

## MARK JAHNKE 2008: YEAR IN REVIEW



**T**here's no denying that 2008 was a year many of us would like to forget.

No sector went untouched, as the recession that started in the real estate market spread to other industries and to the financial institutions that fund them.

Without question, 2008 was a time for taking stock of where we are and where we're headed – a time for figuring out what works and what could work better.

Here at Katz Teller, it was a time for examining what our clients need and how we can best serve them. You probably know that Katz Teller is not the largest firm in town. Our measure of success is not the number of attorneys in our firm. Our goal is to practice law according to a business model that is very different from the model at larger firms.

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We have built our firm on a staffing model that stresses efficiency and timeliness of response. Unlike many firms, our goal is not to see how many lawyers we can get involved in your matter. Instead, our objective is to provide you with the right person for the job so we can handle your matter in the most effective, cost-efficient manner. As many of you know, we have far more partners than associates. In most instances, our clients have found that the senior level attention our model provides results in more effective

representation of our clients' interests. We make every effort not to train our attorneys at our clients' expense. New lawyers at our firm bill substantially fewer hours than in other firms because of this policy. Simply put, we train our lawyers at our expense – not yours. And we will continue to do that in 2009 and beyond.

I would be remiss if I did not take a minute to reflect on some great things that happened at our firm in 2008.

- **Matt Kitchen** joined us as a new attorney in our corporate/transactions group, and **Jerome Bishop** of our litigation group became our newest partner.
- As noted in this newsletter, **Guy Hild** was elected Lawyer of the Year in our region in domestic relations, and **Bob Pitcairn** was, once again, named as one of the top 10 Ohio Super Lawyers.

- We continue to have, by far, the highest percentage of our lawyers listed in the prestigious *Best Lawyers in America* publication – we are the only major firm in Cincinnati to have more than half of its lawyers so listed.

We expect the next few years to be challenging, and we look forward to working with all of our clients to help them successfully navigate the challenges ahead.

## LEGISLATION SUSPENDS REQUIRED MINIMUM DISTRIBUTIONS FROM IRAS AND QUALIFIED RETIREMENT PLANS

**I**n December of 2008, President George W. Bush signed legislation suspending required minimum distributions (RMD) from IRAs and other qualified retirement plans that would have been mandated for the 2009 calendar year.

Generally, individuals who have IRAs and other retirement account balances, including 401(k) accounts, must take an RMD each year after attaining age 70-1/2. Recognizing a significant

downturn in the market, the new legislation suspending the RMD for 2009 may allow individuals to avoid having to sell stocks in their retirement accounts in order to make the RMD.

Although there was discussion between Congress and the IRS, the 2008 RMD was not waived. If you have any questions about the new legislation and its impact, please contact Steve Kisling or Bob Brant.

## CYNTHIA GIBSON AND MATT RICH | NEW ADA PROVISIONS TIP BALANCE IN FAVOR OF EMPLOYEES



**J**ust when you might have gotten comfortable with the Americans with Disabilities Act, there are amendments that tip the balance in favor of employees in a number of ways.

Because this could have a real impact on how your business handles disability claims, we have outlined a few of the highlights below.

The Americans with Disabilities Amendments Act (“ADAAA”) went into effect on January 1, 2009. Here are some of the major changes that may affect you:

**SIGNIFICANT EXPANSION IN THE DEFINITION OF WHO WILL BE CONSIDERED DISABLED:** The ADAAA has clarified that employers determining whether an employee is disabled cannot consider whether an employee’s condition may be improved or eliminated with so-called “mitigating measures” (hearing aids, medication, prosthetic devices and other tools to manage/treat conditions). The only exception is for visual aids such as glasses and contact lenses. What this means for you is that an employee who has a condition that would qualify as a disability, but appears healthy or able due to use of “mitigating measures,” is still disabled within the meaning of the ADA.

Further, the ADAAA has broadened the meaning of key terms in the definition of disabled to bring more employees within the definition. An individual is disabled within the meaning of the ADA when he or she is substantially limited in one or more major life activities or regarded as such. The ADAAA states that the Supreme Court got it wrong when the Court said “substantially limits” means “prevents or significantly restricts,” and it has asked the EEOC to issue a more lenient definition. Further, it has

provided a very expansive list of major life activities, which now include “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the operation of major bodily functions, such as functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.” These changes will make it easier for an employee to meet the definition of disabled under the ADA.

**INCREASED RISK OF “REGARDED AS DISABLED” CLAIMS:**

Under the ADAAA, an employee subject to an adverse employment action (firing, demotion or even discipline) need only prove that he or she was discriminated against on the basis of an actual or perceived physical or mental impairment to win on an ADA claim against his or her employer. An employee no longer has to prove that the impairment actually limits or is perceived to limit a major life activity.

**TIPS THE BALANCE IN FAVOR OF EMPLOYEES:** One of the major purposes of the ADAAA is to correct how the courts, most notably the Supreme Court, have interpreted the ADA. The ADAAA makes it clear that courts must consider the purpose of the ADA – to help disabled employees – in rendering their decisions. This will make it much more likely that courts will issue decisions favorable to employees.

Given these sweeping changes, employers will need to carefully evaluate ADA compliance in all areas, including hiring, medical testing, job descriptions, accommodation, leave and termination. Employers should also consider instituting a formalized process for responding to any request for job changes that may relate to a health condition, so that they can ensure these issues are handled appropriately. If you have any specific questions about the ADA or ADAAA, feel free to contact us.



INSIDE KTBH

**S**heri Auttonberry gave birth to her first child, Hana Elizabeth Conte, on June 22, 2008.

**Tedd Friedman** assisted clients Steven Miller and Bret Caller with the structure and formation of Viking Partners Fund I, LLC, a real estate investment fund designed to take advantage of opportunities in today's distressed real estate market.

In a competitive process based on subject matter expertise as well as demonstrated speaking ability through audience evaluations, **Cynthia Gibson** was selected by the Society for Human Resource Management ("SHRM") to speak at its national conference for Staffing and Management in Las Vegas, Nevada, in April. SHRM is the world's largest human resource professional association, with more than 225,000 individual members in over 125 countries. She will make two presentations: *Managing Intermittent Leave Under the FMLA: Strategies to Minimize Staffing Issues* and *A Googling We Will Go: Background Checks in the New Electronic Age*.

In a very tough economic environment for transactions, **Mark Jahnke** and **Matt Kitchen** completed the recapitalization of one of the firm's clients with a Canadian private equity sponsor. They helped the client develop the strategy for the transaction, select an investment bank to represent the transaction, evaluate several offers and select the winning bidder.

**Tara Klee** gave birth to her first child, Nicholas Alexander Klee, on November 24, 2008.

**Jim McCarthy** had two cases accepted for review in the Ohio Supreme Court. These cases present a unique fact pattern that may aid professionals in the collection of fees for professional services.



KATZ TELLER ATTORNEYS EARN INDIVIDUAL RECOGNITION AS SUPER LAWYERS AND RISING STARS

While the holidays are a time for giving, it is also nice to receive – and many Katz Teller attorneys received high praise from their peers for their outstanding legal work.

Each year, *Law & Politics* solicits nominations from over 28,000 Ohio attorneys, in search of "Super Lawyers." These nominations are then reviewed by a panel of industry leaders, and peer voting commences for the nominated individuals. Only the top 5% of all attorneys are selected by their peers to be "Super Lawyers," and Katz Teller is proud to announce that nine of its attorneys made the list.

**Bob Pitcairn** was once again honored as one of the top 10 attorneys in Ohio, a testament to his reputation in Cincinnati and beyond. **Guy Hild** was in the top 100 vote-getters in the state, while Bob, Guy, **Mark Jahnke** and **Bill Russo** were recognized as top 50 attorneys in Cincinnati. **Cynthia Gibson** was named one of the top 25 female attorneys in Cincinnati. The complete list of Katz Teller's "Super Lawyers" is as follows: **Andy Berger, Joe Brant, Cynthia Gibson, Guy Hild, Mark Jahnke, Jim McCarthy, Bob Pitcairn, Bill Russo** and **Jerry Teller**.

In addition to the "Super Lawyers," *Law & Politics* also selected "Rising Stars" – attorneys who represent the top 2.5% of those nominated as "up-and-coming attorneys." This year, Katz Teller's **Adam Colvin** and **Laura Hinegardner** were recognized as "Rising Stars," both for the second year in a row.

GUY HILD NAMED 2009 SOUTHWEST OHIO LAWYER OF THE YEAR IN FAMILY LAW; 17 KATZ TELLER ATTORNEYS RECOGNIZED AS "BEST LAWYERS IN AMERICA"

**E**very year, the *Business Courier* takes the list of *Best Lawyers in America* and solicits input from the local community on the best of the best in particular specialty areas. To arrive at the best of the best, the *Courier* asks the following question: "To whom would you likely refer a client if you couldn't handle the case because of time constraints or a conflict of interest?" In the area of Family Law, the choice this year was Katz Teller's **Guy Hild**.

Less than 3% of all attorneys practicing in the United States make the list of *Best Lawyers in America* published by Woodward/White, Inc., and only one is recognized each year as the Lawyer of the Year in Southwestern Ohio in a particular specialty. Guy's high level of peer recognition was founded on his business philosophy: "Approach each case with the intent to deliver exceptional service to the client, remaining accessible and responsive to clients' needs at all times."

In addition to representing clients in family law matters, Guy also represents clients in general business matters and

estate planning. These additional areas of concentration allow him to understand and solve complex financial problems presented by clients. Guy was not alone in being recognized by Woodward/White as one of the *Best Lawyers in America*. Sixteen other Katz Teller attorneys were honored as "Best Lawyers" – **Andy Berger** (Corporate Law), **Jody Brant** (Tax Law/Trusts & Estates), **Joe Brant** (Trusts & Estates), **Bob Brant** (Corporate Law/Employee Benefits/Tax Law), **Cynthia Gibson** (Commercial Litigation/Health Care Law/Labor & Employment Law), **John Gierl** (Corporate Law), **Brad Haas** (Corporate Law), **Bill Hayden** (Corporate Governance and Compliance Law), **Mark Jahnke** (Corporate Law/Mergers & Acquisitions Law), **Reuven Katz** (Corporate Law), **Steve Kisling** (Employee Benefits Law), **Jim McCarthy** (Commercial Litigation), **Bob Pitcairn** (Bet-the-Company Litigation/Commercial Litigation/Labor & Employment Law), **Bill Russo** (Tax Law/Trusts & Estates), **Jerry Teller** (Family Law) and **Dan Utt** (Project Finance Law/Real Estate Law).

**JEROME BISHOP** *KTBH'S NEWEST SHAREHOLDER*



**J**erome Bishop does some of his best work in the car.

Jerome and his wife, Gena, live in Mason along with their four children, all under the age of eight. As you might imagine, the Bishop household is a busy place in the morning, with kids needing to be fed and hustled off to school. So that hour of peace and quiet to and from work, up and down I-71, is an hour that Jerome does not squander.

Prior to coming to Katz Teller and fresh out of Georgetown University, Jerome worked on the personal staff of a congressman on Capitol Hill. Jerome's time in politics included his successfully managing the congressman's re-election campaign in 1996. Upon leaving Capitol Hill, Jerome worked as a law clerk at Cleary Gottlieb Steen & Hamilton in D.C. while attending law school (also at Georgetown).

He met Gena, an Ohio native (and an Ohio State University varsity letter winner in cross country), in Washington, D.C., and they were married in 2000. At her suggestion, they relocated to Ohio shortly after Jerome graduated from law school, and Jerome took a position at a large Cincinnati firm before joining Katz Teller.

Since March of 2003, Jerome has made the trek down from Mason to Katz Teller, where he practices in the litigation department, focusing primarily on commercial dispute resolution. This year, Jerome was elected a shareholder of Katz Teller, becoming the firm's 24th shareholder (to only four associates).

As you might expect, Jerome is a rabid Georgetown basketball fan, a status that is more popular now than it was in the 1990s. When he's not watching the Hoyas or following their recruiting, he enjoys golf, running, reading and playing soccer, although not quite at the same level that earned him all-state honors in high school.

Both Jerome's father, a Senior Foreign Service officer who currently serves as the foreign policy advisor to the Air Force Chief of Staff, and grandfather, the former Chief Regulatory Officer for the New York Stock Exchange, believed that real experiences formed, and transformed, the person. As a result, Jerome's summers found him working as a ranch hand in Glen Rock, Wyoming, spending time on the floor of the New York Stock Exchange and filming news segments for the Armed Forces Korea Network in Daegu, Korea.

Yet, despite all his seeming wanderlust, Jerome is most happy about his family's quickly growing southwestern Ohio roots. Jerome and Gena are active in St. Susanna Parish and are avid participants in their three daughters' education at Royalmont Academy.

Katz Teller is proud to welcome Jerome to the partnership and looks forward to a long and productive relationship.

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