

## 2007 – YEAR IN REVIEW

From landmark deals to resounding litigation triumphs, 2007 saw Katz Teller attorneys putting their energy, passion and creativity to great use.

In the summer and early fall, Katz Teller attorneys advised a local public company, its controlling shareholders and its senior executive officers in connection with a \$1.334 billion sale. Several other transactions had an international flavor, with Katz Teller attorneys representing regional and local companies in connection with sales to companies from India and Germany and purchases of companies in England, Germany and India.

In December, over four years of litigation concerning the Last Will and Testament of Cincinnati Bengals co-founder and part-owner Austin E. Knowlton concluded with a month-long jury trial in the Hamilton County Probate Court. Katz Teller attorneys Bob Pitcairn and Cynthia Gibson were trial counsel for the Estate. Their efforts resulted in a defense verdict upholding the validity of the will in what is believed to be the largest will contest action ever tried in Cincinnati.

*Once again, Katz Teller was the leading per capita donor to the United Way.*

Katz Teller also solidified its position as a leader in supporting charitable causes that make a difference in our community. Once again, Katz Teller was the leading per capita donor to the United Way. Katz Teller was also the number one law firm in terms of per capita giving to the Cincinnati Fine Arts Fund.

In addition, staff initiatives under the auspices of the Kare To Be Helpful committee raised several thousand dollars for Big Brothers/Big Sisters, the March of Dimes, the Juvenile Diabetes Foundation, Camp Brant, Relay for Life, Crayons to Computers and a host of other worthy causes.

Katz Teller continues to grow with a purpose and adapt to our clients' needs. It is our resolution in 2008 to deepen and strengthen our client relationships while continuing to provide agile and able representation in every area of the practice. We thank you for choosing Katz Teller as your legal counsel, and we wish you a safe and productive 2008.

## CMS ISSUES – THEN DELAYS – EXPANDED MEDICARE ANTI-MARKUP RULE ADAM COLVIN



The Centers for Medicare and Medicaid Services ("CMS") recently issued an expanded anti-markup rule, but delayed its effective date until January 1, 2009 (except with respect to certain anatomic pathology testing).

CMS originally intended to make the expanded rule effective January 1, 2008. However, an influx of comments requesting clarifications of the new rule led CMS to institute this delay.

As of January 1, 2009, in its current form, the expanded anti-markup rule will apply not only to the technical component (TC), but also to the professional component (PC) of diagnostic tests. Under the expanded rule, if a billing entity orders a diagnostic test and the TC or PC is either purchased outright or performed at a site other than the office of the billing entity where the full range of its services is being provided – the billing entity may not markup the cost of the test.

The expanded rule will likely apply to most block lease arrangements. For example, the rule would apply to a cardiology group's lease of space, equipment and personnel for the operation of a cath lab, if the cath lab is outside of the group's office where the full range of its services is being provided.

During 2008, CMS intends to issue clarifying guidance on the anti-markup rule. CMS may also propose additional rulemaking. If you are currently a party to or plan to enter into any new diagnostic testing arrangements, you should consider the impact that the expanded anti-markup rule will have on these arrangements in the future.

If you have any questions about the anti-markup rule and its application to your practice, please contact Adam Colvin at (513) 977-3423 or acolvin@katzteller.com.

## PREGNANT PAUSE FOR NEW LEAVE REGULATIONS

## WIJDAN JREISAT AND CYNTHIA GIBSON



**A**fter a whirlwind of activity late in 2007, the regulations proposed by the Ohio Civil Rights Commission (OCRC) suggesting that all Ohio employers provide

12 weeks of leave for pregnancy and childbearing are unlikely to be implemented.

The OCRC's existing regulations simply require that a woman be allowed a "reasonable period" for leave. The proposed regulations would have provided that a policy allowing fewer than 12 weeks of leave constitutes sex discrimination unless justified by business necessity.

Needless to say, these regulations caught the attention – and raised the ire – of many employer groups. The regulations would have applied to any employer with four or more employees within the state regardless of the applicability of the Family Medical Leave Act (FMLA).

Unlike the FMLA, these provisions are not restricted by any eligibility requirements – an employee is entitled to this leave on her first day of employment. The regulations may have even allowed for more leave than the FMLA because an employee is eligible for the 12 weeks' leave for pregnancy, childbirth or related medical conditions regardless of whether she has exhausted her FMLA leave. As such, many were concerned that these regulations would impose a high burden on small employers.

Before the regulations could become effective, the Joint Commission on Agency Rule Review (JCARR) had to accept them. JCARR reviews all proposed agency regulations, and it may recommend that the General Assembly invalidate a

proposed regulation if it is contrary to Ohio law (i.e., if the regulation conflicts with the legislative intent of the Ohio Civil Rights Act or the OCRC has exceeded its authority).

On December 3, 2007, JCARR rejected the proposed regulations, finding that the OCRC's summary and fiscal analysis were incomplete and inadequate. The OCRC was given until March 2, 2008, for further review and revision.

Then on December 11, 2007, OCRC Chairwoman Barbara Sykes (who was a leading proponent of the regulations) announced her resignation as of the end of the year. This was seen as a reaction to the chilly reception of the proposed regulations. Members of the Ohio senate from both political parties have indicated that the proposed regulations will not survive further review.

Of course, even without the new proposed regulations, employers subject to the FMLA must still provide the 12 weeks' leave available under that law. In addition, the OCRC regulations currently provide that a woman be allowed a "reasonable period" for leave for pregnancy and childbirth.

*Employers must protect the jobs of women who are on leave to have a baby in order to avoid a claim of sex discrimination.*

The regulation further states that "following childbirth, and upon signifying an intent to return within a reasonable time, such female employee shall be reinstated to her original position or to a position of like status and pay, without loss of service credits." Therefore, employers must protect the jobs of women who are on leave to have a baby in order to avoid a claim of sex discrimination.

We will keep you advised if these regulations survive the pending review. In the meantime, if you have any questions regarding your requirements to provide leave for pregnancy or childbearing, please contact Cynthia Gibson or Wijdan Jreisat.



## INSIDE KTBH

**T**edd Friedman helped a client acquire and develop 435 acres in Monroe, Ohio, that will be home to a regional multi-tenant distribution facility with over 6 million square feet. He assisted in contract negotiations, tax and structural issues, loan negotiation and closing, real estate development issues and transaction closing.

Tedd also handled a lease transaction for Montgomery Inn that resulted in the opening of Montgomery Inn's first restaurant outside of Greater Cincinnati. The new restaurant, which will be part of the complex known as Dublin's Shoppes at River Ridge in Dublin, Ohio (a suburb of Columbus), is set to open in 2008.

**Bill Hayden, Mark Jahnke, Steve Kisling and Adam Colvin** represented shareholders and senior executives of a local public company in connection with a sale to a German company, who purchased the shares of the company for more than \$1 billion.

**Mark Jahnke and Tara Klee** represented a regionally based retail company with stores located in malls throughout the Midwest in connection with a sale to an Indian purchaser. Mark and **Wijdan Jreisat** represented a local company in a sale to a German purchaser, assisting the client in interviewing and selecting an investment bank to lead the sale process and negotiating and closing the sale.

**Wijdan Jreisat** is a founding partner of Social Venture Partners Cincinnati. SVP Cincinnati unites individuals who make the financial, time and expertise commitments to provide nonprofits with grants and support in areas such as marketing, finance and strategic planning. She has also been elected to the board of the newly formed Girl Scouts of Western Ohio, which merges four girl scouts councils along the I-75 corridor and will serve 60,000 girls in 32 counties of western Ohio and southeastern Indiana.

Twelve Katz Teller attorneys were named "Super Lawyers" in the 2008 edition of the *Super Lawyers in America*. Only the top 5 percent of all Ohio attorneys make the list, which is compiled after a peer voting process. This year, **Andy Berger, Jody Brant, Joe Brant, Bob Brant, Cynthia Gibson, Guy Hild, Mark Jahnke, Jim McCarthy, Bob Pitcairn, Bill Russo, Jerry Teller and Dan Utt** were selected by their peers as Super Lawyers.

Among that group, **Cynthia Gibson** was named a top 50 Female Super Lawyer as well as a top 25 Female Cincinnati Super Lawyer. **Bob Pitcairn** once again was the top vote-getter in all of Ohio for the second year in a row, while **Guy Hild, Bill Russo and Jerry Teller** achieved top 50 status in Cincinnati and top 100 status in Ohio.

In addition, *Corporate Counsel* magazine released its annual list of the Best Lawyers in America, and 16 Katz Teller attorneys made the list, including **Andy Berger** (Corporate/Securities Law), **Jody Brant** (Tax Law, Trusts and Estates), **Joe Brant** (Trusts and Estates), **Bob Brant** (Corporate Law, Employee Benefits Law, Tax Law), **Cynthia Gibson** (Labor and Employment Law), **John Gierl** (Corporate Law), **Brad Haas** (Corporate Law), **Bill Hayden** (Corporate Governance and Compliance Law), **Guy Hild** (Family Law), **Mark Jahnke** (Corporate Law, Mergers and Acquisitions), **Reuven Katz** (Corporate Law), **Steve Kisling** (Employee Benefits Law), **Bob Pitcairn** (Bet-the-Company Litigation, Commercial Litigation, Labor and Employment Law), **Bill Russo** (Tax Law, Trusts and Estates), **Jerry Teller** (Family Law) and **Dan Utt** (Project Finance Law, Real Estate Law).



**THE NEWEST ASSOCIATE | MATT RICH**

**M**att Rich is a Northern Kentuckian still learning his way around Cincinnati.

Matt grew up in Latonia, Kentucky. Even though he could have ridden his bike to the river, his childhood definition of Cincinnati was “the place you go to see the Reds or Bengals.” Trips to Kings Island were “vacations,” and restaurants in Cincinnati did not exist.

So it was only natural that when it came time for college, he didn’t think about crossing the river. Matt attended Bellarmine University in Louisville, Kentucky, where he majored in English Literature.

He thought he wanted to be a journalist until he joined the school’s mock trial team, which at that time was ranked first in the nation ahead of schools such as Yale, Harvard, Michigan, Virginia and UCLA. Matt was a member of the team that backed up that ranking by winning the 1999 National Championship. Matt was also the valedictorian of the university’s class of 2000, graduating with a perfect 4.0 grade point average.

The experience on Bellarmine’s mock trial team not only spurred his interest in law school, but introduced him to traveling by plane and to the possibility of going to law school in another state. Matt applied to a number of law schools outside of Kentucky, finally settling on Cornell Law School in Ithaca, New York.

During his law school experience, Matt began to identify more and more with Cincinnati, in part because many of his classmates didn’t really know where Kentucky was. It wasn’t long before Matt adopted the famous Northern Kentucky response of “I’m from Greater Cincinnati” when asked to identify his hometown.

Still, it would be awhile before Matt truly got to experience Cincinnati firsthand. He accepted a position out of law school with a large firm in Columbus. After several years there, and several hundred dollars of phone bills calling his then-girlfriend

(now wife), Cincinnati attorney Cathy Howard, he decided it was time to make the move.

In February of 2006, he joined Katz Teller as an associate in the litigation department. He handles a broad spectrum of matters, but does most of his work in the commercial litigation and real estate litigation areas.

Outside of work, his abiding interests are twofold: University of Louisville basketball (and football, if they’re good) and mock trial. Matt coaches Bellarmine University’s mock trial team, a position that requires him to travel several weekends out of the year to New York City or Washington, D.C. (or less exciting places like Murfreesboro, Tennessee, and Mount Vernon, Iowa), as a coach and chaperone. He also coaches mock trial at Fort Thomas Highlands High School along with his wife. Matt is a frequent volunteer judge at mock trial, moot court and negotiation competitions in the area.

He cites the opportunities to interact with clients and the fine mentoring from other Katz Teller attorneys as his favorite things about the firm. Since joining, he has been active in the recruiting committee, as well as taking on the responsibility for editing this very newsletter. He has also served on the firm’s administrative committee.

Katz Teller is proud to have Matt on board as its newest associate.



K A T Z , T E L L E R , B R A N T & H I L D

PRSRST STD  
US POSTAGE PAID  
CINCINNATI, OH  
PERMIT NO. 6159

255 EAST FIFTH STREET, SUITE 2400  
CINCINNATI, OHIO 45202-4787  
PHONE: 513.721.4532  
FAX: 513.721.7120  
WWW.KATZTELLER.COM

