

# THE Enterprise

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### THIS WEEK

**Utah game developer receives \$1.8 million**  
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## Computer maker to add 500 Utah jobs over next five years



*Its Xi3 Modular Computer is a four-inch cube that operates on 90 percent less electricity than typical desktop computers.*

**By Brice Wallace**  
*The Enterprise*

The Governor's Office of Economic Development Board has awarded a \$2 million incentive designed to help a maker of tiny computers get larger.

The board last week approved a tax credit for Xi3 Corp., based in Salt Lake City, tied to the creation of 500 full-time jobs in Salt Lake or Utah county over five years.

Chris Conabee, managing director of corporate recruitment and incentives for GOED, said the

company "will have larger-scale growth in the future than we can anticipate." As a result, GOED awarded "an intermediate-term incentive." GOED will work with the company over the next couple of years "and kind of hammer out where they're going to end up," he told the board. "During that period, it's our hope that they can stay in-state and we can modify that growth and keep them here, and then we can look at doing an incentive later."

see Xi3 page 2

## 266-unit self-storage facility under way in West Valley City

**By Brice Wallace**  
*The Enterprise*

The South Redwood Road area will sport 266 new self-storage units once Tubroz LLC's \$1.1 million project at 1656 W. Whitlock Ave. (2500 South), West Valley City, is completed.

Tubroz — a reference to the two brothers who own the 11-year-old company — will build the 36,000 square foot of storage and a 900 square foot office in two phases on 1.5 acres.

"It's under construction and we've got the foundations being poured," said Steven Hunt, co-owner with Kendall Hunt. "Within 30 days, we'll have the flatwork done and the masons can get started. Once we get the concrete done and the paving done, then we'll

concentrate on the first phase and get it finished and open that while we work on the second phase."

Menlove Construction of West Jordan is the contractor for the project, to be named Salt Lake Self Storage. Tubroz, based at 2469 S. Redwood Road, hopes to have the first phase, about half of the storage units, open by November and the second phase a few months after that.

Tubroz holds another property, an office/warehouse complex nearby, but opted for self-storage after a study revealed that the community is underserved by current storage space. "We hope to tap into some of that underservedness," Steven Hunt said. "In the area we're in, we're expecting res-

see STORAGE page 2

## Utah home prices climbed for third month, number of properties for sale falls

Utah home prices increased for the third month in a row in June. That's according to a new report from the Utah Association of Realtors that shows the median price rising about 3 percent from June 2011. The median sales price was \$182,000, a \$5,000 increase compared to the median of \$177,000 a year earlier.

Price gains in May and April were similar, about \$5,000 higher than the median during the same month of the previous year. Prior to the rise in April, home values had not increased since 2008.

Among the more populated counties, the area with the highest appreciation was Uintah County, where the median home price rose more than 53 percent compared to June 2011. Coming in second was Washington County with a nearly 11 percent gain. Rounding out the top three was Utah County, where prices were up more than 4 per-

cent.

The number of properties for sale fell nearly 24 percent from last year, marking the 16th consecutive month of double-digit declines. Similarly, new listings in June were down about 10 percent from last year.

The 20,615 properties on the market at the end of June represented a supply of 6.9 months.

In addition to improving home prices, sales also increased in June. Sales rose about 1 percent, representing the 13th consecutive month of gains. For the first half of the year, closed transactions were up more than 10 percent compared to the January-June period in 2011.

For counties with more than 30 sales, June activity was strongest in Box Elder, Salt Lake and Weber counties, where transactions were up 44, 12 and 11 percent, respectively.

see PRICES page 2

## 36,000 trampoline park to open in South Salt Lake

The wAIRhouse, a 36,000 square foot, indoor trampoline park and entertainment center, is slated to open this fall at 3653 S. 500 W. South Salt Lake.

It will be owned by Park City residents Chris and Kelly Steele and their sons, Keegan and Collin.

The wAIRhouse will feature almost 15,000 square feet of wall-to-wall trampolines; large foam pits; a "junior jumper" area; two dodgeball courts; four trampoline basketball courts; a parents' lounge with flatscreen TVs, free Wi-Fi and a mobile device charging station; a cafe; an arcade with video games and pinball machines; five party rooms with three levels of party packages from which to choose; and a simulator room, opening this winter, featuring golf, laser hunting and winter sports virtual reality simulators.

"Our family has traveled to several states from Florida to Arizona to Washington State doing intense research to ensure that our trampoline park is the best it can be," said Kelly Steele.



A website, www.thewAIRhouse.com, will be launched shortly, and visitors will be able to schedule jump times, parties and special occasion celebrations, download safety waivers and view pictures and videos, and more. A portion of all The wAIRhouse proceeds will go to youth organizations throughout the Greater Salt Lake City Valley. The wAIRhouse will be open Tuesdays through Sundays.

The venture was financed by Zions Bank and the U.S. Small Business Administration. The Steeles leased the South Salt Lake location with the assistance of Commerce Real Estate Solutions.



## Xi3

from page 1

The Utah capital investment is expected to be \$32.2 million. The new positions would pay at least 25 percent above the county average wages. Xi3 expects to generate more than \$169.7 million in new state wages and \$98 million in new state revenue during the incentive period.

Formed in 2010, Xi3 has offices throughout the U.S., a subsidiary in Brazil and plans further expansions overseas. It produces a line of small, fast, eco-friendly and durable computers, servers and storage devices. Its Xi3 Modular Computer is a four-inch cube that operates on 90 percent less electricity than typical desktop computers. It is hailed as adaptable because of being ideal for desktop,

enterprise and specialty applications; scalable because it can be used for desktops or clustered super-computers; and economical because of its useful life of six to 10 years, enabled by simple and inexpensive updates, upgrades and modifications.

"It's 10 times smaller and 10 times as energy-efficient" as a typical desktop computer, Jason A. Sullivan, founder and chief executive officer, told the board.

Xi3 is a subsidiary of ISYS Technologies Inc., which Sullivan founded in 2002. Xi3's products are manufactured in the U.S. The company has about 850 patents and six international patents. Its target is enterprise computing, with top companies and world governments among its customers.

"Every little bit helps,"

Sullivan said of the GOED incentive. "It's a very competitive marketplace. There's a lot of competitors in the space, and anything we can do to garner a little bit of a competitive edge will be of great interest and help to us."

Board member Kate Riggs said Xi3 complements Utah's existing information technology cluster businesses.

"Through its cutting-edge computer hardware innovations, Xi3 Corp. is poised to be a global leader in the industry, which is a natural fit for Utah and our next-generation programmers and engineers," Gov. Gary Herbert said in a prepared statement. "The state of Utah's partnership with Xi3 helps a native-born technology grow locally while contributing to our goal to add 100,000 jobs in 1,000 days."

"EDCUtah is pleased to see the expansion of a global company like Xi3 in Utah," Jeff Edwards, president and CEO of the Economic Development Corp. of Utah (EDCU), said in a prepared statement. EDCU is contracted with the state for business recruitment and retention. "Xi3's presence here further enhances our ability to grow the information technology industry and to continue to attract top-notch technology sector jobs to Utah."



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## Advertising agencies merge

Two Utah advertising agencies, Kim Brown & Associates and Welti & Call Advertising, have combined to create a new marketing firm and will merge under the name Inovation Marketing.

Inovation will operate out of the current Kim Brown & Associates offices at 9980 S. 300 W. in Sandy. All current employees of both agencies are expected to remain.

Kim Brown becomes chairman of Inovation and was in broadcast media sales for more than 20 years before establishing Kim Brown & Associates in 2000. Welti & Call advertising is a long-time Utah ad agency established by TV weather personality Bob Welti in 1966 and managed by Will Call for over 30 years. Call becomes president of Inovation.

Ted Phillips, a former president and CEO of several leading ad agencies in Atlanta, San

Francisco and Salt Lake City, will become CEO of Inovation. He is also a past president of the Utah Advertising Federation.

Phillips said Inovation is highly focused on digital and web interactive marketing and social media through its partnership with Hyper X Media, a local digital and social media agency. Inovation has currently launched a landing page until it can fully develop its new website at inovationmarketing.com.

## PRICES

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cent, respectively.

As in previous months, the highest percentage increases were in the lowest price categories. For the 12-month period that ended in June, sales were up about 29 percent. That's compared to a 4 percent gain in the highest price category of \$750,001 and above.

Pending sales, which reflect contracts signed during the month, were up nearly 15 percent in June. That signals a likely rise in July home sales.

In June, sellers received an average of nearly 95 percent of their asking prices. That's the highest level since October 2007. Last year, sellers only received an average of about 91 percent of their original list prices.

Homes also moved off the market faster. In June, it took an average of 76 days to sign a sales contract. That's down 10 days from last year and the fastest sales time since September 2008.

## STORAGE

from page 1

idential individual use, but we've also got a lot of commercial business around us that we hope will take advantage of the temperature control."

About one-third of the units will be temperature-controlled. Approximately half of the project's total will be accessible from indoors. Most units will be 10-by-10 feet or 10-by-15 feet, although some will be as small as 5-by-5 and others as large as 12-by-30.

One hallmark of the project will be strong security. Kendall Hunt runs Hunt Enterprises Inc., which provides security, video, alarm and access control systems for financial and commercial companies and will provide a state-of-the-art security system for Salt Lake Self Storage.

"We'll have upwards of 30 video cameras," Steven Hunt said. "It's going to be new, clean and nice-looking."



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## Search engine optimization firm relocates to larger quarters

SEO.com has outgrown its space in Bluffdale and moved into a new office in Draper that will allow the firm to expand as it enters its sixth year.

SEO.com's new office is located at 11781 South Lone Peak Parkway No. 100.

The new location is more than 18,000 square feet, 6,000 square feet larger than the old office. SEO.com currently has nearly 80 employees. The new office will allow the firm to expand and hire a staff of about 150 people.

"It's crazy to think we started out with four employees in the basement of a home. ... We've come a long way, and I'm excited to see what the future holds," said Ash Buckles, president. "We're really happy to be in our new home. We look forward to breaking it in and taking advantage of the extra space to create more jobs and stimulate Utah's economy."

In addition to extra work-

space, the new location has two large conference rooms and a training classroom. It is located next to eBay and features freeway signage along Interstate 15.

"We really liked our old location and most of our employees live in Salt Lake and Utah counties," Buckles said. "We wanted to keep our new location as close to the old one as possible in order to minimize commutes and keep the talent we have."

Buckles said that SEO.com's former location was on the border of the two counties, making it a prime spot for recruiting purposes.

"There is so much talent in Salt Lake and Utah counties," Buckles said. "We felt our old location gave us a big recruiting advantage, and we wanted to keep that at our new office."

SEO.com is a search engine optimization company. Clients range from small startups to Fortune 100 companies.

## Utah firm gets \$1.8 million to improve on Facebook game

Provo-based Funium has raised \$1.8 million in funding to complete the development of the company's free Facebook game, Family Village. The seed round was led by Family Odyssey, which is 50 percent owned entrepreneur Jim Sorenson, with additional funds coming from other angel investors.

With the additional funding, the company can further improve Family Village's in-game experience by adding the features that both the Funium team and early beta users deemed necessary to the success of the game. In 2011, Funium completed a \$1.2 million round of funding also led by Family Odyssey to accelerate development and expansion of a beta-version of the Facebook game.

As an early investor in Ancestry.com and a co-founder of GeneTree, Sorenson has a successful track record investing

in the family history space. His father, James LeVoy Sorenson, was also a pioneer in molecular genealogy, developing the world's largest repository of correlated genetic and genealogy information at the Sorenson Molecular Genealogy Foundation.

Funium released a pilot version of Family Village, the first Facebook game to help players explore their real family trees while building an online community, in June 2011. In gameplay, players foster their own personalized virtual community by building businesses, houses, immigrating family members and assigning jobs. Family Village can align inputted data with actual real-world documents, such as newspaper articles and census records, about the players' living and deceased relatives. Players can then examine the records, print them or store them in their personal game library.

## Imagine Learning names Joe Swenson president, CEO

Educational software company Imagine Learning, Provo, has named Joe Swenson president and CEO.

Swenson, who has served as president and chief operating officer since joining the company last November, assumes the day-to-day duties of running Imagine Learning.

Imagine Learning is a pro-

ducer of educational software products. Since its founding in 2004, the company has seen sustained revenue growth, attracting acclaim from organizations like *Inc.* magazine and the Ernst & Young Entrepreneur of the Year program.

From 2002 to 2007, Swenson served as president and CEO of DynaVox, a communication and

education solutions company that saw continued revenue growth and increased market penetration under Swenson's leadership. Prior to working with DynaVox, Swenson developed and executed corporate strategy, improved company culture and increased profits at Hill-Rom Acute Care and Hill-Rom Europe.

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*Kimi's Mountainside Bistro, now near Solitude, will move into the long-dormant former Santa Fe restaurant building.*

## Bistro to relocate from ski area to Emigration Canyon

The long-dormant former Santa Fe Restaurant building in Emigration Canyon is about to be brought back to life.

Kimi's Mountainside Bistro, which has operated near Solitude Ski Resort in Big Cottonwood Canyon since May of 2009, will move to the former Santa Fe site, next to Ruth's Diner, this October or November, said proprietor Kimi Eklund.

Dr. Rick Anderson and his wife Susan, who live nearby, bought the vacant structure in order to have more control over the destiny of their neighborhood.

The Emigration location will be larger than Kimi's current operation, and it is expected that most if not all of the eatery's

current staff will make the move, Eklund said.

On the structure's main floor will be a casual, rustic modern European/American restaurant. The "more elegant" upstairs will be available for rent for weddings and other special occasions, Eklund said. The facility will have two decks, one streamside and another above the stream. There will be seating for 88. Kimi's will be open daily for lunch and dinner and will have a full liquor license.

Eklund previously owned the Absolute! restaurant in downtown Salt Lake City, and hopes to re-attract those patrons. The new location will also allow Kimi's to expand its catering operation, Eklund said.

## Water purification franchise eyes SLC

Watermill Express, a Brighton, Colo.-based chain of drinking water purification stations, is seeking franchisees in Utah.

The company, founded in 1984, currently has about 1,300 locations, primarily in the Sunbelt. A thousand of them are company owned, while the remainder are franchised, said co-founder Lani Dolifka.

The fee to open a Watermill Express is \$3,000 per location, Dolifka said, and it costs between \$53,000 and \$138,000 to launch a kiosk, depending on real estate and construction costs. The firm will waive the franchise fee for qualified former law enforcement personnel and qualified veterans. Salt Lake area franchisees will be required to open a minimum of three locations; Dolifka said she thinks the Salt Lake market could accommodate nine to 15 units.

Watermill Express kiosks fit in a roughly 11 x 20-foot parking

space. The units are full automated, computer-monitored and serviced daily.

"We start with state or federally approved water and run it through system in each kiosk," Dolifka said. "It's a 12 step-water perfection program, eight steps of purification." At any point, if total dissolved solids exceed 50 parts per million, the kiosks shut themselves down.

Open 24/7, the kiosks are used by customers who dispense the water into their own containers.

"I'm very sensitive to plastic waste," Dolifka said. "The typical family of four can save up to \$600 annually compared to buying bottled water. Turn that into the environmental piece and we have saved upwards of 500 million bottles from being tossed into the landfill. The average person consumes 29.9 gallons of bottled water per year. Those numbers add up."

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## • Earnings Roundup •

### SkyWest

SkyWest Inc., based in St. George, reported net income of \$17 million, or 33 cents per share, for the quarter ended June 30. That compares with \$1.6 million, or 3 cents per share, for the year-earlier quarter.

Revenues totaled \$937.2 million, up from \$933.7 million for the same quarter in 2011.

The company said its increased operating revenues resulted from increased incentive payments under its contracts with major partners, primarily as a result of better on-time and completion factor performance. The company also implemented cost reduction programs during 2011. It was able to reduce crew and crew-related training costs by about \$10 million.

SkyWest Inc. is the holding company for two scheduled passenger airline operations — St. George-based SkyWest Airlines and Atlanta-based ExpressJet Airlines — and an aircraft leasing company. It serves markets in the U.S., Canada, Mexico and the Caribbean with roughly 4,000 daily flights and about 725 regional aircraft.

“We are very pleased with the significantly improved results, quarter over quarter, and especially pleased to report a net profit,” Jerry C. Atkin, chairman and chief executive officer, said in announcing the results. “Our cost reduction efforts are ongoing and we see additional results of these efforts from the quarter ended June 30, 2012, that are resulting in lower crew and maintenance costs.

Additionally, overall performance metrics for on-time, completion and customer service improved.”

### Skullcandy

Skullcandy Inc., based in Park City, reported net income of \$6.8 million, or 24 cents per share, for the second quarter ended June 30. That compares with \$4.3 million, or 22 cents per share, for the year-earlier quarter.

Sales totaled \$72.4 million, up from \$52.4 million in the 2011 second quarter.

Skullcandy produces headphones, earbuds and other audio and wireless products.

“We are pleased with our strong Q2 results,” Jeremy Andrus, president and chief executive officer, said in announcing the results. “Our sales growth was once again broad-based, with all of our major channels of distribution on both the domestic and international side increasing double digits. We are also beginning to leverage expenses on the domestic side of the business and believe significant investments in product development, gaming and a direct distribution model in Europe are beginning to pay off as we prepare to launch our new line of Astro and Skullcandy gaming products as well as new headphones styles in the back half of the year.”

### ZAGG

ZAGG Inc., based in Salt Lake City, reported net income attributable to stockholders of \$5.8 million, or 18 cents per share, for the second quarter ended June 30. That compares with \$2.7 million, or 10 cents per share, for the same quarter in 2011.

Revenues in the quarter totaled \$61.6 million, up from \$38.8 million a year earlier.

ZAGG produces mobile device accessories and technologies, including screen protection products and iFrogz brand cases, earbuds and headphones. It has offices in Logan and Ireland.

“Our results this quarter reflect our ability to introduce creative product solutions and increase distribution for our new accessories in the indirect channel,” Robert G. Pedersen II, chief executive officer, said in announcing the results. “ZAGG is the founder and leader in the tablet keyboard and folio space, and continues to be the top-selling brand for our retailers. Our product-centric focus is paying off with a product pipeline that is more robust than ever. We look to extend our market leadership position in our existing product lines and continue to create new product categories.”

### EnergySolutions

EnergySolutions Inc., based in Salt Lake City, reported net income of \$5.4 million, or 6 cents per share, for the quarter ended June 30. That compares with \$500,000, or 1 cent per share, for the same quarter in 2011.

Revenue totaled \$392.6 million, down from \$403.7 million in the year-earlier quarter. Revenue from the company’s Government Group totaled \$38.4 million, compared with \$54.4 million in the second quarter of 2011. The company said the decrease was due primarily to the completion of its Atlas mill tailings clean-up project

in Moab, which was partially offset by increases in engineering and technology projects.

EnergySolutions offers nuclear operations, characterization, decommissioning, decontamination, site closure, transportation, nuclear materials management, disposition of nuclear waste, and research and engineering services.

“We continue to make progress on a number of fronts to improve our margins and increase our profitability,” David Lockwood, president and chief executive officer, said in announcing the results. “We are putting in place the building blocks and business plans that will be the foundation for more profitable growth in 2013 and beyond.”

### Evans & Sutherland

Evans & Sutherland Computer Corp., based in Salt Lake City, reported a net loss of \$1.5 million, or 13 cents per share, for the quarter ended June 29. That compares with a net loss of \$500,000, or 5 cents per share, for the year-earlier quarter.

Sales totaled \$4.7 million, down from \$6.6 million in the 2011 second quarter.

Evans & Sutherland produces digital planetariums and digital cinemas, programs and production services, and theater design services.

“Revenue and gross margins for the first six months of 2012 were comparable to 2011 while the revenue recorded for the second quarter was significantly less than the comparable period of 2011,” David H. Bateman, president and chief executive officer, said in

announcing the results. “This low second quarter revenue was attributable to accelerated work completed on customer projects in the first quarter of 2012.”

Bateman said the company believes its annual results will be close to break-even, with future sales comparable to 2011. “We remain positive for the success of the business,” he said.

### Black Diamond

Black Diamond Inc., based in Salt Lake City, reported a net loss of \$1.9 million, or 6 cents per share, for the quarter ended June 30. That compares with a loss of \$800,000, or 4 cents per share, for the same quarter in 2011.

Sales totaled \$31.9 million, up from \$28.3 million a year earlier.

Black Diamond designs, manufactures and markets outdoor products for climbing, mountaineering, backpacking, skiing, cycling and other activities.

“The first half of the year represents our spring/summer product season, and compared to last year, sales were up 16 percent to \$78.3 million,” Peter Metcalf, president and chief executive officer, said in announcing the results. “This healthy, double-digit sales growth squarely met the high end of our seasonal guidance, and we attribute this to strong demand for our diverse collection of lifestyle-defining products, our global distribution capabilities and our continued, steady focus on sales and marketing.”

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## • Industry Briefs •

### ASSOCIATIONS

• The Utah chapter of NAWBO (the National Association of Women Business Owners) will host its annual "Chicks with Sticks" golf tournament fundraiser Aug. 29. The event attracts not only women business owners but other women (and men) who enjoy the combination of golfing, networking, food and prizes. The tournament will be at the River Oaks Golf Course in Sandy and is a nine-hole scramble. Registration and breakfast are at 8 a.m., with a shotgun start at 9 a.m. Lunch follows at 11:30. The event wraps up with prizes for longest drive, straightest drive, longest putt and other challenges. For more information or to register, visit [nawboslc.org/golf](http://nawboslc.org/golf).

### BANKING

• Patrick F. Keenan, CFO at Rio Tinto Kennecott Utah Copper, South Jordan, has been appointed a director of the Federal Reserve Bank of San Francisco's Salt Lake City office, effective Aug. 1. Keenan's Rio Tinto career began with an accounting position with Kennecott Utah Copper, followed by international assignments in Indonesia, England and Australia. He returned to Utah in 2008 to assume his current role at

the firm.

• Bruce Bryan has been appointed the sole head of Chartway Federal Credit Union's Utah operations, which include HeritageWest, SouthWest Community and Utah Central credit unions. Other appointments in the Virginia-based firm's Utah region include Jeff McBride, director of retail; Myrna Stout, director of mortgage origination; Curtis Anderson, director of business lending; Justin Stoddard, business lending manager (north); Susan Sagers, Jan LePore and JaNene Shepherd, all regional operations managers; and regional sales managers Mark Widdison, Kathy Boltz and Clare Collard.

### COMPUTERS/ SOFTWARE

• Supercomputing experts from around the world will be traveling to Salt Lake City in November to attend SC12, the premier international conference on high-performance computing networking, storage and analysis. Dr. Michio Kaku, a world-renowned theoretical physicist, will deliver the keynote address on Nov. 13, building on ideas presented in his most recent book *Physics of the Future: How Science will Change Daily Life by 2100*. The event,

to run Nov. 10-16, is expected to attract more than 10,000 attendees.

• Domo, a Lindon-based software-as-a-service (SaaS) venture started by Omniture co-founder and former CEO Josh James, has appointed Doug Grounds as vice president of customer success. Grounds brings to Domo more than two decades of high-technology experience and a strong background in building and managing high-performing services organizations. Most recently, he spent a year at Aggregate Knowledge where he was responsible for all pre-sales and post sales teams, as well as partner integrations and relationships. Prior, Grounds was part of the Omniture leadership team that helped the company grow from 30 customers to more than 5,000 customers worldwide and from \$3 million to more than \$400 million in revenue.

### CONSTRUCTION

• Amber Craighill has joined BHB Consulting Engineers, Salt Lake City, as the new marketing manager. She manages BHB's branding, provides support for business development endeavors, and builds company awareness. In addition, BHB Consulting Engineers has promoted Adam

Nelson to senior drafter. He has been with BHB Engineers since 2007.

• VCBO Architecture, Salt Lake City, has promoted Celestia Carson, AIA, LEED AP, to senior associate. Carson has worked for the firm for 12 years. Her architectural specialties include complex higher education and other significant public projects, many of which have garnered awards in recognition of design innovation. Carson holds a masters of architecture degree from the University of Utah.

• H&E Equipment Services, Salt Lake City, recently hired industry veteran Ralf Vieten as vice

president of crane structural repairs and remanufacturing. Vieten will focus his efforts to further expand and promote H&E's status as a Manitowoc EnCORE Partner and Manitowoc Crane Care Elite dealer. In addition, he will be responsible for building up the structural repair and remanufacturing operations as H&E expands its capability to remanufacture all makes and models of cranes and like equipment.

*continued on page 8*

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# Legal Matters

## Before the deal: architecture of intellectual property due diligence

How is an organization's intellectual property "house" set in order to maximize value and minimize risk of a transaction of intellectual property (IP) assets?

Experienced dealmakers understand that, whether on the acquiring side or the transferring side of a deal, proper preparation for or execution of due diligence can significantly alter the outcome of a deal. Yet, dealmakers do not always understand how to assess IP assets in a deal. Due diligence on IP assets, such as patents, trademarks, copyrights and trade secrets, is less commonly understood, perhaps because of their intangible, sometimes abstract nature and relatively recent emergence as valuable assets. A tendency to "number crunch" the financial aspects in a deal can cause other aspects of the IP assets, that are equally if not more important, to be overlooked.

A few key considerations in an IP deal include:

- Who owns the IP assets being transacted?
- Are the IP assets properly maintained?
- Do the IP assets provide meaningful exclusivity?
- How are the related intangible assets

impacted by third-party rights?

Understanding these considerations can aid in preparation for and execution of IP due diligence.

### Ownership

A buyer (e.g., assignee or licensee) of IP assets should first and foremost be



Whit Johnson

concerned that the seller (e.g., assignor, licensor or donor) actually owns what is being sold. Although this seems obvious, verifying ownership of IP assets is not as straightforward as routine title searches and title checks familiar in transactions of real property and other tangible assets.

As a buyer, verify each link of the chain of title of each asset from the inventor (or creator) to the seller. Competent intellectual property counsel should examine the assignment documents. A hasty check of the online assignment records at the United States Patent and Trademark Office (USPTO) is not sufficient, particularly for patent assets, because recordation of an assignment is not sufficient evidence to demonstrate a proper transfer. The subtleties of a proper assignment document are not always checked by the USPTO and, thus, recording an insufficient transfer document is common and mere evidence of

recordation does not necessarily confirm a complete chain of title. A buyer should also investigate and inspect for other encumbrances on the IP assets, such as licenses and liens.

As a seller, being prepared to present documentation to support the chain of title of each asset can help streamline the IP due diligence process. Proactively demonstrating complete chain of title for assets being transacted enhances the trust and confidence of the buyer. Consider verifying chain of title in advance of a potential deal to avert an uncomfortable situation of explaining a hole that may create mistrust of the buyer or even kill the deal. Careful collection and tracking of proper assignments from inventors (or creators) is an important IP management tool for any organization seeking to derive value from IP assets. A seller would also be wise to be aware of and forthcoming about any encumbrances affecting ownership rights, again to avoid breeding mistrust of a potential buyer.

### Maintenance

In almost every country, IP assets must be maintained, generally through annuities, maintenance fee payments and/or a renewal process. If the maintenance process is not complied with, an IP asset may be irretrievably abandoned. A buyer should be

concerned that the maintenance payments are current and that the IP assets remain in force and will confirm such for each asset being transacted.

A seller can build trust with the buyer and expedite the deal by demonstrating that the maintenance processes are current for each of the IP assets. Presenting documentation of annuities, payment of maintenance fees and renewal of IP assets demonstrates the seller's IP house is in order and bolsters a belief that the IP assets are all that is professed.

### Exclusivity

A buyer of any asset is keenly interested in assessing the value of the asset. Unfortunately, unlike many tangibles, the value of IP assets is not easily derivable from comparables or a robust market. The value of IP assets is complicated and depends on a number of factors that are hard to evaluate objectively. The factors may include the industry or technology area, how the IP assets may complement other IP portfolios, the demand for products covered by the IP assets and the exclusivity of the IP rights. Many of the factors affecting value are business considerations and are uniquely assessed by a given organization. However, exclusivity of an IP asset is

see IP page 12

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ATTORNEYS AT LAW

from page 6

• **Brent "Husk" E. Crowther**, a principal of Forsgren Associates Inc. in Salt Lake City, has been named 2011 **Engineer of the Year** by the American Society of Civil Engineers for Region 8. Crowther was recognized for his outstanding contribution to the field of civil engineering through his leadership as well as the promotion of the civil engineering profession through mentoring and involvement in the community. Forsgren Associates

is a multi-discipline civil and environmental engineering consulting firm founded in 1962 with offices across 10 states.

### ENVIRONMENT

• **Three facilities in Utah** — Utah Olympic Park (Park City), Duchesne Valley Water Treatment Plant (Duchesne), and Ashley Valley Water Treatment Plant (Vernal) — have agreed to **pay civil penalties and correct violations** associated with the safe

management and use of hazardous chemicals. The penalties, collectively totaling \$11,650 at all three sites, were assessed under the federal Clean Air Act, which requires the development of risk management programs for all public and private facilities that manufacture, process, use, store or otherwise handle flammable and toxic chemicals such as chlorine and anhydrous ammonia.

### FINANCE

• **Progrexion** and its affiliated companies and clients, including Lexington Law and Creditrepair.com, kicked off a corporate giving program by donating more than 100,000 pounds of food to the **Utah Food Bank** and its affiliate food banks throughout the Wasatch Front. The company also presented a check for more than \$22,000 to the Utah Food Bank to support its Summer Business Drive. Progrexion and its affiliated companies and clients comprise the nation's largest consumer advocacy network and employ nearly 1,200 people at locations throughout the Wasatch Front and in Idaho.

### GOVERNMENT

• The **U.S. Department of Energy** announced that two transformative new projects will receive a total of **\$4.7 million in funding** from the department's Advanced Research Projects Agency-Energy (ARPA-E) to leverage the nation's brightest scientists, engineers and entrepreneurs to develop breakthrough energy storage technologies and support promising small businesses. These projects are supported through two new

ARPA-E programs — Advanced Management and Protection of Energy Storage Devices (AMPED) and Small Business Innovation Research (SBIR) — and will focus on innovations in battery management and storage to advance electric vehicle technologies, help improve the efficiency and reliability of the electrical grid and provide important energy security benefits to America's armed forces. **Utah State University** will receive \$3 million under the AMPED program. **Materials & Systems Research Inc.** in Salt Lake City will receive \$1.7 million under the SBIR program.

• **Utah State Treasurer Richard Ellis** has been selected to serve on the board of directors of the **Municipal Securities Rulemaking Board**. The 21-member board establishes policies, approves rule-making, encourages market transparency systems and oversees regulatory organization for the municipal securities market.

### HOSPITALITY

• **David H. Beckstrand** has joined the **Zermatt and Homestead resorts** in Midway as director of sales and marketing. Beckstrand recently returned to Utah after spending a few years in the Scottsdale, Ariz., market, where he worked for a major upscale extended-stay hotel brand. Prior to that, he managed the sales and marketing for luxury resorts and conference centers in the Park City and Salt Lake City markets for nearly 20 years.

### INSURANCE

• According to **InsuranceQuotesUSA.com**, the **average monthly auto insurance cost in Utah is \$58.83**. New Jersey is the most expensive, at \$98.67, while North Dakota is the least expensive, at \$46.17.

### MANUFACTURING

• The Spanish Fork plant operated by **Longview Fibre Paper and Packaging Inc.** has gone **three years without a loss time incident**. In addition, the firm's Cedar City operation has not had a recordable incident in six years. Longview is one of the highest-capacity kraft paper mills in North America. It has a regional network of corrugated container plants.

• Orem-based **Aribex Inc.**, a manufacturer of handheld X-ray technologies, has **completed production of its 10,000th NOMAD handheld X-ray system**. Dental offices increasingly prefer the versatility and improved patient care offered with the use of the handheld X-ray. In addition, the NOMAD has been used in forensic victim identification following natural disasters such as the 2004 Indian Ocean tsunami and last

year's earthquake in Fukushima, Japan.

• **Premier Plastics** has **moved** into its new 27,000 square foot building at 2370 S. 3600 W., West Valley City, nearly tripling the company's footprint. The company specializes in custom plastic packaging and thin-wall thermoforming. It also offers full-service production and fulfillment for clamshell and blister packaging, as well as many other packaging solutions.

• **Jason Gasperich** has been hired as director of sustainability at **Connor Sport Court**, Salt Lake City. Connor sports floors have established themselves as the standard for professional and collegiate sports. In 2010, Gasperich earned a LEED Green Associate credential, which recognizes his fundamental knowledge of LEED and green building, as well as a commitment to sustainability. In 2012, he served as an educational session reviewer for Greenbuild conferences including Greenbuild, Legal Summit, National Affordable Green Homes and Sustainable Communities Summit, Green Jobs Summit and Residential Summit. Gasperich also has background in the construction management industry, having worked in that field for eight years prior to joining Connor Sport Court.

### MEDIA/MARKETING

• **The Summit Group (TSG)**, Salt Lake City, recently won **Local Media Agency of the Year** from **SUBWAY** restaurants at a convention in Florida. Of the 22 agencies in the system, TSG was identified as the best media buyer, specifically for its post-analysis work, strategic planning and strategic media buying and for thinking outside the box. We were also awarded three Best Practice awards for programs it launched recently.

### REAL ESTATE

• A ribbon cutting on Aug. 10 officially opened **The Village at South Campus BYU student housing project** at 600 E. 600 N. in Provo. The Village at South Campus will house more than 900 Brigham Young University students in five floors. There are 236 units and 190,000 square feet of podium. The project includes two residential towers and a two-story commons area with a swimming pool, grocery market, restaurant, lounge and study area. Each apartment will house four people in private bedrooms, two bathrooms and a laundry area. The complex consists of 690 parking stalls, or enough for about three-fourths of its tenants at any one time. About 590 of those will be underground in the one-level parking garage. Currently 90 percent of the units have been rented for 2012-2013.

continued on page 15

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## • Calendar •

• Aug. 14, noon-1 p.m.: **Worker Classification Webinar**, presented by Webinar Masters of North Salt Lake. Christine Walters, a consultant doing business as FiveL Co., will discuss the latest legal, legislative and regulatory trends at the federal and state level that are affecting employers' use and classification of a variety of workers. Among topics will be definitions of an independent contractor; factors to consider when classifying a worker as a volunteer or unpaid intern; and proactive practices for enhancing employment policies, practices or programs. The interactive program is a condensed version of the same presentation given at the Society for Human Resource Management's 2012 Employment Law & Legislative Conference. Cost is \$49. Details are at <http://webinar-masters.com>.

• Aug. 14, 6 p.m.: **Mentor Strategy Session**, sponsored by Grow America Ventures. Candace Klein, entrepreneur and winner of more than 14 business competitions, will share tips on how entrepreneurs can use storytelling skills to pitch their businesses with passion to potential investors. Klein is the founder and CEO of Bad Girl Ventures and SoMoLend. Location is the Zions Bank Founders Room, 1 South Main St., Salt Lake City. Networking and light refreshments will begin at 6 p.m. Klein's presentation begins at 7 p.m. Free. RSVP at <http://www.growam.com/mentor-strategy-session-rsvp/>.

• Aug. 15, 3-5 p.m.: **Supplier Control Life Science Compliance Clinic**, presented by the Utah Technology Council. "Supplier control" is a term coined by the international regulatory community and captures the phases of continual supplier assessment. The Global Harmonization Task Force has delineated six phases that are distinctly devised to form the basis for a robust risk-based approach to managing suppliers for a manufacturing sponsor of the final product as a result of its intended use. Peter Knauer, head of CMC (chemistry, manufacturing and controls) at LSK Biopartners and a senior partner consultant with MasterControl's Quality and Compliance Advisory Services, will lead the discussion. A question-and-answer discussion will follow. The UTC Life Science Compliance Clinic is intended for professionals at regulated companies that are affected by compliance issues. Location is Haemonetics, 12046 Lone Peak Parkway, Draper. Event is free for UTC members, \$30 for nonmembers. Registration and details are at [www.utahtech.org](http://www.utahtech.org) or by calling (801) 568-3500.

• Aug. 18, 9 a.m.-12:30p.m.: **"Avoid Becoming a Victim of**

**Fraud,"** the opening session of the "Staying Sharp: Current Advances in Brain Research" event presented by AARP and the Dana Alliance for Brain Initiatives. Keith Woodwell, director of the Utah Division of Securities, will discuss financial scams, investor protection and "who do you trust?" Activities begin with 8:30 a.m. registration. Main activity will be presented by Kevin Duff, associate professor at the Center for Alzheimer's Care, Imaging and Research, University of Utah Brain Institute. Closing session will focus on AARP's involvement in the debate about the future of Medicare and Social Security. The event is free. Location is the Davis Conference Center, Meridian Room, 1651 N. 700 W., Layton. Registration is available at (877) 926-8300 or <http://aarp.cvent.com/UTSSFraudYEASDavis>.

• Aug. 21, 3-5 p.m.: **"Landing Page and Lead Gen Conversion,"** presented by the Utah Technology Council. The forum will focus on improving conversion on sales leads, subscriptions, visits and other activities and will feature participants going through their marketing materials and making improvements on the spot. It will be moderated by Mark Fredrickson, general manager of e-commerce at TechMediaNetwork. The forum is reserved for senior people responsible for marketing at a UTC technology company. Location will be determined. Details are at [www.utahtech.org](http://www.utahtech.org) or (801) 568-3500.

• Aug. 22, 3-5 p.m.: **"Global and Remote Sales Management,"** a Utah Technology Council sales exec P2P forum. Mike Maxwell, national director of U.S., state and local government and education sales at Symantec, will lead the discussion about building a strong sales culture with remote sales; effective territory, account and opportunity planning with remote sales; customer face-to-face; and sales training and coaching for remote sales. The forum is reserved for senior sales executives from UTC member companies. Location is UTC offices at 2755 E. Cottonwood Parkway, Suite 500, Salt Lake City. Details are at [www.utahtech.org](http://www.utahtech.org) or (801) 568-3500.

• Aug. 23, 11:30 a.m.-1:15 p.m.: **Joint luncheon of the Utah Technology Council, Mountain West Capital Network, Utah Valley Entrepreneurial Forum and the Wayne Brown Institute.** Keynote speaker will be Timothy R. Clark, founder and chairman of TRClark LLC, which guides organizations in strategy, large-scale change and transformation, executive development and employee engagement. Clark will discuss "Does Your Company Need

Managers — or Leaders?" Location is the Thanksgiving Point Institute, 3003 N. Thanksgiving Way, Garden Room, Lehi. Cost is \$40. Details are at [utahtech.org](http://utahtech.org) or (801) 568-3500.

• Aug. 23, 11 a.m.-noon: **"Customer Complaints: Respond and Recover" Webinar**, presented by Webinar Masters of North Salt Lake. Jeri Mae, a trainer and speaker, will discuss tools for evaluating the customer complaint resolution process, exploring best practices of customer complaint resolution, and making it easy for customers to give you their feedback. Cost is \$49. Details are at <http://webinar-masters.com>.

• Aug. 25, 9 a.m.-4 p.m.: **"Nail it Then Scale it,"** a workshop for startup (and would-be startup) businesses, hosted by the Miller Business Resource Center at Salt Lake Community College, in partnership with Utah Valley University. Participants will learn the key elements of the Nail It Then Scale It (NISI) business model, including how to identify and address customer

problems that have a monetizable solution, strategies to understand the buying process of potential buyers, methods to tailor a marketing strategy that will meet a buyers needs, how to identify the right opportunities to effectively scale business efforts, and other strategies used by today's successful entrepreneurs. Location is the Miller Free Enterprise Center, 9750 S. 300 W., Sandy. Cost is \$99. Register at [www.mbrsccc.com/nailitthenscaleit](http://www.mbrsccc.com/nailitthenscaleit).

• Aug. 29, 11 a.m.-noon: **"The Six Habits of Strategic Thinking That Will Transform Your Business" Webinar**, presented by Webinar Masters of North Salt Lake. Greg Davidson, a longtime consultant and president of The Nature of Strategic Thinking, will discuss the basic process of strategy development, the maxims of decision-making and the key principles of strategy execution. Cost is \$49. Details are at <http://webinar-masters.com>.

• Sept. 4, 9-10 a.m.: **"Secrets to Completing Your To-Do Lists"**

**Webinar**, presented by Webinar Masters of North Salt Lake. Julie Edison, a consultant doing business as Modern Elixir, will discuss several time management techniques that can be applied throughout entire organizations. Cost is \$49. Details are at <http://webinar-masters.com>.

• Aug. 28, 7:30-9:30 a.m.: **"Uncertainty and Economic Growth: Europe and the U.S. Election,"** a Utah Technology Council CFOP2P Forum. Designed for chief financial officers, controllers and vice presidents of finance at UTC member companies. Presented by Scott Schaefer, who holds the Kendall D. Garff Chair in Business Administration at the University of Utah's David Eccles School of Business and previously held the Richard M. Paget Chair in Business Administration at Northwestern University's Kellogg School of Management. Location is O.co, 6350 S. 3000 E., Salt Lake City. Registration and details are at [www.utahtech.org](http://www.utahtech.org) or by calling (801) 568-3500.

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## HOW DO YOU KNOW WHEN IT'S TIME TO REPLACE YOUR COPIER?

*Pete's Sharp Tips*

If you've ever worked in an office, chances are you've also worked with a copier that was really past its prime. So the question is: why do companies wait so long to replace the equipment that is so essential to their day-to-day operations? There comes a time with all copiers when keeping them just doesn't make financial sense. Copiers wear out, and just like a car, sometimes replacing them is more sensible than paying for a repair. Look at your repair and maintenance costs for your copier, then compare them to the monthly cost of a new machine.

Copiers have become so much more than just that; they are multi-functional devices that perform so many amazing tasks. With a new copier at your disposal, you may be surprised at how much you can lower your costs and how much money you can free up for other projects. Bottom line aside, replacing your copier will allow you to take advantage of newer technology that can improve efficiency and make office tasks so much easier for everyone involved! Just think about how much technology has changed in just the past five years. There's technology you use now that you probably wonder how you ever lived without. The fact is, you may have a copier that runs just fine, but as your business evolves, the features on your copier stay the same. The functionality you needed yesterday may not be the same as what you need today.

### You should start looking for a new copier if:

- You have a black & white copier, but you need to make color copies
- You are still using a fax machine, but would prefer to scan to email
- You are having issues with your copier that require constant maintenance
- You print or copy in high-volumes, but you have a machine that's meant for a low-volume environment
- Parts and supplies are no longer available for your model or are too expensive
- Output looks poor and doesn't meet today's standards for quality
- Your copier doesn't perform certain functions you require such as printing, scanning, document filing, stapling, etc.
- Your copier is too slow, and is reducing productivity in your office

There's no denying that a copier is an important tool in every office. They are an amazing help in getting things done, but they are also a maintenance-intensive product, so when replacing your copier, make sure you're purchasing something reliable from a trusted dealer. Having the right equipment in your office makes all the difference.

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## Are you burned out or just hating it?

I just read an article about someone's totally bogus opinion of "job burnout." It made me realize some people actually are (or think they are) "burned out."

A quick search on Amazon revealed 580 books that contain the title, or address the subject of, "job burnout." Yikes!

The article I read proposed a remedy of "do less and you'll avoid burnout." It also recommended: avoid excessive workload, don't be overly accommodating, avoid people who drain your energy, do not overwork yourself, and they threw in job disillusionment. In other words: You'll still hate it, but you'll hate it less.

Why do people claim they're burned out? It's a self-inflicted thought wound based on taking inappropriate action, the false feeling of being overwhelmed and stressed-out, having a negative work atmosphere in general, not really loving your job, not believing in what you do, and having a boss who is somewhere between a jackass and an idiot.



**Jeffrey  
Gitomer**

*While burnout and stress are real, often they're self-imposed feelings that you can overcome. Burnout manifests itself in your daily talk until it's embedded into your psyche. Not good.*

While burnout and stress are real, often they're self-imposed feelings that you can overcome. Burnout manifests itself in your daily talk until it's embedded into your psyche. Not good.

**START HERE:** Begin your self-actualization by asking reality-based questions of yourself. Write down the answers.

- How much you love your job?
- What's the BEST part of your job?
- What would you rather be doing?
- Where would you rather be working that could afford you the same or better opportunity (not just money)?

Is the grass really greener on the other side of employment?

Being or feeling "burned-out" or "stressed-out" is not a problem; it's a symptom. "Why" you feel you're burned out is the heart of the situation.

Once you ask yourself these questions, it's time to DO SOMETHING POSITIVE ABOUT IT. Relief begins when you identify "cause" and then continues when you create your own answers and your own

truths. And change your thought pattern from burnt-out to on fire.

Action one: Write down what you believe is causing the stressful feelings.

Action two: Write down what you believe the remedy could be.

Action three: Beside each remedy, write down what you or others could be doing.

Action four: Write down the likelihood of these remedies occurring.

Action five: Write down your ideal job or career, and then write down what you have to do or learn to get there.

Decide if you are in or out. If in, rededicate yourself to personal excellence. If out, get out quick.

**REALITY:** Based on your present situation (family, debt, obligations) you may just have to endure it for a while, but if you have identified causes and remedies, calm begins to occur. You have it under control. You're making decisions.

Your present circumstance has to be measured against your present situation and future hopes and dreams.

Here are a few suggestions for what will take you from "burnout" mode into a more positive and hopeful frame of mind:

1. Start your day with the three most important things you want to accomplish.
2. Cancel all stupid and time-wasting meetings.
3. Stop talking about things that don't matter, especially other people.
4. Focus on outcome, not just task.
5. Dedicate at least 15 minutes a day to thinking by yourself.
6. Get rid of three major time wasters (attention diverters):
  - Facebook notifications at work (unless it's business Facebook).
  - Personal e-mails and personal calls.
  - Negative water fountain chit-chat.
7. Go home from work and read instead of watch. Start with my *Little Gold Book of YES! Attitude*.
8. Review your accomplishments at the end of each day – to both praise yourself and challenge yourself. Write them down.

Re-start your personal fire. Give yourself a chance to become "BEST" at your job and your career. Never give in to self-defeat. Decide every day that you can only be your best by doing your best.

Become BEST, not burnt.

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](http://www.gitomer.com), will lead you to more information about training and seminars, or e-mail him personally at [salesman@gitomer.com](mailto:salesman@gitomer.com).

## Does your marketing bug people?

### Seven Deadly Sins That Can Kill Your Efforts

When people find out I'm a graphic designer, they often run me through a list of their biggest advertising pet peeves. I've heard many of the same pet peeves voiced by several different people. Marketing is essential to growing your business. Unfortunately, one little faux pas can turn your audience off and make them ignore you. Here's a tidy list of things you should avoid so you don't annoy your audience and kill your marketing efforts.



**Katie Ferguson**

**1. Content is too lengthy.** It's easy for business owners to get excited and put too much content on their marketing pieces. However, overwhelming your audience with too much to read will only repel customers. In many cases, you have three seconds or less to catch someone's attention and get your point across. Be concise.

Some marketing pieces are meant to have more content (i.e., websites, brochures, e-mail newsletters). Content-heavy pieces should be well-organized and easy to scan. Your audience should be able to skim through the text and find what they're looking for. You still want to be as concise as possible in all aspects of marketing.

**2. Text is difficult to read.** Have you ever tried to read something with extremely small text? Annoying, right? If your text has to be shrunk to an illegible size, then you need to edit your content and be more concise. According

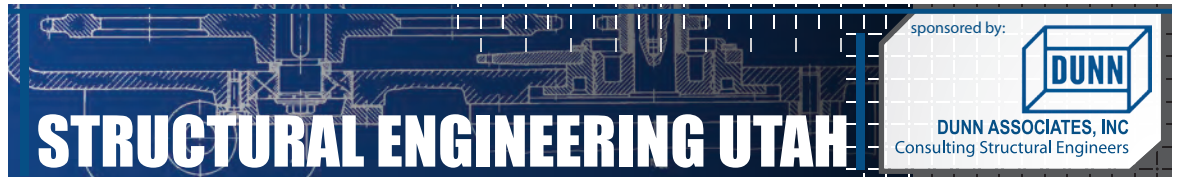
to the American Academy of Ophthalmology (AAO), more than 3.6 million people in the U.S. over the age of 40 are considered visually impaired. Be courteous of your audience and make your marketing easy to read.

Have you tried to read dark text on a dark background or light text on a light background? There needs to be plenty of contrast between your text and its background. Besides, the more contrast an ad has, the more eye-catching it is. People who are colorblind especially struggle with this. The AAO states that about 8 percent of men and 0.5 percent of women are colorblind. So, it's a bigger problem than you may think, especially if you're targeting men.

Here's a trick: before you publish a marketing piece, convert it into a grayscale version and print it. If it's still easy to read, then it should be OK.

**3. Message is unclear.** Confused people don't buy. Your audience should understand what you do and what your message is. When marketing your business, put yourself in your target market's shoes. Would they understand your message? Avoid industry-specific language that your audience doesn't comprehend. Don't be like that scary auto mechanic who uses lingo you've never heard before.

Also, create a clear call to action. A call to action could be *see MARKETING next page*



## Professional stewardship

By Ronald Dunn

Did you hire the structural engineer who was responsible for the design of the building you are now in? There is that outside chance that you did. However, there is a greater chance that you do not even know who he or she was. What are your expectations? What is your relationship with that engineer?

Let us suppose you did hire the structural engineer and you are the owner of your building. Most likely you have met with him or her and shared expectations. Your building is a significant investment and your desire is that it does not cost too much. It is a given that certain codes and regulations must be satisfied by the engineer. These are life safety considerations and are basically non-negotiable. There may even be additional criteria that you want implemented beyond these code minimums. Your design requests are satisfied, you pay your engineer and life goes on.

Another scenario involves an even more frugal owner, which can result in difficult discussions regarding saving as much money as possible in both design and construction costs. Sometimes these decisions can involve compromises and less than prudent decisions. Minimizing redundancies and pushing the limits of structural materials and code interpretations can still often result in obtaining a building permit. Your design requests are satisfied, you pay your engineer and life goes on.

Structural engineers sell risk. They interpret

current codes, draw upon experience and make educated and creative decisions that they feel competent in making. They sell these decisions and extend confidence to their respective clients.

Those professions, which the public at large expects to make educated and trained decisions, such as doctors, lawyers, accountants and others who cannot hide behind a corporate veil, are primarily responsible only for the client with whom they are contracted. Architects and engineers, on the other hand, have a fiduciary responsibility not only to their clients who pay the bills, but also to the public at large who gather, visit or work in each building. Unlike healing a specific individual, providing legal protection or working through a difficult tax situation, the structural engineers' service affects nonpaying customers as well.

Life may go on for the client who pays the bill, but the public expectations for our service go on and on for structural engineers.

Ronald Dunn is the owner and founder of Dunn Associates Inc., a structural engineering firm in Salt Lake City. Since founding Dunn Associates in 1995, he has been directly responsible for structural designs as well as supervising a large staff of professional engineers.

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## Facilities management services

It was an after-hours alarm at an office supply store that alerted a facilities management team to a problem at the site. When the team arrived, they discovered a pipe had burst and water was flowing into the building. Because of their fast response, they were able to save the property owners thousands of dollars in potential water damage and repair costs.

Many real-estate investors and property owners have found solid value in hiring a facilities management team to oversee their properties. And working with a staff of highly trained experts can enhance services while helping to minimize operating costs.

Outsourcing responsibilities in regard to managing and leasing properties to a third party team can create peace of mind for owners who don't reside in the same city, the same state, or even the same country. A facilities management division can be the eyes and ears for property owners, keeping up with day-to-day maintenance and being on-call for emergencies 24 hours a day. Like the previous example, they act as first responders when there is a property issue.

A facilities management team can do daily inspections, checking for graffiti, break-ins, broken

windows, leaky roofs, elevator problems, trash pick-up and even making sure the lights are turned off. By identifying and addressing these issues regularly and early, the facilities team will help maintain curb appeal and prevent additional or escalating problems.

Inside the building, a facilities team provides services that keep tenants happy and leased space looking its best. Facilities personnel will perform sprinkler and drywall repairs, painting and touchups, and janitorial services.

Trained employees can also do HVAC repairs as well as address any plumbing, electrical or janitorial issues that might arise. The team can even do retrofitting, such as upgrading lightbulbs or other energy-saving devices to save money and increase efficiency.

Property owners don't have time to visit properties and address these issues, but a facilities staff will regularly perform these seemingly small tasks and quickly respond to any larger issues that may arise. By swiftly and expertly responding to property concerns, a facilities team will help keep tenants happy and satisfied with a property. Ultimately, this will lead to longer leases and lower



Nate Millward

vacancy rates.

If a property is coming up for a building code or fire inspection, a facility services team will prepare for the inspection whether it's on an annual, quarterly or monthly basis. The staff will check fire extinguishers, evacuation plans and make sure the building is up to code in time for the inspectors. Additionally, the employees can check the efficiency of emergency plans, creating a better, safer work environment for the building's tenants.

Hiring a third-party facilities management team is basically a one-stop shop where all vendor management and emergency contacts can be handled in one place. A high-quality team will be able to act as a first point of contact for property emergencies and additional vendors, and can even act as a project management group. They can oversee property construction, upgrades and tenant build-outs.

A property management team provides vital "boots on the ground" for property owners and investors. By working with a facilities management group, investors and owners can rest assured that their properties are being looked after, maintained and held to a high standard of compliance.

Nate Millward is maintenance manager of NAI WEST Facility Services. His team of 11 technicians provides maintenance and facility services for industrial, office, retail and multifamily properties across Utah. NAI WEST Facility Services is part of NAI WEST.

## MARKETING

from previous page

something like, "Click here to save 25 percent," or "Sign up now and discover three ways to make more money," or "Buy now and get this cool gadget at no extra cost." People need to be told what the next step is.

**4. Advertising is too frequent.** Everyone hates feeling bombarded with too many e-mail blasts, too much junk mail, too many flyers and ads and so forth. Every industry is different, but sending one to two short e-mail blasts per month should be enough. Find creative ways to catch people's attention and be memorable without making your audience feel like you're beating them over the head with too many ads.

**5. Website is difficult to navigate.** Why do people go to your site? What information is most important to them? Make the important information easiest to find. You only have a few seconds for people to find what they need before they get discouraged and move on to another site.

Also make sure all your links work. Broken links will frustrate your audience and make you look unprofessional.

**6. Vital information is hard**

**to find.** Don't you hate it when you go to a website and have to hunt for a phone number? If you want people to contact you so you can make the sale, then make your contact information easy to find in all your marketing avenues. Think about what information is most important and make that information easy to find.

**7. Business card is not the standard size.** This is a common complaint, believe it or not. The standard size for business cards in the U.S. is 3.5 inches by 2 inches. Cards with other dimensions are usually thrown away because they don't fit in organizational systems made for business cards. So, go ahead and get crazy with rounded corners, bright colors and cool cardstocks. But I recommend you keep your business cards the same old standard size so people will want to keep them.

Katie Ferguson is the owner and creator of Graphic Forte. She is a graphic designer who helps business owners up level their branding so they can better connect with their target markets and grow their businesses more rapidly. Ferguson designs logos, print materials, websites and more, and has a degree in communications. For more information or to see her work online, go to [www.graphicforte.com](http://www.graphicforte.com).

## IP

from page 7

a uniquely legal consideration and should involve IP counsel.

The exclusivity of a patent depends on the scope and enforceability of the claims of the patent, which are properly assessed only by experienced patent counsel. A buyer concerned about the exclusivity of patent assets being acquired will seek patent counsel to examine the prosecution history of each issued patent to determine and advise whether the issued claims are reasonably broad in view of the prior art and that appropriate care and judgment were exercised to procure the patent asset. Patentability searches and/or opinions performed prior to filing for the patent assets may be analyzed, and independent patentability searches may be conducted. The actions and decisions of the entity and its patent counsel that filed and/or prosecuted the patent asset should be scrutinized. The buyer should also scrutinize any previous efforts to enforce and/or invalidate issued patent assets, such as through litigation.

A seller of patent assets that is prepared to present patentability searches and otherwise demonstrate a thoroughness of process and investment in procuring patent assets builds trust that generally enhances value. Regardless of the pre-filing activities, the meticulousness during patent procurement and/or previous enforcement activities, a seller can nevertheless build trust and confidence and demonstrate its IP house is in order by being forthcoming and responsive to requests for information from a potential buyer.

The scope and enforceability of other IP assets, including trademarks, copyrights and trade secrets, are also legal considerations. Demonstrating thoroughness and appropriate care and judgment can enhance the value of these IP assets as well.

### Clearance From Third-Party Rights

A buyer in some deals may be planning to use the technology or other intangible assets that may be covered by or otherwise related to the IP assets involved.

Such a buyer needs to understand how the intangible assets may be restricted by third-party rights. In the case of a buyer of technology, the buyer should be concerned not only that the related patent assets provide appropriate exclusivity, but that the technology involved does not infringe the patents of third parties. To assess the risk of infringement, a clearance search may be performed and patent counsel can conduct a clearance analysis (sometimes referred to as freedom to operate search/analysis).

A buyer concerned about clearance issues needs to understand the differences between assessing patentability and non-infringement. While patentability and clearance analyses relate, and in some instances may intersect, a clearance analysis is approached from a different perspective and accomplishes a different objective than a patentability analysis. In short, patentability considers the disclosure of other references while clearance is concerned with the claims. A patentability analysis does not include a careful analysis of claims to assess clearance from claims that may be infringed. Misperceiving that a positive patentability analysis satisfies clearance concerns provides little more than a dangerous and false sense of security. It is also important to understand that clearance searches and analyses are more involved and more complex and require considerably more time and resources. A clearance analysis of a complex technology or varied collection of technologies can take considerable time and may impact or be impacted by the timing of a closing.

As a buyer of IP assets, ensure your IP diligence process addresses often overlooked factors affecting the value of the transacted IP assets. As a seller, a careful, thorough process and preparation for IP diligence can preserve and enhance value.

R. Whitney "Whit" Johnson is an associate with Stoel Rives LLP who focuses his practice on U.S. and foreign patent procurement for computer software and hardware as well as networking, electronics and business method inventions.

# Million Dollar Homes

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820 Empire Ave. Park City

~~\$1,295,000~~

**\$1,195,000**

Approx Sq Ft:	2898	Den:	0
Bed Rooms:	3	Living Room:	0
Bath Rooms:	2.5	Laundry:	1
Family Rooms:	1	Fireplace:	1



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4490 E. Wyndom Ct. SLC

**\$2,399,000**

Approx Sq Ft:	8818	Den:	1
Bed Rooms:	7	Living Room:	1
Bath Rooms:	6	Laundry:	1
Family Rooms:	3	Fireplace:	4



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## A liability perfect storm

By Tim Radcliff

When you were growing up you had your favorite toys, those which you cherished among all others. Maybe it was a miniature car that you rolled around the rug, imagining life at the Indy 500. You loved that toy car, and cried loud and long when your best friend accidentally stepped on it. But no big thing, your best friend's dad just went out and replaced it. No harm, no foul. Then it was off to the races again.

But times change, finances change, and many years later that favorite car is now a Mercedes Benz SLS AMG. And if some bad fate befalls it, trust me, a simple trip down to the local 5&10 is not going to replace it.

But what happens if you or a family member severely injures someone else in the event that triggered the accident? Do you

have the ability to make someone else whole for their pain and suffering? It becomes much more difficult to determine what someone else's pain and suffering is worth, or their inability to work at their profession. Your life is no longer able to be fixed by a simple trip to the 5&10 store, and everything you worked so hard for is now at risk.

Whether it's expensive cars, big houses or fancy yachts, high-net-worth clients have tremendous liability exposure, probably more than they are aware of. Their local insurance agent, who makes far less money per year and can't grasp the magnitude of the potential loss, may not realize it. And most likely neither does some large company with fancy TV spots that tries to shoehorn these wealthy individuals into a one-size-fits-all approach to their excess liability

coverage (commonly known as "umbrella coverage").

I recently met with a client in Connecticut who explained to me that a local agent he was working with talked him out of taking on a much-needed policy because he felt it would be too expensive for the client. The problem was for the \$20 million in coverage, the cost was only \$5,121 per year. This seemed like a significant amount to the agent, as it came out to about 6.4 percent of his \$80,000 annual income, so he talked the client out of it. However, the client who needed that additional coverage has made more than \$13 million a year for the past five years, so what he would have to pay out amounted to only .039 percent of his annual income. Which raises an important question: if this client were to suffer a large loss and be required to pay an \$11 million

liability claim, would the agent, who felt so compelled to advise against the coverage, be opening his personal wallet and paying for the difference? Not likely.

It isn't that the agent was doing a bad job. He simply didn't understand that what appeared on the surface to be an expensive purchase for his own middle-class lifestyle was literally a drop in the ocean to his more affluent client. There was definitely a lifestyle disconnect. I am not saying you have to be wealthy to properly design an insurance portfolio to cover affluent clients. But you have to at least put yourself in their high-priced shoes. This means you have to be conscious of everything in their financial universe, from the high-priced objects in their garage to the family situation under their roof. And that means lose the phone calls, the texting,

the e-mails, and go out and meet with the client on their home turf, no matter where they are located, in order to get a feel for the world they live in.

I met with a new client in Georgia who has a net worth in excess of \$50 million. The client has two teenagers driving to school every day with a total of \$500,000 in liability on the cars and a \$5 million umbrella. In addition, the client frequently allowed full-time employees to travel to and from school to pick up their younger children. The full-time housekeeper was using their vehicle to do the grocery shopping as well. This is like a liability perfect storm for the client, who was obviously given coverage advice that was not well thought out. In his insurance policy, not a properly designed insurance portfolio, the coverage was not afforded to either the workers compensation exposure or the auto liability exposure of the employee using the vehicles.

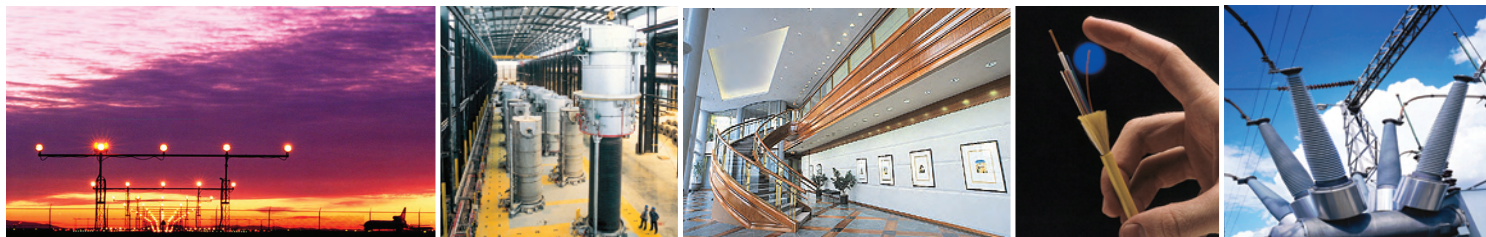
Clearly what the client needed was a risk manager who would consult with him and his family, their trusted advisors (attorneys, CPAs, financial advisors, etc.) and develop a comprehensive plan once all of the client's liabilities were understood. Instead, he used the same agent he had known since he was in college, and that agent "thinks he knows what's best" for his longtime friend and client. Again, it would appear that a bad decision was made by an agent who could not grasp the enormity of the potential situation.

It makes sense that if you have more money, you have larger exposures. Let's face it, the guy who passes you your morning coffee through the drive-through window isn't in danger of being sued for "everything he has." On the other hand, affluent individuals often have a bulls-eye on their back. Those individuals with all the toys will always be a liability magnet. The risk manager's responsibility is to help ensure there is enough coverage in place to keep their clients from losing what they worked so hard to create.

So why do high-net-worth individuals accept being under-insured from their agents? It stems from the frantic pace the clients run in their everyday lives. Many have enormous responsibilities that are leveled on them at work, which means early mornings and late evenings. Therefore, most of the personal insurance falls on the non-working spouse, and if there isn't a spouse, things get really scary. It seems to them that the personal lines insurance isn't that important until they really need it, and then it's too late.

see *LIABILITY* next page

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## LIABILITY

from previous page

So what if you don't buy adequate excess liability insurance? What happens after you have a car accident where you, or a family member, are at fault and your substantial assets are suddenly vulnerable? These cases become very complicated to defend and typically require an attorney billing \$1,000 per hour. You have everything to lose and absolutely nothing to gain. Many times these "events" will wipe out a client's entire net worth due to the constraints placed upon them by the courts, and the requirements to liquidate assets to settle a judgment rendered against them. It is not uncommon at liquidations to get 10 to 30 cents on the dollar, which means a \$20 million judgment may demand you to liquidate \$75 million of actual assets in order to raise \$20 million in cash. Where, if you had purchased that aforementioned \$20 million excess liability policy for \$5,121, you would have been able to choose some of the best lawyers in the country at no charge to you other than your annual premium. So much to lose for so little money begs the risk/reward question.

So in the end it all comes down to math and empowering a client to make a financial choice. I venture to say the excess liability premium versus a legal bill that runs \$100,000 a year for three to six years doesn't look too bad. The agent making \$80,000 a year still thinks it's expensive, and probably always will, but a risk manager will believe it was just what his client needed.

Take the time to stop and look around at what you have acquired, and then imagine life without it. Now be honest with yourself and your family and ask yourself who designed your coverage, an agent or a risk manager. Now take steps to prevent someone who doesn't really understand your situation or comprehend it from making bad decisions on your behalf. Let's face it, the wealth you and your family have created is definitely not the norm, and your personal lines insurance requires someone who can comprehend beyond the norm.

Timothy D. Radcliff is CEO of Private Client Insurance, an insurance agency, licensed in 39 states, that is solely dedicated to the personal lines insurance needs of high-net-worth individuals and families. He can be reached at tim@worldwidepci.com or by phone at (301) 245-0130.

from page 8

- **Salt Lake County average apartment rental rates are up** about 4.9 percent year over year from the second quarter of 2001 based on Hendricks & Partners' survey of approximately 25,400 units. Vacancy, at 3.4 percent, is down from 4.7 percent a year ago. Anything below 5 percent vacancy is considered a tight market.

- The former **Utah Fun Dome property** at 4998 S. Galleria Dr. in Murray has been sold to Utah-based **Kimball Investments** in partnership with **ICO Construction**, an arm of Ivory Homes. The 27-acre site includes a 154,000 square foot commercial building. Seller was a North Carolina bank. Vacant for some time, the site once housed an amusement center, and later a buffet-style restaurant and a veterinary practice. Kimball Investments principal David Kimball said the new owners have no definite plans for the property at this time, but are considering high-end apartments and an assisted living facility.

- **Coldwell Banker Residential Brokerage** has added **Kim Marble** as a sales associate in its South Ogden office. In her new position, Marble will specialize in residential sales in Weber, Davis and Box Elder counties. Previously, Marble worked for the past 14 years at Brigham/Farr West Pediatrics, where she was responsible for managing and bill-

ing.

## RETAIL

- The **Gateway Shopping Center** in downtown Salt Lake City welcomed **Blickenstaff's** and **Called to Surf** as its newest retailers Aug. 9. Both locally owned and operated, Blickenstaff's is a vintage candy shop, while Called to Surf, is a surf shop even for those who don't live beachside. Both stores have flagship locations at the Shops at Riverwoods in Provo which have been open since May 2010.

- **Geekorize**, a firm that markets tech accessories, has been launched in West Valley City. It is a division of FC Organizational Products LLC, the official consumer products licensee of Franklin Covey Co. The new firm offers accessories for the likes of iPads, Kindles and smartphones.

## SERVICES

- Celebrating its 10th anniversary, **Platinum Car Wash**, which has locations in West Jordan, Draper and Cottonwood Heights, has a **special offer for local firefighters** during August. Platinum Car Wash and Detail will give any employees of Unified Fire Authority and Salt Lake Valley Metro Fire Agency (including Sandy, Midvale, South Salt Lake, Bluffdale, Murray, West Jordan, West Valley and South Jordan fire agencies) a free basic exterior car wash this month.



Most golfers think shots launch in the direction they swing, and then curve from that direction depending on the club-face angle at impact. Such is not the case. In reality, balls launch in the direction the clubface faces at impact, and then curve (fades, slices, draws or hooks) away from that direction depending on which way the face angle deviates from the swing direction at impact.



Dave Pelz

The easiest way to achieve a shot which starts straight then slices, for example, is to address the ball as if you are going to aim it to the left, then rotate your clubface to aim straight. Then when you swing to the left (where your

swing is aimed), the ball will start straight and slice to the right. If you don't believe it, just try it. Your shot will launch in a direction determined by the clubface angle at impact, and then will spin and curve away from that direction, based on the severity of the glancing blow caused by the clubface angle relative to the swing path direction.

Dave Pelz is an American golf coach, known for his expertise and published writing on the art of the short game, particularly putting. Pelz's *Short Game Bible* was a *New York Times* national best-seller in 1999. Pelz was named by *Golf Digest* magazine as one of the 25 most influential instructors of the 20th Century. Pelz continues his research at the Pelz Golf Institute in Spicewood, Texas.

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# Top Travel Agencies in Utah

Ranked by Total Sales in 2011

Agency Name Address	Phone Fax Web	Total Sales in 2011	% Business Travel % Vacation/ Leisure Travel	# of Utah Offices # of Utah Employees	Specialties	President/ CEO
<b>Christopherson Business Travel</b> 558 S Green St, Ste 300 Salt Lake City	801-327-7700 801-327-7707 cbtravel.com	\$287 million	85% 15%	1 142	Business travel management and exclusive travel technology	Mike Cameron
<b>Hess Corporate Travel</b> 150 N Main St Bountiful	801-292-8687 801-292-8694 hesstravel.com	\$117 million	95% 5%	1 40	Business travel management	Alan H. Hess
<b>Morris Murdock Travel</b> 515 S 700 E, Ste 1B Salt Lake City	801-483-6441 801-483-6546 morrismurdock.com	\$50 million	0% 100%	6 90	Cruises, tours, guided vacations, and incentive travel	Brian Hollien
<b>Columbus Travel</b> 563 W 500 S Bountiful	801-295-9568 801-295-9688 columbusvacations.com	\$22 million	30% 70%	1 20	Vacation/Leisure Hawaii, Mexico, cruises, business incentive groups	Mark Faldmo
<b>Snelgrove Travel Centers, Inc.</b> 145 W Gentile St Layton	801-544-1800 801-546-9480 snelgrovetravel.com	\$17.9 million	5% 95%	1 16	Vacations and Cruises. "We beat internet prices"	Richard Snelgrove
<b>Cruise &amp; Travel Masters</b> 4376 S 700 E Salt Lake City	801-268-4470 DND cruiseandtravelmasters.com	\$17.7 million	45% 55%	1 45	Authentic and cultural travel experiences, corporate and group travel management	Toby Nash
<b>Clawson Travel Service</b> 216 S 1300 E Salt Lake City	801-582-0303 DND DND	\$16 million	90% 10%	4 10	International travel, Utah's oldest travel agency, founded in 1933, still family owned	Brad Clawson
<b>Thomas Travel</b> 535 E 4500 S, Ste D200 Salt Lake City	801-266-2775 801-293-0991 thomatravel.com	\$10 million	20% 80%	4 8	Group corporate and incentive travel, theater and arts, world wide vacations, cruises	Robert Guymon
<b>Wycoff World Travel</b> 3501 S Main St Salt Lake City	801-487-5991 801-487-5995 wycofftravel.com	\$4 million	50% 50%	1 4	Corporate travel management and custom vacations	David Anderson

DND= Did Not Disclose N/A= Not Available

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Banks	Aug 20	Meeting Facilities	Oct 29
Credit Unions	Aug 20	Salt Lake CBD Restaurants	Oct 29
Colleges & Universities	Aug 27	Hotels	Oct 29
Hospitals	Sept 10	Temporary Staffing Firms	Dec 10
Vision Centers	Sept 10	Copier, Printer, and Fax Dealers	Dec 10
Technology Companies	Sept 24	Office Furniture Dealers	Dec 10
Commercial Insurance Agencies	Oct 22	Commercial Real Estate Agents	TBD
Group Benefits Companies	Oct 22		

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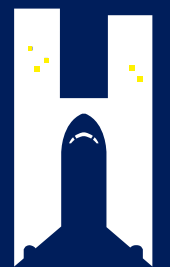
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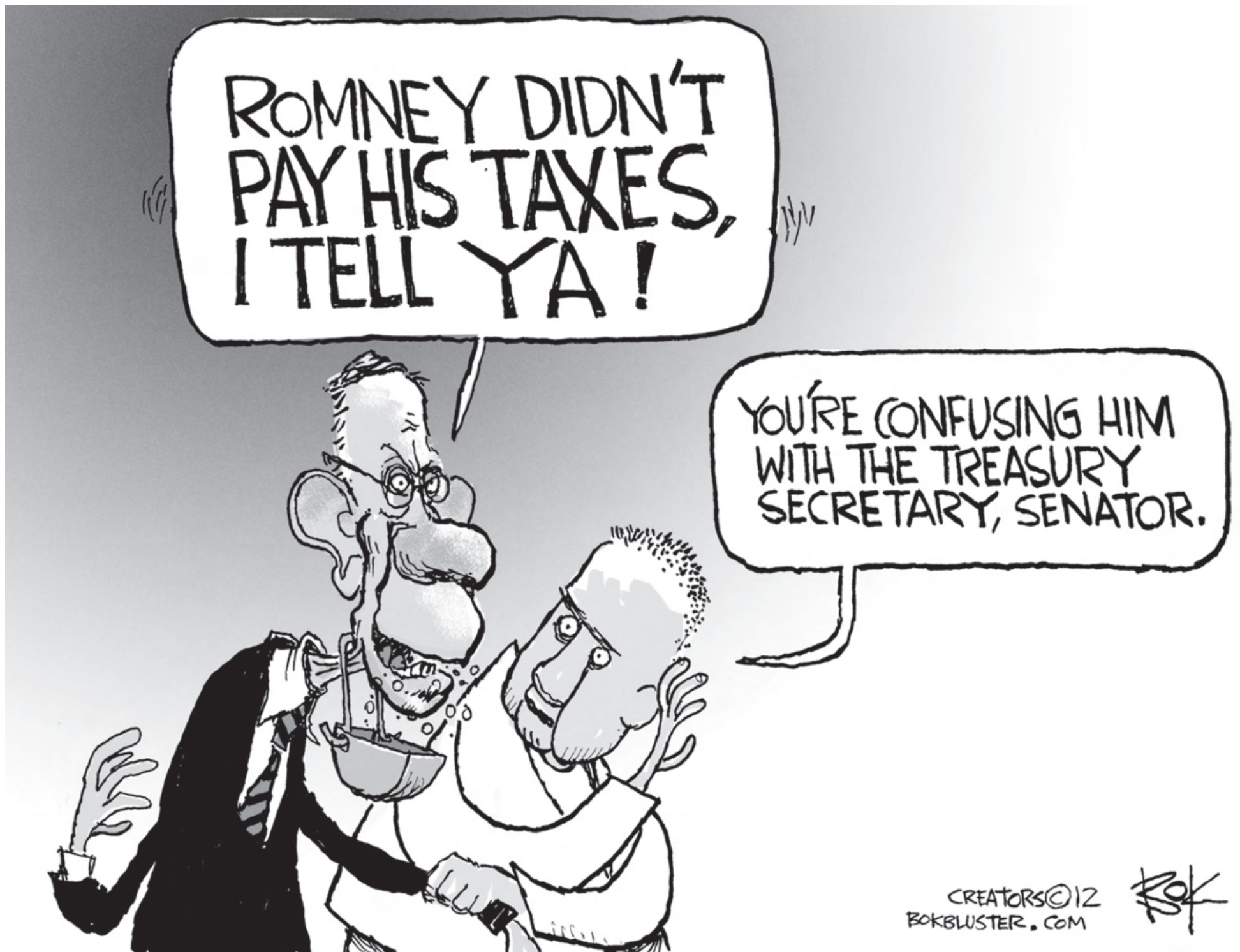
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## Fear and loathing in the Romney campaign

If Mitt Romney's purpose in traveling abroad this summer was to prove his credentials as a potential world leader, the verdict is mixed at best. Neither his tendency to utter bizarre insults nor his shallow, ideological approach to policy inspired much confidence, although he managed to garner support from Israel's right-wing prime minister and an eccentric former leader in Poland. (Our allies in the United Kingdom may never want to hear from him again.)

On the trip's final leg, the world saw the most unattractive side of the Romney campaign, when the traveling press secretary loudly told reporters to "kiss my ass" and "shove it," in a display

of the attitude that trickles down from the top.

Contempt toward the press is an important aspect of this attitude. For most of the campaign so far, Romney has pursued a media strategy that has become increasingly typical of Republican presidential candidates: Speak with Fox News and avoid the rest of the national press corps. That is because Fox journalists (an oxymoron?) are far less likely to

ask questions that the candidate doesn't wish to answer, such as the inquiries shouted at Romney in Warsaw.

Why were they shouting at him? Because during the entire

trip, he had essentially refused to engage with reporters at all.

According to a CNN transcript, American reporters were calling out questions in frustration as Romney walked away at a public plaza near Poland's Tomb of the Unknown Soldier, when press secretary Rick Gorka confronted them.

CNN: "Gov. Romney, are you concerned about some of the mishaps of your trip?"

NYT: "Gov. Romney do you have a statement for the Palestinians?"

Washington Post: "What about your gaffes?"

NYT: "Gov. Romney, do you feel that your gaffes have overshadowed your foreign trip?"

CNN: "Gov. Romney, just

a few questions, sir. You haven't taken but three questions on this trip from the press!"

Gorka: "Show some respect."

NYT: "We haven't had another chance to ask a question ..."

Gorka: "Kiss my ass. This is a holy site for the Polish people. Show some respect."

Within moments, Gorka told Jonathan Martin, a reporter for Politico, to "shove it."

Although Gorka called reporters later to apologize, his blustering attitude revealed the Romney campaign's fury over the negative fallout from the trip — and its arrogance toward the press, which it regards as an obstacle to its ambitions.

The emerging truth about the

man who will soon accept the Republican presidential nomination is that — like Sarah Palin — his handlers cannot trust him to cope with unscripted questions. That was particularly true on this trip, where his plenteous gaffes would only have multiplied if anyone had been able to ask a tough question.

And as with Palin, the difficult task faced by the Republican campaign is to protect Romney from the press scrutiny that is so essential to our process, and so damaging to his prospects.

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

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## Sports versus politics

It has long seemed to me that there is far more rationality in sports, and in commentaries on sports, than there is in politics and in commentaries on politics. What has puzzled me is why this is so, when what happens in politics has far more serious effects on people's lives.

To take one common example, there are many people who believe that if the market fails, the government should step in. But, if Robinson Cano strikes out, does anyone suggest that the Yankees should send in a pinch hitter for him on his next time at bat?

Everyone understands that a pinch hitter can also strike out, and is less likely than Cano to get a hit or a home run. But the very possibility that the government can fail when it steps in to substitute for a failing market seldom occurs to many people. Even among some economists, "market failure" is a magic phrase that implies a need

for government intervention.

We could argue about the empirical evidence as to when government pinch-hitting is better or worse. But there is seldom even an argument at all in some quarters, where government intervention follows market failure as the night follows the day.

Milton Friedman once pointed out, "A system established largely to prevent bank panics produced the most severe banking panic in American history." Many other examples could be cited where government intervention made a bad situation worse.

But most discussions of the role of government never even reach the point of looking for empirical evidence. Today, for example, there is much gnashing of teeth in the media because Democrats and Republicans can't seem to get together to create a bipartisan plan for government

intervention to solve our current economic problems.

Those who cry out that the government should "do something" never even ask for data on what has actually happened when the government did something, compared to what actually happened when the government did nothing. That could be a very enlightening trip through the archives.

Sports statistics are kept in a much more rational way than statistics about political issues. Have you ever seen statistics on what percentage of the home runs over the years have been hit by batters hitting in the .320s versus batters hitting in the .280s or the .340s? Not very likely.

Such statistics would make no sense, because different batters are in these brackets from one year to the next. You wouldn't be comparing people, you would be comparing abstractions and mistaking those abstractions for people.

But, in politics and in commentaries on political issues, peo-

ple talk incessantly about how "the top one percent" of income earners are getting more money or how the "bottom 20 percent" are falling behind. Yet the turnover in income brackets over a decade is at least as great as the turnover in batting average brackets.

In the course of a decade, the top 400 income earners include a couple of thousand people. The income received by the top 400 (as a statistical bracket) has risen, both absolutely and as a share of all income, even while the average income of the average person who was in that bracket at a given time has fallen by large amounts. How can this be? The short answer is turnover.

Turnover in sports creates no such confusion.

If players A, B and C all have batting averages in the .320s this year and, put together, they hit 100 home runs, while players X, Y and Z all have batting averages in the .320s next year, and together they hit 120 home runs, we could say that .320s hitters were increasing

the number of home runs they hit. But A, B and C could easily be hitting less than 100 home runs next year.

It all depends on whether you are talking about what is happening in statistical brackets or what is happening to actual flesh-and-blood individuals who were in those brackets at one time but not another time. We understand that when we talk about sports statistics. But not when we talk about statistics on political issues like income differences.

Do our IQs just drop spontaneously when we turn to politics? Or are there many people in politics and the media with vested interests in misstating issues, and lots of experience in doing so? I think it is the latter, especially during an election year.

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