Our experts have testified on commercial damages in dozens of oil and gas-related disputes. We have worked on behalf of plaintiffs and defendants on engagements encompassing virtually all segments of the industry: exploration and production, marine and pipeline transportation, gathering, storage, refining, natural gas processing, fractionation, and wholesale and retail distribution.

Our work has included economic analyses of damages in matters involving breach of contract, expropriation, patent infringement, antitrust, failed business transactions, fraudulent disclosure, and trade and treaty disputes. We have consulted in matters involving natural gas and petroleum derivatives, trading, and related accounting and valuation practices.

Brattle provides both industry and academic expertise. Our principals include Professor Stewart Myers of MIT, co-author of the world’s leading corporate finance textbook and a Brattle founder, and Daniel L. McFadden, Nobel Laureate, Presidential Professor of Health Economics at the University of Southern California, and Professor of the Graduate School at University of California, Berkeley. We also work closely with a broad network of leading academics and industry experts.

Clients value our commitment to quality and independence, and the balance between our work on behalf of plaintiffs and defendants reflects our credibility in legal forums.
OUR APPROACH

Three basic considerations guide our approach:

1. Sound economic and valuation principles must be applied in estimating damages.

2. Analyses must be transparent and able to withstand intense scrutiny by opposing experts and lawyers.

3. Sophisticated analyses must be presented for audiences that may have limited technical expertise.

Application of Best Practices
Our experts speak authoritatively on international best practices in business valuation. Brattle is always in a strong position to defend its valuation work because we apply the same techniques to measure damages as we use in our non-litigation work and teaching, and our valuation methods are consistent with the academic literature.

Withstanding Cross-Examination
We take extraordinary measures to ensure that our analyses and conclusions will withstand the scrutiny of cross-examination. Our “peer review” process provides internal challenges and testing to ensure that our work is compelling and reliable. Our numerical work contains detailed notes and documentation allowing it to be followed and defended effectively. We also perform an internal audit to ensure that there are no errors.

Clear and Concise Communication
The clear and concise presentation of ideas is a critical skill for experts in litigation. We design our reports and oral testimony to be understood by an intelligent but lay audience. Brattle experts have sharpened their presentation skills through public speaking, classroom teaching, and testifying before courts and tribunals.

Our principals are fully engaged throughout the duration of each case on which they work, either as consulting or testifying experts.
We testified on behalf of Naftogaz, Brattle's client Naftogaz, the national oil and gas company of Ukraine, was successful in securing the set-aside of “take-or-pay” claims in the arbitration over their gas supply contract with Russia’s Gazprom. Naftogaz operated a pipeline that was a contractually agreed upon import pipeline for gas from Russia to the rest of Europe. Naftogaz initiated a dispute regarding the price it was paying for gas to Gazprom and Gazprom counter-claimed in respect of the gas that Naftogaz had been unable to consume but for which it was committed to pay. The result was Naftogaz faced a claim for more than $44 billion in take-or-pay penalties. Brattle economists were instrumental in achieving a retrospective reduction in the contract price that amounted to nearly 30% in mid-2014 and having the take-or-pay claim completely dismissed, essentially on competition grounds.

REPRESENTATIVE ENGAGEMENTS

Breach of natural gas supply contract
In Hess Energy Inc. v. Lighting Oil Company, Ltd., a jury trial in U.S. District Court, we testified on behalf of the plaintiff as to the appropriate damage theory and amount of damages for the breach of a natural gas supply contract between a gas producer and marketer. The jury returned a verdict that adopted our damage amount. On appeal, the federal appeals court affirmed the jury verdict and cited our damage theory for its consistency with legal principles associated with the “anticipatory repudiation” of long-term contracts.

Expropriation of oil assets
In the investment arbitration brought by Yukos shareholders against the Russian Federation, Hulley Enterprises Ltd., Yukos Universal Ltd., and Veteran Petroleum Ltd. v. The Russian Federation, Brattle Academic Advisor James Dow was retained as an expert on behalf of the Respondent to evaluate the US $114 billion damages claim. Professor Dow explained that this amount was excessive, contained numerous errors, relied upon a flawed methodology, and that it appeared to be reverse engineered to obtain a desired result. The Tribunal agreed, finding that “Claimants’ expert admitted at the Hearing that his DCF analysis had been influenced by his own pre-determined notions as to what would be an appropriate result.” Based on Professor Dow’s critique, the Tribunal found that “Claimants’ experts were of limited assistance to the Tribunal in its determination of Claimants’ damages,” and rejected the Claimants’ DCF model.

Oil pipeline lease
In a dispute between the owners of an oil pipeline in Texas, we submitted an expert report on behalf of the plaintiff in Chevron Pipe Line Company v. Sunoco Pipeline, L.P., which calculated the damages that resulted from the majority owner of the pipeline entering into a pipeline lease with a subsidiary at a below-market lease price. Our report analyzed the demand for pipeline transportation services in Texas and the prices obtained for oil pipeline transportation service on new oil pipeline projects serving the Gulf Coast market. This analysis informed our opinion of a fair lease rate that could have been achieved by an independent owner of the pipeline.

False Claims Act dispute: natural gas sales agreement
We provided economic support to a gas marketing company involved in a False Claims Act dispute over the interpretation of the pricing provisions in a gas sales contract that depended on when congestion was occurring on the delivering gas pipeline. We analyzed capacity availability on the pipeline and estimated potential damage claims under various methodologies that priced some gas quantities at the original price and some quantities at the lower (congestion) price.

Eastern European long-term supply contract dispute
In Naftogaz v. Gazprom, Brattle’s client Naftogaz, the national oil and gas company of Ukraine, was successful in securing the set-aside of “take-or-pay” claims in the arbitration over their gas supply contract with Russia’s Gazprom. Naftogaz initiated a dispute regarding the price it was paying for gas to Gazprom and Gazprom counter-claimed in respect of the gas that Naftogaz had been unable to consume but for which it was committed to pay. The result was Naftogaz faced a claim for more than $44 billion in take-or-pay penalties. Brattle economists were instrumental in achieving a retrospective reduction in the contract price that amounted to nearly 30% in mid-2014 and having the take-or-pay claim completely dismissed, essentially on competition grounds.

$1.6 billion natural gas antitrust settlement
On behalf of the settling claimants (California electric and gas utilities, other western states, and California class consumers) in the $1.6 billion natural gas antitrust settlement with El Paso Corporation and its subsidiaries, NATURAL GAS ANTITRUST CASES I, II, III, & IV, Brattle quantified both the damages sustained and the settlement consideration to be allocated to each major settling claimant group. We developed a methodology to allocate the settlement consideration according to the relative damage incurred by each major claimant group from uncompetitive, increased natural gas prices at the California border during the March 2000 to May 2001 period. We took into account both the direct overpayment for natural gas and the indirect effect of higher natural gas costs on the market price of electricity in calculating damages. Throughout the process, we provided declarations to the Court explaining our methodology and results.

Reputation of natural gas supply contract
In City of Huntsville d/b/a Huntsville Utilities, Inc. v. Proliance Energy, LLC, we calculated damages incurred by a natural gas marketing company as a result of the plaintiff buyer’s repudiation of a natural gas supply contract. The damages arose from a series of fixed-price agreements between the gas marketer and a municipal gas utility that covered future time periods. The municipal utility prematurely terminated its contract with the gas marketer at a time when spot and future market prices were lower than the fixed-price agreements, resulting in damages to the gas marketer. NYMEX future prices (adjusted for location differences) on the date of contract termination were used to estimate the damages to the gas marketer. In addition, we prepared reports that critiqued the damages estimate provided by an opposing witness.

Non-compliance penalties and environmental damages
Brattle has worked on dozens of cases involving non-compliance penalties or environmental damages. In Environment Texas Citizen Lobby, Incorporated; Sierra Club v. ExxonMobil Corporation, Brattle was retained by the defendant to estimate the economic benefits to a large petrochemical plant arising from allegedly avoided maintenance expenses and capital investments that would have been necessary to prevent the emissions that violated the Clean Air Act. We determined the cash flow impact of the alleged avoided compliance costs, analyzed the link between costs and the alleged violations, and determined the appropriate interest and discount rates that must be applied to determine their present value.
Valuation of diluted shareholdings
In Martin v. Martin Resource Management Corporation, Brattle valued a privately-held C-Corp that owned the general partner interest in a publicly-traded master limited partnership (MLP) as well as an equity interest in a natural gas storage joint venture and a wholesale petroleum operation. Brattle calculated the reduction in market value of an equity investor’s interest in the company (both as of a prior date of harm and at the time of trial) due to dilution resulting from certain decisions undertaken by the company’s board.

Impact of government measures
For a global oil and gas producer operating in a South American country, we assessed the impact on the company of a series of disputed government measures relating to domestic gas prices, export taxes, and restrictions on exports. We found that the interfering disputed measures had a serious effect on domestic natural gas prices and that the producer suffered significant damages by being forced to sell natural gas at substantially lower prices than would have prevailed in the absence of the measures. We also evaluated the impact of the disputed measures on the performance of the economy and economically disadvantaged citizens.

Expropriation of oil assets
In Mobil Corporation and others v. Bolivarian Republic of Venezuela, Brattle principals worked on behalf of ExxonMobil in its ICSID and ICC claims against Venezuela for the expropriation of its heavy oil business. Our work involved the development of valuation and commodity price forecasting models, consideration of country and currency risks, analysis of benchmark return data, evaluation of engineering cost data, and discount rates for business and contract risks. The reports applied state-of-the-art modeling and simulation techniques to value the asset in the context of both treaty and commercial claims.

Violation of a pipeline transportation agreement
On behalf of several shippers on a refined products pipeline, we quantified damages in CHS Inc., et al. v. Enterprise TE Products Pipeline Company, LLC resulting from the pipeline’s cancellation of service. The loss of service resulted in increased replacement costs for some shippers and lost sales for others. Both types of damages were calculated while taking into consideration the circumstances of the individual shippers.

Oil pipeline discrimination
In BP Products North America Inc. v. Sunoco Pipeline L.P., we quantified the damages to BP as a result of the discriminatory conduct of Sunoco Pipeline that reduced BP’s allocation of pipeline capacity and required BP to purchase more expensive crude oil on alternative pipeline routes.

Termination of a natural gas pipeline transportation contract
In Rockies Express Pipeline LLC v. Department of the Interior, we submitted an expert report on behalf of the defendant that estimated the damages to Rockies Express Pipeline resulting from the termination of a long-term pipeline transportation contract by the U.S. Department of the Interior (Minerals Management Service). We analyzed the revenues the pipeline would have received from the shipper had the contract not been terminated as well as the opportunities the pipeline had to mitigate by re-selling the pipeline capacity to other shippers. We also recommended appropriate discount rates to use for future damages given the risk associated with the future cash flows under the contract.

NAESB natural gas supply contract pricing
In a dispute involving a Marcellus-area, long-term North American Energy Standards Board (NAESB) natural gas supply contract (Antero Resources Corporation v. South Jersey Resources Group LLC and South Jersey Gas Company), Brattle evaluated on behalf of the plaintiff whether a Market Disruption Event had occurred. We reviewed the contract’s specific criteria for such an Event and analyzed the contemporaneous evidence regarding the underlying transaction composition of published natural gas price indices. Brattle also examined natural gas market conditions in the Marcellus area and the contracting parties’ pipeline transportation arrangements. Based on analysis of the evidence, Brattle concluded that a Market Disruption Event had not occurred and that the plaintiff was entitled to damages as a result of short-paying by the defendant.

Proppant contract
In CRS Proppants LLC v. Preferred Resin Holding Company, Brattle prepared an expert report in connection with the termination of a purchase and sale agreement for hydraulic fracturing sand (“frac sand”). The seller terminated the agreement and accelerated amounts due in response to the buyer’s failure to purchase contractually specified quantities of sand. The buyer disputed the termination and acceleration, claiming that the decline in the markets for oil and gas that led to the fall in demand for proppants was not reasonably foreseeable. The Brattle report, prepared for the seller, demonstrated that, although the declines in the market prices of crude oil and natural gas were very large, the declines were not unforeseeable. The Court agreed and granted in part the seller’s motion for summary judgment.

Compensation dispute in energy trading
Brattle served as a consulting and testifying expert in a dispute between an energy trading firm and one of its traders. The firm contended that the trader had been terminated “for cause.” Brattle reviewed the company’s policies and procedures and undertook an intensive examination of company trading records to determine, first, whether the trader had complied with risk management policies and, second, whether he had followed management instructions to reduce risk prior to his termination. Brattle found that the trader had exceeded the position limit and had failed to reduce his position when instructed; in both cases his actions having been obscured by a combination of offsetting trades and changing option exposures.

Reserves disclosure
On behalf of plaintiffs in a class action matter, Brattle performed an event study to estimate the impact on the share price of an exploration and production company due to an overstatement of the company’s oil and gas reserves. Brattle found that restatement of reserves was a material change in the company’s financial condition and that the company’s corrective disclosure led to a statistically significant drop in stock price.
We believe that astute insights are the result of extraordinary effort, respect for details, and a passion for principles. When presented with a challenge, we work tirelessly to provide clear, independent answers. And we stand behind them, because inconvenient truths are better than the false comforts derived from opinions that cannot withstand scrutiny.

In the face of complex challenges, we present the truth of the matter, through the relentless pursuit of professionalism and rigorous analysis.

For additional information about The Brattle Group’s experts and services, please visit brattle.com or call +1.617.864.7900.