

David A. Fusco

Partner

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OVERVIEW

David is the practice group coordinator for the firm's Mass Tort and Product Liability practice group. He maintains an active trial practice concentrating in the areas of class actions, complex commercial litigation, mass tort, and product liability, with an emphasis on defending manufacturers in claims related to alleged toxic substances. He serves as lead counsel in jurisdictions across the country and has experience defending claims involving asbestos, benzene, coal dust, mold, dioxins and furans, ethylene oxide (EtO or EO), PFAS, polycyclic aromatic hydrocarbons (PAHs), silica, and talc, among other substances.

David has particular experience defending clients in claims related to alleged emissions of ethylene oxide and is regularly an invited speaker and author regarding regulatory, litigation, and scientific developments related to ethylene oxide. He is also a member of our global emerging contaminants task force, which is a cross-practice, collaborative effort whose members counsel clients regarding how best to mitigate and defend against evolving chemical-related risks.

David is a seasoned litigator and works with his clients to develop innovative defense strategies in cases involving complex issues of liability and causation. His experience allows him to persuasively present sophisticated legal arguments and scientific issues in an intelligible manner, both when litigating a case to verdict and when leveraging defenses to obtain a favorable result prior to trial. David has broad experience managing the defense of large dockets of repetitive tort claims filed across the country, with a focus on minimizing exposure, controlling costs, and maintaining predictability. He also has significant experience defending medical monitoring putative class actions as well as putative class actions involving alleged product liabilities.

David has tried cases to verdict in Georgia, New York, Pennsylvania, and South Carolina and has served as trial counsel for cases in Alabama, Connecticut, Illinois, Louisiana, Missouri, and West Virginia. In developing and advancing his clients' defenses, David has conducted hundreds of expert depositions across various scientific disciplines, including disease causation, epidemiology, exposure assessment, industrial hygiene, pathological diagnosis, pulmonary function, and toxicology. He has also argued numerous *Daubert* and *Frye* motions regarding the admissibility of expert testimony in federal and state courts throughout the United States.

PROFESSIONAL BACKGROUND

David served as Senior Assistant to the Chief of Staff in the Office of the Governor for the State of West Virginia from 2002 until 2004 where he worked with administration officials to develop various policy initiatives.

David spent his final semester of law school working as a judicial clerk for the Honorable Robert B. King, Circuit Judge for the United States Court of Appeals for the Fourth Circuit. He also worked as a judicial clerk for the Honorable Irene M. Keeley, Chief Judge for the United States District Court for the Northern District of West Virginia, during the summer of 2005.

ACHIEVEMENTS

- Recognized by *Chambers USA*
  - Litigation: Product Liability in Pennsylvania, 2025-2026
  - Product Liability: Toxic Torts, USA - Nationwide, 2025-2026
- Recognized by *The Legal 500 United States* as a Recommended Lawyer for Product Liability, Mass Tort and Class Action - Defense: Consumer Products (Including Tobacco), 2026
- Recognized by *The Best Lawyers in America*® for Mass Tort Litigation / Class Actions - Defendants in Pittsburgh, PA, 2025-2026

SPEAKING ENGAGEMENTS

- "Emerging Contaminants: Ethylene Oxide," Environmental Law Explored podcast, *American Bar Association*, 15 August 2025
- Speaker, 2024 DRI Toxic Torts and Environmental Law Seminar (Ethylene Oxide Panel), Hosted by Defense Research Institute, 22 March 2024
- Speaker, Ethylene Oxide In-House CE Program, Perrin, 7 March 2024
- Speaker, Ethylene Oxide: Examining the Science & Regulations Driving EtO Litigation, Hosted by National Forum for Environmental & Toxic Tort Issues (FETTI), 28 September 2023
- Speaker, Ethylene Oxide: Litigation and Regulations Ahead, Hosted by Perrin Conferences, 18 January 2023

EDUCATION

- J.D., West Virginia University College of Law, 2007 *(Order of the Coif; Executive Articles Editor, West Virginia Law Review)*
- B.A., West Virginia University, 2002 *(magna cum laude)*

ADMISSIONS

- Bar of Pennsylvania
- Bar of West Virginia
- United States Court of Appeals for the Fourth Circuit
- United States District Court for the Eastern District of Pennsylvania
- United States District Court for the Southern District of West Virginia
- United States District Court for the Western District of Pennsylvania

THOUGHT LEADERSHIP *POWERED BY HUB*

- 6 January 2026, FRCP 16.1 Arrives: Will MDL Courts Embrace Its Tools?
- 8 April 2025, Litigation Minute: Emerging Contaminants: Defending Litigation
- 4 November 2024, Increasing Regulatory Scrutiny of Formaldehyde Under TSCA
- 15 April 2024, Chlormequat Contamination in Food Products Draws Attention
- 23 February 2024, Formaldehyde - Why Manufacturers Should Be Paying Attention
- 30 June 2023, US Supreme Court Holds Business Registration Subjects Out-of-State Companies to General Personal Jurisdiction
- 16 May 2023, American Law Institute Vote on Medical Monitoring Could Spur Increased "No-Injury" Claims
- 13 April 2023, PFAS Litigation: Who's Next?
- 21 March 2023, Litigation Minute: Ethylene Oxide—Insurance Coverage Considerations
- 8 March 2023, Litigation Minute: Ethylene Oxide—Where Regulators Are Going and How We Got Here
- 23 February 2023, Tooey Analysis Extended to Occupational Disease Act
- 22 February 2023, Litigation Minute: Ethylene Oxide—Could Your Company Be a Litigation Target?
- 7 February 2023, Litigation Minute: Ethylene Oxide—What it Is and Why You Should Care
- 26 September 2022, The $363 Million Dollar Question: Are Your Ethylene Oxide Emissions a Litigation Target?
- 4 May 2022, Can a State Require a Corporation to Consent to General Personal Jurisdiction as a Condition of Doing Business in the State? The U.S. Supreme Court Is Set to Decide
- 26 January 2022, Pennsylvania Supreme Court Rejects Business Registration as Means for Consent to Personal Jurisdiction

- 26 July 2021, Ethylene Oxide: The Litigation Risks and Regulatory Issues Ahead
- 29 June 2021, Where's the Harm in Class Certification? The United States Supreme Court Confirms: It Must Be in Plaintiffs' Evidence
- 14 January 2021, Pennsylvania Supreme Court to Consider Whether Business Registration Subjects an Out-of-State Company to General Personal Jurisdiction
- 30 June 2020, Pennsylvania Superior Court Defers Resolution of Jurisdiction-by-Registration Debate
- 25 October 2019, *En Banc* Panel of the Pennsylvania Superior Court Gets Set for Reargument Regarding Business Registration as Consent to General Personal Jurisdiction
- 21 February 2019, Taking Out the "Junk": New Jersey Supreme Court Adopts Daubert “Factors” in Landmark Decision on Scientific Evidence
- 13 August 2018, Pennsylvania Superior Court Holds That Registering to Do Business in Pennsylvania Constitutes Consent to Personal Jurisdiction After *Daimler*

OTHER PUBLICATIONS

- “Biosolid Contaminants Spawn Litigation, Regulation Risks,” *Law360*, August 2025
- “Emerging contaminants: Defending litigation,” *Westlaw Today*, May 2025
- “Litigation and Compliance Impacts of Proposed Ethylene Oxide Regulations Based on Flawed Science,” DRI's *For The Defense*, 10 June 2024
- “Chemical Considerations," The Litigation Issue 2023, *Best Lawyers*, 1 September 2023
- “ALI's Medical-Monitoring Proposal May Encourage Claims,” *Law360,* 28 June 2023
- EPA Accepting Public Comments on Amended Ethylene Oxide Regulations, *Washington Legal Foundation,* 9 June 2023
- “*Scapa Dryer Fabrics, Inc. v. Knight*: Addressing the Elephant in the Room,” *Westlaw Journal Asbestos*, Vol. 38, Issue 23, 2 September 2016
- *The Constitutional Issue Hidden Within a Circuit Split: Double Jeopardy in the Context of Proving Predicate Offenses*, 4 Seton Hall Cir. Rev. 265 (2008).

NEWS & EVENTS

- 4 June 2026, K&L Gates Receives Nearly 235 Firm, Individual Rankings in 2026 *Chambers USA* Guide
- 10 December 2024, "Under the Wire" CLE Seminar—Emerging Contaminants: Regulations, Litigation, and Insurance Coverage—What You Need to Know

- 22 March 2024, 2024 DRI Toxic Torts and Environmental Law Seminar (Ethylene Oxide Panel), Hosted by Defense Research Institute
- 28 September 2023, Ethylene Oxide: Examining the Science & Regulations Driving EtO Litigation, Hosted by National Forum for Environmental & Toxic Tort Issues (FETTI)
- 18 January 2023, Ethylene Oxide: Litigation and Regulations Ahead, Hosted by Perrin Conferences
- 17 February 2016, K&L Gates Names 50 New Partners

OTHER MEDIA MENTIONS

- Quoted, "Plant Gas Emissions Suit Tossed For Lack Of Injury Standing," *Law360*, 14 May 2024
- Quoted, "'Forever chemicals' were everywhere in 2023. Expect more litigation in 2024," *Reuters*, 28 December 2023
- Quoted, "Why Medical Device Companies are Worried About the EPA's Planned Sterilization Regs," *MedTech Dive*, 27 November 2023
- Quoted, "More Suits, EPA Scrutiny Seen After Chemical Emissions Case (1)," *Bloomberg Law*, 5 October 2022
- Quoted, “Superior Court Sets En Banc Reargument on Pa.'s Corporate Registration Law,” *The Legal Intelligencer*, 12 December 2018
- Quoted, “It Just Got a Lot Easier to Sue Out-of-State Companies in Pa.,” *The Legal Intelligencer*, 4 October 2018

AREAS OF FOCUS

- Mass Tort
- Class Action Defense
- Commercial Disputes
- Environment and Energy
- Industrial Incidents
- Product Liability

INDUSTRIES

- General Manufacturing
- Life Sciences

- Manufacturing
- Metals Manufacturing and Fabrications
- Specialty Chemicals

EMERGING ISSUES

- Emerging Contaminants

REPRESENTATIVE EXPERIENCE

REPRESENTATIVE ENGAGEMENTS

- Serves as lead defense and trial counsel for polymer manufacturer defending state court personal injury claims related to alleged environmental ethylene oxide emissions.
- Successfully defended polymer manufacturer in federal medical monitoring class action related to environmental emissions of ethylene oxide by excluding plaintiff's lead expert and obtaining dismissal on Article III Standing grounds at summary judgment.
- Serves as lead defense and trial counsel for paint and coatings manufacturer defending numerous personal injury claims filed in Cook County, Illinois, related to alleged environmental emissions of ethylene oxide.
- Serves as lead defense and trial counsel for heavy-equipment manufacturer defending product liability claims related to underground mining equipment and alleged coal and silica dust exposure.
- Serves as national trial team leader coordinating expert and trial defense strategies for equipment manufacturer with thousands of asbestos claims pending throughout the United States.
- Serves as national coordinating counsel for industrial premises owners facing asbestos claims pending in multiple jurisdictions.
- Served as lead counsel defending putative class action related to potential warranty liabilities associated with allegedly defective CPAP (continuous positive airway pressure) medical devices.
- Represents prosthetic device manufacturer in alleged claims related to fatal house fire.
- Confidential consulting regarding state subpoena related to PFAS purchases.
- Confidential consulting regarding PFAS-related issues for international manufacturer.
- Engaged to defend medical monitoring class action related to environmental emissions of ethylene oxide, which was subsequently dismissed.
- Represents manufacturer of ethylene oxide sampling equipment in connection with regulatory and related issues.

- Represents client defending product liability claims related to alleged silica exposure from work with engineered stone products.
- Represented global chemical manufacturer in the defense of medical monitoring and property damage class action claim related to alleged exposures from various toxic substances.
- Represents gasoline distributor in benzene product liability litigation.
- Represents international manufacturer of peat moss products in defense of product liability claims.
- Represented manufacturer of hydroforming equipment in claims related to alleged deceptive sales practices and defective design.
- Represented national financial institution in claims related to alleged violations of the West Virginia Consumer Credit and Protection Act.
- Counseled regional financial institution regarding investigation of former outside counsel's conduct.
- Pro Bono: Represented indigent client in civil claim involving self-defense related to a physical altercation resulting in significant bodily injury.

REPRESENTATIVE TRIAL EXPERIENCE

- Served as trial counsel for equipment manufacturer with alleged asbestos liabilities in Philadelphia County, Pennsylvania; case dismissed by plaintiff following favorable jury verdict.
- Served as trial counsel for equipment manufacturer with alleged asbestos liabilities in Philadelphia County, Pennsylvania; case dismissed at trial following successful argument of motion to exclude evidence of liability for third-party products.
- Obtained defense verdict for equipment manufacturer with alleged asbestos liabilities following three-week trial in Chatham County, Georgia.
- Successfully argued motion to exclude evidence of liability for third-party products from being used against equipment manufacturer with alleged asbestos liabilities in Philadelphia County, Pennsylvania trial that resulted in defense verdict.
- Served as trial counsel for equipment manufacturer with alleged asbestos liabilities in Erie County, New York case resulting in favorable jury verdict.
- Served as trial counsel for equipment manufacturer with alleged asbestos liabilities in Erie County, New York; case dismissed during plaintiff's case in chief.
- Successfully argued *Daubert* motion to exclude causation testimony from plaintiff's medical expert in asbestos case pending in the United States District Court for the Northern District of Illinois. *Krik v. Owens-Illinois, Inc.*, No. 10-cv-07435, 2015 WL 5050143 (N.D. Ill. Aug. 25, 2015), aff'd, 870 F.3d 669 (7th Cir. 2017).
- Successfully cross examined plaintiff's medical causation expert during *Daubert* hearing in asbestos case pending in the United States District Court for the District of South Carolina, which resulted in exclusion of

expert's testimony and dismissal at summary judgment. *Haskins v. 3M Company*, No. 2:15-cv-2123-DCN, 2017 WL 3118017, at *6 n.8 (D.S.C. July 21, 2017).