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**Inside this issue:**

Ohio Supreme Court Decision on Recreational User Statute 1

Residential Lease-\$5 a Day Late Fee is Unconscionable and Unenforceable 2

Business First's Fast 50-2016 2

Delaware County Foundation's "Evening of Generosity" 2

Notice 2

# Client Bulletin



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## Ohio Supreme Court Decision on Recreational User Statute

Twenty-one years ago, the General Assembly adopted a statute (commonly called the "recreational user statute") that provides that a landowner not charging a fee for the use of the landowner's property does not owe any duty to a recreational user to keep the landowner's premises safe for entry or use or extends any assurance that the premises are safe.

Richard Combs was fishing at Indian Lake State Park, which is open to the public without an admission charge. He had spent the night fishing in one location, and early the next morning, he was walking across the causeway to Pew Island for better fishing. An Ohio Department of Natural Resources (ODNR) employee was using a boom mower to cut weeds and brush along the lakeshore. One of the mower blades hit the riprap along the waterline and threw a rock that struck Combs in the eye and face and caused serious injuries. Mr. Combs' suit against ODNR was dismissed on summary judgment by the Ohio Court of Claims on the basis that ODNR was immune from suit under the attendant circumstances due to the recreational user statute. The Tenth District Court of Appeals reversed and the Ohio Supreme Court elected to hear ODNR's appeal of the reversal.

In a 4-3 decision in *Combs v. Ohio Dept. of Natural Resources, Div. of Parks & Recreation*, 146 Ohio St.3d 271, 2016-Ohio-15651, the Ohio Supreme Court held that although the recreational user statute grants a landowner immunity from suit for defects or hazardous conditions on the premises or from the acts or omissions of another recreational user, it does not extend such immunity to acts of the landowner or the landowner's employees or agents that cause injury or death.

## Residential Lease-\$5 a Day Late Fee is Unconscionable and Unenforceable

The Sixth District (Ohio) Court of Appeals recently held, in *Campus Village Toledo Univ. Park, LLC v. Mowrer*, 2016-Ohio-4754, a breach of residential lease case (subject, as a residential lease, to Ohio's Landlord-Tenant Act, Ohio Rev. Code Chapter 5321), that a one-time late fee of \$40 plus \$5 a day was violative of Ohio Rev. Code § 5321.14(A) as unconscionable as to the \$5 a day late fee, but not the initial \$40 late fee. Had the per diem late fee been capped in some manner, such as not exceeding 25% of the monthly rental amount, the court might have not found the per diem late fee to be unconscionable and, therefore, unenforceable.

It should be pointed out that the decision was based on a statute that only applies to residential leases, and the decision would undoubtedly have been different if the per diem late fee was in a commercial lease.

## Business First's "Fast 50-2016"

Business First has released the names of the 50 fastest growing companies in Central Ohio for 2016. At a luncheon the first week of October, the rankings (1-50) will be announced. Congratulations to clients 3 Pillar Homes, LLC and Wolfrum Roofing & Exteriors, LLC for being listed. Also, congratulations to Howard Hanna Realcom Realty, which has an office at 52 North Sandusky Street in Delaware, immediately north of the law firm's office.

## Delaware County Foundation's "Evening of Generosity"

The 4th Annual Evening of Generosity is scheduled for Wednesday, October 5, at the Hilton Columbus/Polaris. The 2016 honorees are: "Spirit of Philanthropy" - Tom Price; "Outstanding Business" - ToolMatics, Inc.; "Outstanding Volunteer" - the late Larry Cline; and "Outstanding Youth Group" - Olentangy High School Service Club. The law firm, honored in 2015 as the Outstanding Business, is a silver sponsor of the event.

## Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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