

Expert Witnesses

01 July 2021

Are professional expert witnesses a “good thing”? If you make your living as an expert gun-for-hire, isn’t it *harder* to stay . . . objective?

In fact, there’s good evidence of the opposite: that those who testify become more scrupulous about their positions.

A leading arbitrator, Doug Jones AO, put it this way, speaking at a GAR Live Dubai: “Repeat experts [. . .] are a good thing [because] they get to realise that their own personal reputations depend on avoiding extreme positions which are unsustainable.”

“They get to understand that they [are] more effective if they put forward fair propositions that they personally find intellectually justified,” he explained.

Once burned, twice shy, as the saying goes.

Repeat-player experts are also a boon when building the case, he reported. From his days as a counsel he remembered how “having a view from a battle-hardened expert could help to impart a more realistic view of the case” to a truculent client.

“You could talk them down from an extreme position. It’s a very positive thing for the process,” Jones said.

Of course, there are exceptions – stories circulate, from time to time, of unscrupulous experts taking diametrically opposed positions in different cases, which is possible thanks to arbitration’s confidentiality (leading to discussions of how to police such behaviour).

But for the most part, giving evidence repeatedly appears to forge a more principled, and thus credible, expert.

Of course, there are different types of expert – it’s not always just about lost profits and damages. Do those other types of expert need to be battle-hardened too?

Ideally, it would appear. Consider a dispute about a project to build and operate a gas processing plant in, say, Nigeria. The claimant in such a dispute might need three or four experts: an engineer or construction specialist, to speak to project management points; a chemist to speak to the quantity of gas the plant would extract; an oil and gas economist on how much that gas might fetch on the market; and finally, a forensic accountant to present all the above in a set of convincing accounts.

If one side’s experts are all old-arbitration hands, and the others aren’t – what happens?

There’s a good chance the side with ring-craft gets an upper hand. The scenario above isn’t in fact a hypothetical; it’s exactly what happened in one recent case, which duly produced one of the largest reported commercial arbitration awards – around US\$9 billion owed by the losing side.

In a conversation with GAR, a lawyer for the victor credited a mismatch between the experts – and in particular the powerful performance of his team from well-known expert witness shop Berkeley Research Group – as a big part of the result.

He said his experts’ team – skilled in four disciplines – mobilised faster and produced a report within a tight timetable that put the other side on the back foot, “from which they never really recovered.”

Furthermore, the other side’s experts had less hearing experience, which meant at times – he believed – they fell into the trap of over-reaching.

“They lost credibility as a result.”

If “repeat” players are better, and you may require several different types, how can those who are the genuine article, rather than just pretending, be found?

The report you are reading – the expert witnesses’ section of the GAR 100 and the tables in it – should help.

It uses the same lens as the GAR 30 to identify the most active and sought-after expert witness firm: it takes the number and size of a practice’s hearings and uses those to make a ranking. As with this publication’s survey of law firms, we used a research period of 1 August 2018 to 1 August 2020.

We present our findings in a series of easier to navigate tables:

Table 1

Table 1 is the GAR 100 Expert Witness Firms’ Power Index.

It displays:

- the average value of a firm’s hearings;
- total hearings participated in, over two years;
- total ‘disaggregated’ hearings (can be different from total hearings if, say, four partners take part in the same hearing); and
- reputational clout.

We standardise and then weight these scores to give an overall ranking.

Thus, the Power Index ranks expert witnesses in a similar way to how we rank the law firms in the GAR 30: by looking at the volume and value of two years’ worth of hearings, and at reputational clout.

We added the reputational clout element last year, at readers’ suggestions.

Secondary tables

We then present a range of related tables.

Tables 2a and 2b are an extract of the Power Index. Table 2a shows the number of members of a firm selected for our sister publication, *Who’s Who Legal: Arbitration* (2021). It also shows how many of those were in the top 2 per cent during research. These are then tagged “thought leaders”. Table 2b examines how a firm’s reputational clout compares with its volume of hearings.

Table 3 shows the number of cross-examinations faced by a firm’s members.

Table 4 shows how different firms split between investor-state and commercial work.

Table 5 shows how many hearings were about energy, and within that how many were about traditional oil and gas.

Table 6 shows how many hearings were construction work.

Table 7 (new this edition) recalculates the Power Index – but without any construction hearings included.

It’s important to point out a few things that *don’t* go into the Power Index ranking too.

First, results. As with the GAR 30 ranking for law firms, it doesn’t matter how well the firm did on a case. The tribunal may have accepted the expert’s analysis in full, and given them a glowing commendation. Currently, we don’t give anyone extra credit for that (perhaps we should). Equally, they could have lost and been hit with US\$58 million of costs (as in one notable example). Win or lose is all the same for the purpose of the Power Index.

Second, business success. It is also irrelevant how the practice in question is doing as a business. A shop can be growing, shrinking, making lots of money, losing it. Once again, it’s all the same for the purposes of our survey. All that matters is the number of hearings, the value at stake in those, and how the firm in question does in our peer review survey – *Who’s Who Legal*.

With that out of the way:

Where does our data come from?

Our data is for the most part provided by expert witness firms. Where a firm hasn't given certain pieces of information – the value of a claim – we triangulate with other questionnaires (including those of law firms) to fill in the blanks.

This year we have added a column for 'disaggregated' hearings. Sometimes an expert firm will provide more than one expert to a hearing. Now if a firm has four experts taking part in the same hearing it gets a "1" for unique hearings (it is one unique hearing) and a four under disaggregated hearings (each of those four experts experienced being in a hearing – hence four).

To measure reputational clout, we use the 2021 editions of *Who's Who Legal: Arbitration* and *Who's Who Legal Thought Leaders: Arbitration*.

We standardise all data (using T-scores) and adjust for missing information (using P-values), before being combined into a final score. There is some weighting added too – the work-related elements count for 70 per cent of the score.

The GAR 100 Expert Witness Firms' Power Index

A few headline facts from this year's ranking: 11 firms go up, nine go down, five firms enter, and one stays put.

In addition, we have:

- a new top five;
- one particularly big climber;
- two big (ish) fallers;
- five new names – a few of which are familiar; and
- the table is bigger than ever – boutiques rub shoulders with international consultancies and regional or sector-specific names.

Finally, some advice we doled out to two firms last year – Blackrock Expert Services and Haberman Ilett (to pool their figures) proves well-founded.

TABLE 1

Firm Name	Average value of claims (US\$M)	Total Value of Claims (US\$M)	Total number of hearings (Unique)	Number of hearings, disaggregated	WWL	WWL Thought Leaders	2021 Rank	2020 Rank
FTI Consulting	499.70	77,453.53	191	223	36	14	1	1
Compass Lexecon	790.34	22,920.00	38	66	22	9	2	3
Kroll	424.72	25,058.45	60	66	22	4	3	8 and 18
AlixPartners	557.23	17,831.43	45	51	13	4	4	7
The Brattle Group	698.30	20,949.00	31	51	8	4	5	10
Berkeley Research Group LLC	503.26	11,574.90	33	33	15	5	6	4
Secretariat International	341.73	17,428.28	54	61	19	6	7	2
HKA	250.68	10,027.10	57	77	16	3	8	13
Charles River Associates	1,097.60	31,830.30	29	31	3	0	9	22
Versant Partners	543.30	10,866.00	20	23	6	3	10	-
Grant Thornton	1,305.40	27,413.50	25	28	3	0	11	16
NERA Economic Consulting	662.17	13,905.55	23	23	10	0	12	11
PwC	414.49	14,092.50	42	45	11	3	13	5
Alvarez & Marsal Holdings LLC	272.27	5,445.33	26	26	14	5	14	9
Ankura	107.88	5,070.48	57	61	9	1	15	-
Ernst & Young LLP	456.34	6,845.11	18	20	8	1	16	17
Exponent	201.27	3,421.60	19	29	0	0	17	-
Deloitte LLP	165.19	5,781.73	42	47	9	0	18	15
Oxera	532.50	2,130.00	6	7	2	0	19	20
BDO	327.50	2,619.99	10	10	5	1	20	12
Global Financial Analytics	1,550.00	3,100.00	2	4	1	0	21	-
Delta Consulting Group	209.65	2,306.17	11	14	2	0	22	14
AFRY Management Consulting	1,346.67	4,040.00	3	3	0	0	23	-
Frontier Economics	362.56	2,175.35	6	6	0	0	24	23
Credibility International	198.24	1,585.90	8	9	2	1	25	21
Analysis Group	168.99	506.98	7	10	0	0	26	24

One to five

In this section of the table:

- we have the same number one but a new number two;
- the top five's been shaken up; and
- Kroll makes a splash.

FTI Consulting supplanted stablemate Compass Lexecon in 2020 to take top position (following some changes in the Index's methodology). And it remains there. If anything, it's consolidated its lead now we also have the disaggregated hearings column. In the two hearings columns, FTI's scores are unmatched. In disaggregated hearings (where FTI posts 223 experts attending

hearings), the next closest score is 77 (from HKA). The same goes for its scores in the reputational columns. At present, FTI has high volume, medium value and very high respect (it would appear). Short of something very strange, it's hard to see it losing the top slot for a while.

Compass Lexecon climbs one slot, to replace Secretariat in second place. Compass Lexecon's average case value is higher than its stablemates – most likely because of a greater focus on investor-state work. And its volume figures and reputational scores are also high. Compass Lexecon is therefore strong right across the board – value, volume and reputation: making it something of a rarity. Most firms manage at best two.

Between them, Compass Lexecon and FTI are home to 23 thought leaders. The next closest firm is home to six.

We also have a new third placed firm this year. **Kroll** hasn't appeared in the Index as "Kroll" before, but it has as "Blackrock Expert Services" and "Haberman Ilett", both Power Index regulars and now part of the Kroll universe. Blackrock Expert Services and Haberman Ilett were stablemates before the Kroll deal but opted to keep separate brands in our table.

We suggested last year that they might be making a tactical mistake: "Were the strengths of the two organisations combined for the purposes of this table, it would be interesting to see the result. A far, far higher ranking, no doubt."

Sure enough, having pooled the three organisations' data, they're in third place.

In 2020, Haberman Ilett posted 11 hearings, and Blackrock 30. The merged Kroll combination this year posted 60 – so volume is up, without a particular dip in the average value: (Haberman Ilett's was US\$496 million and Blackrock's US\$391 million; Kroll's this year is US\$424 million). Clearly Kroll itself has contributed a fair amount to combination.

AlixPartners was seventh, and is now fourth. Its average value of claims is up year on year (US\$557 million compared to US\$269 million a year ago) without volume falling (this is nearly identical). But where it's really improved is in the *Who's Who Legal* columns – going from five individuals included in 2020 to 13 this year, and four thought leaders.

The Brattle Group re-enters the top five after being 10th last year. Its year-on-year figures are also substantially improved – particularly average value of hearing claim (the second highest in the top 5), which last year was a lowly US\$191 million, and hearings volume (which was 11 and is now 31). Both columns are up in part because of the firm's central role in a wave of cases against Spain over renewables. It's also had a wave of gas-related arbitrations (which tend to be of high value).

Six to 10

In this section:

- two members of last year's top five have dropped down;
- this year's highest climber appears; and
- so does our highest new entrant.

Berkeley Research Group, last year's number four, falls two to number six. But this is as much about the fine margins at the top of the table, as material change: BRG's figures are very close to a year ago. Its reputational score indeed is substantially up: a further five members achieved the threshold for inclusion in *Who's Who Legal*, taking it the BRG total to 15. And it still has three who qualify as thought leaders. On the hearings side, its average value was down – slightly – and it reported around 20 per cent fewer hearings: hence the slide.

Secretariat International, last year's number three is this year's number seven. And yet it's another firm that actually improved in several columns. Indeed, 11 additional firm members qualified for *Who's Who Legal*, taking it to 19; and three more became recognised as of the highest stature (thought leaders).

Where Secretariat is down year on year is in the value and volume columns. But there too there's more to it than meets the eye. Last year the firm enjoyed one of the highest average values for cases being heard – in the table – US\$1.5 billion, but this was in part because of incomplete information that required GAR to triangulate our own database of cases. When we do that, we tend to catch the high-end items more than the everyday. This year Secretariat provided fuller information, so the average is more robust – at US\$341 million or so: impressive given the volume of hearings reported. The firm also reported slightly fewer hearings than a year ago – 69 unique hearings in 2020 versus 54 now. This looks to be an effect of covid-19. Secretariat enjoys a name for construction, mining and oil and gas work – and it's those three sectors, our GAR 30 analysis suggests, that seem to have taken more of a 'hit' on hearing work. As in previous years, Secretariat stood out for its international reach. In contrast to some in this table, its members are working on cases in every region.

HKA climbs five spots, to eighth this year. Year-on-year, though, its figures are also consistent. A year ago, its average value of case heard was US\$246 million; this year it is US\$250 million. And on the volume side, 56 hearings in 2020 became 57 in 2021. Where its line of figures has jumped – a lot – is the *Who's Who Legal* column, now 16 individuals and three thought leaders compared with seven and none a year ago. HKA has been investing in itself extensively over the past few years and 2020 saw two big acquisitions – The Kenrich Group in the US, a 100-professional shop with 11 offices; and Probyn Myers – expert architects in the UK. Both share HKA's construction disputes DNA (construction in the broadest sense).

This year's highest climber – up 13 places – **Charles River Associates** appears next (ninth). Its climb is chiefly driven by having (this year) a far higher average hearing value than nearly any other firm in the table, and conversely last year having one of the lowest (then it was US\$152 million). This year's average was driven by five multibillion-dollar matters in which CRA worked, usually for the investor against a state or state entity, arising in the Middle East, Asia and Latin America. Those hearings are all mining or energy related – where the firm seems to command particular expertise (Tiago Duarte-Silva chaired the first GAR Live Mining event, earlier this year). Indeed, CRA served as expert to Tethyan in its dispute with Pakistan – in which Tethyan won a remarkable US\$5.9 billion.

Versant Partners closes the top 10. A new entrant, this is its first year submitting data. Its leaders, however, are ex-Navigant in Washington, DC – and Navigant was in the table until it sold its disputes-business to Ankura (also in this table). Versant is in DC and London and more of a boutique than its forebearer or its successor, if one that is apparently seeking to expand. Members have been on some of the largest and most public arbitrations in recent years, including *Chevron v Ecuador* (for Chevron) *Vattenfall v Germany* (for Vattenfall) and *Union Fenosa Gas v Egypt* (for Union Fenosa).

Versant's line of figures is strong across the board. Its *Who's Who Legal* score is particularly impressive – six inclusions in a firm of 20, three of whom reach the level of thought leader.

11 to 15

In this section:

- Grant Thornton climbs five places;
- Ankura debuts;
- PWC falls eight spots; and
- NERA and Alvarez & Marsall appear.

Grant Thornton was in 16th last year, and is now 11th, making it one of this year's highest climbers. This climb is driven, chiefly, by a big change in its average hearing value. Last year that was US\$285 million; now it is US\$1.3 billion. This figure is driven by a couple of multibillion-dollar matters playing out. Otherwise, the value of cases handled appears to be a mix. The firm's hearings stood out in contrast to some of those in this section of the table for the greater mix of industries and sources of work. It is not all mining, oil and gas and construction (though those feature). Agriculture, pharma and finance – to name just a few – appear too. There's also some evidence that the firm's proportion of investment work year on year appears to be growing.

Where Grant Thornton lags behind some of those in this part of the table is in our *Who's Who Legal* columns. The reason for this isn't immediately clear. It is home to many highly regarded figures, including Bill Johnston in the US, and Michael Radcliffe and Chris West, working from the UK. This makes its ranking somewhat more vulnerable than for other firms; less ballast if the volume or value of hearings changes. The number of reported hearings also seems to fluctuate more than for some. This year it was 29 unique matters; last year 50 or so.

NERA meanwhile heads down this year, for the reason Grant Thornton goes up: a change in its average hearing value. Last year NERA had one of the highest average hearing values in the table – US\$1.02 billion. This was driven by a number of matters (including one piece of litigation that we accidentally included). This year the figure isn't much less, but a bit – US\$662 million – which remains exceptional and matches a number of firms above. NERA's arbitration work appears weighted towards energy and power cases – especially with a regulatory angle – often investment disputes. The firm's data also stood out for the number of different experts who contributed to the hearings scores. At some shops it can be five or six leads who seem to do all the work. For NERA this year 14 different individuals took the lead.

PWC also slips – from fifth last year to 13th. In all truth, its year-on-year figures are little different. Its *Who's Who Legal* score has actually increased by three individuals to 11, with two more thought leaders in total (now three). The average hearing value is down – but only slightly at US\$414 million versus US\$482 million in 2020, but the same goes for volume of hearings – 42 this edition compared to 57 last edition). This particular change in the table seems driven by firms such as Brattle Group, Alix Partners, Grant Thornton and HKA's moving up rather than a change in any fundamentals for PWC.

Alvarez & Marsal is a similar story to PWC. It falls five places, without its figures really declining. Its average value was US\$263 million and has gone up to US\$272 million. The number of hearings is slightly down, but not by much – 26 this edition versus 32 last. Its *Who's Who Legal* score has jumped five people (now 14 from nine). Its most impressive characteristic remains five thought leaders – the highest in this section of the table and commensurate with the firms in the top 10. On the work side, its hearings stand out for the geographic variety, the broader range of industries than at some of those earlier in the table (including the first serious appearance of auto-industry disputes, led by Alexander Demuth in Germany – who co-chairs GAR Live Damages) and for having at least one female partner prominently taking the lead on work (Laura Hardin). Again, then, the ranking change appears to be about others moving rather than Alvarez & Marsal's fundamentals changing.

Ankura makes its debut at 15th. It was, primarily, a US-focused consulting firm (founded in 2014) until 2018 when it bought Navigant's international disputes network for a reported US\$470 million, including its extensive construction arm. This is the first year that Ankura has submitted figures as Ankura. When Navigant last appeared was 2018 it finished fifth (but under a different methodology). Its figures in that edition showed a mix of extremely high value work and more commoditised (we noted there was a *big* difference between its average hearing value (billions), and its median – £101 million). It also had one of the highest volumes of hearings we reported that year – around 62.

Ankura's figures have a similar profile. It posts the highest number of unique hearings – 62 – outside the top 10. Its average hearing value, however, is on the lower end – reflecting a greater spread in the value of the claims handled. Most of the work is indeed construction, reflecting the Navigant roots – and for the most part commercial. At Ankura too, we see even more female partners taking the lead – notably Jacqui Record in the Middle East and Kelly Heuer and Amanda Jo Amadon in the US. This may reflect the firm's construction roots. Anecdotally, the world of construction is less male-dominated than some professional disciplines.

16 to 20

In this section:

- EY and Oxera climb;
- BDO falls;
- Deloitte is also down; and
- Exponent makes a debut.

Ernst & Young climbs one space to 16th. Its year-on-year performance is better in the number of hearings columns (up to 18 from 13) and its *Who's Who Legal* score (an impressive “eight” and “one” (thought leader)) – and it has remained around the same on average value of hearings (an also respectable US\$456 million), although the firm withholds quite a few claim values and thus the average is somewhat less reliable. For now, EY is held back in the ranking by its volume of hearings score. With that in mind, it is worth noting that the majority of its current hearings are connected with either India or Africa, both of which are only expected to become more important to the global economy. In that sense, it looks well positioned for growth.

Exponent makes a debut at 17th. Formerly known as Failure Analysis Associates, it is a scientific and engineering consulting firm with a following among US corporates, particularly energy firms, and, so, something of a US-focus. It does have non-US offices – five – which mostly do construction. By dint of housing a lot of niche expertise, Exponent will often supply more than one expert to a client (hence the difference between its disaggregated and unique hearings scores (29 and 19 respectively).

Although it isn't immediately obvious from our table, Exponent's average hearing value is in fact the highest in this year's Index. That's because in the past two years it provided experts to two matters worth US\$30 billion and US\$60 billion respectively (the second is an insurance coverage dispute). (GAR reported a third multibillion-dollar matter on which the firm worked, which didn't end so well for Exponent's client: the other side was awarded US\$50 million in costs.)

Consequently the firm's average value per case was, well, simply huge. So huge that these two matters – which in the case of the US\$60 billion one featured multiple Exponent experts – “broke” our formula, and we had to leave the scores out as statistical outliers. Hence the more lowly US\$201 million in the chart. Had these US\$30 billion and US\$60 billion hearings been included, Exponent would have finished far higher.

The one area where Exponent looks “weak: is the *Who's Who Legal* column. Why that is, we don't exactly know. It may be that it hasn't had to hunt for work.

Deloitte falls three places to 18th. Its performance in two of our three categories – reputational clout and volume of hearings – was identical to last year, or slightly improved. But its average value of hearing fell from US\$324 million to US\$165 million. Deloitte had the greatest volume of hearings in the lower half of the table, along with a competitive *Who's Who Legal* score. A slight shift in its average value of hearing figure and it would likely jump straight back up the table.

Oxera climbs one to 19th. The European regulated industry specialist, with historic links to Oxford University, has improved in part through not doing worse than a year ago – as we noted happening in our GAR 30 analysis. Its average value of hearing is the same as last year – and the range of industries and types of dispute more diverse than is often the case – from finance to post M&A to IP to telecoms. Its *Who's Who Legal* score has improved – by one, and this is another practice where female partners take the lead on work (Helen Jenkins and Min Shi).

Like PWC, **BDO** in 20th is one of the bigger fallers this year. That looks a little harsh, given its average value in fact climbed substantially on a year ago – from US\$189 million to US\$327 million. (We predicted this might happen – noting that its average figure then looked to be suppressed by two atypically small items. That looks to have been the case.) This US\$327 million is more reflective of the practice's heritage and quality. Its *Who's Who Legal* score also improved – by one.

The lower ranking is in part because a weighting was given to Thought Leader scores last year was removed for this edition. BDO is the one firm in this section of the table *with* a thought leader (Gervase Macgregor, one of Europe's biggest names). Nothing in the practice's fundamentals have changed. BDO has historically posted a low to medium number of hearings – reflecting a house-style for greater partner-attention. In that regard BDO is similar to some of the law firms it's retained by. And there's another similarity. Like many of today's senior law firm names, members of the BDO team trace their start in the field to a stint working with one of the UN commissions (in BDO's case the UN Compensation Commission on Iraq).

21 to 26

In this section:

- an old favourite returns;
- AFRY makes its debut; and
- it becomes clear who from last year has missed out (Arcadis, KPMG, Accuracy, StoneTurn, and the Claro Group).

Global Financial Analytics returns to the Index after a hiatus of a year. This small shop founded by an ex-Navigant lead Rory Walck was a regular up until that. It dropped out because its members took a sabbatical following the completion of *Mobil Investments v Canada*. We noted, last year, that the firm had resumed operations but, while it had plenty of fresh work, none of that work had yet reached the hearing stage. That's now changed – hence it is back and in a similar overall position. The firm's small and doesn't carry a large caseload, but what it has is always high value. For example, it has been appearing for Vento Motorcycles in US\$3 billion investment claim against Mexico. This year, GFA has the highest average hearing value in the table.

Delta Consulting drops eight places, to 22nd. This is not quite as grave as it first sounds: Delta Consulting rose 13 spots a year ago. So it's still trending upwards over the longer term. It fell largely because the average value of hearings declined this edition – from US\$528 million to US\$209 million. Its other scores remained largely the same. One would expect this construction and infrastructure boutique to continue trending upwards in coming editions. It has been working with Sidley Austin, White & Case and Vinson & Elkins of late on some of their larger Latin American project disputes and is becoming better and better known in the region (able to work in Spanish and Portuguese). It is now also present in London too, where its office has doubled in size within two years.

AFRY Management Consulting, in 23rd, makes its debut this year. Like GFA, (and Exponent – see above) it has a huge average hearing value – US\$1.3 billion – but a low hearing volume. Unlike GFA, it's a sizeable entity that works in areas other than international disputes. AFRY can trace its roots to 1895 (it started as a group of steam-pipe inspectors), whence it has grown into a Swedish-Finnish design, engineering and infrastructure consultancy with 17,500 employees worldwide; AFRY is its name following a recent merger (a portmanteau of "AF" and "Pöyry").

AFRY began to offer expert witness services seriously around 2010. Since then, the firm has worked on some 60 commercial disputes, most in gas or power or bioindustry focus. Around 10 members of the firm now have testifying experience; a further 30 consultants have worked with regularity on disputes. Because of the expertise in gas-matters in particular, it is often found on high value work. The average hearing value this year is driven by one particularly sizeable gas matter.

Frontier Economics is another European economics consulting firm appearing in more and more on international arbitrations of late. Three of its senior members have now testified more than 10 times, and the firm is starting to have a following among Central and Eastern European states, for gas and similar energy work. Its disputes business has grown from its wider consulting work straddling competition and regulated industries.

Frontier finishes in largely the same position as last year, but saw a big increase in its average hearing value between the editions (from US\$136 million to US\$382 million).

Credibility International slips four places. Its year-on-year figures declined in the two columns that matter most to the ranking: average value from US\$382 million to US\$198 million and the hearing volume from 14 to eight (nine disaggregated). But it has gained a thought leader (Tim Hart, a veteran of the discipline with more than 69 arbitrations under his belt). This year's hearing data shows Hart is no longer the only lead on cases – Andrew Preston and Rebecca Vélez in particular feature multiple times.

The firm has been in existence since 2010 and is a favourite of some of the US's more eminent treaty-arbitration firms, particularly those who defend states and state entities. Recently it has appeared in hearings on behalf of Poland, Thailand, and the city of Lima, capital of Peru. It's also starting to develop something of a specialisation in mining. Founder Tim Hart was one of the first experts to work on investment cases; indeed, he testified on behalf of the claimant in the first investment case to make headlines for the size of its award (*CSOB v Slovak Republic*; US\$866 million in 2004). The practice remains weighted towards investment work.

Analysis Group rounds out this year's Index. The firm failed to include full data on its hearings so our researchers were forced to fill in some of the blanks through triangulation with GAR 100 firms' questionnaires. It is clear from case descriptions that the practice provided separately that it is working on plenty of the highest value work – disputes related to failed asset sales, mass claims over bank failures, oil pipelines and joint ventures in the nuclear industry. It's pretty certain that the figures in our table undershoot reality. But they are all we have – for now. Analysis Group was founded in 1981. Around 69 members of the firm now work regularly on international arbitration. Ten of those have worked on more than 25 cases. The firm regularly works with some of the leading names in the GAR 30 – including King & Spalding, Debevoise & Plimpton, and Curtis, Mallet-Prevost, Colt & Mosle, and members of the practice have been cross-examined by among others, Philippe Pinsolle (of Quinn Emanuel) and Georgios Petrochilos (of Three Crowns).

And that completes this year's Power Index.

Regular readers will notice a couple of familiar names not apparently included.

KPMG, StoneTurn, Cornerstone and CEG are all absent, for a second year in a row. All failed to respond to requests for information. Two other firms – The Claro Group and Accuracy – were affected by an administrative hiccup on GAR's end, which is where we go now...

Addendum to Power Index

Owing to a miscommunication, two firms were omitted from this year's Power Index. Accuracy and The Claro Group.

We have retrospectively compiled their data and approximate ranking position – here:

TABLE 1a

Addendum to the Power Index 2021

Firm Name	Average value of claims (US\$M)	Total Value of Claims (US\$M)	Total number of hearings (Unique)	Number of hearings, disaggregated	WWL	WWL Thought Leaders	2021 Rank	2020 Rank
Accuracy	138.9	5420	39	56	14	2	~ 15	6
The Claro Group	455.5	2733	6	6	2	0	~23	19

Accuracy is the first firm our compilers omitted. Had it not, it would have finished in approximately 15th position –around nine places lower than its sixth place last year.

That (hypothetical) drop is less severe when one recalls that Accuracy was among the highest climbers last year – climbing 12 positions from 18th. So, at 15th now (give or take), year-on-year it is trending upwards.

The firm, formerly part of Arthur Anderson, improved its scores in the WhosWho and Thought Leaders columns (those were three and one higher respectively) but slipped in average value (from \$203.5 million to \$138.9 million) and volume (from 64 unique hearings a year ago to 39 now).

Last year we noted Accuracy had worked on 10 investment cases about the solar industry in Spain working for the government's in-house legal team. This year Spanish solar contributed far less – just three hearings - and the mix of industries in dispute was more diverse. It included defence, manufacturing, automotive, infrastructure, electronics and retail, as well as

energy and construction. Construction was again the biggest single contributor (15 hearings), followed by energy (nine). Mining – also prominent last year – was far less present (just three items)

The Claro Group was a new entrant last year, at 19th. This year, had it been included, we estimate a finish of around 23rd. The firm's average value of case fell from \$770.7 million to \$455 million, and its volume of hearings was slightly down (from eight to six) but its WhosWho score improved (by one). But that average value was dragged down by one peculiarly small item (sub \$10 million). Given the firm also worked on matters worth \$2 billion and \$500 million, its reasonable to assume that its average value in other years will be higher..

Wayne Wilson, formerly with Alvarez & Marsal, is probably the firm's best known name. Last year he dominated the reported work. This year Karl Killian, Jeff Andrien and Mike da Laval all also appear on reported cases. The firm's work still skews strongly towards energy, much of it as mentioned high value. Five of the six hearings were energy cases (many in oil and gas). The other was financial services and may well have had an energy element. The firm worked with law firms such as Vinson & Elkins, Mayer Brown and Herbert Smith.

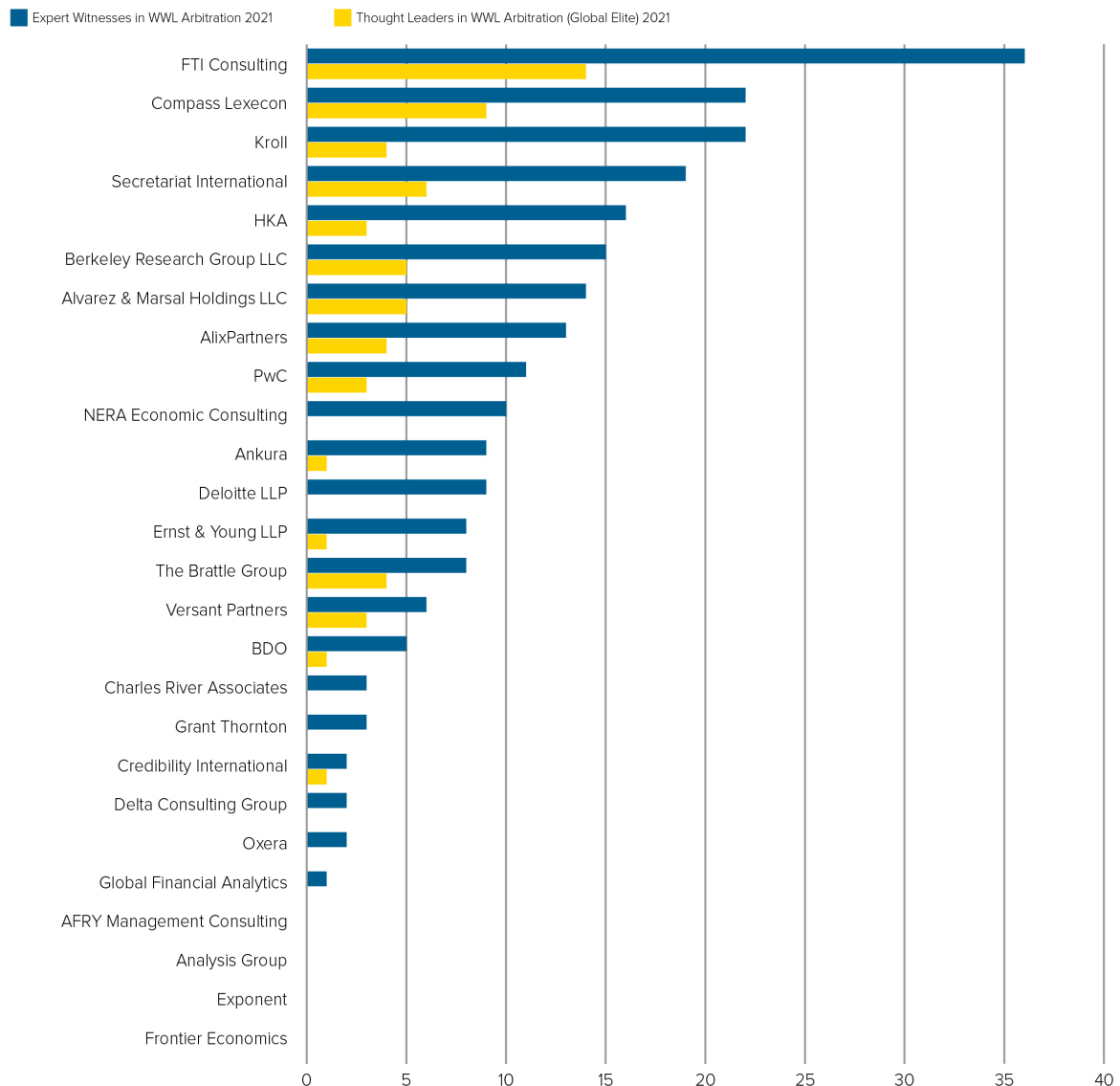
And now back to the rest of the commentary.

Table 2a and b - merits hearings versus reputational clout

Table 2a extracts the *Who's Who Legal* and Thought Leader columns from the Power Index. (A "Thought Leader" is an individual who finishes in the top 2 per cent of the *Who's Who Legal* research.)

If reputation were the only criterion, then the Power Index's order would look like this:

TABLE 2A
Expert Witnesses and Thought Leaders in WWL 2021



The firms that move up the order most, when pure reputation is considered are:

Alvarez & Marsal (+7), Deloitte (+5), PwC (+3), HKA (+3), BDO (+3), Ankura (+2), Ernst & Young (+2) and NERA (+1).

And those going the other way: The Brattle Group (-10), Grant Thornton (-8), Charles River Associates (-8), Versant (-6), and Alix Partners (-4).

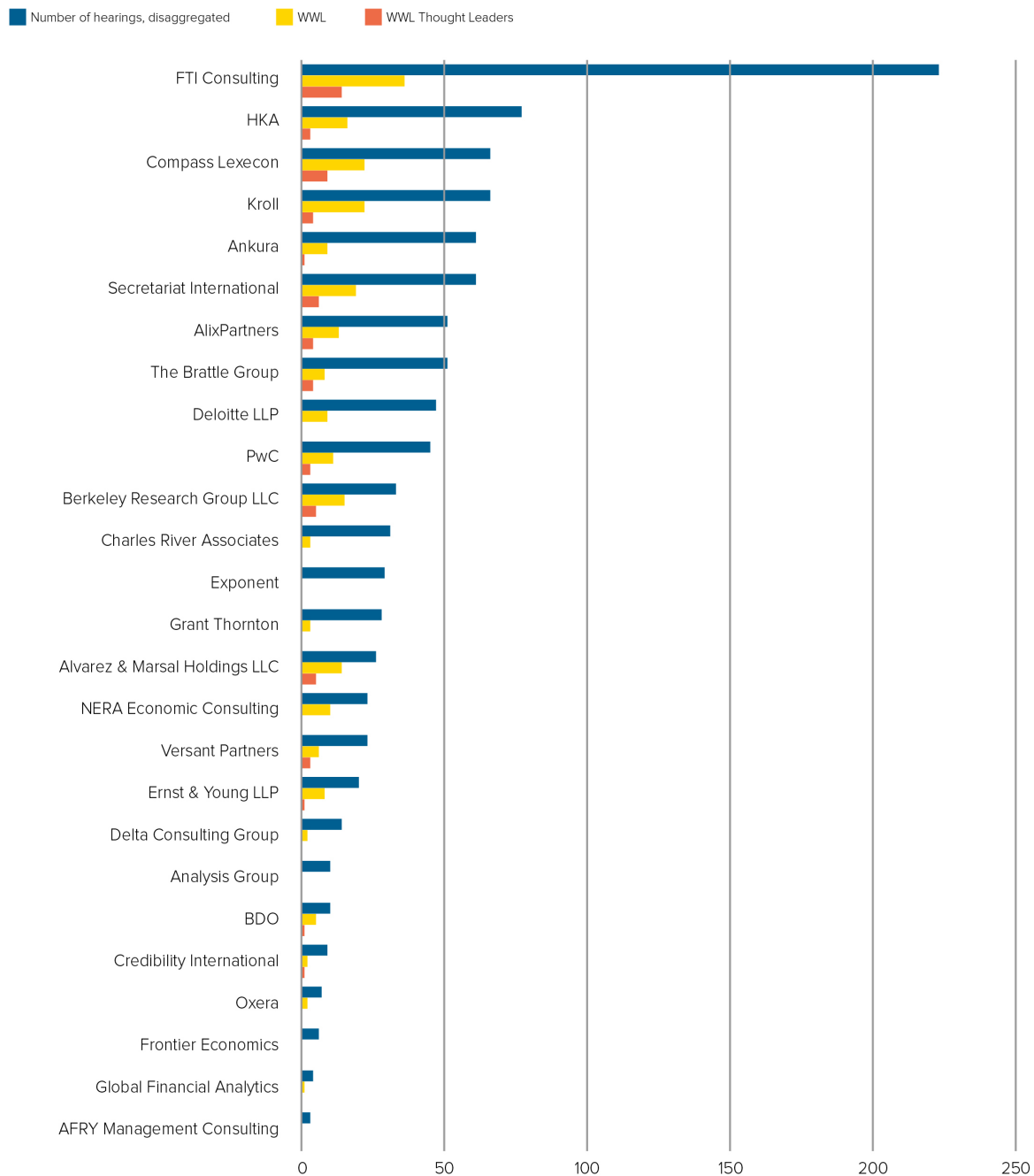
This chart has its limitations; it says nothing about the concentration of *Who's Who Legal* names. For example, the Brattle Group is a far smaller organisation than PwC or FTI, meaning it probably has far more individuals of stature per square metre, so to speak.

But it does at least suggest which firms may be over- or underperforming, versus their reputation.

(Of course, different firms may put different levels of effort into acquiring market reputation. Teams who have a good supply of internal referrals or strong institutional clients may not value the trappings of recognition as much.)

Table 2b overlays hearings numbers ('disaggregated' hearings) and the reputational scores.

TABLE 2B



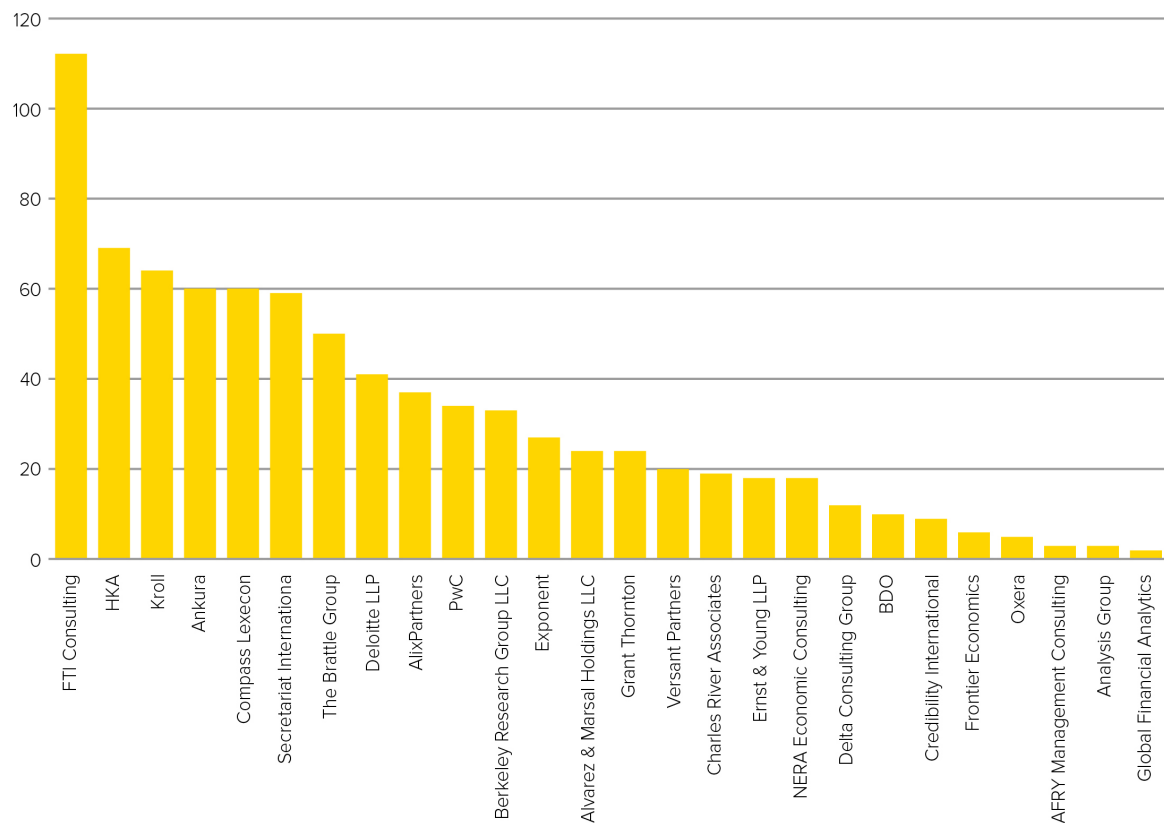
Individual conclusions are tricky. But the overall pattern is unequivocal. There is a broad correlation between number of hearings and reputational clout.

At the same time, within that, there are clear exceptions. Grant Thornton and Charles River Associates (on three *Who's Who Legal* names apiece) are anomalies – they have strong hearing numbers but 'low' *Who's Who Legal* scores. Ankura and The Brattle Group are also noticeably different in the *Who's Who Legal* column than those immediately around them by volume.

Table 3 – most cross-examinations

Here we look at the response to the question: how often were your experts cross-examined? The results are presented in Table 3, as simple totals unlinked to any value of claim. This year we use disaggregated hearings – so, if four experts took part in the same hearing, and each one was cross-examined – the firm gets a point for each of them.

TABLE 3
Number of hearings cross-examined, disaggregated



The very top of the cross-examinations table looks much like the Power Index: FTI in first place – and by some distance.

But otherwise, the top 10 is pretty different.

HKA is six places higher, Ankura 11 places, and Deloitte 10. Meanwhile, Alix Partners and Berkely Research Group are down five apiece.

Little wonder perhaps. The cross-examination table is essentially the Power Index re-ranked by volume alone (in other words with no regard for the value of the hearings in question). So higher-volume shops rise to the top.

What's odd is how FTI's cross-examination number is at odds with its disaggregated score to a greater degree than anybody else. We're still digging into that. More helpfully, and as we've noted before, the firms that do well in this table (and any table ranked by volume) are those with a construction slant.

Table 4 - Investor-state versus commercial work

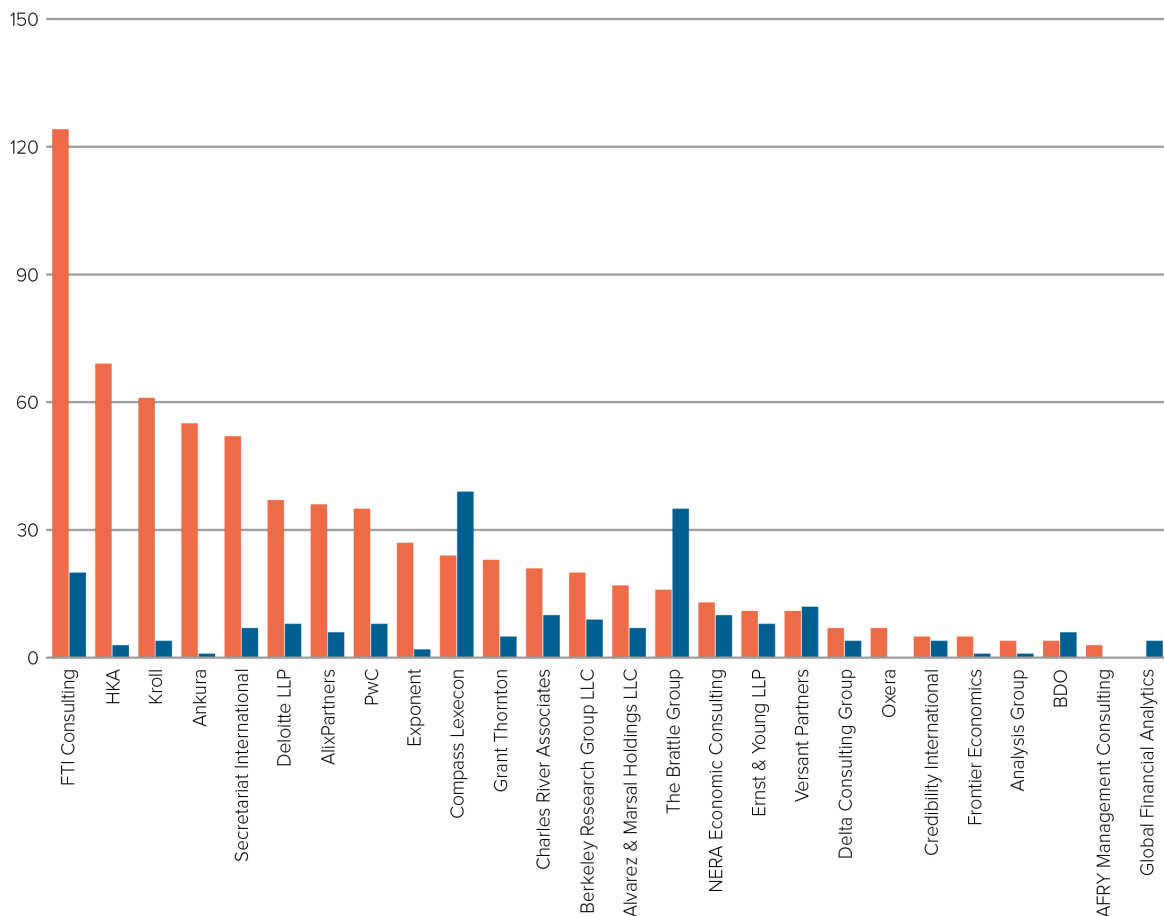
Table 4 shows the split between investor-state and commercial arbitration at the firms in the survey.

TABLE 4

Total number of commercial hearings and investor state hearings

Number of Commercial Hearings, disaggregated

Number of Investor State hearings, disaggregated



If we were ranking the Power Index by investor-state hearings, then the top order would be (number of hearings in brackets):

1. Compass Lexecon (39);
2. The Brattle Group (35);
3. FTI (20);
4. Versant (12);
5. Charles River Associates (10);
6. Berkeley Research Group (9); and
7. Alvarez & Marsal (7).

That would be a five and 13 place jump for The Brattle Group and Charles River Associates – respectively and six places for Versant.

It's notable how many of the current top 10 in the Power Index have a bias towards investment treaty work (or construction work). It appears there is a correlation between investment cases and success. This is probably because claims in investment cases tend towards being larger (not always realistically so).

This table shows nicely who exactly has a strong focus on investment work – GFA, for example, handles it nearly exclusively, and the Brattle Group is weighted two-thirds to the investment side. Compass Lexecon, Versant and BDO, NERA, Delta Consulting and Credibility International are around half and half.

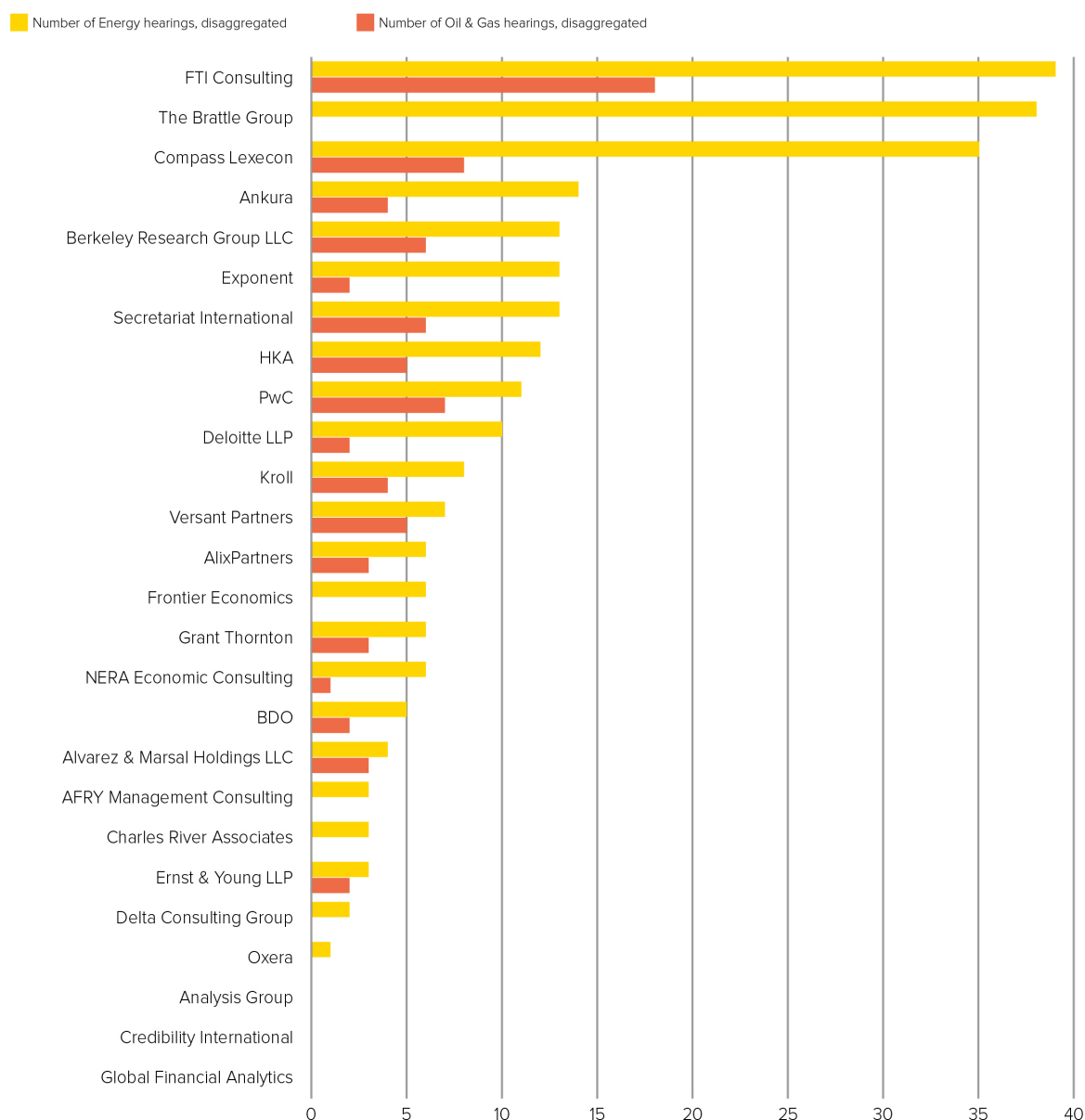
There are two notable absentees from this table this year: Blackrock Expert Services and Haberman Ilett. Blackrock had around 15 investor-state hearings a year ago, and Haberman Ilett around seven. Both have since become Kroll. Curiously, between them the score is now four. This may simply be timing. Investor-state cases take a long time between hearings. It may be that one crop has reached their conclusion and the next lot haven't yet reached their hearing phase. Or perhaps it's something else – time will tell.

Table 5 – Energy, oil and gas work

Table 5 presents the number of energy-related hearings per practice, along with how many of those were oil and gas.

TABLE 5

Total number of energy hearings and oil & gas hearings



FTI Consulting overtakes stablemate **Compass Lexecon** at the top of this table this year. The firms arrive in the sector from different directions. FTI's energy-related cases are often construction-related, while Compass Lexecon's tend to be investor-state claims.

The Brattle Group's year-on-year performance in this chart has changed – substantially. Its total last year was six energy items (none were traditional oil and gas); now it is 38. In 2019, its total was seven items total and three oil and gas. Twenty-eight or so of Brattle's recent energy matters are renewables cases against Spain, part of the wave of cases that have been unfolding. Seen like that, the jump isn't quite so big.

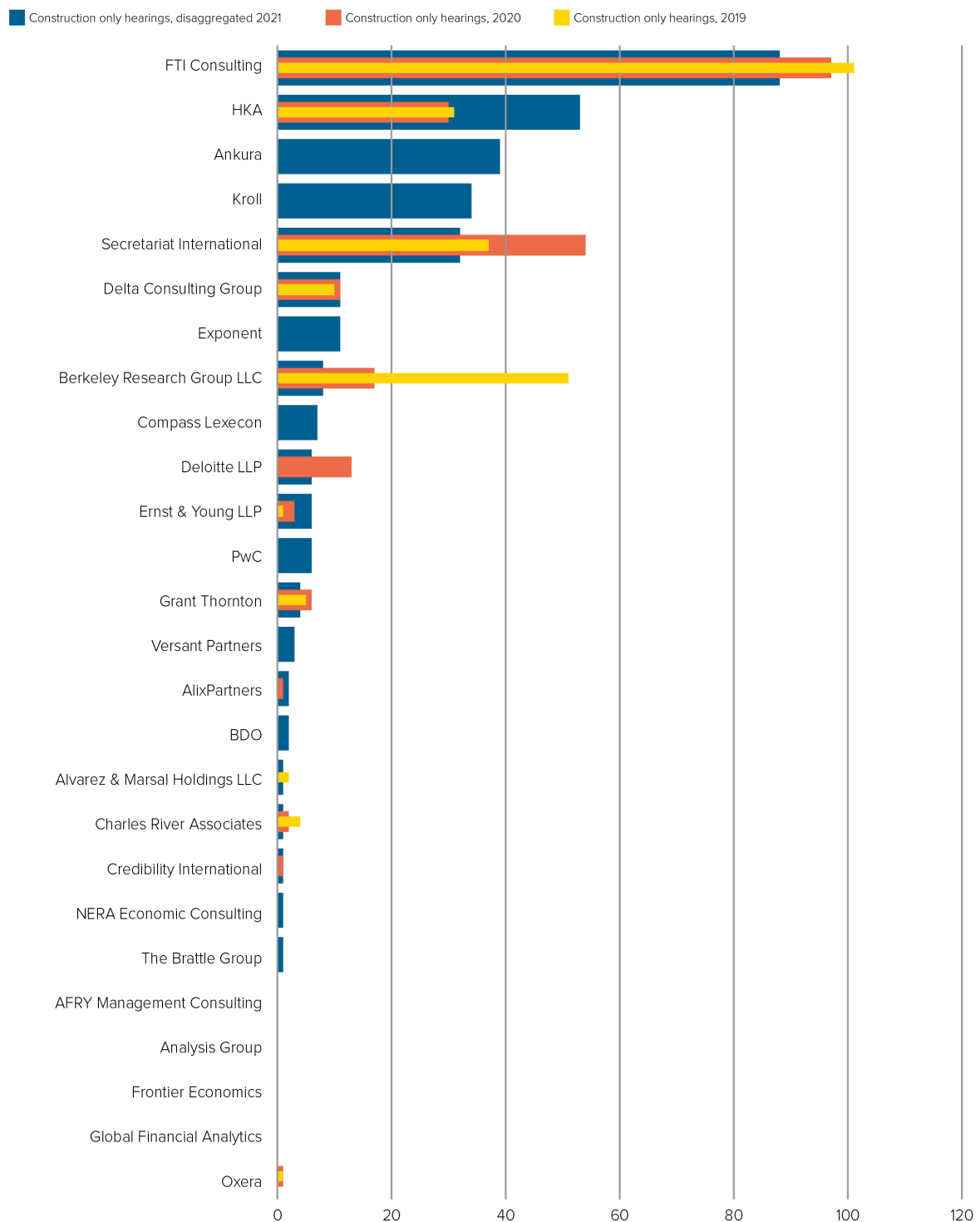
Ankura and Exponent both produce their highest finishes this year in this table.

In Exponent's case that's no surprise. The firm has a loyal following among US power firms and energy majors. As mentioned, it's been on at least three hearings in the past two years worth in the tens of billions of dollars.

Table 6 – Construction

Table 6 focuses on solely on construction disputes.

TABLE 6

Total number construction hearings

A number of firms rise sharply in the order as soon as the lens is “construction work only”. HKA (up six), Ankura (up 12), Secretariat (up three), Exponent (up 11), and Deloitte (up nine) are all far more prominent in this table than the Power Index.

This proves, among other things:

- construction arbitration’s a love it or hate it activity. You either do it, or you don’t – there’s little middle ground;
- construction produces a lot of work and hearings; and
- compared to some types of work, those are lower in value.

The last comment is open to some debate. These days the construction matter in question can be upgrading the Panama Canal, building an LNG energy terminal – very high value stuff – and so on. But for the most part those are the exceptions that prove the rule. Most of the time, construction disputes are not for billion-dollar amounts.

It also appears, with this chart, that the year-on-year numbers are down. (FTI and Secretariat's figures in particular.) Could this be a covid-19 effect? It isn't impossible to believe. While, strictly speaking, covid-19 only affected the final six months of a 24-month research period, those six months were the period of greatest disturbance to normal life and construction disputes by the nature are one of the fiddlier areas of normal life. It may be this was a sector where clients felt it would be better if at all possible to postpone. If so, it is unlikely those delays will be permanent and the cases will resume at some point. In that case, these figures will catch back up next year.

Table 7 – The Power Index 2021 (excluding construction hearings)

TABLE 7
Power Index 2021 (with construction hearings excluded)

Firm Name	Average value of claims (US\$M)	Total Value of Claims (US\$M)	Total number of hearings	Number of hearings, disaggregated	WWL	WWL Thought Leaders	2021 Rank
Compass Lexecon	851.40	21,285.00	34	59	22	9	1
FTI Consulting	631.21	64,383.43	108	135	36	14	2
The Brattle Group	698.30	20,949.00	31	50	8	4	3
AlixPartners	587.71	17,631.43	43	49	13	4	4
Berkeley Research Group LLC	604.55	9,672.80	25	25	15	5	5
Secretariat International	537.31	14,507.26	27	29	19	6	6
Kroll	356.08	11,038.34	31	32	22	4	7
Charles River Associates	1,086.44	30,420.30	28	30	3	0	8
HKA	478.39	6,697.40	20	24	16	3	9
Grant Thornton	1,514.53	27,261.50	22	24	3	0	10
PwC	478.84	13,886.50	36	39	11	3	11
Versant Partners	545.18	9,268.00	17	20	6	3	12
NERA Economic Consulting	662.17	13,905.55	22	22	10	0	13
Alvarez & Marsal Holdings LLC	275.47	5,233.93	25	25	14	5	14
Ernst & Young LLP	653.27	5,879.45	12	14	8	1	15
Global Financial Analytics	1,550.00	3,100.00	2	4	1	0	16
Deloitte LLP	86.44	2,593.25	37	41	9	0	17
Ankura	154.81	2,786.50	21	22	9	1	18
AFRY Management Consulting	1,346.67	4,040.00	3	3	0	0	19
Exponent	175.70	1,757.00	12	18	0	0	20
BDO	366.91	2,201.46	8	8	5	1	21
Oxera	532.50	2,130.00	6	7	2	0	22
Credibility International	198.50	1,389.50	7	8	2	1	23
Frontier Economics	362.56	2,175.35	6	6	0	0	24
Analysis Group	168.99	506.98	7	10	0	0	25
Delta Consulting Group	28.33	85.00	3	3	2	0	26

Table 7 is a new addition to the report, this year.

It re-does the Power Index – but this time without any construction-related work. A number of readers last year noted (1) construction work (for those that pursue it) produces a lot of hearings; and (2) that may lead construction firms to dominate the Power Index. They wondered how the Index would look without construction work.

Now we know!

There are indeed shifts – but they're subtle. This version of the Power Index has a new number one. But the original number one, FTI, is still second. Elsewhere, The Brattle Group and BRG, and Charles River Associates and Secretariat all move up – a bit. And Kroll, HKA, and Versant all move down – but again only a bit.

At the other end of the table. GFA is the largest beneficiary – gaining five places; Delta Consulting is the largest faller, dropping four.

Otherwise, in many ways this version of the Power Index looks a lot like the original. Whether that will be so every year, we'll find out. We're going to make the "Power Index without construction" a regular feature going forwards.

If nothing else the table helps to confirm the suggestion just above that billion-dollar construction matters aren't the rule. Excluding all construction hearings dropped the "total value" captured by the table by US\$50 billion. Sounds a lot, but in fact it is only a sixth of the table's original total value.

That's it for this year. We hope you enjoyed the report. Please do send us your thoughts, comments and suggestions for the future to editorial@globalarbitrationreview.com.

Additional reporting by Charlotte Riley