

## **JONATHAN S. SHEFFTZ**

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Mr. Shefftz is an independent consultant who specializes in the application of financial economics to litigation disputes, regulatory enforcement, and public policy decisions. Previously he was a consultant with Industrial Economics, Incorporated (“IEc”) from 1992 until 2006 when he moved to western Massachusetts. Mr. Shefftz has extensive experience in settlement and litigation support, and has been qualified as an expert witness in U.S. District Court, a federal agency’s Administrative Court, and state courts.

Mr. Shefftz’s recent experience includes work in the following areas.

- Calculating the economic damages suffered by companies and individuals from alleged wrongful actions.
- Applying financial economics to civil penalty factors in regulatory enforcement actions.
- Analyzing financial economic issues related to public policy decisions.

Mr. Shefftz has performed this work in a variety of contexts, including expert witness testimony, computer model development, training course delivery, and regulatory review. He has supervised project teams comprising economists, accountants, paralegals, and software developers, as well as worked in parallel with engineers, scientists, lawyers, and lobbyists. His clients have included federal and state governmental agencies, private litigators, and other private-sector entities.

Mr. Shefftz holds a B.A. *magna cum laude* and *Phi Beta Kappa* in Economics and Political Economy from Amherst College, and an M.P.P. degree, with concentrations in Government & Business and Energy & Environmental Policy, from the John F. Kennedy School of Government at Harvard University.

Mr. Shefftz’s positions have included Eastern Vice President for the National Association of Forensic Economics, Chair for the Town of Amherst Planning Board, referee for the *Journal of Forensic Economics*, Course Liaison for the “Engineering Economic Decision Making” course at the University of Massachusetts Amherst, and Treasurer as well as Finance Committee member for the Jewish Community of Amherst. He is also a member of the Government Finance Officers Association, Eastern Economic Association, and Amherst Area Chamber of Commerce.

## JONATHAN S. SHEFFTZ

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### Economic Damages

Mr. Shefftz has experience with the following work on economic damages, including expert witness testimony both in deposition and at trial. He has also applied his expertise in unjust enrichment calculation, financial statement analysis, municipal financial assessment, and corporate control / ownership issues to private-party damages cases – this expertise is described in more detail in the “Financial Factors in Regulatory Enforcement” section.

### *Business Damages*

Mr. Shefftz has modeled companies’ cash flows under hypothetical “but-for” states of the world versus actual states of the world to calculate business damages in numerous cases. Sample contexts include an engineering firm that lost business to a spin-off competitor, timber companies that alleged a contract breach from implementation of Congressional legislation, a furniture company whose relationship with a joint venture partner was interfered with by a key customer, a fixed base operator prohibited from selling jet fuel by a municipal airport commission, a brownfields remediation firm with an incapacitated key principal, a state-chartered joint underwriting association whose prior servicing carrier incorrectly determined premiums, a dealer who delivered contaminated fuel, a social networking website imperiled by a developer’s nondelivery, computer code discarded by a demolition crew, and a sports organization whose apparel licensee breached a contract.

### *Personal Damages*

Mr. Shefftz has assessed lost earnings and household services along with incurred and anticipated medical costs in numerous cases involving wrongful death, personal injury, wrongful termination, estate disputes, and divorce proceedings. Sample contexts for this work include alleged employment discrimination, medical malpractice, workplace injuries, vehicular accidents, retail store accidents, below-market earnings, and an arrest instigated by a former spouse.

### *Water Contamination*

For a real estate development, Mr. Shefftz analyzed the diminution in value by projecting the groundwater contamination-induced delayed schedule versus the original schedule. On a claim to have developed groundwater assets but for contamination, he testified on the municipality’s impaired financial condition at the time. On a class action lawsuit by property owners, he evaluated the defense economist’s statistical analysis of property values. On other water contamination lawsuits, he has calculated the damages from the need to switch to alternative sources of water, including a desalination plant, whole-house drinking water systems, and a neighboring utility.

### *Intellectual Property*

For defense counsel in a copyright infringement lawsuit, Mr. Shefftz assessed declarations from the plaintiff’s expert economist who asserted that a “companion” book would damage the author of the original series of novels. He also assisted counsel with preparation for trial cross examination.

### *Computer Model Development*

For the U.S. Department of Justice Commercial Litigation Branch, Mr. Shefftz developed a standalone computer model for statutorily determined interest under the Contract Disputes Act.

## JONATHAN S. SHEFFTZ

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### **Financial Factors in Regulatory Enforcement**

Mr. Shefftz has experience with the following work on regulatory enforcement actions brought under the Asbestos Hazard Emergency Response Act (AHERA), Clean Air Act (CAA), Clean Water Act (CWA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Emergency Planning and Community Right-to-Know Act (EPCRA), Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Oil Pollution Act (OPA), Resource Conservation and Recovery Act (RCRA), Safe Drinking Water Act (SDWA), Spill Prevention, Control and Countermeasure (SPCC) rule, Toxic Substances Control Act (TSCA), Underground Storage Tank (UST) program, as well as various state statutes. Mr. Shefftz has been qualified as an expert witness on numerous occasions in federal, administrative, and state courts. His clients for this work have included the U.S. Environmental Protection Agency (EPA), U.S. Department of Justice (DOJ), private litigators, state Attorneys General, and defense counsel.

#### *Financial Statement Analysis / Ability-to-Pay / Economic Impact / Corporate Control & Ownership*

Mr. Shefftz has examined the tax returns, financial statements, and other financial documentation for individuals, businesses, not-for-profits, municipalities, and all four unincorporated organized U.S. territories, to assess the ability to pay for – and/or economic impact of – sought environmental expenditures, e.g., compliance costs, penalty demands, and cleanup/remediation costs. He has reviewed discovery documents and conducted research in many cases to assess the extent to which subsidiaries can rely on their corporate parents for financial support and the extent to which corporate control of subsidiaries goes beyond that exercised by mere ownership.

#### *Financial Gain / Economic Benefit / Unjust Enrichment*

Mr. Shefftz has modeled companies' and municipalities' cash flows under hypothetical full and timely compliance states of the world versus actual delayed compliance states of the world to calculate the economic benefit (i.e., financial gain or unjust enrichment) on numerous enforcement actions. As part of this work, he has estimated the weighted-average cost of capital for a wide variety of companies and industries.

#### *Other Financial Factors in Regulatory Enforcement Actions*

Mr. Shefftz has performed work on other financial factors in regulatory enforcement actions: the “size of violator” penalty element; the relative weight of different financial indicators for establishing deterrence; and, the adequacy of financing plans to ensure environmental compliance.

#### *Computer Model Development, Training, and Support*

Mr. Shefftz has managed the development of the current versions of the BEN, PROJECT, ABEL, INDIPAY, and MUNIPAY computer models that U.S. EPA's Office of Enforcement and Compliance Assurance applies to financial economics issues in enforcement actions. He has prepared the models' help systems and training materials, as well as presented training courses and provided related support for federal and state enforcement staff. Mr. Shefftz has also assisted in several U.S. EPA academic peer reviews and public comment processes for the BEN computer model and related economic benefit recapture issues. Finally, he has created Canadian and Chilean versions of the BEN model.

## JONATHAN S. SHEFFTZ

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### **Public Policy**

#### *Cost of Capital Estimation*

Mr. Shefftz assessed peer reviewer comments and then revised a draft report on cost of capital estimation for water systems. His work included applying the capital asset pricing model to the commercial drinking water industry and correcting for the earlier draft's assumptions regarding capital structure and industry-level business risk.

#### *Financial Assurance*

For a state agency, Mr. Shefftz proposed appropriate inflation forecasts and discount rates, drafted a guidance document, and then developed a stand-alone computer model to calculate the net present value of future remediation costs. For EPA's Office of Solid Waste, he provided recommendations on discounting future cleanup costs; for the Office of Site Remediation and Enforcement, he created a computer model to assess the combined affordability of financial assurance and cleanup costs; for another EPA office, he created a spreadsheet model to calculate the insurance and/or trust fund amounts necessary to provide for post-closure care. For the U.S. Department of the Interior's Office of Surface Mining Reclamation and Enforcement, he reviewed other agencies' approaches and developed a spreadsheet model to calculate initial trust fund amounts and then recalculate subsequent years' annual rebalancings to reflect actual returns and additional future costs. For a not-for-profit, he reviewed draft reports on the potential role of financial assurance in the regulation of hydraulic fracturing (i.e., "fracking").

#### *Joint Cost Allocation*

For a study of Bureau of Reclamation rate setting for California's Central Valley Project, Mr. Shefftz researched economically efficient methods for allocating water project costs to user classes.

#### *Proposed Legislation*

For an industry association, Mr. Shefftz designed and implemented a survey and analyzed its results to predict the impacts of a proposed national lead tax upon lead consumption and dependent industrial sectors. For a national waste management firm, he analyzed the financial impacts of a proposed state tax on hazardous waste land disposal.

#### *Superfund Impacts*

Mr. Shefftz examined the Department of Energy SURE model's predictions of economic impacts from Superfund liability and cost allocation reform. At a Superfund site, he critiqued a small city's claims that a proposed contaminated soil cleanup would lead to widespread economic disruptions.

#### *Legislative Review*

For the 1990 Clean Air Act amendments, Mr. Shefftz investigated the potential of fuel oxygenation requirements to cause petroleum refinery closures. For the Safe Drinking Water Act, he reviewed EPA's national-level drinking water affordability criteria, assessed their implications for small water systems' finances, proposed alternative criteria, created databases to predict how many systems would be judged unable to afford drinking water rules, evaluated public comments, and drafted report text to respond to a Congressional charge.

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### Representative Clients

Mr. Shefftz has been retained by the following clients, whether directly as an independent consultant, during his prior employment at Industrial Economics, Incorporated (“IEc”), and/or as an independent consultant via subcontract with IEc.

#### *State Agencies:*

California  
Illinois  
Massachusetts  
New Hampshire  
Ohio  
Texas  
Wisconsin

Connecticut  
Indiana  
Michigan  
New Mexico  
Pennsylvania  
Virginia

#### *Citizen Groups and Industry:*

Advocates for the West  
Biodiversity Conservation Alliance  
CWM Chemical Services, Incorporated  
Frontier Group  
Idaho Conservation League  
Lead Industries Association  
National Environmental Law Center  
Natural Resources Defense Council  
Our Children’s Earth Foundation  
Puget Soundkeeper Alliance  
Sierra Club  
University of Denver Environmental Law Clinic  
WildEarth Guardians

Alabama Environmental Council  
Bouncing Cranberries LLC  
Environment America Research & Policy  
Grand Canyon Trust  
Kinder Morgan  
Muscow Family Olive  
National Parks Conservation Association  
Northwest Environmental Defense Center  
Pacific Environmental Advocacy Center  
RE Sources for Sustainable Communities  
Tulane Environmental Law Clinic  
Waste Action Project

#### *Federal/National Agencies:*

U.S. Department of Justice (Civil Division – Commercial Litigation Branch; Environment and Natural Resources Division – Environmental Enforcement Section, Environmental Defense Section)  
U.S. Environmental Protection Agency (various Headquarters Offices and Regional Counsels)  
U.S. Fish and Wildlife Service (within U.S. Department of Interior)  
National Oceanic and Atmospheric Administration (within U.S. Department of Commerce)  
Office of Surface Mining Reclamation and Enforcement (within U.S. Department of Interior)  
Chilean Superintendencia del Medio Ambiente

## JONATHAN S. SHEFFTZ

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### **Representative Clients (continued)**

#### *Private Law Firms:*

Adler, Cohen, Harvey, Wakeman & Guekguezian LLP  
Law Office of Jacqueline L. Allen  
Arnold & Porter LLP  
Bayh, Connaughton and Malone  
The Collins Law Firm, P.C.  
D'Ambrosio Law Offices  
Law Offices of John K. Dema, P.C.  
DLA Piper  
Doherty, Wallace, Pillsbury & Murphy  
Donovan Hatem LLP  
Downey Brand LLP  
Dreyer Boyajian LLP  
The Garcia Law Firm  
David S. Hammer, Esq.  
Hanson Curran LLP  
George E. Hays, Esq.  
Henrichsen Siegel Moore, PLLC  
Kasowitz, Benson, Torres & Friedman LLP  
James E. Kolenich  
Meryl A. Kukura, Esq.  
Kenneth Lieberman, Esq.  
Lucentini & Lucentini LLP  
Marr Law Offices  
Meyers Nave  
Morrison Mahoney LLP  
Motley Rice LLC  
Law Office of Michael D. Parker  
Patton Boggs LLC  
Edward M. Pikula, Esq.  
Ryan, Ryan, Johnson & Deluca, LLP  
Ryan Whaley Coldiron Shandy PLLC  
Silverstein, Silverstein & Silverstein P.A.  
Simonds, Winslow, Willis & Abbott  
Smith & Lowney, PLLC  
Stoel Rives LLP  
Law Offices of Charles G. Walker  
Wilson Elser Moskowitz Edelman & Dicker LLP  
Reed Zars, Esq.

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### Publications and Presentations

*Foreign Net Discount Rates: The Case of Undocumented Mexican Workers*, paper discussant at Western Economic Association International Annual Conference (Seattle WA), 6/30/13 (scheduled).

*Evolving Transition Probabilities and Worklives*, paper discussant at Allied Social Sciences Association Annual Conference (San Diego CA), 1/5/13.

*Commercial Damages Calculations*, panelist at Eastern Economic Association Annual Conference (Boston MA), 3/10/12.

*Medical Net Discount Rates: 1980 - 2011*, paper discussant at Eastern Economic Association Annual Conference (Boston MA), 3/10/12.

*The Value of Future Earnings in Perfect Foresight Equilibrium*, paper discussant at Allied Social Sciences Association Annual Conference (Denver CO), 1/8/11.

*The Role of the Economic Expert in Litigation Directed at Piercing the Corporate Veil*, presentation at Fall Forensic Economics Workshop (Durango CO), 10/8/10.

*Alternative Perspectives for Breach-Nonbreach Scenario Specifications in Commercial Litigation*, paper presentation at Western Economic Association International Annual Conference (Portland OR), 7/1/10.

*Sampling Issues in Commercial Damages Cases*, paper discussant at Western Economic Association International Annual Conference (Vancouver BC), 7/1/09.

*Net Discount Rates: Does Duration Matter?*, paper discussant at Eastern Economic Association Annual Conference (Boston MA), 3/7/08

*Enforcement Economics: Deterrence, Economic Benefit, & Ability to Pay*, presentation at California Environmental Protection Agency State Water Resources Control Board “Enforcenomics” Workshop (Berkeley CA), 1/11/08.

*Alternative Focuses for “But-For” Scenario Specification in Commercial Litigation*, paper presentation at Western Economic Association International Annual Conference (Seattle WA), 6/30/07

*Expert Witness Role Play*, presentation at U.S. EPA 9<sup>th</sup> Financial Analyst Workshop (Atlanta GA), 5/3/07.

## JONATHAN S. SHEFFTZ

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### **Publications and Presentations** (continued)

*Working with Experts in Environmental Cases: An Expert Economist's Perspective on Expert Testimony*, presentation at Public Interest Environmental Law Conference (Eugene OR), 3/2/07.

*Alternative Measures and Focuses for Economic Damages Calculations*, paper presentation at Eastern Economic Association Annual Conference (New York NY), 2/23/07.

*Lost Profit as a Measure of Lost Earning Capacity*, panelist at Western Economic Association International Annual Conference (San Francisco CA), 7/7/05

"EPA's Economic Benefit Analysis Policy and Practice," *Natural Resources and Environment*, Fall 2004.

"Taxation Considerations in Economic Damages Calculations," *Litigation Economics Review*, Summer 2004.

*Economic Benefit and Wrongful Profits in the Calculation of Penalties for Environmental Violations*, presentation to Boston Bar Association Environmental Litigation Committee, 9/23/04.

*Business Valuation/Commercial Damages*, panelist at Western Economic Association International Annual Conference (Vancouver BC), 7/1/04.

"Wrongful Profits: Setting the Record, and the Concept, Straight," *Environment Reporter*, 1/2/04.

*Present Value Sensitivity to Ex Ante vs. Ex Post Perspective*, paper presentation at Western Economic Association International Annual Conference (Denver CO), 7/12/03.

*Taxation Considerations in Economic Damages Calculations*, paper presentation at Eastern Economic Association Annual Conference (New York NY), 2/22/03.

*Economic Benefit from Illegal Competitive Advantage and Complex Economic Benefit Scenarios*, presentation at U.S. EPA 5<sup>th</sup> Financial Analyst Workshop (Boston MA), 7/26/00.

*Economic Benefit in Wetlands Cases: Financial Analysis Issues*, presentation at U.S. EPA Wetlands Enforcement Conference (Alexandria VA), 3/22/00.

*Economic Benefit*, presentation at U.S. EPA 4<sup>th</sup> Analyst Workshop (Denver CO), 3/10/99.

## JONATHAN S. SHEFFTZ

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### Testimony History

*RE Sources for Sustainable Communities v. Pacific International Terminals, Inc.* (USDC, WD Wash.), deposition 4/11/13.

*WildEarth Guardians v. Lamar Utilities Board doing business as Lamar Light and Power, and Arkansas Power Authority* (USDC, Colo.), deposition 3/22/13.

*Tina A. Rhodes, Individually and as Administratrix of David C. Rhodes, et al. v. Tyrone Gadsen and GP&T Transport, Inc.* (Massachusetts Superior Court), deposition 12/11/12, courtroom testimony 1/23/13.

*Waste Action Project v. Sierra Pacific Industries dba Sierra Junction City Sawmills* (USDC, WD Wash.), deposition 12/28/12.

*Environment Texas Citizen Lobby, Inc. and Sierra Club v. ExxonMobil Corporation, et al.* (USDC, SD Tex.), deposition 6/1/12.

*People of the State of California and The City of San Diego v. Kinder Morgan Energy Partners, L.P., et al.* (USDC, SD Cal.), deposition 4/26/12.

*Marvin Evans v. Certain Underwriters at Lloyd's London, KMS Associates, Inc., Greenwich Insurance Company, W. Brown & Associates, Inc. and Hub International Gulf South Limited f/k/a/ Hibernia Rosenthal Insurance Agency, LLC d/b/a Hibernia Rosenthal* (Florida Circuit Court), depositions 9/15/11 and 11/15/10.

*Bouncing Cranberries LLC v. CommonPlaces eSolutions, LLC*, testimony at binding arbitration hearing 8/18/11.

*Puget Soundkeeper Alliance v. BNSF Railway Company* (USDC, WD Wash.), deposition 7/7/11.

*State of Texas v. BP Products North America Inc.* (Texas District Court), deposition 6/7/11.

*Chevron Corporation v. Jonathan S. Shefftz* (USDC, Mass.) and *Maria Aguinda et al. v. Chevron Corporation* (Court of Justice of Nueva Loja, Ecuador), deposition 12/16/10.

*Elizabeth Russell and Katherine Gates v. Joseph Reilly and James Georges, Executors of the Estate of K. Mildred Dooling, a/k/a Mildred K. Dooling, and Patrick Curtin, Individually and as Trustee of the M.D. Realty Trust* (Massachusetts Superior Court), courtroom testimony 7/21/10.

*Hildagarde Bartling, et al. v. Country Villa Bay Vista Healthcare Center, et al.* (California State Court), deposition 1/29/10.

*Joseph J. Zajac III v. Pamela J. Trueblood, et al.* (USDC, MD Fla.), affidavit 9/16/09.

## JONATHAN S. SHEFFTZ

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### Testimony History (continued)

*In the matter of 99 Cents Only Stores* (U.S. EPA Administrative Court), courtroom testimony 6/24/09.

*U.S. v. Government of Guam* (USDC, Guam), courtroom testimony 12/9/08 and 4/13/09.

*U.S. v. James and Nancy Oliver d/b/a Safety Waste Incineration* (USDC, Alaska), courtroom testimony 3/25/09 and 3/27/09.

*In the matter of Valimet, Inc.* (U.S. EPA Administrative Court), courtroom testimony 12/10/08.

*Rectrix Aerodome Centers, Inc. v. Barnstable Municipal Airport Commission, et al.* (USDC, Mass.), deposition 12/2/08.

*State of Ohio v. The Shelly Holding Company et al.* (Franklin County Municipal Court), depositions 7/30/08 and 9/19/08, courtroom testimony 10/16/08 and 10/17/08.

*In the matter of Lowell Vos Feedlot* (U.S. EPA Administrative Court), courtroom testimony 9/17/08.

*French Heritage, Inc. v. Ethan Allen, Inc.* (Connecticut State Court), deposition 6/28/06 and 6/29/06.

*Oregon Public Interest Research Group, Diane Heintz, and Rena Taylor v. Pacific Coast Seafoods Company, Pacific Surimi Joint Venture, LLC, Pacific Surimi Co., Inc., and Dulcich Inc. d/b/a Pacific Seafood Group* (USDC, Oregon), deposition 4/18/06.

*In the matter of Rizing Sun LLC* (U.S. EPA Administrative Court), courtroom testimony 2/7/06.

*State of Ohio v. Container Recyclers, Inc.* (Franklin County Municipal Court), deposition 4/1/05.

*In the matter of Vico Construction Corporation and Smith Farm Enterprises* (U.S. EPA Administrative Court), courtroom testimony 6/20/02 and 10/8/03.

*U.S. v. The New Portland Meadows, Inc.* (USDC, Oregon), courtroom testimony 5/20/03.

*In the matter of Vico Construction Corporation and Amelia Venture Properties* (U.S. EPA Administrative Court), courtroom testimony 1/14/03.

*United States Public Interest Research Group, Stephen E. Crawford, and Charles Fitzgerald v. Heritage Salmon, Inc.; U.S. PIRG et al. v. Stolt Sea Farm, Inc.; U.S. PIRG et al. v. Atlantic Salmon of Maine LLC* (USDC, Maine), deposition 6/5/01, courtroom testimony 10/15/02.

*U.S. v. Murphy Oil USA, Inc.* (USDC, WD Wis.), deposition 4/24/01.

*U.S. v. Royal Oak Enterprises, Inc.* (USDC, ED Va.), depositions 3/22/00 and 5/19/00.

## JONATHAN S. SHEFFTZ

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### **Testimony History** (continued)

*In the matter of Titan Wheel Corporation of Iowa* (U.S. EPA Administrative Court), affidavit 11/24/99.

*U.S. v. Gulf States Steel, Inc.* (USDC, ND Ala.), affidavit 12/30/98, deposition 10/22/99.

*U.S. v. Koch Industries, Inc.* (USDC, ND Okla. and SD Tex.), depositions 5/24/99 and 6/1/99.

*State of Wisconsin v. I-K-I Manufacturing Company, Inc.*, deposition 4/13/99.

*U.S. v. Borden Chemicals & Plastics* (USDC, MD La.), deposition 2/5/98.

*State of New Hampshire v. Johnson Products, Incorporated*, deposition 2/3/98.

*In the matter of EK Associates, L.P., d/b/a EKCO/GLACO, and EK Management Corporation* (U.S. EPA Administrative Court), courtroom testimony 8/14/97.

*U.S. v. Smithfield Foods, Inc., et al.* (USDC, ED Va.), deposition 7/9/97.

*U.S. v. Nucor Corporation* (USDC, ND Ala.), deposition 6/12/97.

*U.S. v. U.S. Metallics, Inc., and Town of Onalaska, Wis.* (USDC, WD Wis.), affidavit 10/21/96.