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THIS WEEK

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Midvale equipment leasing company sold for $35 million

By Brice Wallace
The Enterprise

A PacWest Bancorp subsidiary has completed its acquisition of Marquette Equipment Finance, based in Midvale, for $35 million in cash.

MEF focuses on business equipment leases throughout the U.S. Its tangible net assets on Dec. 31 were approximately $18 million. It was founded in 1978.

Pacific Western Bank acquired all the MEF capital stock from Meridian Bank and assumed $154 million in outstanding debt and other liabilities.

PacWest said the company will continue to operate under its current name as a Pacific Western Bank subsidiary, although Pacific Western will change MEF's name within a year. MEF will continue to focus on equipment finance and will retain all 71 employees. Jim Christensen, MEF's president, and Christian Emery, executive vice president and chief financial officer, will continue in their respective roles.

"We're excited. This gives us an opportunity to grow," Christensen said. "This is a California bank that is strong and has deposits they want to deploy in the marketplace, and we are going to be one of the vehicles to do that."

PacWest said that at year-end, MEF had about $166 million in gross leases outstanding. They were spread across 18 industries. Financial services/insurance, manufacturing and health care represented about two-thirds of the lease portfolio balance.

"One place we're especially strong is structuring financing arrangements, especially when we're dealing with collateral that's unusual," Christensen said, citing software as an example.

Although virtually all of MEF's employees are in Utah, the company has a national footprint. Its deal sizes typically range from $250,000 to $5 million.

"We had some limits on us before in terms of the amount of growth and size that we could get to, that now we aren't going to be dealing with. Certainly there's going to be a much stronger growth orientation," Christensen said. "We're looking to increase our deal size and also looking to enter into some new markets."

He declined to provide specifics. "We're just looking to expand

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$15 million Denver-based trailer leasing firm opens SLC facility

By Barbara Rattle
The Enterprise

Prime Trailer Leasing, a Denver-based firm that bills itself as the largest semi trailer rental company in the region, has established a facility at 1150 W. 2100 S., Salt Lake City.

The company, which rents primarily dry vans, flatbeds and refrigerated vans for over-the-road, local cartage and storage applications, also has a location in Reno. The company has a total of 30 employees, three of them in Salt Lake City.

Allen Gardner, marketing director for Prime Trailer, which was founded by his father, Wes Gardner, in 1992, said the company decided to establish a physical presence in Utah due in part to the exit of from the area of a major competitor. GE, owner of Transport International Pool, has begun moving out of the market, Allen Gardner said. He noted that Prime Trailer has revenues of roughly $15 million annually.

Prime Trailer's customer base consists of both small and large trucking companies — "large carriers that either have seasonal needs or they need 10 trailers out in an area and they only have eight at their location," Gardner said. "We help augment their fleets. But typically we work with smaller carriers, maybe those with 1,000 trailers or under. Now that we're expanding to multiple locations we're starting to be able to have the opportunity to serve some bigger customers in a way that makes sense for them."

Gardner said the majority of the firm's inventory consists of late models, 2003 or newer.

"We try and focus on newer equipment given all the new regulations that are coming out for our industry," he said. "That's the edge that we're trying to take with the market out there because that's where most of the demand is, especially if they [customers] are heading to California."

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Outlook: all segments of Utah commercial real estate to see moderate growth in 2012

All segments of commercial real estate will see moderate growth in 2012, according to the Salt Lake City-based commercial real estate brokerage NAI West.

Office Market Outlook

Looking forward to 2012, experts are predicting a continued soft office marketplace.

"We have seen significant activity in the central business district for owner occupied and/or single use buildings," said NAI West vice president and office leasing and investment specialist Jack Woodward. "Current indicators are showing that lease rates and sales prices are slightly lower than year end 2010. We have also seen a corresponding drop in vacancy rates for 2011." Owners should see an increase in leasing activity as tenants continue to take advantage of soft market conditions.

Commercial brokers are also expecting to see positive absorption of office space. With Utah's pro-business culture and strong economy, available space should decrease through 2012. Woodward used northern Utah County as an example of the positive direction of the office market, noting that several buildings in the area have been leased before construction is completed.

Retail Market Outlook

The retail real estate market has a very positive outlook for 2012. Vacancy rates dropped in 2011, and are expected to continue to decline in 2012. Grocery stores and other retailers are following population growth and seeking new locations in Utah's high growth areas. A number of regional and national retailers established Utah locations in 2011 and many more are planned for the coming year.

"We expect to see a lot of repositioning in 2012. Store closures have slowed and vacancy rates

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Employers more optimistic about 2012, according to survey

Employers are more optimistic about 2012. The *2012 Economic Trends Survey* by The Employers Council shows employers' optimism both for the overall economy as well as their own business.

The comprehensive survey of nearly 2,000 organizations reflects a more optimistic view of 2012 by executives across the nation. Interestingly, the results did not vary significantly by region or state.

Economy and Sales: Optimistic

An impressive 90 percent of the executives expect the overall economy will be about the same or better in 2012 compared to 2011 (58 percent about the same, 32 percent better). In Utah, executives are even more gung-ho, with 93 percent expecting the 2012 economy to be about the same or better compared to 2011. Similar to last year, respondents across the nation are more confident about their own business outlook than the overall economy. While 32 percent anticipate the overall 2012 economy will be better than 2011, 67 percent of business owners expect increases in their own sales/revenue. Not all respondents were quite as enthusiastic, with 23 percent of respondents that anticipate flat sales/revenue and 10 percent that expect a decrease in sales/revenue. In Utah, only 8 percent of business leaders expect a decrease in sales/revenue.

Plans for significant new investments in people, facilities and/or equipment are split. Fifty-one percent say they will not make investments while an optimistic

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MEF

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our range," he said.

In a prepared statement, Matt Wagner, PacWest's chief executive officer, described MEF as "a terrific fit" for Pacific Western Bank.

"Its conservative approach to credit and the strength of the management team have made Marquette Equipment Finance into a solid performing equipment leasing company," Wagner said. "MEF's leasing platform provides a valuable additional growth channel for us and enhances both the categorical and geographical diversification of our loan portfolio. We look forward to adding their expertise to our organization and giving them the opportunity to grow further."

Vic Santoro, PacWest's executive vice president and chief financial officer, said the acquisition should boost MEF's overall profitability.

Milestone Advisors represented Meridian Bank and Marquette Equipment Finance in the transaction.

PacWest Bancorp has $5.5 billion in assets. Pacific Western has 76 full-service community banking branches throughout California that provide commercial banking services, including real estate, construction and commercial loans, to small and medium-sized businesses.

PacWest operates two commercial finance companies. It acquired BFI Business Finance, based in San Jose, Calif., in 2007. It acquired First Community Financial Corp, a lender and factoring company based in Phoenix, in 2004.

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are predicted to fall 10 to 20 percent," said Mountain West Retail/Investment principal Chris Hatch. This decrease in rates is a function of nominal new construction in the area, he added.

Hatch is also predicting a strong 2012 for retail investments. "Real estate investment trusts and institutional buyers continue to search our market for core investment opportunities with stable growth and upside," according to Hatch.

Industrial Market Outlook

The next 12 months should look very similar to 2011 for Utah's industrial real estate market and should see slight increases in activity. There are a number of projects that will come to market in 2012 that may give Utah a slightly negative net absorption, but overall vacancies will remain low.

Commercial brokers and experts are predicting a continued flight to quality as tenants find opportunities in class A and class B properties with favorable rents. CAM (common area maintenance) fees are up and owners that can find ways to keep operating expenses lower will have a better opportunity to retain tenants.

Jeff Heaton, NAI West vice president and industrial properties specialist, sees no indication of lease rates or property values decreasing and remains optimistic about Utah's industrial market. "Utah has all the fundamentals for a positive industrial market. We are experiencing population growth, have an educated workforce, low cost of living and a proactive, business friendly government that are all combining to improve the marketplace," he said.

Investment and Multi-Family Market Outlook

Investment and multifamily indicators show a very positive outlook for 2012 and this should remain one of the most robust segments in the industry. Both owners and sellers will have significant opportunities in the next 12 months as the market is experiencing increased occupancy levels (94-95 percent), with attendant market rent increases.

"In 2012 an additional 4,200 multi-family units are scheduled to be added in Salt Lake County alone. Despite the increase in units, occupancy rates should remain above 90 percent," said Greg Ratliff, NAI West broker and investment and multifamily specialist. "Demand for quality rental housing will continue to increase and we expect to see these additional units absorbed quickly." This upward trend in occupancy, combined with the reemergence of available debt with low interest rates, continues to make multifamily an attractive investment opportunity.

Additionally, Ratliff said, these trends are creating favorable opportunities for sellers who are able to trade at lower income capitalization rates than the previous two years due to the availability of debt to qualified investors.

Summary

Overall, Utah continues to have one of the healthiest commercial real estate markets in the country. "We expect that 2012 will be a solid year for commercial real estate," said Lloyd Allen, senior vice president and business director at NAI West. Quoting *Investment Trends Quarterly* Allen said, " '…Despite the investment losses taken in real estate during the past few years, it is still a relatively stable investment compared to the volatility of the stock market and the potential is there for reasonable returns.' I expect 2012 to be fairly stable and even provide solid returns, particularly from retail, multifamily and industrial properties. In the brokerage community, we anticipate moderate growth in transaction volume and see 2012 as a good time for an astute client to do profitable real estate transactions."

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49 percent of respondents plan investments to improve service, capacity and/or revenue in 2012.

Job Creation Barriers

The greatest barrier to job creation, according to executives, is concerns about further economic decline (59 percent). The next two greatest response groups said the biggest barriers are limited consumer demand (16 percent) and excessive government regulations (15 percent).

Staff Size: Growing A Bit

Although 54 percent of the organizations reporting do not plan to increase the size of their staff in 2012, nearly 36 percent of the respondents plan to hire additional staff, with most of those expected during the first half of 2012. These national results are similar to last year.

In Utah, hiring is expected to slow this year compared to last with 33 percent of Utah employers planning to increase staffing levels in 2012 versus 45 percent in 2011.

Compensation and Benefits Strategies

Employer confidence has improved over one year ago with 70 percent of participating organizations actually giving a pay increase in 2011. This is up from the 59 percent of participating organizations that planned an increase in 2011. The latest survey paints a similar pattern for the 2012 forecast. Significantly fewer organizations are delaying or freezing wages (14 percent in 2012 vs. 20 percent in 2011) and nearly 66 percent of those surveyed are planning a pay increase in 2012 — up 7 percent from 2011.

A minority of the organizations surveyed, 35 percent, froze or reduced pay as cost cutting measures in 2011. Of the organizations that froze or reduced pay in 2011, 29 percent plan to completely or partially restore pay to some employees in 2012. These increases are in the form of merit, general or cost-of-living adjustment (COLA). Of the organizations that froze or reduced pay in 2011, 33 percent report a continuation of the pay freeze and 39 percent are uncertain.

More Cost-Cutting

As executives continue to manage their organizations through the challenging economy, 52 percent plan to trim costs by focusing mainly on lean/process improvement initiatives during 2012. Fifty-four percent of Utah respondents expect to do so. Other popular cost-cutting measures for 2012 are shifting a larger percentage of health care costs to employees (24 percent nationally, 23 percent in Utah); layoffs/permanent reduction in staff (6 percent nationally, 10 percent in Utah); and reduction of paid time off such as vacation and personal days (4 percent both nationally and in Utah).

Thirty-nine percent of respondents have no cost-cutting measures planned for 2012. This is a 5 percent decrease compared to last year's survey results. It's not clear if this is a barometer of employers' optimism or if it is an indicator of how lean companies are operating after past cost-cutting measures.

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He declined to say how many trailers are located at the Salt Lake City facility, noting that such information is proprietary.

Gardner said 2010 was a record financial year for Prime Trailer, noting the transportation industry is often considered a bellwether for the economy as a whole.

Apple mobile device repair firm opens second location

iQue Repair, a fledgling firm that specializes in the repair and restorations of iPhone, iPad and iPod devices, has opened a second location.

The company launched its first store in October at 7231 S. 900 E., Midvale, in about 800 square feet. The new Provo location, at 2255 N. University Parkway, is twice the size of its Midvale counterpart, said Vinny Gigirolemo, a partner in the business along with K.C. Kelly and Morgan McKell. Five more locations are planned this year; the owners plan to establish a chain of repair locations along the Wasatch Front.

"We quickly learned that people were willing to travel from Utah County to have us do their repairs further north, and we decided to shorten their trip by bringing the service to their front door," Kelly said.

"This new [Provo] store has much more to offer than repairs and accessories. We have the first Internet café in the area offering free WiFi for customers who want to wait for their repairs but need to stay connected for one reason or another," Kelly said. "We hope this appeals to students who are on the run and need a place to pursue their work while they take advantage of our repair services and preventative maintenance programs at the same time."

Repair personnel at iQue are not certified or licensed by Apple, maker of the "i" devices, as Apple has no such program, according to Gigirolemo.

"Apple does not have a certification program for their mobile devices. Their business model is more toward 'if it breaks, purchase a new one,'" he said. "In fact their warranty program is 'if it breaks, you pay us $300 and we'll give you a new one.' We identified this void for repair services. A lot of the cell phone repair people out there do it all, but our real claim to fame is that we specialize in Apple. People should really pay attention to that. The competition does it all, and they can't specialize.

"There are a lot of mom and pop shops out there, and very few chains. We hope to be the dominant player in the 'i' arena."

Those who don't live near iQue's locations can mail their device to the company for a free overnight evaluation.

"All phones are insured in our care," Kelly said.

Stats: more people moving out of Utah than in

Utah is continuing a trend of people moving out of state, according to migration statistics from a prominent moving company. However, those stats don't align with overall population growth in the state.

According to Atlas Van Lines, the company handled 580 moves of household items from Utah in 2011 while handling 466 inbound moves. That compares with relatively "balanced" figures in 2010: 428 inbound and 448 outbound.

Utah was the only western state with more outbound traffic in 2011. New Mexico had more inbound moves, but all other western states were considered balanced.

Utah was among 16 states with more outbound than inbound moves, based on Atlas' 80,289 interstate and cross-border relocations in 2011.

Since 2002, Utah has seen only two years, 2005 and 2006, with more inbound than outbound moves, according to Atlas.

The Atlas figures run counter to Utah's overall population growth during the previous decade. Utah's growth rate between 2000 and 2010 was third among states, at 23.8 percent.

Mark Knold, senior economist at the Utah Department of Workforce Services, said the Atlas figures might indicate that young people are looking elsewhere for work.

"We have such a high amount of population growth going on in this state, but even with the employment growth that we have had lately, it's not keeping up with the population growth," Knold said.

"For the labor force age 16 and older, there's probably incentive to move out and find some work somewhere else. Even if we had employment growth, often it's not large enough to absorb the large amount of labor force growth each year. We've had a lot of people graduating from high school and college and entering the labor force."

Utah's population in 2010 was 2.76 million, having grown 530,716 since 2000. Census figures show that the "natural" increase — births minus deaths — accounted for 381,181 of the overall growth, while net in-migration contributed 149,535.

Atlas, based in Evansville, Ind., said its study revealed that the number of household moves across state lines continues to rise nationwide. Washington, D.C., had the highest percentage of inbound moves for the sixth consecutive year. Ohio had the highest percentage of outbound moves.

"Our annual migration patterns study is an interesting gauge of the economy, where economic development is taking place and trends to follow throughout the upcoming year," Jack Griffin, president and chief operating officer of Atlas World Group, said in releasing the study. "These new findings are especially promising, as we saw the number of moves increase yet again."

Machine repair company to set up shop, warehouse in Salt Lake City

Tram Electric Inc., a machine repair company based in Price, has purchased a 12,600 square foot building in Salt Lake City with plans to make it a "tear-down" shop and warehouse.

Tram, through Castle Country LLC, acquired the building at 1969 W. California Ave. (1330 South) from Livvy & Will LLC.

"We're expanding our business a little bit," said Ann Zaccaria, who owns Tram with husband David Zaccaria. "We're here in Price, but we've got quite a few accounts in northern Utah, so we bought the building to take care of their needs."

The California Avenue site is the first commercial property for Tram in Salt Lake City. Currently, the company has only account managers and sales staff in the area, with all electrical and mechanical remanufacturing and repair taking place in Price.

Ann Zaccaria said the company will start with perhaps five employees at the Salt Lake building. "We do a lot of business in that area, and we want to become part of the area," she said.

Founded in 1981, Tram has about 100 employees at 45,000 square foot and 30,000 square foot facilities in Price and a warehouse in Wyoming.

Wick Udy of NAI West represented Tram in the transaction. West Haradin and Don Enlow, also of NAI, represented the seller.

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ASSOCIATIONS

• The **Salt Lake Chamber** is **expanding the scope of the Capitol Club** and has named the 2012 chair and vice chair for the program. Launched in 2010, the Capitol Club is comprised of Utah business leaders with a keen interest in policy issues affecting the business community. Members engage top policy and business leaders to gain insight on the most pressing issues impacting the community. This year, events will also include an emphasis on sharing business and career development expertise. **Aaron Call,** regional vice president of G&A Partners, will serve as the 2012 chair of the Capitol Club. G&A Partners is a licensed professional employer organization and human resources outsourcing provider. Call has been a member of the Capitol Club since its inception. He takes over for outgoing chair Anne Marie Gunther of Vivint. Angie Welling, director of public relations at Love Communications, will serve as vice chair. Welling previously served as director of communications to Gov. Gary R. Herbert.

BANKING

• The **Federal Reserve Bank of San Francisco** has appointed **W. Don Whyte,** president of Kennecott Land/Rio Tinto, South Jordan, as director of the Salt Lake City branch. He replaces Clark Ivory, CEO of Ivory Homes, who served as chairman from 2007 to 2010. **Scott Hymas**, CEO of R.C. Willey Home Furnishings, who has served as chairman since 2010, has been reappointed for 2012.

COMPUTERS/ SOFTWARE

• **Stackable.com,** the Web application hosting division of Salt Lake City-based Internet services provider **XMission,** now **offers VPS services**. Developers who prefer more hands-on control over their own server and software can now develop their projects on Stackable. With VPS, developers can build applications inside scalable virtual servers which automatically live behind a managed load-balancer. Virtual servers can be provisioned with XMission's API or its control panel and then services can be bound to the firm's managed load-balancers at no additional charge. Stackable hosting starts at $35 per month for one 256MB container. All new VPS developers who sign up for a Stackable account will receive a free 256MB container for one month.

CONSTRUCTION

• **Shaw Industries**, a Georgia-based firm that is the world's largest carpet manufacturer, will **relocate its Salt Lake City distribution center** in early March. Presently located at 1790 W. 4400 W., the company has leased 44,000 square feet at 3400 W. California Ave. Local operations manager Camron Anderson said while both locations are about the same size, the center's current location offers only five dock doors while the new one provides 13, which will increase efficiency. Thirteen employees will make the move; an additional two will likely be hired during the next year. The Salt Lake facility serves Montana, Eastern Idaho, most of Utah, Eastern Nevada and Western Wyoming. Shaw Industries, a Berkshire Hathaway company, leased its new location with the assistance of NAI West.

ENVIRONMENT

• **More than 1,000 Utah homes** underwent energy efficient upgrades last year under the **Utah Home Performance program,** which offers rebates to homeowners who make energy-saving home improvements. The Utah Home Performance with Energy Star is administered through the Office of Energy Development and funded through the American Recovery and Reinvestment Act to offer up to $2,000 in cash rebates as an incentive to homeowners making the upgrades as recommended in a home performance assessment. In addition, the program leveraged Rocky Mountain Power and Questar's Demand Side Management programs, averaging

$450 in rebates per home.

FINANCE

• **Grow Utah Ventures** is expanding its services to entrepreneurs by taking over the leadership and hosting of the **CrowdPitch** and **SpeedPitch** events that have been previously conducted by Lendio (formerly known as Funding Universe). Nearly six years ago, Grow Utah Ventures and Funding Universe organized the first SpeedPitch event held in Utah. It gave leading entrepreneurs the chance to pitch their business to an exclusive group of angel investors. Since that time, the events have blossomed into a standing forum where entrepreneurs of promise are given a close inspection by supportive angel investors. Grow Utah Ventures will also host the **Angel Investor of the Year Banquet,** as well as the **Startup of the Year** and **Mentor of the Year** awards. Grow Utah Ventures is a privately funded nonprofit organization dedicated to stimulating, unlocking and developing the entrepreneurial talent and early stage business opportunities for value creation across Utah.

GOVERNMENT

• **Taxpayers have until Tuesday, April 17, to file their 2011 tax returns.** The delay is due to the fact that April 15 falls on a Sunday, and Emancipation Day, a holiday observed in the District of Columbia, falls this year on Monday, April 16. According to federal law, District of Columbia holidays impact tax deadlines in the same way that federal holidays do; therefore, all taxpayers will have two extra days to file this year. Taxpayers requesting an extension will have until Oct. 15 to file their 2011 tax returns.

HEALTH CARE

• SelectHealth, a nonprofit health insurance carrier, will recognize **25 Utah organizations that support health improvement** or serve populations with special needs. Recipients of the 2012 Select 25 award will receive $2,500 to use toward making a healthy difference in their communities. Applications for the Select 25 award are being accepted now through Feb. 10 at select25.org. Only the first 500 applications will be considered. At least three recipients will be chosen from each of four specified Utah regions. Thirteen at-large winners will also be chosen. Completed applications will be reviewed by a committee of leaders from SelectHealth, Intermountain Healthcare and the community. SelectHealth introduced the Select 25 award in 2008 in commemoration of its 25th anniversary.

• More than 9,000 office visits to the **People's Health Clinic** in Park City in 2012 will use the latest in electronic health record (EHR) technology, thanks to a holiday donation of $140,000 in practice management software from **ManagementPlus**. ManagementPlus EHR 5.0 software will now assist the clinic's staff and volunteer doctors in providing care to uninsured patients in Utah's Summit and Wasatch counties.

• **Alliance Health Networks**, a Salt Lake City developer of social networks in health, has inked an agreement with **Joslin Diabetes Center,** the world's leading diabetes research and clinical care organization, to begin actively participating in Alliance's Diabetic Connect social network, www.diabeticconnect.com. The effort is part of a joint initiative to engage and educate people with diabetes and those who care for them. With the partnership, Diabetic Connect's 650,000 members can interact with Joslin's experts, including diabetes educators, endocrinologists and clinicians, following their posts, asking questions and tracking discussions of interest. Additionally, Alliance Health Networks and Joslin are developing other diabetes management tools, including interactive, online classes. The first of these will be "Monitoring Matters," which will consist of a series of interactive tutorials that will be hosted on Diabetic Connect and on Joslin's website, www.joslin.org.

HOSPITALITY

• The **Park Plaza Resort** in Park City has been awarded the **RCI Gold Crown Resort** property designation by ResortCom International, a worldwide vacation exchange firm. San Diego-based Tapestry Resorts provides full resort management services to Park Plaza, a high-volume vacation ownership timeshare resort. This is the third consecutive year that the property has received the honor.

HUMAN RESOURCES

• For the 13th year running, the Utah Department of Workforce Services/Office of Work & Family Life is honoring the state's best workplaces with the **Utah Work/Life Awards.** This year's award winners, which will be presented Jan. 12, are **Fehr & Peers**, Salt Lake City; **Digital Financial Group,** Murray; **Utah Foster Care Foundation,** Murray; **DigiCert Inc.,** Lindon; **Cementation USA Inc**., Sandy; **Intermountain Financial Group/MassMutual,** Salt Lake City; **Equitable Life & Casualty Insurance Co**., Salt Lake City; **Software Technology Group,** Salt Lake City; **Spillman Technologies**, Salt Lake City; **CyberSource, a Visa Company,** American Fork; **Futura Industries,** Clearfield; **CLEARLINK,** Salt Lake City; **Marriott Vacation Club International Owner Services,** Salt Lake City; **Nicholas & Co. Inc**., Salt Lake City; **South Davis Community Hospital**, Bountiful; **Canyons-A Talisker Mountain Resort,** Park City; **1-800 CONTACTS Inc**., Draper; **Automatic Data Processing, Inc**., West Valley City; and **Mountain American Credit Union**, West Jordan.

INSURANCE

• **Intermountain Financial Group,** the Utah agency of Massachusetts Mutual Life Insurance Co., has hired **Roger Gardner** and **Alex Hancock** as financial services professionals to work with individuals and businesses with financial strategies in areas of life insurance, business succession, retirement and college funding strategies.

LAW

• **Snell & Wilmer** has elected **Ken Ashton** and **Stewart Peay** as new partners in its Salt Lake City office. Ashton advises startup, emerging growth and mature companies with organization entity formation and governance, and in a variety of business transactions, including mergers and acquisitions, finance arrangements and other commercial transactions. He also represents private equity funds, strategic buyers and commercial and private lenders. Peay's practice is focused in general commercial litigation, financial services litigation, construction litigation, civil RICO defense and products liability defense.

• **Kirton McConkie**, Salt Lake City, has hired three new associates. **Analise Wilson** is a member of the firm's Litigation, Trials & Appeals and Alternative Dispute Resolution sections. She is a 2011 graduate of the J. Reuben Clark Law School Brigham Young University. **Dallas Rosevear** is a member of the firm's Business section. He is a 2011 graduate of the S.J. Quinney College of Law at the University of Utah. **Jed Brinton** is a member of the firm's First Amendment & Religious Organizations section. He is a 2011 graduate of the Yale Law School.

• **Fabian Law** has named **David R. Hague** and **Mark E. Kittrell** shareholders at the firm. Hague has been an associate with the firm since graduating from law school. He practices primarily in the areas of bankruptcy law and commercial litigation. He has extensive experience representing secured and unsecured creditors, debtors and debtors-in-possession, and chapter 7 and 11 trustees in complex bankruptcy cases. He also represents clients in the areas of equipment leasing, collection law, and secured transactions. Kittrell has been an associate at the firm since 2007. He practices primarily in the areas of complex commercial litigation and criminal defense. His legal background has given him extensive courtroom and trial experience. After law school, he clerked for the Honorable James Z. Davis at the Utah Court of Appeals, and then worked at the Salt Lake Legal Defender Association, representing indigent defendants on felony and misdemeanor matters.

• **Blake K. Wade**, a public finance attorney with **Ballard Spahr** for 24 years, has been named managing partner of the firm's Salt Lake City office. He succeeds Blaine L. Carlton, who retired on Dec. 31. Wade oversees more than 40 attorneys and nearly 50 staff members in Ballard Spahr's Salt Lake City office, which opened in 1987. Wade, a Utah native, joined Ballard Spahr when it opened the Salt Lake City office and served as chair of the firm's Public Finance Department for the past 11 years. He has assisted governmental entities throughout Utah with their capital projects and financing needs and has also worked throughout the United States on large public financing projects. Wade is a graduate of the University of Utah S.J. Quinney College of Law, where he was a member of the *Utah Law Review.*

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Legal Matters

How limited is your limited liability protection?


Casey Jones

A client recently contacted me because his business had been sued over a contract it entered into with another company. Notably, the other company sued my client, individually, in addition to his business, on the sole basis that my client was the owner and manager of the business. My client expressed his confusion as to why he was being sued personally for a contract entered into by his business. His business is a limited liability company and he did not sign a personal guaranty. Accordingly, he did not believe that he could be held personally liable for a contract entered into by his business. He was concerned about his potential personal exposure in the matter. I explained that if the plaintiff wins the lawsuit and obtains a judgment, the business and he are both responsible for paying the plaintiff its judgment. Consequently, if the business does not have enough assets to pay the judgment, the plaintiff can garnish his personal bank account or foreclose on his other personal assets to collect the judgment. This article reviews the counsel I gave my client regarding how a business owner can be held personally liable for the debts of his or her business.

Limited liability protection is one of the greatest benefits a business entity can provide to its owners. Most business entities provide limited liability, including corporations and LLCs. Other business entities, such as general partnerships and sole proprietorships, do not offer the owners limited liability. The "limited liability veil" protects the business owner's personal assets from the business' creditors. Specifically, limited liability means the business owners are not personally liable for the business' debts or liabilities. For example, a shareholder of a corporation does not have to repay a loan taken out by the corporation or pay the damages resulting from an automobile accident caused by one of the corporation's employees. Thus, the owners' personal assets, such as their homes and bank accounts, cannot be reached by the business' creditors. Accordingly, the owners' exposure to liability is generally considered to be limited to their initial investment. However, such generalities are overly broad and tend to fade when applied to specific situations.

As a practical matter, an owner's potential liability sometimes is not so "limited." When a small corporation or LLC decides to raise funds by borrowing, cautious creditors will require the major shareholders or members to personally guarantee the company's obligations. In that circumstance, the business owner is clearly on the hook. An individual owner is also liable for his or her own torts (e.g., negligence resulting in an auto accident), even if done in the scope of his or her employment for the company. The doctrine of vicarious liability (liability of an employer for an act or omission by an employee) only adds a defendant; it does not relieve the employee of personal liability.

In addition, there are various judicially created doctrines that may be applied to extinguish the owner's limited liability. Although the courts are extremely reluctant to apply the doctrine, the limited liability veil may be "pierced" if a court finds that the owners disregarded the business entity by operating the company as their "alter ego." This doctrine is known as "piercing the corporate or limited liability veil." It means the business' creditors may sue the business owner personally for the business' debts. If the creditor wins the lawsuit against the business owner, the business owner is personally responsible to pay the judgment or else the creditor may enforce its judgment against the business owner.

Utah courts consider several factors in determining whether to pierce the veil and hold a business owner personally liable. One factor Utah courts consider is whether the business entity was adequately capitalized. Undercapitalization of a one-owner entity may lead to the limited liability veil being pierced. Thus, a business should be properly capitalized so that is able to pay its obligations. Courts also take into consideration whether the use of the business is to evade a personal obligation of the business owner, to perpetrate a fraud or a crime, to commit an injustice or to gain an unfair advantage.

Another factor courts consider is whether the business observed its business formalities. Thus, a business should hold an organizational meeting when the business is first organized, adopt bylaws for a corporation or an operating agreement for an LLC, issue certificates for stock or clearly provide documentation that the shares are uncertificated if the entity is a corporation, maintain complete business and financial records, hold regular annual meetings and keep minutes, file business income tax returns, ensure named officers and directors are involved and play a role in the business, file

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MEDIA/MARKETING

• The ***Utah Publicity Source Book*** has been updated for 2012 and was **released Jan. 6.** More than 2,000 updates and additions have been made to the book for the 2012 edition. The *Utah Publicity Source Book* has been published annually for communication professionals since 1981. The book contains a contact information directory of Utah's media, government, associations and communication organizations. It contains more than 560 pages of detailed listings organized by category. The 2012 edition is $195 for a complete book and $160 for an insert that will update a previously purchased book. The purchase price is fully refundable if the purchaser is not satisfied with the product. For more information visit www.upsbonline.com or call (801) 596-2143.

REAL ESTATE

• Salt Lake City-based **Commerce Real Estate Solutions** established an **office in Reno** on Jan. 2 by entering into an agreement with Trinity Commercial. Trinity principal Brian Armon will serve as branch manager of the Cushman Wakefield | Commerce office, located at 6121 Lakeside Dr., Suite 205.

• **Utah home sales continued their upward trend** in November, rising more than 10 percent compared to last year and marking the sixth straight month of home sales increases, according to a new report from the Utah Association of Realtors. During November, Utah Realtors sold 2,523 homes, townhomes and condominiums versus 2,285 sold last year during the same month. Sales were also up for the year as a whole, rising 8 percent compared to the January-through-November period in 2010. Since the beginning of the year, more than 30,000 homes have been sold. The number of contracts signed to buy homes rose 31 percent in November compared to the same month last year. Pending sales have increased for seven consecutive months. In November, the number of homes for sale fell more than 23 percent compared to last year. At the end of the month, 21,731 homes were listed for sale, compared to 28,308 last year. Inventory levels have been falling for a year, with November marking the fewest number of homes on the market since April 2007. Nevertheless, **price improvements still lagged** behind the progress made in other areas. The median sales price of Utah homes sold was $170,000 in November, down about 9 percent from last year's median of $186,250. For the year as a whole, prices are down about 8 percent compared to the first 11 months of last year

• **Sales of previously-owned homes in Salt Lake County in November rose 15 percent** compared to November 2010, according to the Salt Lake Board of Realtors. In November, there were 871 home sales (all housing types) compared to 760 home sales in November 2010. November marked the sixth consecutive month of year-over-year home sales increases. Home sales in Salt Lake County in the first 11 months of 2011 were up 9 percent compared to the same 11-month period a year ago (10,395 home sales compared to 9,569 sales last year). The **median home sales price (all housing types) in November declined** to $179,900, a 10 percent decrease compared to a median price of $199,900 in November 2010. The inventory of homes for sale in Salt Lake County in November fell to 5,918 units, down 25 percent compared to 7,897 units in November 2010. Based on current sales trends over the past year, there is a 6.3-month supply of housing inventory, down 31 percent compared to a 9.1-month supply of inventory in November 2010. In November, pending home sales (homes under contract) rose to 954 units, a 34 percent rise compared to 711 units last November.

RESTAURANTS

• Salt Lake City restaurant **Faustina** is now **open for brunch Saturday and Sunday** from 9 a.m.to 3 p.m. Highlights of executive chef Billy Sotelo's brunch menu include Brie-stuffed brioche French toast; cinnamon swirl pancakes with cream cheese glaze; Brie puff pastry with roasted red grapes and a seasonal berry compote; Faustina Benedict with polenta, local Italian sausage, grilled tomato, poached eggs and hollandaise sauce, served with house made breakfast potatoes; and Sotelo's Faustina Scramble, with artisan lamb sausage, roasted pepper medley, Asiago cheese and scrambled eggs served with a French baguette.

RETAIL

• **Air Terminal Gifts**, a Utah-based family-owned business, has launched **two new online retail stores** — Enjoy Zeta (www.enjoyzeta.com) and Enjoy Karma (www.enjoykarma.com). The online clothing boutiques feature women's fashion apparel, jewelry and accessories handpicked by the company's buying team that travels all over the country seeking out unique and affordable fashions. Air Terminal Gifts developed Enjoy Zeta and Enjoy Karma based off its two former brick-and-mortar boutique locations, Zeta & Co. and Your Planet, previously located in Salt Lake International Airport.

TRANSPORTATION

• **New Car Dealers of Utah,** which represents 150 franchised new car dealers in the state, **donated another $5,000 to the Utah Highway Patrol** for its efforts to reduce the number of drunk drivers on Utah roads. With the funding, the Utah Highway Patrol was able to add an additional 20 shifts over the holiday weekend.

• **SkyWest Airlines**, St. George, is now offering **jet service between Cedar City and Salt Lake City**. The twice-daily Delta Air Lines flights operated by SkyWest Airlines began service Jan. 4. The larger jet aircraft cuts down on travel time and provides added comfort for passengers. The new service is on board the 50-passenger, Bombardier-manufactured Canadair Regional Jet 200.

LIABILITY

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annual business renewals with the state, adopt resolutions reflecting approval of all major corporate actions (even LLCs should take steps to document action by appropriate records), pay dividends when possible and maintain arm's length relationships among the owner and the business.

In addition, Utah courts consider whether the business owner commingled his or her personal funds with the business. Therefore, a business owner should maintain separate bank accounts for the business and his or her personal accounts. In addition, the business should not pay the owner's personal bills or personal living expenses with business funds and the business owner should not use the company credit card or funds for his or her personal purchases.

This discussion should not be taken to mean that limited liability is easily lost. That is not the case. Limited liability is the essence of a corporation and LLC. On the other hand, it is a risk which should not be minimized or overlooked. If you operate the business in a reasonable and businesslike manner and follow the guidelines above, you should enjoy the protections of limited liability.

Casey Jones is an attorney at Strong & Hanni Law Firm and a member of the business group at Strong & Hanni. His primary role is to assist clients with legal issues in the areas of business, tax, real estate and estate planning. He is an active member of the Business and Securities Sections of the Utah State Bar. He can be at cjones@stronandhanni.com or (801) 532-7080.

Happy New Year — is it yours or theirs?

Happy New Year! Or is it? Are you happier than least year?

Happy New Year is an expression that EVERYONE extends to others. Almost as a courtesy. Want to try something new? Say it to yourself – and MEAN IT!!

What's your plan to be *happy* this year? Or are you just going back to the "goal" and "resolution" process that really hasn't worked that well over the past decade? Or should I say *past two decades*?

There are fundamentals to follow to make your resolutions and goals a reality. The secret to achievement is the unspoken aspects of the process. And many of those elements revolve around the word "happy."

Jeffrey Gitomer

Here are a few things to consider as you look to "put" and "be" HAPPY in your life in the New Year. These elements will give you the freedom to find internal happiness:

• Be happy about yourself.

• Be happy about your life.

• Be happy about your relationships.

• Be proud of what you're doing.

• Love what you're doing.

• Desire to be the BEST at what you're doing.

• Know the purpose (your REAL WHY) behind what you're doing.

To help you get started, I'm going to share some gold from my *Little Gold Book of YES! Attitude*. It explains the urgency of self-imposed happiness as it relates to your success. Read it and apply it to your life:

•••••

The truth is, the fact is, the reality is, there's no better time to be happy than right now.

If not now, when? After the economy gets better? You may not be able to wait that long.

Your life will always be filled with challenges, barriers and disappointments. It's best to admit this to yourself, and decide to be happy anyway. Alfred Souza said, "For a long, long time it had seemed to me that I was about to begin real life. But there was always some obstacle in the way, something to be gotten through first, some unfinished business, time still to be served, a debt to be paid. Then life would begin. At last it dawned on me that these obstacles were my life."

There is no "way" to happiness.

Happiness is the way.

There is no "after" to happiness.

Happiness is now.

HERE'S THE ANSWER: Happiness is inside your head FIRST and everyplace else second. Happiness is a treasure. Your (potentially missed) opportunity is to treasure every moment that you have.

Stop waiting until you finish school, until you go back to school, until you lose 10 pounds, until you gain 10 pounds, until you have kids, until you quit smoking, until your kids leave the house, until you start work, until you retire, until you get married, until you get divorced, until Friday night, until Sunday morning, until you get your new car or home, until your car or home is paid off, until spring, until summer, until fall, until winter, until the first or the 15th, until your song comes on, until you've had a drink, until you've sobered up, until you win the lottery or until the cows come home to decide that there is no better time than right now to be happy.

And treasure the happiness of now more because you share it with someone special enough to invest your time in.

Happiness is:

Not a sale or a commission.

Not an economy or a budget.

Not a yes or a no.

Not a game-winning hit or a last second touchdown.

Happiness is a way of life that is inside you at all times. It helps you get over the tough times, and helps you celebrate the special times.

Seems pretty simple to define on paper, but real difficult to manifest when the chips are down. My experience has taught me the difference between resign and resolve. You can resign yourself to what is, and hope or wait for a better day. Or you can resolve that you are a positive person who finds the good, the positive, the happiness, the smile, and especially the opportunity in everything.

Happiness is now, not a goal or a destination.

It's not an after. It's a before.

It's an attitude – your attitude – about what was, what is, and what could be.

And it's up to you. All you have to do is: decide.

•••••

Please decide to have YOUR Happy New Year.

I'm gonna have mine.

Jeffrey Gitomer is the author of *The Sales Bible, Customer Satisfaction is Worthless, Customer Loyalty is Priceless, The Little Red Book of Selling, The Little Red Book of Sales Answers, The Little Black Book of Connections, The Little Gold Book of YES! Attitude, The Little Green Book of Getting Your Way, The Little Platinum Book of Cha-Ching, The Little Teal Book of Trust, The Little Book of Leadership, and Social BOOM!* His website, www.gitomer.com, will lead you to more information about training and seminars, or e-mail him personally at salesman@gitomer.com.

Becoming numb

You may have thought the theme of this article, based upon its title, has something to do with drugs. Surprisingly, it has to do with the incredible volatility in the world's financial markets.

With fear levels of the general population at arguably all-time highs, as evidenced by the yield gained on the 10-year Treasury notes being around 1.9 percent at the time of this writing (remember, yields on bonds work in the opposite direction of prices), stock market volatility is moving at an unprecedented pace. I can come into my office on a Monday morning and see the market up 2 percent or higher, and by the end of the trading day the market might close down. When I come in, in the morning, economic data being reported at the first of the day may appear to be rosy, and by the end of that very same day it may show a potential European collapse with people forecasting the end of mankind. It can lead to me, or you, becoming numb.

Jim Rigtrup

This is stuff that is a psychologist's dream.

How can a financial advisor, like me, as well as the average investor, come up with a healthy approach to handling these uncertainties?

It's easy to say that the solution is to move your money out of the markets and put it into the perceived safety of a bank savings account. The problem, of course, is that today we are living much longer. And with a potential 30-year retirement coming for some of us, combined with consistent inflation, the small returns generally generated in a bank savings account will most likely guarantee us running out of money.

The second strategy that we might try would be to never look at the markets. Simply invest our money with a trusted advisor or invest it using our own tactics, and walk away and never look at it. Although this strategy is commonly recommended, and will likely result in the lowest level of stress experienced by the investor, it seems next to impossible to implement in today's information-oriented world. Whether you go to a restaurant or to a car wash, someone will likely have a television on, typically tuned to a news channel. And how about the simple practice of watching the local nightly news? Now even many of those broadcasts contain stock market updates. So, good luck if you choose this strategy.

What I recommend to my clients and prospects is the long-term approach. By looking for returns over longer periods of time, short-term volatility becomes a little more tolerable. By knowing that the odds favor, historically speaking, the market's rise over time, regardless of economic and political worries, one can see the market plunge 3 or 4 percent in one trading day and not be tempted to bail out. We can become numb to it.

What I think we need to be cautious of, and what I think we need to be leery of, is getting so thick-skinned to dramatic swings of emotion that we become numb as human beings. Be honest with yourself, do you see a report on the news of a violent murder, rape or whatever, and say to yourself, *whatever?* Do you find yourself, with the constant barrage of sensationalized, media-hyped events, becoming numb to their significance in your life? Has our society desensitized us to the point where we simply do not care anymore?

My clients are a good bunch of people. I, as their advisor, care very greatly how their portfolios perform for them. Sometimes when they call me in a panic asking, based upon the latest apocalypse du jour that they have heard in the media, to get out of their investments, I may come across as uncaring when I advise them to not pay any attention to it. I may come across as someone who does not care enough to make any changes to their portfolio.

In fact, the direct opposite is the case. I care so much that I may plead with them to stay invested in the worst of economic times, so that when they reach the magical age of retirement, the likelihood of their running out of money is reduced. I care so much that I ask them to be patient and to have faith in the future of this very resilient nation. And finally, I care so much that I ask them to be disciplined enough to stay with our investment plan despite it appearing to be financially unsound.

My hope is that I do not become so numb to the wild daily economic fluctuations that I begin to not care about them. My hope is that you will not become so numb to your financial advisor's recommendations that you bail out of your well-designed financial plan because the media tells you to do so.

The volatility in the world's financial markets will continue. In fact, many experts predict that it will get worse. Know that, as it does so, you can always consult with your investment counselor, who likely cares considerably about your portfolio, and that he or she will suggest to you that the best outlook is for you to become thick-skinned to the short-term volatility.

That you should become numb to it.

Jim Rigtrup is the owner of and a wealth manager with Keystone Wealth Management Group LLC, Sandy. He can be reached at (801) 572-1077 or at jim.rigtrup@lpl.com.

That mobility thing

One of the common developments in "the olden' days" of five years ago and earlier was the concept that American workers typically had the ability to be mobile — to move from one geographic area to another, from one state or city to another — in order to fill an open employment position. What helped in previous years was the fact that one could likely sell their home for more than they paid for it and/or a new employer would provide a reasonable relocation package to assist one's effort to move.

That was then, this is now.

The movement of Americans is at its lowest level since World War II, according to The Associated Press. Weak housing markets of the past four to five years now find millions of people buried in their homes, with no chance of selling at a profit. Note that roughly one out of every four homeowners across the nations is "underwater" on their home — they owe more on their mortgage than the home is worth.


Jeff Thredgold

In addition, pressures upon profitability have found fewer companies willing to provide attractive relocation packages. Even fewer employers are willing to take a hit on the prospective new employee's current residence.

More young people who have recently graduated from college continue to live at home, or move back in, given currently limited employment opportunities for younger workers. More and more stay in the communities where they went to school.

Manufacturing Pressure

This has profound implications for the American economy, with perhaps the greatest impact on manufacturing firms around the nation. A recent survey conducted by Deloitte & Touche and The Manufacturing Institute noted that American manufacturers cannot fill 600,000 skilled positions, or 5 percent of all current manufacturing jobs (NADCA). Such a number works out to an average of 12,000 open and available manufacturing jobs per state! Such a number also keeps the nation's unemployment rate higher when compared to prior economic expansions.

The survey showed that 67 percent of manufacturers have a moderate to severe shortage of available, qualified employees, noted a Deloitte & Touche spokesperson. The survey also noted that 64 percent of manufacturing executives lament the lack of skilled workers, which is making it more difficult to expand their operations or boost productivity.

One reason is the fact that many older skilled workers took early retirement in recent years and don't want to move to fill a position. The other factor is that noted above — they simply can't get away from the house that binds.

Retirement Pressure

The lack of mobility has also had a major impact on traditional retirement locales such as Arizona, Florida and Nevada. If people can't sell their homes in colder climates following retirement, they can't easily move to warmer destinations.

This reality has contributed to the real estate busts or painful price corrections in one retirement community after another in Phoenix, in Tucson, in San Diego, in Las Vegas, in Miami, in Naples, etc. of the past four years. It has not been unusual to see initial home or condominium prices down 40, 50, 60 percent and sometimes more in these communities.

The old mindset for a retirement community developer was "if you build it, they will come." The mobility issue rendered that view flawed in recent years.

India

Reference is frequently made to the BRIC nations — Brazil, Russia, India, and China — four nations with considerable geographic size, large populations and enormous economic potential. The past few years have seen China garner most of the attention, as that nation of 1.3 billion people just surpassed Japan as the world's second largest economy.

Brazil also draws considerable attention, given its rise in the agricultural and energy areas. Russia also draws attention as an energy and commodity player, but perhaps equal attention for the corrupt nature of the political structure and the need to pay bribes to get most anything done.

And Then There is India

This nation of 1.2 billion people has what is now the global community's 10th largest economy. While China draws praise (in some circles) for its ability to grow the economy and move closer to being a world class player in many sectors, India struggles.

Economic reforms unleashed 20 years ago created the potential for a world class economy. While economic growth has remained "solid" in recent years, the Indian economy continues to face major challenges.

In Contrast

The media likes to paint China and India with the same brush. They are actually very disparate economies.

China is an export-based economy with a current emphasis on internal investment to minimize volatility tied to exports. India is an internal demand economy with aspirations of building exports to the world.

One might think that global investors are just "champing at the bit" to push massive amounts of investment dollars into this nation of enormous potential. They would be wrong.

Investors Retreat

During 2008, foreigners poured twice as much direct investment into India — $33 billion — as Indians plowed into businesses overseas. By 2010, that changed in a big way. Indian citizens invested $40 billion abroad — twice as much as foreign investment in India (The Associated Press).

Capital outflows by foreign investors from Indian stocks have been massive, with investment down by more than 95 percent in 2011, versus 2010 (www.dbfsindia.com). The potential allure of sizable investment gains in this newly emerging nation has been offset by massive government corruption and political paralysis on a grand scale.

Inflation has been a major issue in recent years, with prices rising more than 9 percent in 2011. The Reserve Bank of India, that nation's central bank, tightened monetary policy 13 times in 2010 and 2011 in an attempt to slow inflation pressures. Such aggressive tightening was the fastest since 1935 (www.bloomberg.com).

The Indian population accounts for one of every seven people on the planet. By contrast, the American population accounts for less than one of every 20 global citizens. Various estimates suggest that India could overtake China by 2030 to become the planet's largest as measured by population (Herman Trend Alert).

Indian economic growth this year could slow to around 7 percent after inflation. Such growth, while impressive when compared to that of more developed nations such as the U.S., will not be enough to lift the hundreds of millions of citizens still subject to severe poverty.

Jeff Thredgold is the only economist in the world to have ever earned the CSP (Certified Speaking Professional) international designation, the highest earned designation in professional speaking. He is the author of *econAmerica,* released by major publisher Wiley & Sons, and serves as economic consultant to Zions Bank.

Property restoration and disaster recovery — frozen pipes

We are in the middle of winter's icy grasp – and that means frozen pipes. Insurance companies spend millions of dollars each year on claims caused by frozen pipes. Copper and plastic pipes can burst when they freeze, causing damage to your business and home alike. Besides being costly, disasters disrupt our lives and are extremely inconvenient.

The following are steps you can take to help prevent pipes from freezing:


Lynn Griffith

- Shut off and drain unused pipes, such as sprinkler lines.
- Disconnect and drain outdoor hoses.
- Open valves on sprinkler lines and outside water faucets to allow water to drain.
- Insulate supply lines in crawl spaces, attics and exposed areas.
- Cover outside hose bibs connected to the house.
- Insulate water pipes with a pipe sleeve.
- Consider using heat tape or heat wrap on exposed pipes.
- Seal openings and cracks that allow cold air to enter in from outside.
- Open kitchen cabinets and bathroom vanities under the sink where pipes are located to allow warm air to circulate.
- Let water drip from the faucets in the kitchen and bathrooms — even a trickle helps prevent pipes from freezing.
- Know where the main water shut off valve is located — show others so they can shut off the water if needed.
- If the home or business is vacant, set the thermostat no lower than 55 degrees and consider turning the water off while you're away.
- In freezing weather, have someone check on the property daily.

The following are steps you can take if you have frozen pipes:

- Locate the suspected area before thawing the pipe.
- Shut off the main water valve to prevent further damage.
- Keep the faucet open.
- Increase overall temperatures in the home or business.
- Use a blow dryer or space heater to warm up the area.
- Heat tape, heat wrap or a heating pad all work well for thawing pipes.
- Never use a torch or open flame to thaw a pipe — this is extremely dangerous and could cause a fire or a pipe to explode.
- An open flame also puts off lethal carbon monoxide.
- Do not use electrical items if you have standing water — you could get electrocuted.
- If needed, call a plumber or restoration company for assistance.

Quick response can mean the difference from a few hundred dollar loss to a few thousand dollar loss. The longer water is in the building the more damage may occur.

Please keep in mind that these are suggestions and guidelines to help you prepare for, or deal with frozen pipes. Prevention items such as hose bib covers, heat tape, crack sealer, and pipe covers can be purchased at your local hardware store and are relatively inexpensive.

Linn Griffith is the Utah marketing director for BELFOR Property Restoration, the world leader in disaster recovery and property restoration with 110 offices across North America. He can be reached at linn.griffith@us.belfor.com.

Blips on the 2012 workers' comp radar

By Preston Diamond

In 2010, Steve Klingel, president and CEO of NCCI (the National Council on Compensation Insurance), described the state of the workers' compensation industry as "precarious," while adding that the industry faces "a number of difficulties that will confront market stakeholders in the weeks and months to come."

Here are a few areas that should be given attention as we head into the new year

The Aging Workforce. Their coming was foretold in 2008, when the first baby boomer hit 62 and filed for Social Security. The Institute on Aging at the University of North Carolina has released data showing that 20 percent of workers will be 55 or older by 2020.

Although older workers tend to get injured less on the job, when they do get hurt we find larger claims and more days off the job. According to a report by NCCI, a determining factor in the high claims cost can be traced back to older workers having higher salaries so their compensation for loss-work time is higher. According to the Bureau of Labor Statistics (BLS), older workers take an average of 15 days off per injury compared to one day off for younger workers. Plus, they require more extensive medical treatment than, say, a teenage worker. Factor in the statistics showing older workers are less likely to return to work after an injury (in some cases over 80 percent less likely, compared to 12 percent for a worker in his 20s), and you see a disturbing trend.

The best we can do when it comes to getting an aging workforce back on the floor is to make a concentrated effort to customize the return-to-work program based on the severity of the injury, age, existing medical conditions, etc. In other words, ease workers back into the fold and make the workplace conducive to them, even it's simply making sure there is enough bright light in the work area (the eyes always seem to be the first thing to go).

Off-Site Workers. In an age of technology, where more and more workers are doing their jobs from their homes, we are seeing a whole new can of work comp worms open up.

According to World at Work's 2011 Survey on Workplace Flexibility, in 2010, 26.2 million U.S. workers conducted business outside the office. Companies see the advantages of home-based work (i.e., a decrease in absenteeism, reduced stress), but overlook an untapped area of risk. Two recent cases illustrate what may be a disturbing trend. A New Jersey court granted workers' compensation survivor benefits to the family of a woman who died of a blood clot while sitting at her computer doing work. That same month in Oregon, a court ruled in favor of a claim brought by a woman who broke her wrist when she tripped over her dog while carrying supplies from her home to her car.

So how do employers monitor "at-home" risk? Perhaps it is as simple as having someone visit the home and make sure everything is ergonomically in order and void of any clutter or potential hazards. It's also been suggested that the employer photograph the workspace. A more extreme maneuver would be to invest funds in the workspace and set it up for the worker. This could be a one-time cost versus a much higher cost down the road should the worker somehow suddenly fall out of their chair and break a hip. As for making sure any injury happens on "work time," experts suggest having the worker log in on their computer so time at work and time off can be tracked. No employer wants to pay a claim because one of their workers hurt his back while lifting a turkey out of the oven on Thanksgiving.

Rising Medical Costs and Prescription Drugs. Medical costs continue to soar and it can be attributed to several factors which are, in some ways, related. In many states, employers let the employees choose what doctor they want to see when injured, and employees are most likely to choose their family doctor. The problem here is the family physician sees the worker as their client. So if the employee asks for a week off, the doctor will grant it. Why not? Most family physicians have no experience with occupational medicine or the importance of getting employees back to work.

Another area of growing concern is the type of drugs being prescribed to injured workers and their long-term effects. According to a recent article in *USA Today,* the biggest drug problem in America isn't the heroin being mainlined in a back alley or the cocaine being ingested in some run-down crack house. In actuality, it's the prescription painkillers sitting in a medicine cabinet in Middle America, to the point that they kill 18,000 people per year. And don't think this hasn't raised an eyebrow to workers' compensation payers, who are on the lookout to ensure that addictive drugs that are over-prescribed by doctors aren't affecting workers' comp cases. Evidence has shown that some doctors are prescribing pain medication usually targeted for cancer patients for simple back strains.

According to Gregory L. Johnson, a health care management consultant, "There is an increase in medical costs as a percentage of all claims; there is an increase in pharma as a percentage of all medical costs. And there is an increase in opioids as a percentage of pharma. So it's driving a lot of overall loss results in workers' comp."

Another industry expert contends that employers may find themselves not only paying for the medication but also funding detox programs, drug overdose claims and treatment for long-term side effects. It's imperative that employers, doctors, claimants and insurance carriers all get on the same page to make sure such abuse does not occur.

The Need for Wellness Plans. Healthier employees lead to lower premiums. If companies can help their workers improve their health without cutting benefits or shifting more premium costs to employees, why aren't smaller companies using this proven method to lower their health care costs?

Randy Boss, a risk architect with Ottawa Kent Insurance in Grand Rapids, helps companies implement successful wellness programs. And he says he can understand how employers feel. "They're frustrated because most likely they have tried things that didn't work," says Boss. "Businesses tend to think short-term and not long-term, and expect to see solid and immediate savings on their health care costs."

Yet, the benefits of having healthy workers transcend reduced health care costs, including workers' compensation and lower absenteeism. Healthy workers are less prone to injury and when injured, they recover quicker than less healthy workers. If workers change and modify their lifestyle and reduce their health risks, medical costs decline.

A University of Michigan study of a Midwest utility company's workplace wellness program found that over nine years, the utility company spent $7.3 million for the program and reaped $12.1 million in savings. Medical and pharmacy costs, time off and worker's compensation factored into the savings. The study, which took into account a number of costs, including indirect costs of implementing wellness programs, such as recruitment and the cost of changing menus, showed that wellness programs work long-term even though employees aged during the course of the study.

Companies need to make a commitment to helping their employees stay in better shape. Says Randy Boss, "If companies don't have the ability to fire all their old workers and hire young workers, then they need to concentrate on what they *can* control ... the risk factors. That's where a health and wellness program comes in. But to be successful you need high participation, preferably over 85 percent. We've been fortunate to have a 94 percent record *without* having to pay employees to participate. We do this by motivating and educating employees so they take the action steps to get the results."

An effective wellness plan only works if implemented from the top down. "We see participation rates up to 70 or 80 percent with management support and incentives, but only 10 to 20 percent without it," says Susan Butterworth, director of Oregon Health Sciences University Health Management Services.

New NCCI Rulings. NCCI has recently made significant changes to the split point that will ultimately affect the experience mod.

The split point will be increased from $5,000 to $15,000 over a three-year transition period. After the transition, the split point will be indexed for claim inflation in subsequent updates. Filing for these changes will likely be made in third quarter this year. This change will take effect in 2013, based on each state's usual rate filing date. For some, it will be 1/1/13, for others later in the year.

NCCI's data indicates that close to 80 percent of experience mods will change plus or minus five points. The modification of the split point will most substantially impact the very best and very worst mods. Each company will be affected differently based on the costs of their employee injuries.

A big positive for all businesses is that every company's lowest possible mod will drop. This means that employers will have greater control over what they pay for workers' compensation than they have before. For companies that take command of their workers' comp program, the opportunities have never been better to reduce their costs, even though rates are increasing in many states.

Preston Diamond is managing director and co-founder of the Institute of WorkComp Professionals (IWCP), based in Asheville, N.C. In 2010, IWCP created a sister organization, the Institute of Benefits & Wellness Advisors, that trains, tests and certifies benefit and P&C agents in wellness and employee benefits He can be contacted at (828) 274-0959 or preston@workcomppro-fessionals.com.

• Calendar •

• Jan. 10, 7:15-9 a.m.: **Association for Corporate Growth Utah January Breakfast Program.** Guest speaker will be John E. Richards, managing partner of UtahAngels and co-founder of BoomStartup. Location is the Little America Hotel, 500 S. Main St., Salt Lake City. Free to ACG members, nonmembers pay $30 to $45. Register at http://www.acg.org/utah/events/event.aspx?EventId=4091.

• Jan. 10, 3-5 p.m.: **Utah Technology Council Life Science Workshop.** Co-chairs of the workshops, including one on when to keep inventions as a trade secret versus patenting, will be Clark Turner of Aribex and Ronald Weiss of ARUP Laboratories. Location is the offices of Stoel Rives LLP, 201 S. Main St., Suite 1100, Salt Lake City. Free to UTC members, nonmembers pay $30. Register at www.utahtech.org.

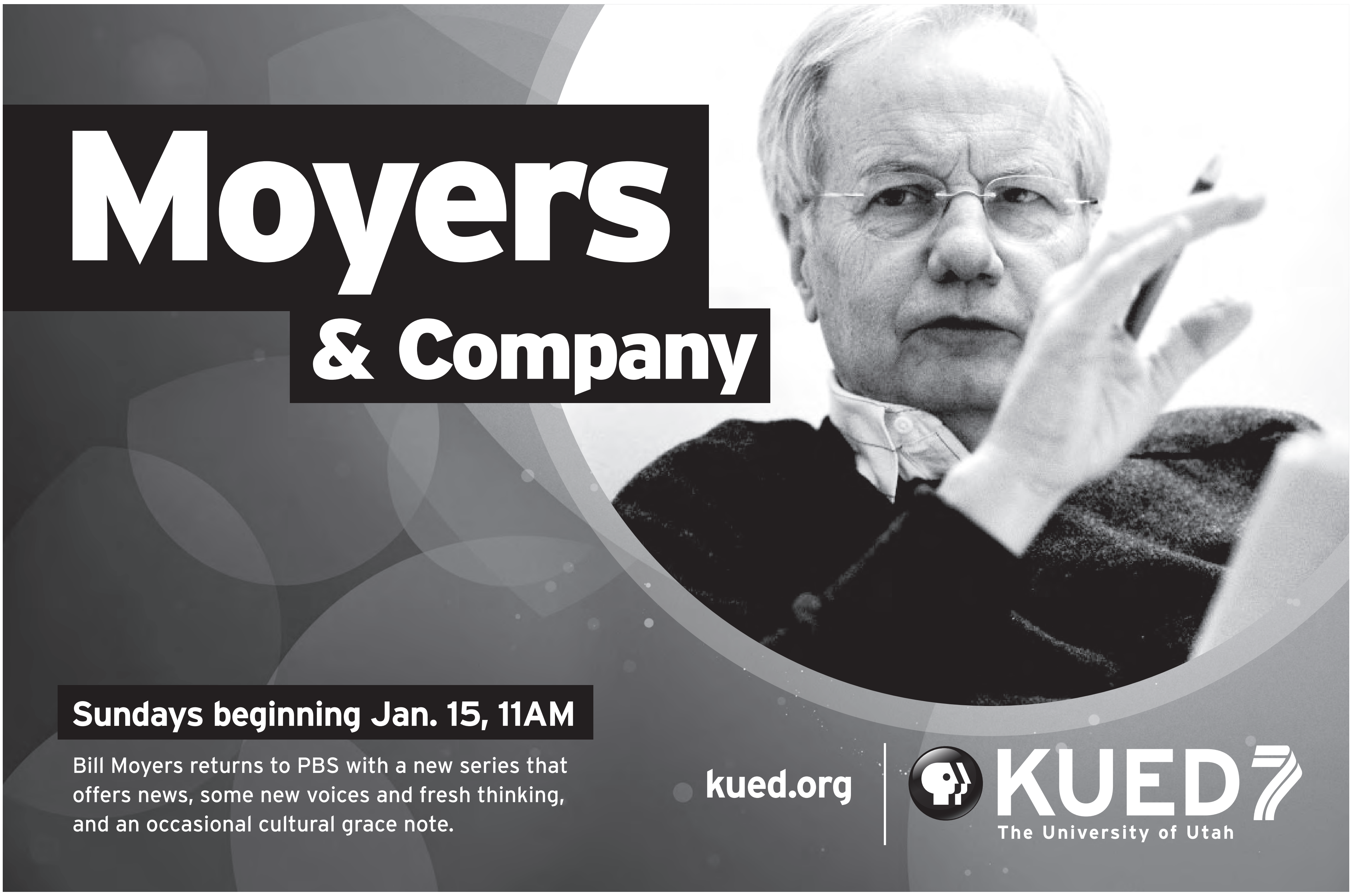
• Jan. 11, 5:30 p.m.: **"Mistakes to Avoid in Preparing for Funding,"** sponsored by the SLC Entrepreneur Circle. Entrepreneurs Alan E. Hall, angel investor, and Dr. David Norton, investment manager for the investment fund Island Park, will join representatives from the regional venture capital and angel investors community to share their personal tips, tricks and wisdom on the ways entrepreneurs can successfully find new funding in 2012. Location is Zions Bank, 1 S. Main St., Salt Lake City. Free. Register at http://www.meetup.com/SLC-Entrepreneurs/events/40460732.

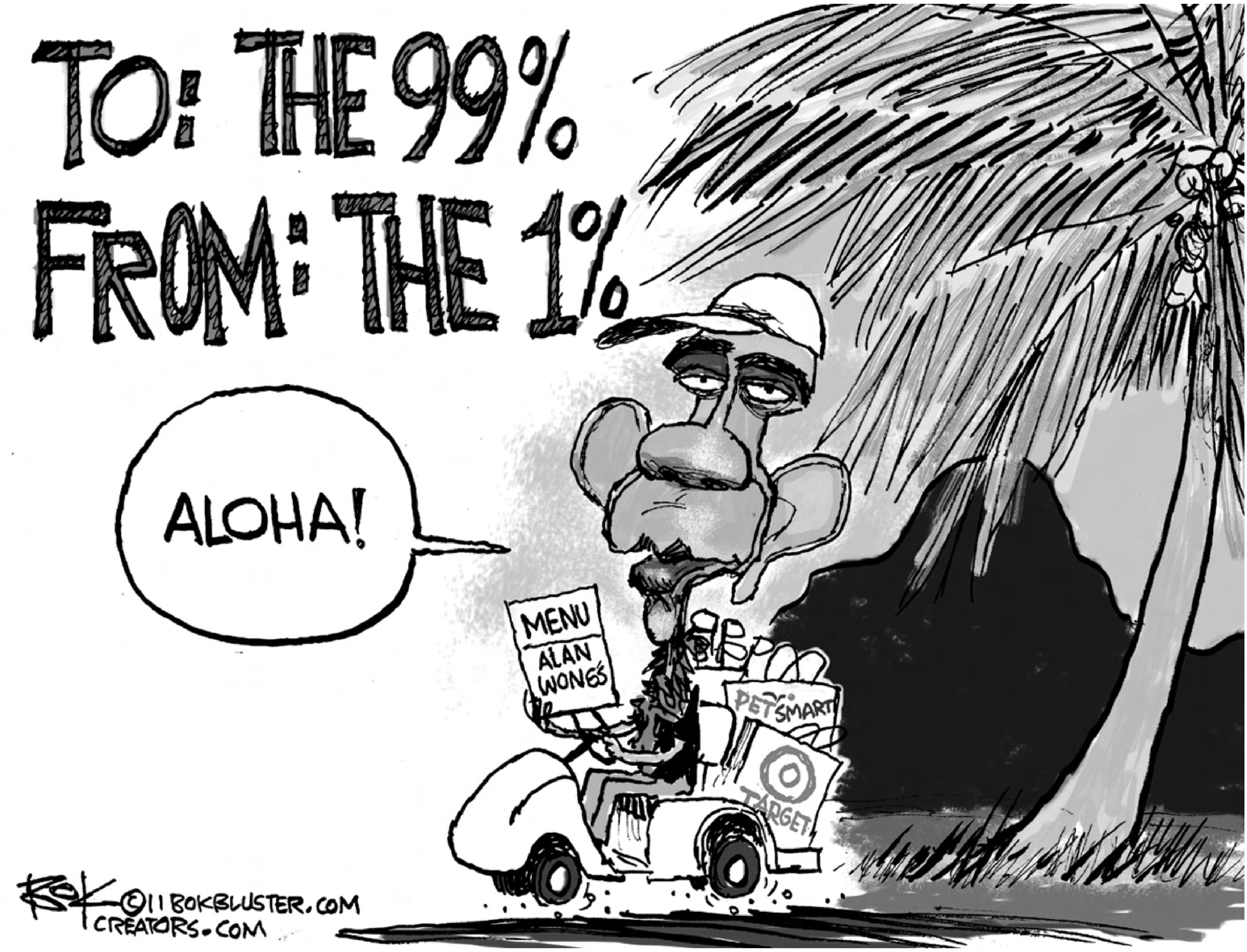
• Jan. 12, 7:30-9:15 a.m.: **Utah Economic Review**, sponsored by the Salt Lake Chamber. Participants will learn about the economic issues of the day — the European debt crisis, stock market volatility, federal debt/deficit challenges, employment, income, housing and more. The Utah Economic Council will share its forecast for the coming year, and Gov. Herbert will share his economic guidance and insights. Location is the Little America Hotel, 500 S. Main St., Salt Lake City. Cost is $45 and includes breakfast and a copy of the Economic Forecast. Register at www.slchamber.com, by calling (801) 328-5060 or by e-mailing cwalker@slchamber.com.

• Jan. 13, 8:30-10 a.m.: **Business Community Meeting,** sponsored by the Utah World Trade Center. Guest speaker will be the Hon. Ian Solomon, U.S. executive director of the World Bank. Participants will learn about procurement opportunities in health, education, energy, infrastructure, telecommunications and water. Location is Wells Fargo board room at the Salt Lake Chamber, 175 E. 400 S. Free. RSVP with Elizabeth Goryunova at egorn@wtcut.com or (801) 807-9574.

• Jan.19, 6-8 p.m.: **2012 Annual Construction Forecast Dinner Meeting,** sponsored by Associated Builders and Contractors of Utah and the American Society of Professional Estimators. Keynote speakers will be James Wood, director of the Bureau of Economic and Business Research at the University of Utah; and Glen Beckstead, ASPE, cost estimator for MHTN Architects. Location is the Sheraton Hotel, 150 W. 500 S., Salt Lake City. Cost is $60 for ABC, ASPE and NAWIC members, $80 for nonmembers. Register by calling (801) 708-7036 or e-mailing abc.utah@abcutah.org.

• Jan. 31, 7 a.m.-noon: **2012 Utah Commercial Real Estate Symposium**, sponsored by the Utah chapters of CCIM & NAIOP. Dr. Sam Chandan, president and chief economist of Chandan Economics, will keynote; local commercial real estate professionals will present industrial, investment, office, multi-use/retail and multi-family/apartment market overviews and Zions Bank will present a Capital Markets Update. Location is the second floor ballroom at the Hilton Salt Lake City Center, 255 S. West Temple. Cost is $95 for CCIM and NAIOP members, $125 for nonmembers. Register at http://bit.ly/2012Symposium.





Could Ron Paul be the next Ralph Nader?


Joe Conason

Even as Barack Obama gradually climbs in national polls, more than a handful of the president's once-ardent admirers suddenly seem more attracted to Ron Paul.

Long disappointed by Obama's overly solicitous attitude toward banking, defense and national security interests — at the expense of economic justice and civil liberties — these disappointed critics find a satisfying echo in Paul's assaults on the banks, the Federal Reserve, the military-industrial complex and, indeed, the entire American super-structure, including the miserably failed war on drugs. As a libertarian, he doesn't actually share the liberal perspective on these issues but sometimes sounds as if he does.

For some people, perhaps, that is enough.

As a seasonal fad unlikely to persist beyond Iowa, a minor liberal flirtation with Paul wouldn't matter at all. While he has provided much entertainment over the past few weeks, scaring the Republican establishment with his anybody-but-Romney climb in the polls, he undoubtedly understands that he will not be the nominee of their party (and in calmer moments, so do they).

His prescriptions for government and the economy may be misguided, to put it kindly, but his passionate support for the Bill of Rights is refreshing, especially because so many Republicans and too many Democrats are prepared to snip or even scrap that document. So is the consistency of his current stance on such issues as narcotics, marriage and military engagement abroad. Which are only the most obvious reasons that he will always be rejected by the GOP, even as his dedicated supporters occasionally win a momentary victory in a straw poll or a pseudo-convention.

But what if Paul should decide to run on the Libertarian Party ticket next year? He ran for president as a Libertarian in 1988, and he has coyly hinted that he might do so again in 2012, with that party's leaders practically begging him to accept their nomination when the Republican primaries end. He could either defeat former New Mexico governor Gary Johnson, who recently announced that he has left the Republican Party to seek the Libertarian nomination, or ask Johnson, who supported Paul in 2008, to join the ticket as his vice presidential candidate. In many respects, Ron Paul for President is as much a family business as an ideological crusade, so the incentives for him to continue into November will be powerful.

For liberals who are drawn to Paul as an outspoken critic of the Federal Reserve, the military budget and the wars on terrorism and drugs, that would pose a challenge. Like Ralph Nader in 2000, Paul could offer them a tempting opportunity to express their weariness with compromise and complexity; once more they could vote their conscience and voice their frustration. The moral hurdle would be much higher than with Nader, a genuine American icon who carries none of Paul's embarrassing baggage. At the very least, Nader upheld traditional progressive ideals for government, the economy and the environment while Paul would eagerly repeal a century of advances on all those fronts, if he could.

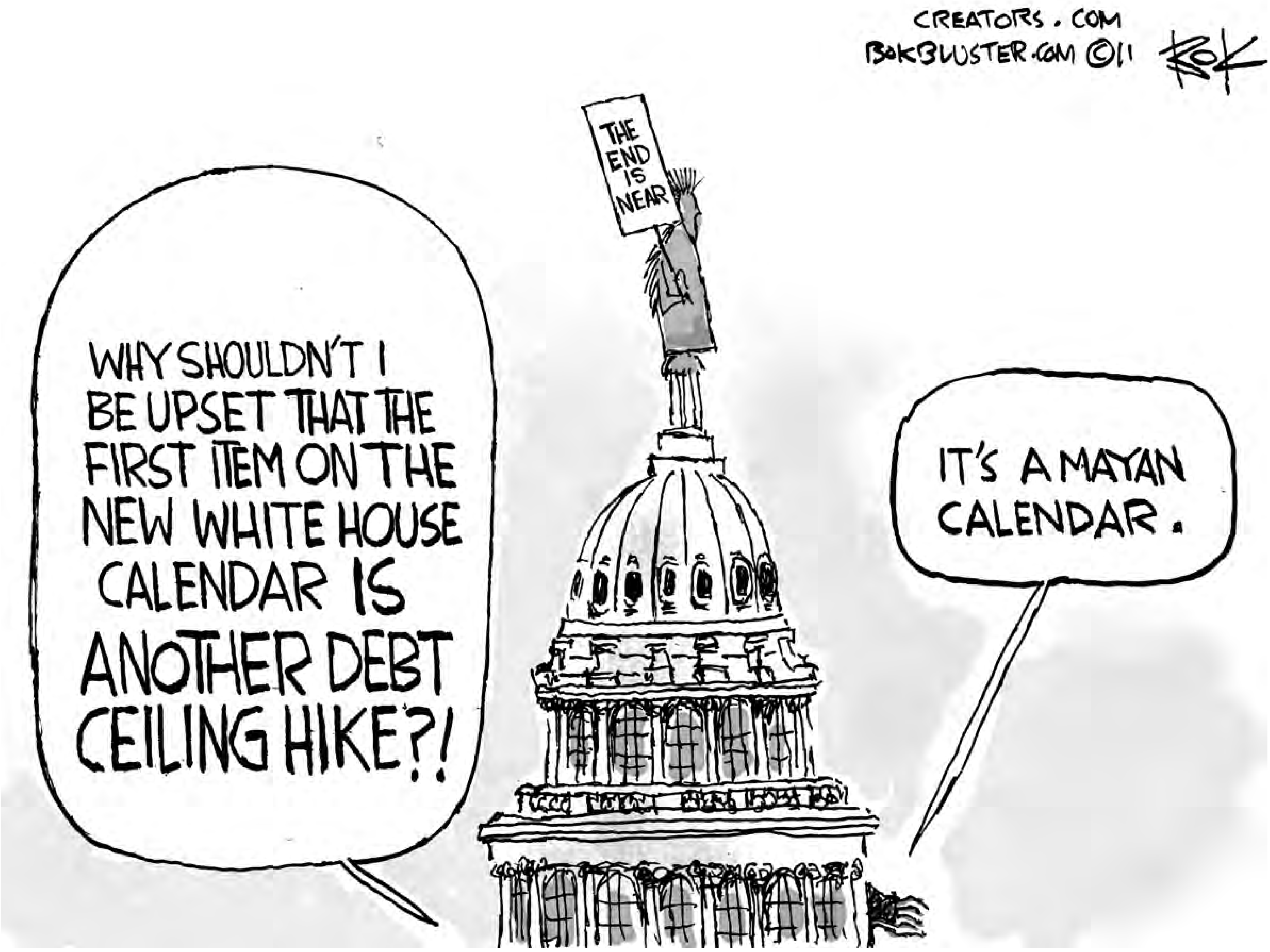
But for those willing to overlook the racist, homophobic, anti-Semitic, and paranoid Ron Paul newsletters — as well as their putative author's feeble, implausible, and changeable explanations for them — the Texas Congressman might claim to be an alternative to that tired-old-two-party, lesser-of-two-evils ballot choice.

That would appeal only to progressives who suffer from historical amnesia, the chronic affliction of American politics, and were thus unable to recall the consequences of Nader's third-party candidacy. One of those consequences, ironically enough, was the war in Iraq, which probably would not have occurred if Al Gore hadn't forfeited the electoral votes that Nader threw to George W. Bush.

Another consequence was the abandonment of the U.S. commitment to mitigate climate change, which dwarfs even the economic debacle of the past few years in its potential toll on humanity. And a third consequence was the spike in economic inequality encouraged by Bush tax, spending and regulatory policies — which will someday seem moderate in retrospect, if Obama loses next year to Mitt Romney with Republicans controlling both houses of Congress.

The Nader supporters of 2000, a fraction of the liberal electorate, didn't get the policies they so urgently desired, of course. They didn't even get a viable Green Party or a lasting movement for change. Instead, they helped to inflict a political disaster from which America has scarcely begun to emerge. In the new year, we may discover whether they wish to revive that nightmare.

Joe Conason is the editor in chief of NationalMemo.com.



Republican voters' choices

No one seems to be really happy with this year's field of Republican candidates for that party's presidential nomination — except perhaps the Democrats.

The sudden rise, and equally sudden fall, of a succession of Republican front-runners is just one sign of the dissatisfaction of the Republican voters with this field of candidates.


Thomas Sowell

In this, as in many other aspects of life, we can only make our choice among the options actually available. So Republican voters who want to be realistic need to understand that they are going to end up with qualms and nagging doubts about whomever they pick this time.

Not all voters want to be realistic, of course. Some voters, whether Democrats, Republicans or independents, treat elections as occasions to vent their emotions, rather than as a process to pick someone into whose hands to place the fate of the nation.

People who think this way tend to vote for someone they just happen to like, whether for personal or ideological reasons, and regardless of whether that candidate has any realistic chance of being elected.

The surprising support in the polls for Congressman Ron Paul seems to be of this sort. But does anyone seriously want to put the fate of this nation in the hands of a man who can casually brush aside the danger of nuclear weapons in the hands of Iran, the world's leading sponsor of international terrorism?

Barring some astonishing surprise, the contest for the Republican nomination for president boils down to Mitt Romney versus Newt Gingrich. It is doubtful whether either of them is anyone's idea of an ideal candidate or a model of consistency.

The fact that each of the short-lived front-runners in the Republican field gained that position by presenting themselves as staunch conservatives suggests that Republican voters may have been trying to avoid having to accept Mitt Romney, whose record as governor of Massachusetts produced nothing that would be regarded as a serious conservative achievement.

Romney's own talking point that he has been a successful businessman is no reason to put him into a political office, however much it may be a reason for him to become a successful businessman again.

Perhaps the strongest reason for some voters to support Governor Romney is that the smart money says he is more "electable" than the other candidates in general and Newt Gingrich in particular. But there was a time when even some conservative smart money types were saying that Ronald Reagan was too old to run for president, and that he should step aside for someone younger.

Washington Post editor Meg Greenfield said that the people in the Carter White House were "ecstatic" when the Republicans nominated Reagan, because they were convinced that they could clobber him.

Today, it is said that the Obama administration fears Romney, but would relish the opportunity to clobber Gingrich because of his "baggage." CNN has already started digging into Gingrich's most recent divorce.

Much depends on whether you think the voting public is going to be more interested in Newt Gingrich's personal past than in the country's future. Most of the things for which Gingrich has been criticized are things he did either in his personal life or when he was out of office. But, if we are serious, we are more concerned with his ability to perform when in office.

Even some of those who believe that Gingrich would devastate Obama in head-to-head debates on substantive issues nevertheless claim that all Obama has to do is come back with questions about Newt's work for failed mortgage finance giant Freddie Mac.

But, even at the personal, point-scoring level, Barack Obama can open up a can of worms by going that route, since Freddie Mac at least never planted bombs in public places, like some of Obama's political allies.

There are no guarantees, no matter whom the Republicans vote for in the primaries. Why not vote for the candidate who has shown the best track record of accomplishments, both in office and in the debates? That is Newt Gingrich. With all his shortcomings, his record shows that he knows how to get the job done in Washington.

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