

## 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

(216) 912-3792  
DJFagnilli@mdwccg.com

127 Public Square  
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  
2009-2024

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

### 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.

### Ohio Appellate Court holds expert testimony not required to support claim for bad faith.

**Cleveland**  
**Insurance Services – Coverage & Bad Faith Litigation**  
**July 1, 2023**

The Ohio Second District Court of Appeals reversed summary judgment in favor of an insurer and remanded the case back to the trial court for further proceedings, holding that the plaintiff did not need an expert to proceed to trial on a bad faith Case Law Alerts, 3rd Quarter, July 2023 is prepared by Marshall Dennehey to provide information on recent developments of interest to our readers.

### Ohio Supreme Court finds no duty to defend in opioid litigation.

**Cleveland**  
**Insurance Services – Coverage & Bad Faith Litigation**  
**October 1, 2022**

In this closely watched decision, the court was asked to determine whether a CGL insurer was required to defend Case Law Alerts, 4th Quarter, October 2022 is prepared by Marshall Dennehey to provide information on recent developments of interest to our readers.

### Ohio Supreme Court Finds No Duty to Defend in Opioid Litigation

**Cleveland**  
**Insurance Services – Coverage & Bad Faith Litigation**  
**September 20, 2022**

The Ohio Supreme Court issued its long awaited decision in Acuity v. Masters Pharmaceutical, Inc., 2022-Ohio-3092 on September 7, 2022, one year after the case was argued. The material in this law alert has been prepared for our readers by Marshall Dennehey.

## 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.