



David A. Fusco

Partner

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OVERVIEW

David Fusco is a litigation partner in our Pittsburgh office and a Practice Group Coordinator for our Mass Tort and Product Liability practice group. David 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, dioxins and furans, ethylene oxide, PFAS, polycyclic aromatic hydrocarbons (PAHs), silica, and talc, among other substances.

David is an experienced litigator and focuses on developing 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 also has significant 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.

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.

SPEAKING ENGAGEMENTS

- 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 District Court for the Southern District of West Virginia
- United States District Court for the Western District of Pennsylvania

THOUGHT LEADERSHIP POWERED BY HUB

- 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

- "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

- 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

MEDIA MENTIONS

- 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 Litigation Defense
- Commercial Disputes
- Environment, Land, and Natural Resources
- Product Liability

INDUSTRIES

- General Manufacturing
- Manufacturing
- Metals Manufacturing and Fabrications
- Specialty Chemicals

REPRESENTATIVE EXPERIENCE

REPRESENTATIVE ENGAGEMENTS

- Represents manufacturer of ethylene oxide sampling equipment in connection with regulatory and related issues.
- Serves as lead counsel for an international polymer manufacturer defending a putative class action involving environmental ethylene oxide emissions and thousands of putative class members.
- Serves as lead counsel for a mining equipment manufacturer defending product liability claims related to alleged hazardous coal and silica dust exposures.
- Serves as national coordinating counsel for engineered stone manufacturer defending product liability claims related to alleged silica exposure.
- Serves as a 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.
- Represents global chemical company in the defense of class action claims related to alleged exposures from various toxic substances.
- Represents international manufacturer of peat moss products in the defense of product liability claims.
- Represents gasoline distributor in benzene product liability litigation.
- 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.
- Pro Bono: Represented indigent client in civil claim involving self-defense related to a physical altercation resulting in significant bodily injury.
- Counseled regional financial institution regarding investigation of former outside counsel's conduct.

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).