tax issues.

Mr. Hutchings is also experienced in securities matters. He has been involved in several disputes arising out of the financial crisis related to residential mortgage-backed securities, credit ratings, and financial guaranty insurance. These matters often involve managing large amounts of data and conducting detailed statistical analyses. Mr. Hutchings has both offered expert evidence and supported leading academic experts, including Nobel laureate Joseph Stiglitz in securities matters.

In antitrust and competition matters, Mr. Hutchings consults to attorneys and industry and academic experts. These matters have included mergers and single-firm conduct. He has written on using insights from competition economics in tax disputes and other economic analyses. Additionally, Mr. Hutchings is experienced in valuation and commercial damages in varied contexts. He has estimated damages arising from tortious interference, breach of contract, and other contractual and extra-contractual remedies.

Mr. Hutchings began his career at Brattle as a Research Analyst, and before that was a Research Associate at the MIT Center for Real Estate.

EDUCATION

- University of Toronto, Faculty of Law, J.D.
- University of Toronto, M.A. in Economics
- Massachusetts Institute of Technology, B.S. in Economics and B.S. in Mathematics

AREAS OF EXPERTISE

- Tax Controversy and Transfer Pricing
- Securities and Finance
- Commercial Damages
- Antitrust/Competition
- Regulation and Public Policy

EXPERIENCE

Tax Controversy

- Provided consulting support to a taxpayer in developing expert strategy and support testifying economist in *Cross Refined Coal, LLC v. Commissioner*. Developed economic and financial analyses to model risk exposure to partnership and individual investors to assess substance of the transaction. Our client prevailed in a rare bench opinion.
- Analyzed worthless stock deduction claim in a long-running IRS appeal for Veolia that was ultimately resolved favorably for our client in 2019. Developed contract-by-contract analysis of profitability and other financial analyses to rebut IRS claims and support valuation and ultimate deduction.
- Investigated hedging policies of large insurance firm in dispute with the IRS over the tax treatments of hedging strategies. Managed team of Brattle personnel evaluating derivative products and reconciling varying state and federal regulations. Case settled favorably for our client.
- Performed extensive analyses of two Offshore Portfolio Investment Strategy (OPIS) transactions in support of a Brattle expert's reports and testimony for the IRS. Investigated the pre-tax profitability and non-tax business purposes of these transactions and provided consulting support to the attorneys and expert through trial and appeal. Involved valuing a host of exotic options using analytic and simulation methods, comparing the transactions to alternative investment strategies, and reconciling transaction documents. Both cases were decided for the IRS in Tax Court and upheld by two different Circuit Courts.
- Supported Columbia Professor and Nobel Laureate Joseph Stiglitz in his testimony for the DOJ regarding a series of transactions between U.S. and foreign financial institutions that were alleged to have created improper claims of tax benefits. Provided consulting support to attorneys, including those new to the case, and extensive collaboration with Prof. Stiglitz on the cash flows and structures of the transactions. The matter settled favorably before trial.
- Worked with the IRS and DOJ to analyze the Structured Trust Advantaged Repackaged Securities (STARS) structure regarding foreign tax credits that were alleged to have been created by subjecting the income to U.K. taxes. Involved extensive review of transaction documents, cash-flow modeling, tests of the pre- and post-tax profitability of the transactions, and research into U.S. and U.K. banking practices with a large Brattle team. Three cases have

already been decided for the DOJ and IRS at trial and, so far, two upheld on appeal by different Circuit Courts.

- Analyzed a series of different tax-motivated transactions that include a Son of BOSS structure to offset significant income on taxpayers' tax returns. Provided consulting support to DOJ attorneys on valuing options, evaluating the economic substance, and identifying economic similarities amongst a wide set of transactions. Worked with expert to develop testimony and prepare for deposition. The matter settled favorably before trial.
- Supported Brattle Chairman Michael Cragg in his testimony in U.S. Tax Court regarding the valuation of residual interests in long-running dispute in a long-running dispute with the IRS. 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 Dr. Cragg's opinions.
- Provided support to MIT Professor Stewart Myers in his testimony for Exelon in its recently-tried tax dispute regarding Section 1031 like-kind exchanges and Exelon's purchase of coal-fired electrical plants. Analysis involved extensive financial analysis of leases, options, and assets.

Transfer Pricing

- Involved in analyzing all aspects of Eaton's transfer pricing policies in its dispute with the IRS regarding cancelled APAs. Worked with over a dozen other Brattle personnel to coordinate testimony of six Brattle-supported experts, with primary responsibility for the main transfer pricing economist's report, testimony, and trial preparation. Collaborated closely with trial team before and at trial to craft effective direct testimony presentation and provide real-time support for redirect testimony and cross-examination topics for opposing experts. The matter was decided favorably for our client.
- Analyzed The Coca-Cola Company's transfer pricing policies in its dispute with the IRS in involving over \$9 billion in proposed adjustments. Involved in detailed functional and transfer pricing analysis of the best method.
- Developed 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, a detailed functional analysis of the industry, and adjustments to accounting statements to properly measure economic profit for a system profit-style analysis. The matter settled favorably before trial.

- For a large Canadian financial institution in a transfer pricing dispute with the CRA, supported economic expert in developing evidence regarding the proper bargaining framework for allocating losses.
- Supported expert in credit analysis in forming an opinion on the reasonableness of an intercompany debt guarantee between a U.S. parent and Australian subsidiary in a dispute with the Australian taxing authority.
- Provided consulting support to in-house and external counsel on various intercompany financing arrangements. This included analyzing the creditworthiness of several corporate subsidiaries in support of an academic, formerly of a major credit rating agency providing analysis and opinion as to the implied credit rating of each as independent entities.

Securities and Finance

- Supported Nobel Laureate Professor Joseph Stiglitz in developing testimony for financial guaranty insurers in a series of disputes against mortgage banks related to alleged breaches of representations and warranties regarding the quality of mortgage assets in RMBS and allegedly fraudulent activity. Additionally, led Brattle team that developed econometric analyses around RMBS securitizations. Involved in all phases of case development and preparation with attorneys, including in-person deposition and cross-examination support of both sides' experts and working on summary judgment motions.
- Offered expert testimony on behalf of objectors in settlement proceedings related to RMBS. Details confidential.
- Provided expert support in a successful dispute over the U.S. government's imprudent management of tribal funds. Involved benchmarking performance of a fixed-income portfolio strategy over time, constructing alternative portfolios and simulating their performance, and rebutting the governments' experts' claims regarding the prudent time horizon for investment and the liquidity requirements of the fund. The Nation prevailed in its Phase I claims and settled with the government on favorable terms before trial for Phase II.
- In a matter related to the collapse of a Structured Investment Vehicle (SIV) during the recent financial crisis, developed direct and rebuttal reports on behalf of named plaintiffs on the structure of the SIV market, the importance of credit rating agencies, and the impact of misrepresentations by credit rating agencies on the plaintiffs. This work involved extensive analysis of documents, review of relevant literature, and critiquing opposing experts' claims. The matter settled favorably before trial.

- Performed due diligence on the process of historically revaluing a bond fund that failed during the 2008 credit crisis for the purpose of making whole the investors in the fund. Involved the analysis and valuation of a variety of mortgage-backed securities, collateralized debt obligations, and other asset-backed securities.

Commercial Damages

- Analyzed a failed Latin American merger at the center of an arbitration dispute over whether the merger was improperly prevented by one of the parties. Provided expert support in estimating the value of the potential merger based on market reactions and the erosion of the value over time. As part of the work, reviewed proposal documents to demonstrate why certain analyses by the other party's advisors that had been used to conclude the merger was ill-advised rested on faulty assumptions. The matter settled favorably before the hearing.
- Led a Brattle team that analyzed the financial performance of a major consumer-goods manufacturer and its relationships with distributors in Eastern Europe in defending a claim for breach of contract and tortious interference. Involved detailed review of financial statements, assessing the reasonableness of forecasted future earnings, proper allocation of overhead costs, and conceptual issues of perpetual growth. The arbitral panel ultimately decided favorably for our client.
- For an international arbitration proceeding related to the Argentine Republic's handling of the sovereign debt crisis of the early-2000s, aided expert in developing testimony analyzing the appropriateness of sovereign responses to the crisis and critiquing opposing reports that the actions taken were inappropriate. In particular, examined the value of then-novel GDP-indexed bonds, compared their returns to other holdings, and analyzed how their use contributed to economic recovery.
- Part of a Brattle team that developed testimony and analysis quantifying damages for a Fortune 500 firm involved in a dispute over whether it had disclosed a regulatory pricing restriction when it sold its pharmaceuticals division. As part of the analysis assessed degree to which information had already been encompassed in disclosures made during the acquisition process.
- In a securities class action arising from alleged manipulation by a U.S. cosmetics company involving unique hybrid securities, assisted expert in providing advice to counsel on the range of damages to plaintiffs using event-study methodology and derivative pricing.

Antitrust/Competition

- Provided consulting support in an expedited matter before the Federal Trade Commission (FTC) involving leading healthcare software providers. Prepared analysis and potential testimony for a host of experts on industry structure, technology interfaces, the allegedly anticompetitive acts, and the implications for the general public welfare, especially in light of changing regulations in the healthcare market (e.g., ACA, ICD-10). Focused particularly on developing analyses that estimated the magnitude of the welfare impact. Assisted attorneys in crafting their initial complaint and subsequent briefings with the FTC, after which the matter was resolved favorably for our client.
- Analyzed potential anticompetitive effects of transactions for clients considering mergers and acquisitions. Considered potential remedies that the Canadian Competition Bureau may require.
- Part of a Brattle team that investigated the allegedly anticompetitive behavior of a major travel technology firm. The analysis focused on the economics of platform markets, understanding the flows of commissions and fees between firms, and the willingness of consumers to pay for certain services.
- On behalf of a leading producer of pulp and paper products, supported expert in development of testimony rebutting claims that the firm had exercised monopsony power against lumber harvesters. The analysis involved the economics of the lumber industry supply chain and demonstrating that the client did not possess monopsony power over the plaintiffs.
- Provided expert support in preparing testimony on irreparable harm for a global human resources company defending itself against a competitor's efforts to obtain a preliminary injunction that would have barred our client from selling certain software products.

Regulation and Public Policy

- Working on behalf of respondents Intel, Hewlett-Packard, and Apple in a Section 337 investigation at the ITC, prepared testimony and rebuttal testimony for Nobel laureate Joseph Stiglitz demonstrating that an ITC exclusion order preventing importation of the respondents' accused products was adverse to the public interest and should not issue. Provided pre-trial and trial support to Professor Stiglitz and attorneys. This work involved estimation of market size, analyzing ability of others to increase production, assessing how an exclusion order would impact the economy during a delicate recovery both monetarily and in terms of employment,

and critiquing opposing experts' claims. The investigation was ultimately decided for the respondents.

- In a case challenging the legitimacy of the Irish government's response to that country's banking crisis, prepared testimony demonstrating that the government's seizure of a multi-billion dollar loan portfolio secured by the properties of Paddy McKillen, a leading Irish investor, was economically inappropriate given Irish economic conditions and the quality of the loans themselves. In addition to a review of the economic literature and best practices for such restructuring, this work required a thorough analysis of the history of the banking sector in Ireland, in-depth study of Mr. McKillen's companies' operations, and contrasting the stated goals of the government's response with the likely outcomes in this specific case. The matter made its way to the Irish Supreme Court where the testimony of Brattle experts was favorably cited and the matter concluded successfully for Mr. McKillen.
- Part of the Brattle team that supported Nobel Laureate Professor Joseph Stiglitz in preparing *amicus curiae* brief submitted to the Supreme Court of the United States in *Kiobel*, relating to the economics of the Alien Tort Statute and the Torture Victims Protection Act.
- For a matter in which United Airlines and American Airlines sought to enjoin the City of Chicago from commencing an extensive expansion program at O'Hare airport, provided consulting support for attorneys on behalf of the City demonstrating that the airlines failed to meet the economic criteria for obtaining a preliminary injunction. This work involved assessing the welfare gains from more efficient airport operations, analyzing the effect of major construction during an economic downturn, and investigating the impact on airlines' operations due to the expansion. This case was successfully resolved with a settlement that allowed the City of Chicago's construction plans to proceed.
- Involved *pro bono* with the *Juliana* case where U.S. youth are seeking action on climate change. Supported Joseph Stiglitz in his expert testimony and consulted with counsel on economic and remedy issues.

EXPERT TESTIMONY

In the Matter of Securitized Asset Backed Receivables LLC Trust 2007-BR2 and Securitized Asset Backed Receivables LLC Trust 2007-BR3

Forum: Superior Court of the State of California, County of Orange, Probate Division

Nature of Testimony: Reports (2017, 2018), Depositions (2017, 2018)

PUBLICATIONS AND PRESENTATIONS

- “Virtual PE Challenge,” National Association for Business Economics Transfer Pricing Symposium, July 18, 2018, with Bin Zhou and Jehan deFonseka.
- “Recent Trends and Developments on the Organization for Economic Cooperation and Development’s (OECD) Transfer Pricing Guidelines: What You Need to Know,” February 15, 2018, with Evan Cohen.
- “Global Transfer Pricing Litigation: Trends and Developments Explored,” August 17, 2017, with Christine Polek.
- “An Economic Framework for Identifying the Tested Party,” *Tax Notes*, Vol. 149(9), pp. 1185-1190, November 30, 2015, with Michael I. Cragg.
- “Public Disclosure versus Confidentiality in Liquid Fuel Markets,” *The Brattle Group*, January 2015, with Evan Cohen, Michael Cragg, and Bin Zhou.
- “Can the U.S. Congressional Ethanol Mandate be Met?” *The Brattle Group*, May 2010, with Metin Celebi, Evan Cohen, Michael Cragg, and Minal Shankar.