Civil Litigation

Experts in various fields associated with Energy & Water Economics have appeared in hundreds of cases, both regulatory proceedings and civil litigation. We have worked for some of the nation's most prestigious [law firms](http://www.energyandwatereconomics.com/Expertise/Civil_Litigation/Clients/clients.html). On the regulatory side, the industries covered are wide ranging, encompassing natural gas production, transportation, and distribution; oil pipelines; water utilities; telecommunications; and electric utilities.

The subject matter in regulatory proceedings includes public policy, market power, unbundling, depreciation, revenue requirements, rate of return, cost analysis, rate design, econometrics, demand side management, and energy supply, demand and price. With respect to civil litigation, experts testify on energy agreements, regulation and pricing, valuation, condemnation, damages, antitrust, and toxic torts.

Energy & Water Economics knows the importance of timeliness, reliability and objectivity in litigation.  The firm will devote the requisite resources to meet client needs, drawing from professionals well versed in economics, statistics, computer analysis and particular industries.

Areas of Expertise

Real Estate

* Real estate losses
* Regulatory Takings
* Toxic site proximity impacts
* Stigma issues in contaminated/remediated properties
* Economic impacts of tenant loss direct & indirect
* Shopping center issues
* Condemnation/takings valuations

Complex Commercial Litigation

* Business interruption damages
* Valuation of closely-held businesses, partner buyouts
* Valuation of financial assets, contracts
* Valuing intangible assets and professional practices
* Valuation of goodwill loss due to condemnation
* Antitrust economics and damages
* Startup business damages
* Valuation of restricted or illiquid securities
* Valuation of securities and other assets for tax cases

Startup Business Issues

* Market penetration
* Business growth issues
* Financial statement estimates

Antitrust

* Price fixing, bid rigging
* Discriminatory pricing

**Regulatory Takings**

The economics of Regulatory Takings is a subspecialty that Dr. Wade pioneered in 1995. He is the expert witness in eight recent & current takings cases, which involve measurement of the Penn Central test and damages.

* Confidential COFC Taking case ongoing, 2012.
* *Richfield Landfill v. State of Michigan* (Temporary taking – settled 2010)
* *Chancellor Manor v. U. S.* (Research for Petition for Certiorari, 2007.)
* *Reed Island v. U. S. (Court of Federal Claims)* (Temporary taking – damages; case settled 2007)
* *HMA Contractors v. Lincoln County, et al* (Regulatory taking – Case dismissed)
* *Chancellor Manor v. U. S*., No. 98-39C (Fed.Cl. Ct.)

Testified for plaintiff December, 2004 at Court of Federal Claims. (Temporary taking, decision for the plaintiff August 29, 2005. $17 million award (*“Cienega IX”);* overturned by Fed.Cir. Sept. 2007,*“Cienega X.”)*

* *Palazzolo v. Rhode Island,* Testified June 2004 in Rhode Island for plaintiff*.* (Decision for defendant, 2005, based on science and engineering.)
* *K&K v. Michigan DNR,* Testified for the Plaintiff.Decision for plaintiff May 28, 2002; (*K&K v. Michigan DEQ*, $16.5 million award, File No. 88-12120-CM, October 7, 2002. reversed 2005; appealed for error to MI Supreme Court; denied; pet. cert. USSC, January 2007, cert. denied.)

Published Finance and Takings Articles:

1. “Sources of Regulatory Takings Economic Confusion Subsequent to *Penn Central,*" 41 Environmental Law Reporter 10936, October 2011.
2. “Federal Circuit’s Economic Failings Undo the Penn Central Test,” 40 Environmental Law Reporter 10914, September 2010.

3. “Penn Central’s Ad Hocery Yields Inconsistent Takings Decisions,” 42 The Urban Lawyer 549, summer, 2010.

* Republished in 2011 Zoning and Planning Law Handbook, Patricia E. Salkin, ed.

4. “Temporal Posture & Discount Rates for Groundwater Contamination Damages,” 40 Environmental Law Reporter 10262, March 2010.

5. “Confusion about “Change in Value” and “Return on Equity” Approaches To Penn Central Test in Temporary Takings*,”* 38 Environmental Law Reporter 10486, July 2008.

6. “Average Reciprocity of Advantage: ‘Magic Words or Economic Reality: Lessons from Palazzolo," 39 The Urban Lawyer 319, spring, 2007.

7. “’Sophistical and Abstruse Formulas’ Made Simple: Advances in Measurement of *Penn Central’s* Economic Prongs and Estimation of Economic Damages in Federal Claims and Circuit Courts,” 38 The Urban Lawyer 337 spring2006.

8. "Economic Backbone of the *Penn Central test* post *Florida Rock* *V*, *K&K* and *Palazzolo*," 32 Environmental Law Reporter 11,221 (October, 2002).

9. “Penn Central’s Economic Failings Confounded Takings Jurisprudence,” 31 The Urban Lawyer 2, 277 - 308, spring, 1999.

10. “Economic Impacts, The Bennett Decision, and Investment-Backed Expectations,”

 6 Cal Land Use Law and Policy Reporter 11, (1997).

11. “Economic Considerations of Regulatory Takings Reform: Judicial Precedent and Administrative Law v. Legislative Intent,” BNA Environmental Reporter, August 4, 1995.

12. “The Role of Economics in Regulatory Takings Cases,” with Robert Trout, Litigation Economics Digest, 1, 1, Fall 1995.

13. “The Role of the Economist in a Regulatory Taking Claim,” California Land Use Law and Policy Reporter, March, 1995.

**CLE Presentations on regulatory takings:**

1. "Economically Impoverished Federal Circuit Decisions dim the *Polestar*\* of the *Penn Central* Test," ALI-ABA CLE Inverse Condemnation seminar, February 2011, Coral Gables FL. (\*“Our polestar instead remains the principles set forth in *Penn Central* itself

and our other cases that govern partial regulatory takings.” (*Palazzolo v. Rhode Island,* 533 U.S. 606, 617–18 (2001) (O’Connor, J., concurring).

2 “Valuing a Temporary Takings Claim: ‘Every Which Way but Right,’” ALI-ABA Conference, Inverse Condemnation and Related Government Liability, Scottsdale, April 14, 2007

 3. United States Court of Federal Claims, 18th Judicial Conference, “Damages against the Sovereign: Theory and Practice,” Panelist on Damages, November 4, 2005.

4. “Vicissitudes of Valuing a Temporary Takings Claim; or, 'Sophistical and Abstruse Formulas' Made Simple."  (with thanks to Justice FRANKFURTER @ (338 U.S. 1, 20, 1949), ALI-ABA Conference, Boston, October 1, 2005.

5 “Bennett & Undue Economic Hardship: Florida Rock V’s ‘Stable Framework’ to Analyze Penn Central’s Significant Factors,” Law Seminars International Conference, San Francisco, November 1999.

6 “Penn Central’s Economic Failings Confounded Takings Jurisprudence,” ALI-ABA Conference, Boston, September 30, 1999.

7 “Economic Considerations of Regulatory Takings,” Presentation, Restructuring in California: The Morning After, Law Seminars International Conference, Sacramento, CA, September 1998.

8 “Economic Considerations of Regulatory Takings: ‘The Mouse that Roared,’” CLE International Regulatory Takings Conference, San Francisco, March 2, 1995.