



JOSHUA FEINSTEIN

Partner

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Joshua has a broad-based practice that combines his extensive experience in business litigation with a sharp focus on healthcare compliance.

Joshua has successfully defended dozens of matters in both state and federal courts, obtaining summary judgment in numerous discrimination cases, among other favorable results. As a litigator, he concentrates his practice in employment-related disputes, including discrimination, wage-and-hour and non-compete litigation, but also has experience with Article 78 proceedings, commercial disputes, public accommodations accessibility litigation under the Americans with Disabilities Act, municipal law matters, freedom-of-information litigation and tax-assessment review challenges as well as appellate practice and international cross-border litigation. Joshua has tried multiple cases and argued numerous appeals before both the New York Appellate Division and the U.S. Court of Appeals for the Second Circuit.

Joshua draws on his perspective as a litigator in assisting health care providers to navigate the ever-evolving regulatory and compliance challenges facing their industry. He has counseled hospitals, medical practices, skilled nursing facilities, home health care agencies, pharmacies and management services organizations on a range of issues, including the Stark Law, compliance under the Anti-Kickback Statute, liability risks under the False Claims Act, reimbursement claims, credentialing, physician contracts, hospital/physician integration and the corporate practice of medicine.

Combining rigorous analysis of legal risks with an appreciation of the realities of business, Joshua strives to find practical, efficient solutions that further his client's objectives.

Honors

- Listed, *Best Lawyers in America* (Litigation - Labor and Employment) 2024

The Guaranty Building
140 Pearl Street
Suite 100
Buffalo, NY 14202

Practices & Industries

Business Litigation
Class Action Litigation
Employment Litigation
Food & Beverage
Healthcare
International-U.S. Cross-Border
Municipal
Real Property Tax Assessment & Eminent Domain
Wage & Hour

Admissions

New York
U.S. District Court, Eastern District of New York
U.S. District Court, Northern District of New York
U.S. District Court, Southern District of New York
U.S. District Court, Western District of New York
U.S. Court of Appeals, Second Circuit

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- Bar Association of Erie County, Volunteer Lawyers Project: Law Firm Pro Bono Coordinator of the Year Award, 2014
- Pro Bono Honor Roll, The United States District Court for the Western District of New York, 2022

Experience

Hodgson Russ reversed on appeal an approximately \$3 million judgment in a municipal labor dispute and obtained dismissal of the pleadings of a multimillion-dollar collective action against a municipality under New York State insurance laws. The case involved the use of five insurance tax proceeds.

In *Maraschiello v. City of Buffalo*, Hodgson Russ obtained summary judgment and successfully defended an appeal before the U.S. Court of Appeals for the Second Circuit. The plaintiff was next in line for promotion on the civil service eligible list for police inspector. After he lost his opportunity for promotion, he sued claiming reverse discrimination. In forcefully rejecting the plaintiff's contention that Buffalo acted for impermissible race-based reasons in discarding civil service exam results, the Second Circuit emphasized that Buffalo's "problem was the test itself, rather than with a particular set of results." The Second Circuit's decision has broad significance for municipalities and other employers nationally as it makes clear that employers retain substantial discretion to design and implement new employment procedures for purposes of complying with Title VII and other anti-discrimination law, despite claims by majority plaintiffs that such compliance efforts constitute reverse discrimination.

A health care client came to the firm after learning that its Medicare billing privileges had been permanently suspended for a five-month period for technical reporting errors unrelated to patient care quality. As a result, the client faced losing hundreds of thousands of dollars in reimbursements for health care services that it had already provided to patients. A team of Hodgson Russ attorneys, including Josh Feinstein, Roopa Chakkappan, and Kate Tiskus (and with guidance from Jane Bello Burke), rolled up their sleeves and dove into the highly technical and arcane rules governing Medicare reimbursement. Ultimately, they persuaded the Center for Medicare and Medicaid Services that its regulations were being misapplied. The agency therefore reconsidered the determination and ordered the client's billing privileges to be reinstated in full - resulting in one very relieved client.

Hodgson Russ successfully defended the City of Buffalo's use of employment promotional exams against two federal putative class-action challenges by a group of African-American firefighters. After a bench trial, the district court ruled that the

Education

Swarthmore College, B.A., high honors

Stanford University, Ph.D.

New York University School of Law, J.D., cum laude

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examinations were valid, non-discriminatory selection devices that were job related and consistent with business necessity, even though they statistically favored non-minority candidates. A Hodgson Russ attorney successfully briefed and argued the appeal in the U.S. Court of Appeals for the Second Circuit, which affirmed the district court's ruling.

In *M.O.C.H.A. Society, Inc. v. City of Buffalo* (2013), the U.S. Court of Appeals for the Second Circuit affirmed the district court's ruling in favor of Hodgson Russ's client, the City of Buffalo, that evidence did not support the plaintiffs' challenge to the Buffalo Fire Department's drug testing policy.

In *Foley v. City of Buffalo*, Hodgson Russ obtained the dismissal on the pleadings of a federal lawsuit alleging that our municipal client had systematically denied members of a 700-strong municipal fire department overtime pay, thus avoiding for the client potential damages in excess of \$10 million.

Hodgson Russ has defended various regional corporations in employment discrimination matters pending in the U.S. District Court for the Western District of New York. Causes of action pending in the litigations include the Fair Labor Standards Act, Title VII, Age Discrimination in Employment Act, Americans with Disabilities Act, and New York State Human Rights Law claims.

At a federal jury trial in Omaha, Nebraska, Joshua Feinstein was part of a Hodgson Russ team that represented an advertising agency seeking payment for a \$1.6 million ad campaign. Hodgson Russ tried the case to verdict and won. The case settled after an appeal.

In *Casciani v. Town of Webster and Nesbit*, Hodgson Russ successfully defended a municipality in a federal lawsuit brought by a high-net-worth individual claiming his civil rights had been violated by an ordinance prohibiting him from landing his helicopter at his residence. Even though the plaintiff submitted over two dozen affidavits and three expert reports, the district court granted the municipality summary judgment and the Second Circuit affirmed.

In *Piccone v. Town of Webster*, Hodgson Russ obtained summary judgment dismissing the complaint on behalf of a municipal defendant against allegations of employment discrimination and harassment based on gender, age, national origin, and ethnicity in violation of the U.S. Constitution's Equal Protection Clause and New York State Human Rights Law. The case turned on extensive e-mail, the content of which the plaintiff alleged was offensive. Hodgson Russ attorney Joshua Feinstein was able to undermine the plaintiff's claim and obtain summary judgment by having her admit that she voluntarily engaged in the e-mail exchanges.

In the News

New York Court Sides with Masons in Property Exemption Suit
Tax Notes State, May 8, 2023

2nd Circ. Affirms Buffalo PD Win in White Cop's Bias Suit
Law360, February 28, 2013

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Press Releases

83 Hodgson Russ LLP Attorneys Ranked in 2024 Edition of *Best Lawyers in America*
August 17, 2023

Hodgson Russ LLP Honored with 2023 New York State Bar Association President's Pro Bono Service Award
April 17, 2023

Hodgson Russ Wins NYSBA President's Pro Bono Service Award
Press Release, May 8, 2015

Hodgson Russ and Kevin Kearney Honored by Legal Services Corporation for Pro Bono Work
Press Release, October 6, 2014

Hodgson Russ Attorneys Acknowledged in NYSBA Newsletter For Pro Bono Service
Press Release, August 14, 2014

Publications

The Final New York State Budget is Approved: Here are the Major Impacts for Hospitals, Nursing Facilities, and other Health Care Providers
Hodgson Russ Healthcare Alert , May 14, 2024

Temporary Restraining Order Rejected in the Latest Attack on RPTL § 575-b Assessment Model
Hodgson Russ Renewable Energy Alert, May 13, 2024

2024 Assessment Model Finalized for Solar and Wind Projects in New York: Will Project Tentative Assessments on May 1 be Accurate?
Hodgson Russ Renewable Energy Alert, May 2, 2024

Diamonds Are Forever, But New York Tax Exemptions Are Not
Hodgson Russ Real Property Tax Assessment & Eminent Domain Alert, January 29, 2024

New York State Department of Health Adopts Health Equity Impact Assessment Regulation Applicable To Facilities Including Clinics, Hospitals, and Skilled Nursing Facilities Submitting Applications through the State's Certificate of Need (CON) Process
Hodgson Russ Healthcare Alert , September 7, 2023

Final New York State Budget Imposes New Requirements for New York Home Care Providers and Significant Financial Investments for the Health Care Industry
Hodgson Russ Home Care and Healthcare Alert, May 16, 2023

RPTL § 575-b is Back! New York State Budget Moots Litigation Over Assessment Model
Hodgson Russ Real Property Tax Assessment & Eminent Domain Alert , May 10, 2023

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What's in Your "Secret Sauce?" The FTC's Proposed Rule to Ban Noncompetes and Considerations for Food and Beverage Businesses

Hodgson Russ Food & Beverage Alert, May 3, 2023

Chick-fil-A Confirms Data Breach

Hodgson Russ Food & Beverage Alert, March 20, 2023

McDonald's Faces Class Action Lawsuit Over Sexual Harassment, Hostile Work Environment Accusations

Hodgson Russ Food & Beverage Alert, January 4, 2023

Presentations & Events

Untapped Innovation: Using Telehealth to Improve Resident Care & Gain the Edge Over the Competition

May 27, 2020

Municipal Law Seminar

Hodgson Russ, Buffalo, NY, May 22, 2014

Municipal Law Seminar

Hodgson Russ, Buffalo, NY, May 16, 2013

Municipal Law Seminar

Hodgson Russ, Buffalo, NY, May 17, 2012

Bar Association of Erie County Defending Your Municipality in a Federal Civil Rights Case Seminar

Buffalo, NY, May 4, 2011

International City/County Management Association Audioconference for Municipalities

September 29, 2009

Professional Affiliations

- American Health Lawyers Association
- New York State Bar Association: Health Law Section
- Bar Association of Erie County

Community & Pro Bono

- Member, Board of Trustees: Tapestry Charter School