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PRACTICES

Complex Civil Litigation
False Claims Act Litigation
Federal Excise Taxes
Supreme Court & Appellate Litigation
Tax Controversy & Litigation

EDUCATION

J.D., Georgetown University
Law Center, *with honors*, 1994

B.A., Georgetown University,
with honors, 1991

Adam P. Feinberg

MEMBER

Adam Feinberg has a nationwide complex federal regulatory litigation practice. His main area of focus is federal excise and other tax controversies and litigation. He also specializes in other federal regulatory litigation, including under the Administrative Procedure Act, the Federal Employees Health Benefits Act, the Employee Retirement Income Security Act, and the False Claims Act. He represents clients in the energy, air transportation, healthcare, defense, and other industries that are subject to substantial federal taxation and regulation. According to his clients, Mr. Feinberg "has deep experience related to our business and takes a very hands-on approach." He joined the firm in 1997.

Representative Engagements

Federal Tax and User Fee Litigation

- *British Airways PLC v. United States*, No. 1:19-cv-01124 (Fed. Cl.). Currently represent British Airways in refund suit regarding whether payments to domestic airlines in connection with the issuance of frequent flyer miles are subject to the air transportation excise tax under Internal Revenue Code § 4261(e)(3). Represent Deutsche Lufthansa AG, Iberia Lineas Aereas De Espana SA, Air New Zealand Limited, Finnair Oyj, and several other foreign airlines in similar cases.
- *Valero Marketing and Supply Co. v. United States*, No. 5:24-cv-00099 (W.D. Tex.). Currently represent Valero in tax refund suit involving the Alternative Fuel Mixture Credit under Internal Revenue Code § 6426(e) and the Oil Spill Tax under Internal Revenue Code § 4611.
- *PBF Holding Company LLC V. United States*, No. 2:23-cv-21546-JKS-ESK (D. N. J.). Currently represent PBF in tax refund suit involving the Alternative Fuel Mixture Credit under Internal Revenue Code § 6426(e).
- Currently represent numerous major airlines in various controversies involving the federal excise tax on air transportation under Internal Revenue Code § 4261 and several other federal "ticket taxes" and user fees.
- *United Airlines, Inc. v. Transportation Security Administration*, 859 F.3d 67 (D.C. Cir. 2017) & 20 F.4th 57 (D.C. Cir. 2021). Successfully petitioned the D.C. Circuit twice to overturn TSA's denials of United Airlines' refund claim involving erroneously paid air passenger user fees.
- *Valero Marketing and Supply Co. v. United States*, No. 5:19-cv-00328 (W.D. Tex.) & No. 21-50492 (5th Cir.). Represented Valero in tax refund suit involving the Alternative Fuel Mixture Credit under Internal Revenue Code § 6426(e). Summary judgment granted in Valero's favor as to some claims in 2021; remaining claims settled in 2022 while on appeal.

- *Halliburton Energy Services, Inc. v. New Mexico Taxation and Revenue Department*, D&O No. 19-05 (N.M. Administrative Hearings Office Feb. 4, 2019)
Represented Halliburton in a state gross receipts tax refund suit involving fracturing operations in the Permian Basin.
- *Thompson Truck & Trailer, Inc. v. United States*, 901 F.3d 951 (8th Cir. 2018).
Retained as appellate counsel to challenge dismissal of refund suit involving the federal excise tax on the retail sale of heavy trucks and trailers.
- *Louisiana Health Services & Indemnity Co. v. United States*, 2009 U.S. Dist. LEXIS 56699, No. 05-0914 (M.D. La. 2009). Represented an insurance company in a successful refund suit regarding deductions for the loss of customer-based intangible assets held when the insurance company first became a taxable entity. Summary judgment granted in the insurance company's favor on most liability issues; refund amount settled in 2010.
- *Hospital Service Association of Northeastern Pennsylvania v. United States*, 78 Fed. Cl. 434 (2007), appeal dismissed, No. 2009-5020 (Fed. Cir. 2008). Represented an insurance company in a successful refund suit regarding deductions for the loss of customer-based intangible assets held when the insurance company first became a taxable entity. Summary judgment granted in the insurance company's favor.
- *American Airlines, Inc. v. United States*, 551 F.3d 1294 (Fed. Cir. 2008).
Represented American Airlines in refund suit involving U.S.-imposed user fees for international passengers. Judgment in American Airlines' favor affirmed on appeal.
- *Continental Airlines, Inc. v. United States*, 77 Fed. Cl. 482 (2007), appeal dismissed, 346 Fed. App'x. 578 (Fed. Cir. 2009). Represented Continental Airlines in refund suit involving U.S.-imposed user fees for international passengers. Summary judgment granted in Continental Airlines' favor.
- *United Airlines, Inc. v. United States*, No. 1:06-cv-00641-ECH (Fed. Cl.).
Represented United Airlines in refund suit involving U.S.-imposed user fees for international passengers. Settled favorably in 2010.
- *Blue Cross & Blue Shield of Wyoming v. United States*, No. 1:04-cv-01791 (Fed. Cl.).
Represented an insurance company in a successful refund suit regarding deductions for the loss of customer-based intangible assets held when the insurance company first became a taxable entity. Settled in 2007.
- *Kohler Co. v. United States*, 468 F.3d 1032 (7th Cir. 2006), *aff'd*, 387 F. Supp. 2d 921 (E.D. Wis. 2005). Represented Kohler in successful refund suit over whether it incurred a taxable gain in connection with a Mexican debt-equity swap transaction.

Other Federal Regulatory Litigation

- *Ray v. Tabriz*, No. 23-3285 (7th Cir.). Represent the Blue Cross and Blue Shield Association in appeal involving removability of a dispute under a federally-sponsored health benefits plan.
- *Gonzalez v. Blue Cross Blue Shield Association*, 62 F.4th 891 (5th Cir. 2023).

Successfully represented the Blue Cross and Blue Shield Association in suit involving a federally-sponsored health benefits plan. Claims were dismissed on preemption grounds.

- *Alaska Airlines, Inc. v. Transportation Security Administration*, No. 2-72121 (9th Cir.). Represent Alaska Airlines in enforcement action involving TSA's Known Shipper program.
- *Mannino v. La. Health Serv. & Indem. Co.*, No. 3:19-cv-00185-SDD-RLB (M.D. La.). Successfully represented Blue Cross and Blue Shield company in ERISA class action involving prescription drug copayments. Motion to dismiss granted in 2023 on failure to exhaust grounds.
- *St. Charles Surgical Hospital, L.L.C. v. La. Health Serv. & Indem. Co.*, 990 F.3d 447 (5th Cir. 2021). Represented Blue Cross and Blue Shield company in successful appeal in federal officer removal case involving a federally-sponsored health benefits plan.
- *St. Charles Surgical Hospital, L.L.C. v. La. Health Serv. & Indem. Co.*, 935 F.3d 352 (5th Cir. 2019). Represented Blue Cross and Blue Shield company in successful appeal in federal officer removal case involving a federally-sponsored health benefits plan.
- *Blue Cross and Blue Shield of Nebraska, et al. v. United States*, No. 1:18-cv-00491-SGB (Fed. Cl.). Successfully represented two Blue Cross and Blue Shield companies seeking recovery against the government due to its underpayment of risk corridors and risk adjustment amounts under the Affordable Care Act.
- *Fero v. Excellus Health Plan, Inc.*, 2017 U.S. Dist. LEXIS 25471 (W.D.N.Y. Feb. 22, 2017). Represented the Blue Cross and Blue Shield Association in class action regarding the Excellus data breach. Argued motion resulting in dismissal of third party breach of contract claims (on ground that plaintiffs are not intended third party beneficiaries of the subject federal government contract) and dismissal of state statutory claims for benefit of the bargain damages (on ground that such damages are barred by the filed rate doctrine).
- *United States ex rel. Soodavar v. Unisys Corporation*, 178 F. Supp. 3d 358 (E.D. Va. 2016). Represented Unisys Corporation in a False Claims Act suit alleging fraud in connection with the U.S. Army's radio-frequency identification program. Successfully argued motion to dismiss, which was granted on the grounds that "worthless services" allegations failed to state a claim and remaining claims were precluded by the False Claims Act's first-to-file bar.
- *Vrijesh S. Tantuwaya MD, Inc. v. Anthem Blue Cross Life & Health Ins. Co.*, 169 F. Supp. 3d 1058 (S.D. Cal. 2016). Represented administrator of a federally-sponsored health plan. Successfully argued before the district court in opposition to motion to remand (on federal officer removal grounds) and in favor of motion to dismiss (on federal preemption and sovereign immunity grounds).
- *Bell v. Blue Cross & Blue Shield of Okla.*, 823 F.3d 1198 (8th Cir. 2016). Successfully represented Blue Cross & Blue Shield entity in case involving the scope of the

Federal Employees Health Benefits Act's preemption provision.

- *United States ex rel. Saunders v. Unisys Corporation* , No. 1:12-cv-00379 (E.D. Va.). Represented Unisys Corporation in a False Claims Act suit alleging fraud in connection with the U.S. Army's radio-frequency identification program. Settled in 2014.
- *Mentis El Paso, LLP v. Health Care Serv. Corp.* , 58 F. Supp. 3d 745 (W.D. Tex. 2014). Represented administrator of a federally-sponsored health plan. Obtained dismissal of the case on sovereign immunity grounds.
- *Omega Hosp., L.L.C. v. La. Health Serv. & Indem. Co.* , 592 F. App'x 268, 272 (5th Cir. 2014). Represented Blue Cross and Blue Shield company in successful appeal of award of attorney's fees in federal officer removal case.
- *Ensco Offshore Company and ATP Oil & Gas Corp. v. Kenneth Lee Salazar, et al.* , 2011 U.S. Dist. LEXIS 49875 (E.D. La. May 10, 2011); 2011 U.S. Dist. LEXIS 16321 (E.D. La. Feb. 17, 2011); 2010 U.S. Dist. LEXIS 111226 (E.D. La. Oct. 19, 2010); 478 Fed. App'x. 113 (5th Cir. 2012). Represented plaintiffs in an Administrative Procedure Act challenge to the U.S. Department of the Interior's deepwater drilling moratorium and subsequent delays in issuing offshore drilling permits. The moratorium was withdrawn by the government on the day post-hearing briefs were due; summary judgment was granted in plaintiffs' favor on the delay claims and the government was preliminarily and permanently enjoined to act on the subject drilling permits within 30 days.
- *United States ex rel. Greabe v. Blue Cross and Blue Shield Association* , No. 04-11355 (D. Mass). Represented the Blue Cross and Blue Shield Association in a False Claims Act suit alleging fraud in connection with a Federal Employees Health Benefits Act contract with the U.S. Office of Personnel Management. Successfully argued motion for summary judgment, which was granted in the Association's favor in 2010.
- *United States ex rel. Campbell v. Lockheed Martin* , No. 95-cv-549 (M.D. Fla.). Represented Lockheed Martin in a False Claims Act suit alleging fraud in connection with contracts with the Air Force for LANTIRN navigation and targeting systems. Settled in 2003.

Rankings and Recognition

- *Legal 500*: Tax: U.S. Taxes: Contentious, 2020 - 2024
- BTI Client Service All-Stars, 2023
- DC Bar Capital Pro Bono Honor Roll, 2019
- DC Bar Capital Pro Bono High Honor Roll, 2015

Admissions

STATE ADMISSIONS

- District of Columbia
- Virginia