

## OHIO COURT OF APPEALS LESSENS THE STANDARD FOR RECKLESSNESS IN RECREATIONAL ACTIVITIES



By: **Thomas R. Wolf**

Ohio has long held to the rule of law that a participant in a recreational activity cannot bring a cause of action against another participant absent a showing of reckless or intentional acts. Courts throughout the State of Ohio, including the Ohio Supreme Court, have granted Motions for Summary Judgment for Defendants where an injury has occurred in a wide variety of recreational activities. The Courts were all in agreement that a Plaintiff cannot pursue a claim for negligence, and had generally required a high standard before allowing Plaintiff to pursue a claim under the reckless standard.

The Eleventh District Court of Appeals in *Kalan v. Fox*, 2010-Ohio-2951, in a two to one decision, reversed a Trial Court's grant of summary judgment for a woman injured while playing in a women's softball game. The decision appears to be in direct contradiction to an Ohio Supreme Court case with essentially the same facts.

In *Kalan*, Plaintiff was the catcher for a women's softball team. Defendant attempted to score from third base, and made contact with the Plaintiff in a collision at home attempting to score. Plaintiff filed suit against Defendant, alleging negligence and/or reckless conduct in the course of game of women's softball.

The Trial Court granted summary judgment on all counts. Plaintiff appealed, and the Court of Appeals affirmed the finding on the negligence claim. Of significance in the Court of Appeals ruling on the negligence claim, the Court held that no claim can be pursued for a violation of a rules infraction, whether deliberate or unintentional, as these violations are almost inevitable in contact sports. Therefore, a claim based upon an underlying penalty or other act addressed by the rules of the games will not stand.

However, the Court determined that Plaintiff's allegations of recklessness deserved review. The Court found that there was conflicting testimony on Defendant's actions. Plaintiff and one other witness testified that the Defendant "barreled" into the Plaintiff in an upright collision that occurred before home plate. Defendant and other witnesses testified that the contact took place during the act of the Defendant sliding headfirst in to home.

The Court of Appeals determined that, even though contact is a part of the game of softball, as Plaintiff herself admitted, an issue of fact existed as to whether Defendant "barreled" into the Plaintiff and whether such action was reckless and reversed the grant of summary judgment.

One Judge dissented. The Judge noted that the Ohio Supreme Court in 1990 had ruled upon a case with almost identical facts. In *Topola v. Wisniewski* (1990), 55 Ohio St. 3d 30, the Ohio Supreme Court reversed the Eighth District Court of Appeals' reversal of the Trial Court's grant of summary judgment in a case where a player on third base attempted to score on a fly ball hit to right field. In *Topola*, the Plaintiff was the catcher who caught the ball well in advance of the Defendant's arrival at home plate. Defendant allegedly leapt in to the air feet first, and with a karate-kick like motion, struck Plaintiff's left leg, breaking it between the ankle and the knee. The Trial Court granted summary judgment, the Court of Appeals reversed, but the Ohio Supreme Court, on the basis of two earlier decisions, *Marchetti v. Kalish* (1990), 53 Ohio St. 3d 95 and *Thompson v. McNeill* (1990), 53 Ohio St. 3d 102 and reversed the Court of Appeals judgment.

The *Kalan* decision is limited to the Eleventh District. However, *Kalan* presents a lessening of the standard of recklessness in recreational activities. Aggressive actions by one party may now be sufficient to present a triable claim for injuries suffered by participants in recreational activities.

Should you desire a full text of this decision and opinion, or have any other questions in general, please contact one of our General Casualty Practice Group members.

### Akron

**Thomas R. Wolf**  
[twolf@reminger.com](mailto:twolf@reminger.com)  
200 Courtyard Square  
80 South Summit St.  
Akron, OH 44308  
Phone: 330-434-6004  
Fax: 330-375-9075

### Cincinnati

**Carrie Masters**  
[cmasters@reminger.com](mailto:cmasters@reminger.com)  
525 Vine Street,  
Suite 1700  
Cincinnati, OH 45202  
Phone: 513-455-4033  
Fax: 513-721-2553

### Cleveland

**Brian M. Zaber**  
[bzaber@reminger.com](mailto:bzaber@reminger.com)  
101 Prospect Ave. W.  
1400 Midland Bldg.  
Cleveland, OH 44115  
Phone: 216-430-2217  
Fax: 216-687-1841

### Sandusky

**Justin D. Harris**  
[jharris@reminger.com](mailto:jharris@reminger.com)  
237 W. Washington Row,  
Second Floor  
Sandusky, OH 44870  
Phone: 419-609-4234  
Fax: 419-626-4805

### Columbus

**Matthew L. Schrader**  
[mschrader@reminger.com](mailto:mschrader@reminger.com)  
65 East State St., 4<sup>th</sup> Floor  
Capitol Square  
Columbus, OH 43215  
Phone: 614-232-2631  
Fax: 614-232-2410

### Youngstown

**David M. Krueger**  
[dkrueger@reminger.com](mailto:dkrueger@reminger.com)  
11 Federal Plaza Central,  
Suite 300  
Youngstown, OH 44503  
Phone: 330-744-1311  
Fax: 330-744-7500