**IN THE SUPREME COURT OF OHIO**

Case No. 2022-0316

| | | |
|---|---|---|
| **Josh Schaad** | : | |
| | : | On Appeal from the Hamilton County Court |
| Plaintiff-Appellant, | : | of Appeals, First Appellate District |
| | : | |
| vs. | : | Amicus Brief of the Ohio Municipal League |
| | : | |
| **Karen Alder, *et al.*** | : | Court of Appeals |
| | : | Case No. C-2100349 |
| Defendants-Appellees. | : | |

---

**AMICUS BRIEF OF THE OHIO MUNICIPAL LEAGUE**

---

Robert Alt* (0091753)
**Counsel of Record*
Jay R. Carson (0068526)
**THE BUCKEYE INSTITUTE**
88 East Columbus Street, Suite 1300
Columbus, OH 43215
(614) 224-4422
robert@buckeyeinstitute.org
j.carson@buckeyeinstitute.org

*Counsel for Plaintiff-Appellant*

Diane Menashe* (0070305)
**Counsel of Record*
Daniel Anderson (0067041)
**ICE MILLER LLP**
250 Columbus Street, Suite 700
Columbus, OH 43215
(614) 462-2700
Diane.Menashe@icemiller.com
Daniel.Anderson@icemiller.com

*Counsel for Defendants-Appellees*

Philip K. Hartmann* (0059413)
**Counsel of Record*
Thaddeus M. Boggs (0089231)
Jesse J. Shamp (0097642)
**FROST BROWN TODD LLC**
10 West Broad Street, Suite 2300
Columbus, OH 43215-3484
(614) 559-7293
phartmann@fbtlaw.com
tboggs@fbtlaw.com
jshamp@fbtlaw.com

Garry E. Hunter (0005018)
General Counsel
**OHIO MUNICIPAL LEAGUE**
175 S. Third Street, #510
Columbus, OH 43215-7100
Phone: (614) 221-4349
Fax: (614) 221-4390
ghunter@omlohio.org

*Counsel for Amicus Curiae the Ohio Municipal League*

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Other Authorities**



**Rules**



**Regulations**

## INTRODUCTION

The Ohio Municipal League (the "OML"), as amicus curiae in support of Karen Alder, *et al*., urges this Court to affirm the decision of the First District Court of Appeals (the "First District") in *Schaad v. Alder*, 1st Dist. Hamilton No. C-210349, 2022 -Ohio- 340. The First District correctly concluded that Section 29 of House Bill 197 ("Section 29") does not violate the Due Process Clause.

The issues before this Court are whether Section 29 was a valid enactment by the General Assembly expanding municipal tax authority and whether it violates the Due Process Clause. For the reasons that follow, Section 29 was a valid enactment of the General Assembly and does not violate the Due Process Clause.

Under the specific and unique circumstances of this case, Section 29 was a valid enactment by the General Assembly under both Article XVIII, Section 13 and Article XIII, Section 6 as a limitation on municipal taxing power. It is well-settled that all legislative enactments have a strong presumption of validity. *Buckeye Institute v. Kilgore,* 2021-Ohio-4196, 181 N.E. 3d 1272, ⁋ 37 (10th Dist.). Here, Section 29 can be viewed both as an exercise of the General Assembly's express power to restrict the municipal power of taxation, *see Schaad* at ⁋ 10, and as an exercise of the General Assembly's power to authorize taxes beyond municipal borders, *id.* at ¶ 11, citing *Time Warner Cable, Inc. v. City of Cincinnati*, 2020-Ohio-4207, 157 N.E.3d 941 (1st Dist.). Section 29 required municipalities to impose their income tax as that section directed regardless of what would garner the most income for the municipality. *Id*. at ¶ 10; *see also* 2020 Am.Sub.H.B. No. 197, Section 29, 340-341. And perhaps there are municipalities that would have preferred to impose their tax based solely on where individuals' remote work locations. However, Section 29 created a uniform municipal tax plan that was standardized and maintained the *status quo* during

uncertain, pandemic times. The enactment of Section 29 was not the first instance of the General Assembly limiting municipal taxing authority, or even the first time the General Assembly arguably required municipalities to impose extraterritorial taxes. *Buckeye Institute* at ¶ 22; *Time Warner Cable, Inc. v. City of Cincinnati*, 2020 -Ohio- 4207, 157 N.E. 3d 941, (1st Dist.). To be clear, the General Assembly does not have carte blanche authority regarding municipal home rule or local self-government, but in this case and considering the factual circumstances the General Assembly acted within its authority.

Section 29 also complied with the requirements of the Due Process Clause. Due Process requires that taxation be justified based on benefits conferred from the taxing authority to the taxpayer. *Couchot v. State Lottery Comm*., 74 Ohio St.3d 417, 421, 659 N.E. 2d 1225 (1996). Here, the Plaintiff-Appellant is a resident of the State of Ohio, which has enacted the uniform municipal tax. Further, all of Plaintiff-Appellant's income is earned within Ohio. And the local jurisdiction receiving the tax revenue, based on his place of employment, provides the municipal protections that enable the perpetuation of his employer's business from which his income derives. Plaintiff-Appellant has thus been given all the process that he is due. This Court's decisions in *Angell v. City of Toledo*, 153 Ohio St. 179, 91 N.E. 2d 250, (1950), *Hillenmeyer v. Cleveland Bd. of Rev*., 144 Ohio St.3d 165, 2015 -Ohio- 1623, 41 N.E. 3d 1164, and *Willacy v. Cleveland Bd. of Income Tax Rev.*, 159 Ohio St.3d 383, 2020 -Ohio- 314, 151 N.E. 3d 561 do not counsel otherwise. *See Schaad* at ¶ 17; *Buckeye Institute* at ¶ 43. Therefore, Plaintiff-Appellant's Due Process argument must fail.

Meanwhile, if the First District's decision is reversed, Ohio municipalities would be faced with fiscal peril from stale refund requests for revenue they depended upon during the worst initial months of the COVID-19 pandemic. The tax period for which Section 29 applied has come and

gone and the accounts are long since settled. Municipalities are not equipped for this potential liability.

Undoubtedly, Ohio municipalities have issued bonds, engaged in infrastructure projects, made collective bargaining agreements, and made other important decisions for their municipality based on the tax revenues received under Section 29. To reverse the First District's decision would be an inequitable result for Ohio municipalities and their residents, while providing an unjustified windfall for some displaced by the precautions mandated in response to the COVID-19 pandemic that ultimately killed over one million Americans. The OML is uniquely qualified to elaborate as to the impacts that this decision could have on Ohio municipalities.

## STATEMENT OF AMICUS INTEREST

The OML was incorporated as an Ohio non-profit corporation in 1952 by city and village officials who saw the need for a statewide association to serve the interests of Ohio municipal government. It currently represents 730 of Ohio's 931 cities and villages. The OML has six affiliated organizations: the Ohio Municipal Attorneys Association, the Municipal Finance Officers Association, the Ohio Mayors Association, the Ohio Association of Public Safety Directors, the Ohio City/County Management Association, and the Ohio Municipal Clerks Association. On a national basis, the OML is affiliated with the National League of Cities, the International Municipal Lawyers Association, the U.S. Conference of Mayors, and the International City/County Managers Association.

The OML represents the collective interest of Ohio cities and villages before the Ohio General Assembly and the state elected and administrative offices. In 1984, the OML established a Legal Advocacy Program funded by voluntary contributions of the members. This program allows the OML to serve as the voice of cities and villages before the Ohio Supreme Court and the

United States Courts of Appeals and Supreme Court by filing briefs *amicus curiae* on cases of special concern to municipal governments. The Ohio Municipal League has been accredited by the Ohio Supreme Court as a sponsor of both Continuing Legal Education Programs for attorneys and the required Mayors Court training for Mayors hearing all types of cases.

## STATEMENT OF THE CASE AND FACTS

The OML hereby adopts, in its entirely, and incorporates by reference, the statement of the case and facts contained within the Brief of Defendants-Appellees, Karen Alder, *et al*.

## LAW AND ARGUMENT

**Proposition of Law No. 1: The General Assembly validly enacted Section 29 pursuant to its authority under the Ohio Constitution.**

### A. Legislative enactments have a strong presumption of validity.

It is a well-developed premise that the duly enacted statutes of the state have a strong presumption of constitutionality. *Buckeye Institute at* ¶ 18. Courts can only declare a legislative enactment unconstitutional if it is shown beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible. *Id. quoting State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E. 2d 59 (1955). States also have a great deal of power to regulate intrastate taxation among their residents; and state governments are only limited by the federal constitution in the taxation of their residents. *Buckeye Institute* at ¶ 20 *quoting Greenough v. Tax Assessors of Newport*, 331 U.S. 486, 490, 67 S.Ct. 1400, 91 L.Ed. 1621 (1947). The sovereign power of the states to regulate intrastate taxation not only covers the mode, form, and extent of the taxation, but also the structure of taxation as a whole. *Buckeye Institute* at ¶ 20 *quoting N. Carolina Dept. of Revenue v. Kimberley Rice Kaestner 1992 Family Trust*, 139 S.Ct. 2213, 2226, 204 L.Ed.2d 621 (2019). Given the broad authority of states to regulate intrastate taxation,

the General Assembly had power to enact a temporary limitation on the taxing authority of Ohio municipalities in response to a once-in-a-century disruption to the world economy.

**B. Section 29 was consistent with the General Assembly's previously recognized authority to mandate a uniform municipal taxation plan.**

Ohio municipalities have authority under the Home Rule Amendment of the Ohio Constitution, Article XVIII, Section 3, to exercise all powers of local self-government and to adopt and enforce within their limits such local, police, sanitary, and other similar regulations, as are not in conflict with general laws. *Athens v. McClain*, 163 Ohio St.3d 61, 2020 -Ohio- 5146, 168 N.E. 3d 411, ¶ 20. It is well-settled that municipalities have authority to enact local tax regulations, as an exercise of local self-government, under their Home Rule Authority. *Id.* at ¶ 21. However, this Court has held that pursuant to Article XVIII, Section 13 and Article XIII, Section 6, the General Assembly has the authority to limit municipal taxing power. *Id.* at ¶ 22. Municipal taxation power therefore is plenary in theory, but subject to limitation by the General Assembly. Section 29 is well-within the parameters of "limitation" already recognized in *Athens*, and hardly pushes the envelope.

Section 29 temporarily deemed work performed at one's residence to be work performed at one's principal place of employment for municipal tax purposes. 2020 Am.Sub.H.B. No. 197, Section 29. The "limitation" or "restriction" on municipal action is the requirement that municipalities must deem work performed in one location to have been performed elsewhere, regardless of whether that work physically occurred in the municipality. Municipalities were not given the option of electing to tax individuals wholly based on their remote work location. *Schaad* at ¶ 10. Instead, in response to the unprecedented COVID-19 pandemic, and the necessarily abrupt adoption of public safety measures that prevented the normal functioning of all aspects of life, the Generally Assembly drew upon both its general Article II power (to legislate all that is not

prohibited by the U.S. or Ohio constitutions), and its specific powers to restrict the municipal power of taxation (Art. XIII, section 6) and to limit the municipal power to levy taxes (Art. XVIII, section 13).

This Court recently recognized the General Assembly's power to create a centralized municipal taxing system in *Athens*. *Id*., 163 Ohio St.3d 61, 2020-Ohio-5146. There, this Court considered whether the General Assembly could enact a statute that allowed entities that pay net-profit taxes to municipalities to choose to have the Ohio Department of Taxation administer their net-profits tax obligations with the municipalities. *Id*. at ¶ 2. This Court concluded that within the meaning of "limit" under Article XVIII Section 13 came the General Assembly's ability to limit the administration of a municipality's validly enacted tax. *Id*. at ¶ 45. Further, this Court held that the General Assembly's decision to create a centralized system for imposing municipal net profits taxation was a limitation on the municipal taxing authority as authorized by the Ohio Constitution. *Id*. at ¶ 3. But even under the theory advanced by the municipal plaintiffs in *Athens*, Section 29 would have been a valid exercise of the General Assembly's power to "limit" the "levy" of municipal taxes—Section 29 defines and limits the tax base upon which municipalities may levy taxes by uniformly requiring remote workers' income to be taxable in the location of their employer.

Further, as the Legislative Service Commission's ("LSC") analysis of Section 29 indicates, Section 29 affects "which municipal corporation may tax the employee's pay, and whether and how much of the employer's own income in subject to a municipality's income tax." Legislative Service Commission Final Analysis Am.Sub.H.B. 197, p. 30. The LSC's analysis also indicates that Section 29 "potentially allows the employer to avoid withholding taxes for that employee in the municipality where the employee's temporary worksite is located and prevents the employer

from becoming subject to that municipality's income tax." (LSC Final Analysis at p. 30.) This is, fundamentally, language of limitation.

The Plaintiff-Appellant's suggestion that Section 29 was a grant of authority for municipalities to tax extraterritorially and indiscriminately is a strawman. (Plaintiff-Appellant's Merit Brief, p. 26.) The Plaintiff-Appellant's concern that Section 29 is just a first step down a path to unfettered extraterritorial municipal taxation is (a) not this case and (b) absurd. Courts do not presume that a legislature intended to produce an unreasonable or absurd result. *Toliver v. City of Middletown*, 12th Dist. Butler No. CA99-08-147, 2000 WL 895261 *4 (June 30, 2000).

Indeed, the General Assembly's ability to limit municipal taxing power while still authorizing extraterritorial taxation is not unprecedented. In *Time Warner Cable*, the First District Court of Appeals reviewed a municipal tax provision that required a company to only file a consolidated tax return for their companies doing business within the city. *Time Warner Cable*, 2000-Ohio-4207, 157 N.E.3d at ⁋ 3. Under the then-applicable version of R.C. 718.06, however, businesses could file a consolidated return (including the profits or losses of multiple controlled, extraterritorial entities) with one city. *Id*. The court found this was consistent both with the General Assembly's power to *limit* municipal taxation power under *Athens* (by requiring acceptance of the consolidated return in the first place), *id.* at ¶14, as well as the power of the General Assembly to authorize extraterritorial exercise of municipal power, *id.* at ¶17.

It may be jarring to read the Ohio Municipal League arguing in favor of a State action limiting municipal taxing power. The Ohio Municipal League and the General Assembly have hardly, if ever, been aligned on these issues. And this alignment may not happen again. But Section 29's effort to maintain the municipal status quo under the unique COVID-19 pandemic circumstances is within the scope of the General Assembly's power.

### C. The COVID-19 pandemic emergency did not suspend limits on the General Assembly's power, but these circumstances underscore the importance of the Court's beyond-a-reasonable-doubt review of constitutionality.

Since the inception of the Ohio Constitution, the General Assembly has been given great deference as to the validity of their legislative acts enacted under Article II Section 1d. *State ex rel. Durbin v. Smith*, 102 Ohio St. 591, 602-604, 133 N.E. 457 (1921). Section 29 was passed with the intention of maintaining the *status quo* during a very uncertain public health emergency caused by the COVID-19 pandemic. *Schaad,* 2022 -Ohio- 340, 2022 WL 353625 at ⁋ 17, citing *Buckeye Institute*. At that time of uncertainty, with the sudden and unexpected shock of emergency pandemic restrictions, it was rational and reasonable for the General Assembly to enact Section 29, consistent with its powers to limit municipal levy of taxes, and to preserve the reliance interests of municipalities that had budgeted for tax revenue based on employers operating in their jurisdictions. *See Hillenmeyer v. Cleveland Bd. of Rev.*, 144 Ohio St.3d 165, 2015-Ohio-1623, 41 N.E.3d 1164, ¶35 ("Protection of reliance interests constitutes a valid basis for legislative line drawing."). Any legislature, whether the General Assembly or a municipal council, is entitled to deference in its exercise of legislative prerogatives—hence the high bar for a plaintiff to establish that a statute violates the constitution. The pressures of the rapidly progressing COVID-19 pandemic did not substantively expand the General Assembly's powers. But they counsel humility in reviewing legislative work, as this Court has established in its beyond-a-reasonable-doubt constitutional review; that humility and deference to the legislature is appropriate, considering that we are now two-and-a-half years removed from the immediate exigencies of March 2020.

**Proposition of Law No. 2: Section 29 does not violate the Due Process Clause.**

**A. Section 29 does not violate the Due Process Clause.**

Federal Due Process is generally satisfied if there is a rational relationship between a statue and the purpose of the statute. *Buckeye Institute* at ¶ 37 *quoting Desenco, Inc. v. City of Akron*, 84 Ohio St.3d 535, 545, 706 N.E.2d 323 (1999) *citing Martinez v. California*, 444 U.S. 277, 283, 100 S.Ct. 553, 62 L.Ed.2d 481 (1980). Section 29's deeming of work performed in one location to have been performed in another location has a rational relationship to maintaining the status quo and a uniform system for municipal taxation in a time of uncertainly due to the COVID-19 pandemic. *See Buckeye Institute* at ¶ 38 (appellant did not dispute that there was a rational relationship between Section 29 and its purpose).

In *Desenco,* this Court considered whether a statute was related to its purpose in compliance with federal Due Process. *Id*., 84 Ohio St.3d at 536, 706 N.E.2d 323. Specifically, this Court reviewed whether the provisions of R.C. Chapter 718, which permit municipalities to establish joint economic development districts ("JEDD") and subsequently allow those districts to levy taxes, was an unconstitutional violation of Due Process. *Id*. at 536. This Court determined that JEDDs were created for the purpose of fostering economic development by creating employment opportunities and to improve the economic welfare of the people. *Id*. at 545. This Court held that the purpose of JEDDs was legitimate and that the purpose bore a rational relationship to the general welfare of the state because the taxpayers benefit from the services that the JEDD provides. *Id*. Thus, this Court determined that the statute complied with due process. *Id*.

Here, as in *Desenco*, there is a clear rational relationship between the statute and the purpose of the statute. Section 29 deems work performed at an employee's residence to have been performed at their principal place of employment. 2020 Am.Sub.H.B. No. 197, Section 29. Section

29 intended to create a clear and comprehensive state tax scheme during the state of emergency by maintaining the status quo for taxing purposes. *Schaad,* 2022 -Ohio- 340, 2022 WL 353625 at ¶ 17 *citing Buckeye Institute*. The statute is related to that purpose because it essentially required municipalities to continue imposing taxes in the manner used prior to the pandemic, which created a tax scheme that was easily followed.

Further, when determining whether a taxing law complies with Due Process, a court should undertake a flexible application of certain factors: (i) the taxing authority's power, dominion, or control over the taxpayer, (ii) the benefits that the taxing authority has conferred on the taxpayer, and (iii) the social or governmental costs incurred by the taxing authority. *Couchot*, 74 Ohio St. 3d 417, 422, 659 N.E. 2d 1225. A flexible test that focuses on the benefits conferred from the municipality to the employee is more applicable in the Due Process context than a bright-line test. *Buckeye Institute,* 2021-Ohio-4196, 181 N.E.3d 1272, ¶ 38. When a court considers the legitimacy of a tax under the Due Process Clause, it asks whether the taxing authority has given anything for which it can ask a return. *Id*. at ¶ 39. A two-prong test has been created to address this question. *Id*. at ¶ 41. Prong one requires the court to consider whether the taxpayer has a "minimum connection" with the taxing authority. *Id*. Generally, this prong is met if the taxing authority is imposing a tax for work performed within their jurisdiction. *Id*. The second prong requires the court to consider the proportion of the taxpayer's income that is attributable to property or events within the taxing authority. *Id*. at ¶ 42.

In this case, Section 29 satisfies both prongs. First, Plaintiff-Appellant is a resident of Ohio such that the State has *in personam* jurisdiction over him and meeting the "minimum connection" standard. Under the second prong, there does not appear to be any allegation that any portion of Plaintiff-Appellant's income is generated outside the State of Ohio. Therefore, the State of Ohio

has the ability to exercise jurisdiction over one hundred percent of Plaintiff-Appellant's income and the application of Section 29 to his income, under the uniform municipal income taxation code, does not violate Due Process.

**B. The so-called *Angell-Willacy* line of decisions do not affect the validity of Section 29.**

Contrary to Plaintiff-Appellant's assertion, an application of the *Angell-Willacy* line of decisions to this case does not alter the outcome. This case considers whether a state taxation statute regulating intrastate taxation is valid under the Due Process Clause. We again begin with the strong presumption that legislation is valid unless it clearly violates the Constitution. *Buckeye Institute* at ¶ 18. Despite the arguments of Plaintiff-Appellant and his supportive amici, the so-called *Angell-Willacy* line of cases does not warrant a conclusion that the Due Process Clause prohibits the General Assembly's action in Section 29.

*Angell* discusses the Due Process Clause only briefly, noting that the "test of whether a tax law violates the due process clause is whether it bears some fiscal relation to the protections, opportunities, and benefits given by the state, or, in other words, whether the state has given anything for which it can ask a return." *Angell*, 153 Ohio St. at 185, 91 N.E.2d 250 (1950), citing *State of Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 61 S.Ct. 246, 85 L.Ed. 267 (1940). Examples of protection, opportunities, and benefits noted by the *Angell* Court to give the municipal government the right to tax included the affording of fire protection and law enforcement "to the place of business of plaintiff's employer and the operation thereof without which plaintiff's employer could not as readily run its business and employ help." *Id.* These municipal services that afforded protection to the physical site of the *Angell* plaintiff's employer were sufficient under the Due Process Clause. *Id.*

Two of the other cases referenced by Plaintiff-Appellant, *Hillenmeyer* and *Willacy,* address Due Process in the context of interstate taxation and do not support the contention that the Due Process Clause prohibits Section 29. In *Hillenmeyer*, for example, the Court considered the extraterritorial taxation of a former Chicago Bears linebacker. *Hillenmeyer*, 114 Ohio St.3d 165, 2015-Ohio-1623, 41 N.E.3d 1164, at ¶1. The key issue was the City of Cleveland's "games played" calculation method, which led to disproportionate allocation of income to Cleveland as compared to the totality of work the plaintiff performed other than games. *Id.* at ¶1, ¶46. *Hillenmeyer* did not grapple with the State of Ohio's power of intrastate taxation. And it does not address the circumstance of a municipality taxing a player whose team is based in the municipality, as would be analogous to the situations governed by Section 29. *Hillenmeyer* therefore does not provide an apt comparison or persuasive precedent here.

Likewise, *Willacy* does not support the arguments of Plaintiff-Appellant or supporting amici. The *Willacy* Court describes the due-process test as having two prongs, with the first being satisfied if the non-resident's income arose from work performed within the jurisdiction. *Willacy*, 159 Ohio St.3d 383, 2020-Ohio-3145, 151 N.E.3d 561, ¶23. The second prong, however, "requires a determination of the extent to which the nonresident's income 'is fairly attributable either to property located in the state or to events or transactions which, occurring there, are subject to state regulation and which are within the protection of the state and entitled to the numerous other benefits which it confers.'" *Id.* at ¶24, citing *Internatl. Harvester Co. v. Wisconsin Dept. of Taxation*, 322 U.S. 435, 441-442, 64 S.Ct. 1060, 88 L.Ed. 1373 (1944). Section 29 stands upon this second prong, whereby the municipality of the employer provided benefit—to the employer and employee—by continuing to afford municipal services and protection to the place of business

during those uncertain months of 2020 when our entire society was disrupted by the novel coronavirus.

Plaintiff-Appellant's Due Process arguments against Section 29 must fail. Section 29 complies with the Due Process Clause.

## CONCLUSION

Because Section 29 was a valid enactment of the Ohio General Assembly under both the Ohio Constitution and the Due Process Clause, the Ohio Municipal League respectfully requests that this Court affirm the judgment of the First District Court of Appeals.

Respectfully submitted,

*/s/ Philip K. Hartmann*
Philip K. Hartmann* (0059413)
**Counsel of Record*
Thaddeus M. Boggs (0089231)
Jesse J. Shamp (0097642)
**FROST BROWN TODD LLC**
10 West Broad Street, Suite 2300
Columbus, OH 43215-3484
(614) 559-7293
phartmann@fbtlaw.com
tboggs@fbtlaw.com
jshamp@fbtlaw.com

*Counsel for the Ohio Municipal League*

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email this 4th day of October 2022, upon the following counsel for Plaintiff-Appellant and Defendants-Appellants:

| | |
|---|---|
| Robert Alt | robert@buckeyeinstitute.org |
| Jay R. Carson | j.carson@buckeyeinstitute.org |
| Diane Menashe | Diane.Menashe@icemiller.com |
| Daniel Anderson | Daniel.Anderson@icemiller.com |

*/s/Philip K. Hartmann*
Philip K. Hartmann (0059413)
**FROST BROWN TODD LLC**