

DAVID J. HUTCHINGS
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Mr. Hutchings' economics expertise spans a wide array of topics, including tax and transfer pricing, securities and finance, valuation and damages, and antitrust. Deeply experienced in litigation, international arbitration, and investigations, he has led case teams, conducted economic and financial analyses, estimated damages and liability, and performed valuation analyses in complex matters across many jurisdictions, including the US, Canada, the UK, the EU, Latin America, and Australia.

In tax controversy and transfer pricing matters, he has assisted expert witnesses and attorneys for both taxpayers and taxing authorities in jurisdictions around the world, provided expert testimony, and authored expert reports on dispute and planning issues. In addition, Mr. Hutchings has been involved in securities disputes arising out of US financial crises related to residential mortgage-backed securities (RMBS), credit ratings, and financial guaranty insurance.

In antitrust and competition matters, Mr. Hutchings has analyzed anticompetitive effects, evaluated potential remedies, examined the economics of platform markets, and assisted in the preparation of analysis and testimony before courts and government regulators, such as the US Federal Trade Commission (FTC).

In addition, he has quantified harms and foregone benefits, and valued natural resources and treaty entitlements, in several disputes between Canadian First Nations and the Crown, both testifying at trial and consulting to reach pre-dispute resolutions. He has also quantified damages arising from tortious interference, breach of contract, and other contractual and extra-contractual remedies, and provided valuation analyses in numerous commercial disputes.

EDUCATION

J.D., University of Toronto Faculty of Law

M.A., economics, University of Toronto

B.S., mathematics, and B.S., economics, Massachusetts Institute of Technology

PROFESSIONAL EXPERIENCE

2023–Present Analysis Group, Inc.
Managing Principal

2009–2023 The Brattle Group
Interim President (2022–2023)
Principal (2019–2023)
Senior Associate (2016–2019)
Associate (2014–2016)
Research Analyst (2010–2013)
Research Analyst Intern (2009)

SELECTED EXPERT CASE WORK

- ***Red Rock First Nation and Whitesand First Nation v. Canada (Attorney General), et al.***
Ontario Superior Court of Justice
Provided reports and trial testimony.
- ***Restoule, et al. v. Canada (Attorney General), et al.***
Ontario Superior Court of Justice
Provided reports.
- ***In re: Baker Hughes, a GE Company, Derivative Litigation***
Court of Chancery, State of Delaware
Provided deposition.
- **Confidential matter at Internal Revenue Service (IRS) appeals**
Provided report.
- **Confidential matter at IRS appeals**
Provided report and interview.
- ***In the Matter of Securitized Asset Backed Receivables LLC Trust 2007-BR2 and Securitized Asset Backed Receivables LLC Trust 2007-BR3***
Superior Court, State of California, County of Orange, Probate Division
Provided reports and depositions.

SELECTED CONSULTING EXPERIENCE

Tax Controversy

- **Veolia Environnement S.A. dispute with IRS over worthless stock deduction**
Analyzed a worthless stock deduction claim in a long-running IRS appeal for Veolia that was ultimately resolved favorably for the client in 2019. Developed a contract-by-contract analysis of profitability and other financial analyses to rebut IRS claims and support valuation and ultimate deduction. The IRS conceded the matter in full.
- ***Athene USA Corporation v. United States of America***
US District Court, Southern District of Iowa
Investigated hedging policies of a large insurance firm in a dispute with the IRS over the tax treatments of hedging strategies. Managed a team of that evaluated derivative products and reconciled varying state and federal regulations. Case settled favorably for the client.
- ***Philip Morris USA Inc. v. US Department of Treasury***
US Court of Claims, Michigan
Led a team on behalf of Altria Group, Inc. that advised the taxpayer on the taxation of extraterritorial investment gains. The team worked closely with counsel and the finance team to undertake a detailed

functional analysis and prepare an analysis on the unitary nature of the businesses at issue. The state tax authority conceded the matter in full.

- Authored a report and provided an interview to the IRS on behalf of a large financial services provider regarding entrepreneurial risk. The matter was resolved favorably for the taxpayer.
- ***American International Group v. United States of America***
US District Court, Southern District of New York
Supported Nobel laureate and Columbia University Professor Joseph Stiglitz in his testimony for the US Department of Justice (DOJ) regarding a series of transactions between US 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 Professor Stiglitz on the cash flows and structures of the transactions. The matter settled favorably before trial.
- ***Cross Refined Coal, LLC and USA Refined Coal, LLC, Tax Matters Partner v. Commissioner of Internal Revenue***
US Tax Court
Provided consulting support to a taxpayer in developing expert strategy and supported testifying economist. Developed economic and financial analyses to model risk exposure to partnership and individual investors to assess the substance of the transaction. The client prevailed in a rare bench opinion.
- ***Reddam v. Commissioner of Internal Revenue***
Blum v. Commissioner of Internal Revenue
US Tax Court
Performed extensive analyses of two Offshore Portfolio Investment Strategy (OPIS) transactions in support of an 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 number 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 US Tax Court and upheld by two different circuit courts.
- ***AD Global FX Fund v. United States of America***
AD Equity Investment Fund LLC v. United States of America
AD Global 2001 Fund LLC v. United States of America
US District Court, Southern District of New York
Analyzed a series of different tax-motivated transactions, including 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 among a wide set of transactions. Worked with an expert to develop testimony and prepare for deposition. The matter settled favorably before trial.
- ***RERI Holdings I, LLC and Harold Levine, Tax Matters Partner v. Commissioner of Internal Revenue***
US Tax Court
Supported an expert in the preparation of testimony in US Tax Court regarding the valuation of residual interests 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 the expert's opinions.
- ***Exelon Corporation v. Commissioner of Internal Revenue***
US Tax Court
Provided support to MIT Sloan School of Management Professor Stewart Myers in his testimony for

Exelon in its 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

- For a large Canadian financial institution in a transfer pricing dispute with the Canadian Revenue Agency, developed evidence regarding the proper bargaining framework for allocating losses.
- ***Eaton Corporation and Subsidiaries v. Commissioner of Internal Revenue***
US Tax Court
Involved in analyzing all aspects of Eaton's transfer pricing policies in its dispute with the IRS regarding cancelled advance pricing agreements. Worked with a team to coordinate the testimony of six experts, with primary responsibility for the main transfer pricing economist's report, testimony, and trial preparation. Collaborated closely with the trial team before and at trial to craft an 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 the client.
- ***The Coca-Cola Company and Subsidiaries v. Commissioner of Internal Revenue***
US Tax Court
Analyzed The Coca-Cola Company's transfer pricing policies in its dispute with the IRS involving over \$9 billion in proposed adjustments. Involved in detailed functional and transfer pricing analysis of the best method.
- Developed rebuttal testimony to IRS expert testimony 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.
- Supported an industry expert in credit analysis in forming an opinion on the reasonableness of an intercompany debt guarantee between a US parent and its Australian subsidiary in a dispute with the Australian taxing authority.
- Provided consulting support to counsel on various intercompany financing arrangements. This included analyzing the creditworthiness of several corporate subsidiaries in support of an academic expert, formerly of a major credit rating agency, providing analysis and opinion as to the implied credit rating of each as independent entities.

Commercial Damages

- Provided consulting support in valuing and evaluating valuation issues, including the reliability with which damages might be measured, in disputes involving pharmaceutical products, biopharmaceutical products, nascent technology, platforms, patents, natural resources, and trade secrets.
- ***Jicarilla Apache Nation f/k/a Jicarilla Apache Tribe v. United States of America***
US Court of Federal Claims
Provided expert support in a successful dispute over the US government's imprudent management of tribal funds. Involved benchmarking the performance of a fixed-income portfolio strategy over time, constructing alternative portfolios and simulating their performance, and rebutting the government 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.
- ***Confidential Arbitration***
Netherland Arbitration Institute

Led a 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. Assessed whether damages could be reliably estimated. Involved detailed review of financial statements, assessing the reasonableness of forecasted future earnings, proper allocation of overhead costs, and conceptual issues of perpetual growth and the use of ex ante and ex post data in damages estimates. The arbitral panel ultimately decided favorably for the client.

- 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 the client from selling certain software products.
- 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.
- ***Abaclat and Others v. Argentine Republic***
International Centre for Settlement of Investment Disputes
For an international arbitration proceeding related to the Argentine Republic's handling of the sovereign debt crisis of the early 2000s, aided an 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.
- ***Meda AB v. 3M Company, 3M Innovative Properties Company, and Riker Laboratories, Inc.***
US District Court, Southern District of New York
Part of a 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 the 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 US cosmetics company involving unique hybrid securities, assisted an expert in advising counsel on the range of damages to plaintiffs using event-study methodology and derivative pricing.

Securities and Finance

- ***Ambac Assurance Corporation v. EMC Mortgage LLC f/k/a EMC Mortgage Corporation, J.P. Morgan Securities LLC f/k/a Bear, Stearns & Co. Inc., and JPMorgan Chase Bank, N.A.***
Ambac Assurance Corporation and The Segregated Account of Ambac Assurance Corporation v. Countrywide Home Loans, Inc., Countrywide Securities Corp., Countrywide Financial Corp., and Bank of America Corp.
Ambac Assurance Corporation and the Segregated Account of Ambac Assurance Corporation v. Countrywide Home Loans, Inc., Countrywide Securities Corp., Countrywide Financial Corp., and Bank of America Corp.
Ambac Assurance Corporation and The Segregated Account of Ambac Assurance Corporation v. First Franklin Financial Corporation, Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Inc., Merrill Lynch Mortgage Lending, Inc., and Merrill Lynch Mortgage Investors

MBIA Insurance Corporation v Credit Suisse Securities, DLJ Mortgage Capital, and Select Portfolio Servicing

Supreme Court of the State of New York, County of New York

Supported Nobel laureate and Columbia University 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 the 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, working on summary judgment motions, and trial preparation for relevant matters.

- ***Abu Dhabi Commercial Bank, et al. v. Morgan Stanley & Co., et al.***
US District Court, Southern District of New York
In a matter related to the collapse of a structured investment vehicle (SIV) during the 2008 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.
- Provided historic valuations for the acquirer of a fund that failed during the 2008 credit crisis for the purpose of making whole the investors in the fund that had alleged imprudent management. Securities analyzed and valued included a variety of mortgage-backed securities, collateralized debt obligations, and other asset-backed securities.

Regulation and Public Policy

- ***Kelsey Cascadia Rose Juliana, et al., v. United States of America, et al.***
US District Court, District of Oregon
Supported, pro bono, Professor Joseph Stiglitz in his expert testimony regarding the economics of climate change and consulted with counsel on economic and remedy issues.
- ***In the Matter of Certain Microprocessors, Components Thereof, and Products Containing Same***
US International Trade Commission
Working on behalf of respondents Intel, Hewlett-Packard, and Apple in a Section 337 investigation at the US International Trade Commission (ITC), prepared testimony and rebuttal testimony for Nobel laureate and Columbia University Professor Joseph Stiglitz demonstrating that an ITC exclusion order preventing the 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 the estimation of market impacts and the economic effects of injunctions on markets and the economy as a whole. The investigation was ultimately decided for the respondents.
- ***Dellway, et al. v. National Asset Management Agency, Ireland and the Attorney General***
High Court of Ireland
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 multibillion-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, an 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 Supreme Court of Ireland, where the testimony of experts was favorably cited, and the matter concluded successfully for Mr. McKillen.

- ***United Airlines, Inc. and American Airlines, Inc. v. City of Chicago***
US Circuit Court, State of Illinois, County of Cook, Chancery Division
For a matter in which United Airlines and American Airlines sought to enjoin the City of Chicago from commencing an extensive expansion program at Chicago O'Hare International 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.
- Part of the team that supported Professor Joseph Stiglitz in preparing an amicus brief submitted to the Supreme Court of the United States in *Kiobel*, related to the economics of the Alien Tort Statute and the Torture Victim Protection Act.

Antitrust and Competition

- ***Epic Games, Inc. v. Apple, Inc.; Epic Games, Inc. v. Google LLC, et al.***
US District Court, Northern District of California
Led a team that supported the experts in the *Epic v. Apple* litigation, including trial expert report development, rebuttal reports, and deposition and trial support to attorneys.
- Provided consulting support in an expedited matter before the FTC involving leading health care software providers. Prepared analysis and potential testimony for a number of experts on industry structure, technology interfaces, allegedly anticompetitive acts, and the implications for general public welfare, especially in light of changing regulations in the health care market (e.g., the Affordable Care Act, 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 the client.
- Analyzed potential anticompetitive effects of transactions for clients considering merger in Canada. Considered potential remedies that the Canadian Competition Bureau could require.
- ***US Airways, Inc. v. Sabre Holdings Corp.***
US District Court, Southern District of New York
Led a team that investigated the allegedly anticompetitive behavior of a major travel technology firm, supporting experts in reports, deposition, and trial. 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 an expert in the 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 demonstrated that the client did not possess monopsony power over the plaintiffs.

ARTICLES AND PUBLICATIONS

"The Proper Measure of Profits for Assessing Market Power," with Michael Cragg, Patrick Holder, and Bin Zhou, *Antitrust* (March 21, 2023)

"An Economic Framework for Identifying the Tested Party," with Michael I. Cragg, *Tax Notes* (November 30, 2015)

Public Disclosure versus Confidentiality in Liquid Fuel Markets, with Evan Cohen, Michael Cragg, and Bin Zhou, The Brattle Group (January 2015)

Can the U.S. Congressional Ethanol Mandate be Met?, with Metin Celebi, Evan Cohen, Michael Cragg, and Minal Shankar, The Brattle Group (May 2010)

PRESENTATIONS AND SPEAKING ENGAGEMENTS

“Undoing Colonial Behaviour in the Modern Era: An Economic Approach to Indigenous Property Rights,” 80 years of Joseph Stiglitz: An economy for a just, free, and prosperous society (May 24, 2023)

“Transfer Pricing Amid COVID-19: Trends, Developments and Practical Guide,” with Jamie Eagan, Robin Hart, and Michael Cragg, The Knowledge Group (October 8, 2020)

“Joint Venture Products and Distribution: The Case of the NFL Sunday Ticket Challenge,” with Michael Cragg (July 6, 2020)

“Transfer Pricing Regulation in the 2020 Landscape: Maximizing Opportunities and Overcoming Challenges,” with Robin Hart, The Knowledge Group (March 13, 2020)

“Virtual PE Challenge,” with Bin Zhou and Jehan deFonseka, National Association for Business Economics Transfer Pricing Symposium (July 18, 2018)

“Recent Trends and Developments on the Organization for Economic Cooperation and Development’s (OECD) Transfer Pricing Guidelines: What You Need to Know,” with Evan Cohen, OECD (February 15, 2018)

“Global Transfer Pricing Litigation: Trends and Developments Explored,” with Christine Polek, The Knowledge Group (August 17, 2017)