

## DAVID J. FAGNILLI

SENIOR COUNSEL



### AREAS OF PRACTICE

Product Liability  
Property Litigation  
Insurance Services – Coverage & Bad Faith  
Litigation  
General Liability  
Construction Injury Litigation  
Automobile Liability  
Trucking & Transportation Liability  
Environmental & Toxic Tort Litigation  
Asbestos & Mass Tort Litigation  
Insurance Agents & Brokers Liability  
Premises & Retail Liability  
Rideshare Liability  
Catastrophic Claims Litigation

### CONTACT INFO

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Suite 3510  
Cleveland, OH 44114

### ADMISSIONS

Ohio  
1986

U.S. District Court Northern District  
of Ohio

U.S. District Court Southern  
District of Ohio

U.S. Court of Appeals 6th Circuit

U.S. Supreme Court

### EDUCATION

Cleveland-Marshall College of Law  
(J.D., 1986)

Southern California College (B.A.,  
1980)

### HONORS & AWARDS

AV® Preeminent™ by Martindale-  
Hubbell®

The Best Lawyers in America®,  
Insurance Law  
2009-2025

Ohio Super Lawyers  
2010-2020

### OVERVIEW

David is a member of the casualty department handling matters involving products liability, trucking and transportation, automobile liability, premises liability, construction accidents, uninsured and underinsured motorist coverage and personal injury. He has represented insureds in business disputes, construction claims, complex litigation and business arbitrations. David has also handled litigation concerning defamation, contractor claims, property use disputes, and commercial and business property losses. He has extensive experience negotiating favorable settlements independently and through mediation and other forms of ADR.

Additional areas of practice include insurance coverage, contract interpretation and analysis for first and third party claims; and defense of coverage disputes and bad faith lawsuits involving commercial general liability, commercial property, commercial vehicle, umbrella, auto and homeowners' policies; and claims for environmental damage, asbestos and other toxic torts.

David is admitted to practice in all Ohio Courts, all Federal District Courts in Ohio, the Sixth Circuit Court of Appeals and the U.S. Supreme Court. David is a life member of the Eighth District Judicial Conference. He is a member of the American, Ohio State, Cleveland Metropolitan, and Lake County Bar Associations, the Defense Research Institute, the Ohio Association of Civil Trial Attorneys, the Cleveland Association of Civil Trial Attorneys, the Claims & Litigation Management Alliance, and the Justinian Forum.

A shareholder with an AV® Preeminent™ by Martindale-Hubbell rating, David has also been selected by his peers as an "Ohio Super Lawyer" annually since 2010, as published in *Cincinnati Magazine* and *Northern Ohio Live Magazine*. Since 2009, he has been listed in *The Best Lawyers in America*®.

David received his B.A. from Southern California College in 1980, and his *juris doctor* from Cleveland-Marshall College of Law in 1985.

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## ASSOCIATIONS & MEMBERSHIPS

American Bar Association

Cleveland Association of Civil Trial Attorneys

Cleveland Metropolitan Bar Association

Defense Research Institute

Justinian Forum

Ohio Association of Civil Trial Attorneys

Ohio State Bar Association

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## YEAR JOINED

2016

## THOUGHT LEADERSHIP

### **Court Rules that Liability Insurance Does Not Cover Claims for Civil Liability Under the Antiterrorism Act 18 U.S.C. 2333(a)**

**Cleveland  
Insurance Services – Coverage & Bad Faith Litigation  
July 1, 2024**

Several insurers sought a declaration that they were not obligated to indemnify the defendant when it resolved underlying claims alleging liability for support of Columbian terrorists. Case Law Alerts, 3rd Quarter, July

### **Ohio Supreme Court Finds that Hidden Damage Discovered After Appraisal Was Completed and Repairs Commenced May Still Be Recoverable**

**Cleveland  
Insurance Services – Coverage & Bad Faith Litigation  
July 1, 2024**

The plaintiff was insured by the defendant insurance company for property damage to its building, which sustained wind damage in a storm on February 24, 2019. Case Law Alerts, 3rd Quarter, July

### **Professional Services Exclusion in GL Policy Issued to Property Inspector Barred Claims for Injuries Resulting from Inspector's Failure to Replace Floor Panel**

**Cleveland  
Insurance Services – Coverage & Bad Faith Litigation  
July 1, 2024**

The plaintiff was a real estate agent who was injured when she fell through an open inspection panel in the floor of a bathroom at a house that she had listed. Case Law Alerts, 3rd Quarter, July

### **Ohio Supreme Court Applies Contract Language to Determine if Permissive User Qualifies as an Insured Under a Personal Auto Policy.**

**Cleveland  
Insurance Services – Coverage & Bad Faith Litigation  
January 1, 2024**

This lawsuit involved a dispute as to which insurance policy should provide liability coverage for an auto accident. The driver, Ashton Smith, was insured by Acuity. He was driving a car insured by Progressive. Case Law Alerts, 1st Quarter, January 2024 is prepared by Marshall Dennehey to provide information on recent developments of interest to our readers.

### **Ohio Supreme Court Applies Tort Conflict of Law Rules to an Insurance Bad Faith Claim.**

**Cleveland  
Insurance Services – Coverage & Bad Faith Litigation  
January 1, 2024**

In this 5-2 decision from the Ohio Supreme Court, the majority held that the tort conflict of law rules found in Section 145 of 1 Restatement of the Law 2d, Conflict of Laws, apply to an insurance bad faith lawsuit. Case Law Alerts, 1st Quarter, January 2024 is prepared by Marshall Dennehey to provide information on recent developments of interest to our readers.

## CLASSES/SEMINARS TAUGHT

*Insurer, Adjuster and Agent and Broker Liability: A - Z*, National Business Institute, August 26, 2016, presenter

*Ten Commandments of Working with Expert Witnesses*, June 13, 2013, CLM Transportation Conference, panelist

*Anatomy of a Complex CGL Claim, Additional Insureds – Ohio Anti-Indemnity Statute*, Cleveland Metropolitan Bar Association, November 2, 2012

*Insurance Law from Basic to Advanced – Claims Handling Process*, Akron Bar Association October 30, 2012

*What Civil Court Judges Want You to Know*, National Business Institute, November 4, 2011, moderator

*Ohio Tort and Insurance Case Law Update*, Akron Claims Association, April 14, 2010

*Insurance Law in Ohio*, Lorman Educational Services, March 21, 2003, co-author and presenter

*Insurance Law in Ohio: Third Party Coverage in Ohio*, National Business Institute, March 14, 1996, co-author and presenter

## PUBLISHED WORKS

"Ohio Supreme Court Holds That General Contractor's CGL Insurer Is Not Obligated to Defend Suit Alleging Subcontractor's Faulty Workmanship," *Legal Updates for Coverage & Bad Faith*, March 2019

*Case Law Alerts*, regular contributor, 2018-present

*Ohio Construction Insurance Law; Policyholder and Insurer Perspective on Custom Agri*, Bar Journal of the Cleveland Metropolitan Bar Association, February 2013, coauthor

*A.M. Best Ohio Digest of Insurance Law*, Editor 2012-present

## RESULTS

### Summary judgment for insurance broker and two Lloyds syndicates.

#### **Insurance Services – Coverage & Bad Faith Litigation**

**March 1, 2020**

We obtained a ruling granting summary judgment in favor of an insurance broker and two Lloyds syndicates in a case pending in the United States District Court for the Northern District of Ohio. The case involved a claim arising from a fall from a tree stand at a hunting camp.