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The massive landslide in the Bingham Canyon Mine of Kennecott Utah Copper is shown shortly after it occurred in April. The company has now cleared enough of the debris and rebuilt infrastructure in order to resume full production.

Back in full production...

but impact of Kennecott slide will linger at least three more years

Brice Wallace
The Enterprise

Kennecott Utah Copper's Bingham Canyon Mine is back in full production after an April 10 slide that was the biggest in the history of mining.

But the company's top executive said the slide's impact will be felt for at least three more years.

"I believe when the financial team is done this month, we'll demonstrate that we're cash-positive for August, which is a phenomenal feat," Kelly Sanders, president and chief executive officer, told the Salt Lake Rotary last week.

"You may get the idea from my conversation that we're fully back on our feet and fully recovered. We're not, and it will be three years before we are. We've made great strides. The team has done an excellent job. We are doing a superb job on safety and we are recovering at the mine. But it's 144 million short tons of material that we need to remove, [and] annually we move about 260 million tons, so we need to move that on top of what we do each year already. It will take us about three years to do that and it's a very expensive endeavor."

The slide had been predicted by experts monitoring the mine, although the amount

see KENNECOTT pg. 17

French firm to buy BioFire for $450 million

John M. Rogers
The Enterprise

Salt Lake City-based biotech firm BioFire Diagnostics has agreed to sell to French rival BioMerieux for a reported $450 million. The deal is due to close in early 2014.

BioFire is a 23-year-old company specializing in molecular biology whose products can detect viral and bacterial infections in a single test. BioMerieux, which makes tests to detect diseases and to check the quality of food, water and cosmetics, said the buyout is aimed at consolidating its position as a major player in infectious disease diagnostics.

Analysts characterize the deal as a sign of a trend in the pharmaceutical industry toward the use of sophisticated biotechnology as a way to better identify the causes of diseases and design more targeted treatments.

However, the price for BioFire was not cheap. Berenberg Bank, which is funding the deal through debt, noted that BioMerieux is paying 6.4 times the sales BioFire is expected to generate this year. In addition, BioFire is currently operating at a loss — mainly because of funds being plowed back into research and development — and BioMerieux expects the deal to have an adverse effect on its operating income for several years.

BioFire began life as Idaho Technology Inc. in the corner of an Idaho potato equipment facility in 1990. Eventually moving to Research Park at the University of Utah, the company changed its name to BioFire Diagnostics in 2012. With recent

see BIOFIRE pg. 16

Salt Lake City launches tools to ease solar conversion

Salt Lake City, in partnership with Utah Clean Energy, the Utah Automated Geographic Reference Center, the U.S. Department of Energy and Salt Lake County has launched an innovative new digital tool aimed at streamlining the path to solar energy utilization.

SOLAR SIMPLIFIED

This comprehensive tool, a website dubbed www.SolarSimplified.org, was developed with the goal of simplifying the solar process for all sectors, with the overall objective of reducing the time, costs and complexity of going solar. The website was created by Salt Lake City and Utah Clean Energy, with contributions from Salt Lake County and the Utah Automated Geographic Reference Center, and supported by the U.S. Department of Energy SunShot Initiative's Rooftop Solar Challenge and the Wasatch Solar Challenge.

Local clean energy experts at Utah Clean Energy developed the website's content, with their senior policy associate Sara Baldwin at the helm of the project.

see SOLAR pg. 16

Our profession needs to 'look more like America,' speaker tells UACPA

Brice Wallace
The Enterprise

The certified public accountant industry is making strides but must do more to ensure that "the profession looks more like America," the chairman of the American Institute of Certified Public Accountants said during a recent CPA gathering in Salt Lake City.

Specifically, Richard Caturano said the profession needs to hire more women, minorities and young people and make them feel welcome enough to stay.

The Big Four firms are doing well with diversity and inclusion, but smaller firms "are not known for being inclusive," he said. Overall, the profession is 79 percent white, while the overall U.S. workforce is 55 percent white.

"It's so complex as to how we do it," Caturano said about changing the profession's look. "It's a huge challenge for us."

There is room for change. The profession is expected to have 200,000 new jobs created over the next decade. What's more, the numbers of people taking the CPA exam or enrolling in accounting in college are all-time highs.

"We're seeing the people come into the profession. We've got to figure out how to keep them in the profession, making the profession more attractive," Caturano said during the member summit of the Utah Association of Certified Public Accountants (UACPA).

He noted that by 2050, the U.S. population will have a majority consisting of what currently are minorities, including Hispanics and Asians. By 2015, one-fourth of the U.S. buying power will held by minorities.

Boosting the numbers of women, minority and young CPAs will require a change in attitude in the profession, he said.

"It just so happens that some of the things that the new generation is looking for are the same things that would make our profession more attractive to minorities and more attractive to women," he said, citing flexibility regarding work hours as one example.

The profession might need to change its business model, currently reliant on billable hours, in order to provide employees with time to explore their "passions in life." That's in contrast to today's baby boomers, who tend to think they must "kill yourself in order to be successful," he said.

At least, that's what they will tell you.

"My theory is that deep down inside — not every baby boomer will admit this — but we kind of want the same thing, too," Caturano said. "The baby boomer male who has endured this 'walking uphill in the snow both ways to work,' deep down inside … I think the baby boomer knows that that is really not such a bad situation, to have a profession that will be able to embrace that kind of a concept so that you can spend more time with whatever it is that you want to do. …"

He described most CPAs today as "baby boomer white men" who tend to surround themselves with similar people as their ascend to leadership positions. That's why only 21 percent of CPA leadership positions are held by women, he said.

Women, minorities and young people must feel like they're being heard and have reasons to stay as CPAs, he said.

"Do we try to understand what their challenges are in life, or do we just kind of say, 'Well, that's not the way I think and you need to think like the bald white guy'?" he asked.

"I would maintain that if we truly had the reputation in any of our organizations of being truly welcoming and truly inclusive … it would be different. We would attract more students and we would outdo anybody in terms of competing for the bright talent coming out of college today. … We want the best and brightest people, OK? And the best and brightest people exist in women and minority communities. We need to get them. We need to make them feel welcome. We need to make them feel included."

Kent Thomas, UPCPA's president, made similar remarks.

"If we don't recognize and understand what's going on in the demographics of the population today, we're in trouble as a profession," Thomas said.

Regarding the younger generation, "if we don't provide and environment where they are excited and proud to be part of the profession and can meet their objectives, they will simply leave, which is what is happening in the profession today," he said. "They're simply not staying. So what we were getting among the best and brightest to come out of business schools to join the profession, they're not sticking around in the long haul. And that's unfortunate because a bunch of middle-aged, Caucasian males aren't going to be around forever to run this profession. We need good people to come in. …"

Thomas acknowledged that the fact it's "the right thing to do" rarely prompts change. Instead, firms must realize the economic ramifications of the shift.

"Let me tell you what that means: When I go out to sell our services and I run into a Hispanic entrepreneur, if I don't have someone in my firm or if I can't address the cultural issues that he faces and understand his business and what he's thinking, he's not going to hire me, period. If I run into a young entrepreneur — and I run into them all the time; we have lots of young startup companies with entrepreneurs — if I don't have someone who can fit his culture and establish a relationship there, he will not hire my firm, plain and simple. And that's the economic reality that we face and why we need to be on top of it," he said.

In addition to changes in the makeup of the workforce, Caturano suggested that CPAs in the future will need to be equipped with new skills: communication, flexibility, and computational thinking to help clients solve complex problems.

"If we're operating in business and industry, we expect to be able to solve those complex problems," he said. "Well, if we don't have the skill set to solve those problems, if instead all we know how to do is use a calculator, then we are really of no value, no use."

CPAs of 40 years ago sported green eyeshades and pocket protectors and were good at math but lacked certain other skills needed today, he said. "That's gone," Caturano said. "That's totally over. It's not what a CPA is today. That [older] CPA is of no value to our clients today because we just don't do that kind of work anymore."

EMI signs five Ariz. schools

Five Arizona charter schools have selected Utah-based EMI Health as their medical plan provider. EMI Health will begin providing healthcare coverage immediately for Harvest Preparatory Academy, Telesis Center for Learning, Horizon Community Learning Center, Arizona Charter Schools Association, and Choice Academies through the Arizona Charter Select Pool.

"Our flexible plans, excellent rates and broad provider network continue to attract a variety of employer groups to EMI Health," said Steve Morrison, CEO of EMI Health. "The addition of these charter schools shows that our products and services are in line with what employers and employees seek: low premiums without sacrificing excellent medical coverage."

EMI Health will be responsible for providing medical benefits and claims management to 410 employees covered under a variety of group healthcare plans. It will also work to maintain the highest quality medical coverage at the best rates possible for those covered within the pool.

EMI Health can provide extremely competitive rates to these employers because they are pooled together and underwritten as one large self-funded group.

EMI Health provides health insurance and administrative services to numerous employer groups in Arizona and Utah and offers its nationally recognized Wellness Program, award-winning customer service, and access to large and robust medical provider networks for employer groups of all sizes.

UofU business building opens

The David Eccles School of Business at the University of Utah has completed Phase Two of the Spencer Fox Eccles Business Building, bringing the full array of the building's innovative, state-of-the-art facilities into active use. Following the completion of the first phase in November 2011, the landmark building can now fully engage more than 3,500 business students in a unique business learning environment.

"With the completion of this project, the opportunities and facilities the David Eccles School of Business can offer to students are second to none," said Dean Taylor Randall. "Since this building's inauguration, we have seen a truly accelerated rate of engagement, innovation and collaboration, unprecedented in our history. The Spencer Fox Eccles Business Building has helped elevate our level of excellence to the national stage and enabled us to attract the world's brightest young business minds."

In addition to 11 new classrooms, 10 new team discussion rooms and three new conference rooms — many equipped with cutting-edge technology, podcasting and video-conferencing capabilities — the second phase also introduces several spaces that will foster collaboration and innovation. These include: the C.R. England Student Community Pavilion, which houses discussion rooms and student and faculty lounges to encourage interdepartmental projects and dynamic student-faculty interaction; the Ken Garff Classroom Pavilion that focuses on undergraduate business education, featuring the latest in wireless, integrated learning and video technologies; and the Ivory-Boyer Real Estate Center that hosts the annual Utah Real Estate Challenge and provides students with real estate industry education and research.

Also included are the Lyle K. and Marjorie J. Campbell Dean's Suite that houses the school's leadership team, enhancing opportunities for collaboration among its members; the Bill and Pat Child Community Space, a gathering spot for the campus and community, featuring indoor space and an outdoor terrace overlooking the heart of the campus; the First Security Board Room that honors the legacy of First Security Bank by featuring original furniture from the company's board room; and the Trading Room that features displays of financial market data on four large projection screens and multiple computers to help prepare students for careers in financial services.

More than 70 percent of the building's 188,623 total square feet on nine levels is dedicated specifically to students via classrooms, computer labs, collaborative meeting spaces and student lounges.

Diplomat: U.S., China truly integrated

People getting ideas about China from the news media may come away thinking that nation is rife with troubles, but the top career U.S. diplomat there said last week that the U.S. and China are intertwined in a relationship that "represents perhaps the greatest opportunity for the advancement of human civilization in history."

Speaking at the World Trade Center Utah, Robert Griffiths, U.S. consul general in Shanghai, said "it's just breathtaking to realize just how integrated we really are."

"To this bilateral relationship, both sides bring particular strengths," he said. "The United States brings its democratic values, the rule of law, high technology, innovation, creativity. The Chinese bring enormous economies of scale, enormous human capital, the willingness to work hard, a great sense of motivation and energy."

Griffiths acknowledged that China has issues, noting news media coverage of unfair trade practices; a failure to live up to obligations made when it entered the World Trade Organization in 2001; unfair advantages that government support gives to Chinese enterprises, particularly state-owned enterprises; intellectual property issues; limitations the government puts on foreign enterprises; cyber-security issues and "a growing sense of nationalism."

But U.S.-China connections are growing stronger every day. Annual trade between the countries totals $500 billion. Each country invests billions of dollars in the other. In education, universities in each country have large exchange programs, with more than 200,000 Chinese studying in the U.S. Travel and tourism is strong, with 1.4 million visas issued to Chinese for U.S. visitation last year and their average spending of $7,000 per trip resulted in a $10 billion economic impact in the U.S. Airlines carry 60,000 fliers between the countries each week. About 50,000 Americans — many of them businesspeople — live in Shanghai.

The economic model in which U.S. companies put operations in China because trade rates are low and then manufacture products for sale in the U.S. "is just outdated," Griffiths said. A U.S. Chamber of Commerce survey in Shanghai indicated that 60 percent of U.S. companies there were solely serving the Chinese market, with only 17 percent there just to manufacture and export.

"That's a huge shift for what's going on with American companies in China," Griffiths said. "It's a different world. It's a different relationship. It's one that's full of opportunities [and] full also of challenges. … As you know, when you go into the China market, you will work hard and you will work in ways you didn't know you had to work before. To be successful, you have to do a lot of things and you have to work hard. But the opportunities are enormous."

Griffiths cited several examples of business collaborations between the two countries. U.S. architects and designers have worked on China's tallest buildings. Clean coal technology from the U.S. has been bolstered by the economies of scale offered by China's largest coal company, with the result being technology that can be exported to other parts of the world. Collaborative research continues on processes using nuclear energy to generate electricity without radioactivity.

"China is a rising power. It's only going to get stronger. It's only going to get more influential. The potential points of conflict with the United States are only going to grow in number. That's not going to change. It is a relationship that is not going to suddenly become buddy-buddy. That's not going to be what's going to happen. It is going to be a [relationship] that, as far as we can see into the future, has serious potential conflict built into it," Griffith said.

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H&M plans Lehi store

Hennes & Mauritz (H&M), the fashion retailer that has opened several locations in Utah, has announced plans to open in Lehi. Set to open in the spring of 2014, H&M will locate at the Outlets at Traverse Mountain.

The new store is part of H&M plans to expand greatly throughout the West in 2014. H&M at the Outlets at Traverse Mountain will open in a 23,000 square foot store. The new store will include full-priced collections for ladies, men, young ladies and young men, with separate "store within store" sections for accessories. This location will also carry H&M's children's collection.

Since H&M opened its first store on New York's Fifth Avenue 13 years ago, the U.S. has been one of the retailer's most important markets. With its emphasis on expansion, H&M has 278 locations across the country.

Survey reveals downtown SLC parking pluses and problems

Salt Lake City residents don't avoid coming downtown because of parking problems and they seem to prefer off-street lots and garages to metered parking. Those are among the results of a survey released recently by Salt Lake City & the Downtown Alliance. More than 400 residents in Salt Lake and Davis counties were surveyed for the study.

In 2012, the city installed modern, solar-powered electronic meters, adding the convenience of multiple payment options for customers, including the ability to add time remotely via a smartphone application. Changes to pricing and hours for on-street parking stalls were also implemented to increase turnover for customers of local businesses.

A public information campaign followed to educate residents and visitors of these changes, available options and to provide resources. The main messages were to communicate the fact there are 30,000 garage and lot spaces downtown, compared to 2,600 metered spaces, and reminding residents and visitors metered parking is enforced from 8 a.m. to 8 p.m. for two hours.

Highlights from the survey include:

- Of the 406 people surveyed, only four people did not visit downtown in the past 12 months due to parking.
- 89 percent of people who parked downtown patronized off-street paid garages/lots, while only 55 percent chose paid metered parking.
- 63 percent and 65 percent have used City Creek Center or Gateway, respectively, in the past year.
- 67 percent prefer garages, while only 20 percent prefer meters.
- 70 percent showed a strong understanding of the usage of meters and felt they were easy to operate.
- Overwhelmingly, the ability to use a credit or debit card at meters was a favorite feature.
- Additionally, there was not a single feature or aspect of metered parking that stood out as negative.
- On-street metered parking time limits and costs had very little negative sentiments.
- Almost half of respondents assumed they needed to leave the receipts from the metered parking machine in their car.
- Many people appreciate and prefer using a credit/debit card to pay for on-street parking (and in general).
- Awareness and usage of the QuickPay smartphone app is VERY low – only 10 percent of respondent knew of it and event less have used the app.
- Nearly three-quarters of people were not aware of the extension in paid meter hours from 6 p.m. to 8 p.m.

The survey, conducted with Richter 7 and Lighthouse Research, was aimed to test the public's perception of parking as a wholeand to identify any pain points or lack of education. Additionally, the study looked to identify demographics experiencing unique challenges related to parking and found none. An across the board consistency was found between Salt Lake City and Davis Country residents, between those who do or do not live downtown, and between downtown workers and non-downtown workers.

Speaker: state survived 'doozy' of a recession

Utah's diversified economy has helped the state weather the recession and begin to emerge from it, a University of Utah economist said recently.

Speaking at the member summit of the Utah Association of Certified Public Accountants (UACPA), Pam Perlich, a senior research economist in the Bureau of Economic and Business Research at the U., described the recession as a "doozy" but one in which Utah endured.

"We didn't have it as bad and we're recovering a little bit more quickly, [being] not quite as volatile as the national economy," she said. "Our exposure to manufacturing wasn't nearly as bad, [and] we're much more diversified in our economy than most states' economies."

The recession's hallmark has been unemployment, which peaked in Utah at 8.4 percent in 2010 but has shrunk to 4.2 percent.

"We didn't have it as bad here in Utah as other places and we've come out of it a little faster, but it's been a very difficult recession to recover from, indeed, and the economy that's reconstituting itself is quite different than the one that we left in the dust," she said.

Perlich's presentation focused on the long-term drivers of change in Utah. The economy was one, along with technology and demography. But the three elements are intertwined. Perlich said the "knowledge technology" allowing instantaneous communication helped Utah transform from a rural, western state to a more-urban state connected to the outside world. A population boom in Utah has left Utah County with nearly as many residents as in all of Wyoming. Along the way, Utah also has capitalized on new physical connections, such as the interstate highway system, the last piece of which — be-

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Industry Briefs

ASSOCIATIONS

• The **Salt Lake Chamber** will have its 126th annual meeting beginning at noon Sept. 13 at the Marriott Downtown at City Creek, honoring four businesses as Outstanding Corporate Partners and six people as Chamber Champions. **Wells Fargo** is the Corporate Partner of the Year. **G&A Partners**, a comprehensive human resource outsourcing and administrative provider, will be honored as the Small Business of the Year. **Daynes Music Co.**, the oldest music store in the West and second oldest in the United States, will be honored as the Entrepreneur of the Year. The Community Partner of the Year award will be presented to the **Economic Development Corp. of Utah**. The Chamber Champions are **Ray Dardano** of Marlin Business Bank, **Karen Gunn** of Salt Lake Community College, **Janet Jorgensen** of Salt Lake Magazine, **Dave Loach** of IC Group, **Grant Nielsen** of KSL News Radio and **Tim Wheelwright** of Durham Jones & Pinegar PC. The chamber also will honor its immediate past chair, **Ray Pickup**, president and CEO of Workers Compensation Fund.

• **Jeremy Dailami**, cold chain LTL (less-than-truckload) director at **England Logistics**, Salt Lake City, has been elected to a three-year term on the **International Refrigerated Transportation Association's board of directors**. Dailami was nominated by a selection committee. His experience includes leading England Logistics' nationwide temperature controlled LTL department. He has been with England Logistics since 2009. He has experience managing accounts for both full truckload and less-than-truckload clients. Dailami holds a B.S. of Engineering from the University of Southern California and an MBA from Westminster College.


Jeremy Dailami

BANKING

• **Goldenwest Federal Credit Union**, Ogden, has named **Paul Callan** manager of its commercial lending department. In addition to his management responsibilities, Callan facilitates commercial financing programs for business owners throughout Utah. Callan is a 37-year banking industry veteran. Prior to joining Goldenwest in 2011 as a commercial loan officer, Callan was employed by Barnes Bank for 13 years. His background includes working in commercial lending at First Interstate Bank and Walker Bank. Callan earned an undergraduate degree from Brigham Young University and a MBA from Utah State University.


Paul Callan

• **Bank of American Fork** has promoted three people to new management positions: **Bill Beck**, **Philip Gunther** and **Steve Winters**. Beck, senior vice president, southern region manager and branch manager at Spanish Fork, previously worked in commercial lending, primarily out of the bank's Orem office. He also has worked at Far West Bank and First Security Bank. Gunther, senior vice president and chief credit administration officer, has more than 20 years of banking experience at Bank of American Fork, first as a teller and later as a courier, collector, auditor, consumer loan officer, commercial loan officer and manager of the American Fork branch. Winters, vice president, loan officer III and branch manager in American Fork, has been with the bank for 13 years, including work as a credit analyst in the SBA department and time as a bankcard representative and teller.


Bill Beck


Philip Gunther


Steve Winters

HEALTH CARE

• **South Davis Community Hospital** (SDCH), Bountiful, has named **Lisa Roskelley** as the executive officer for the **SDCH Foundation**. The organization supports the medical services provided to children, families and adults of all ages at SDCH, following life-altering accidents, illnesses or medical conditions. Roskelley's experience ranges from politics to journalism to corporate communications. She served as communications director and spokeswoman for former Gov. Jon Huntsman and participated in his 2012 presidential bid. Most recently, she has worked as a communications director with ATK. Roskelley received her bachelor's degree from Weber State University in communications/journalism and her master's of public administration from the University of Utah. She and her husband, Christian George, own and operate the Prairie Schooner Restaurant and Steak House in Ogden.


Lisa Roskelley

OUTDOOR PRODUCTS/ RECREATION/SPORTS

• **Ski Utah** and **Utah's 14 ski resorts** are collecting clean, gently used coats and jackets as part of their first-ever **"Suit up for Snow" project**. Coats of all sizes are welcome and will be distributed to The First Chair and The Road Home. The First Chair's mission is to help children from low-income households access learn-to-ski or snowboard programs. The Road Home operates out of the Salt Lake Community Shelter and provides basic needs such as food, clothing and shelter, while connecting people with resources to help integrate them back into the community. The coat drive will run through Nov. 1, with drop-off locations at participating resort ticket offices, Ski 'N See locations, the Rowmark Ski Swap and the Ski Utah Office. A complete list of locations is at http://www.skiutah.com/files/Snow_donation_location.pdf. Donors have a chance to win prizes, including a Yeti Pass, Rossignol skis, a Burton snowboard and assorted merchandise from Smith, Dakine and Hot Chillys. Ski 'N See will offer a discount on a new jacket purchase for donating a coat at one of its participating stores.

SERVICES

• **Solomon Bruce Consulting LLC**, an international management/engineering advisory services practice based in Texas, has opened an office in Salt Lake City. Its allied associate in the office will be **Jeffery S. Carrel**, a former senior supply chain managing executive with Johnson & Johnson pharmaceuticals working in the Philadelphia office. He is a United States Air Force veteran, serving six years as a B-52 navigator in Strategic Air Command. He brings more than 25 years of experience working in the pharmaceutical supply chain. He has extensive experience in tactical and strategic planning/scheduling, operations management, continuous improvement methodologies, project management, new products introductions and customer relationship management. Carrel earned an undergraduate degree in finance from Weber State University and an MBA from the University of South Dakota.

TECHNOLOGY/LIFE SCIENCES

• **Centershift Inc.**, a Salt Lake City-based developer of Internet-based management applications for self-storage, announced that **Terry Bagley** has transitioned out of his position as president and chief executive officer, and he will be succeeded by **James Hafen**. Hafen will also assume a seat on the Centershift board of directors. Hafen is one of the original founders of Centershift and was previously serving as a senior vice president and chief technical officer since 2001. Hafen has worked in various capacities at several technology-based companies, including Megahertz, US Robotics, Seagate and Evans & Sutherland. He also was director of application development at Extra Space Storage. He was the architect of the industry's first Internet-based storage management system that, after being spun out of Extra Space, later evolved into the Centershift Store application. Hafen holds a Bachelor of Science degree in Economics from the University of Utah. As part of the transition, Bagley has resigned his seat on the Centershift board of directors. The company said Bagley had previously determined the time was right to apply his experience to other endeavors. He will continue to work with Centershift on a consultative basis in the near term during the transition. The company also said that **Mark Smith**, a founding member of the company, has been named senior vice president of product strategy. **David Voorhies** has been promoted to senior vice president of product development. He has been with the company for 11 years and was previously vice president of application services. **Steve Hall** has been promoted to vice president of operations. He spent the previous four years as systems and operations manager for the company.


James Hafen

TRAVEL & TOURISM

• **Cvent**, a cloud-based enterprise event management platform, has ranked **Salt Lake City** 47th on its list of the **top 50 cities for meetings and events** in the United States. The ranking is based on meeting and event booking activity in the Cvent Supplier Network. It is the first time the city has been included in the rankings. Cvent evaluated nearly 5,700 American cities featured on its Supplier Network to create the list. Activity was tracked between July 2012 and June 2013, and the ranking was then determined by a set of qualifying criteria.

CPAs honor their own at annual awards banquet

The Utah Association of Certified Public Accountants (UACPA) honored 20 of its members for demonstrating exceptional service to the UACPA, the CPA profession and community at the annual awards banquet on Aug. 23 at the Little America Hotel in Salt Lake City.

The Distinguished Service award went to Auston G. Johnson, who retired from his position as state auditor in December 2013. He was elected for four terms and served in that position since 1995. Johnson is a member of the American Institute of CPAs, where he has volunteered on the auditing standards board and served on a task force that wrote the *Government Accounting and Auditing Guide*. He has served twice as president of the National State Auditors Association and is currently chair of the *Yellow Book* advisory council, where he provides guidance to the comptroller general of the United States in establishing government audit standards.

Dean R. Burdick received the Outstanding CPA in Public Practice award. Burdick is a partner of the St. George CPA firm of Hinton Burdick CPAs and Advisors, which has expanded to seven regional offices. Burdick's areas of specialty include individual and corporation taxation, 1031 real estate exchanges, estate and financial planning, business entity selection, IRS negotiations, taxation and business consultation.

Carey D. Woolsey received the Outstanding CPA in Business & Management award. Woolsey has worked at the Church of Jesus Christ of Latter-day Saints for more than 17 years and previously served as president of the UACPA (2010 – 2011). He is a certified internal auditor (CIA) and certified fraud examiner (CFE).

The Outstanding Educator award went to Robert L. Gardner, a professor of accountancy at BYU. After serving four years in the United States Air Force as a missile launch officer, Gardner attended the University of Utah and eventually received his Ph.D. in tax from the University of Texas. He has served as the associate director of the School of Accountancy and, in addition to receiving numerous teaching awards, he holds the Robert J. Smith Distinguished Professorship of Accounting. Gardner has served as president and trustee of the American Taxation Association.

Patsy Halladay was awarded the Outstanding Leadership Council Member award. The CFO of AAA Fair Credit Foundation has 19 years of experience and is currently the chair of the UACPA's Financial Literacy Task Force. Halladay has served on the board of directors for the Utah JumpStart Coalition and for the South Valley Sanctuary. She recently took on the responsibility as the float chairperson for the 2013 Days of '47 parade.

Annette Andersen was awarded the Rising Star award. Andersen has volunteered for the UACPA as a campus ambassador at the University of Utah and organized a multi-college conference, aided in the build-a-bike service project for the Young CPA Professionals and helped coordinate networking events for students. In 2009, Andersen received the "Outstanding Student Award in Business" from Salt Lake Community College.

Laura Wagner received the Women to Watch: Emerging Leader award. With nearly seven years of experience with Grant Thornton, Wagner has spent the last three years as their women initiatives champion. She currently acts as the treasurer for the Women's Tech Council and co-founded the Salt Lake City Chapter of the University of Wisconsin Alumni Association. She recently completed a four-year term on the board of the Utah Chapter of the American Women's Society of CPAs.

Jodie B. Hewitson received the Women to Watch: Experienced Leader award. After 10 years with Deloitte & Touche, Hewitson joined Tanner's tax team in 2007 and was promoted to tax partner in 2011. She is the past president and current board member of the Utah affiliate of the American Women's Society of CPAs.

The Jeannie Patton Lifetime Service Award went to Bryce E. Olson, who retired in 2006 and now volunteers as an accountant and consultant for a not-for-profit entity. Olson worked for the IRS for 10 years and in 1977 returned to public accounting, eventually merging his practice with the Tanner firm. In addition to serving on various UACPA committees, Olson acted as president from 1999 to 2000.

The Life Member Award celebrates the continuous service of CPAs who are retired and 55 years or older. The 2013 individuals recognized include Paul H. Kastler, Auston G. Johnson, Wendy S. Martin and D. Gerald Searfoss.

Seven students who exemplify the ideals and excellence of the profession received the Outstanding Accounting Student award. Those students include Jill H. Aoki from Utah State University, Scott N. Barney from Southern Utah University, Sherry A. Hullinger from Weber State University, William Liddle III from Westminster College, Ryan Hess from the University of Utah, Jordan Hales from Utah Valley University and Stephanie Ann Flint from Brigham Young University.

Calendar

September 8-11

2013 Material Handling & Logistics Conference, sponsored by engineering company Dematic. Conference is designed to educate participants on how to benchmark their own supply chain goals, quantify gaps and help them build their own actionable 100-day plan to start closing those gaps. Keynote speaker will be Jay Leno. Location is Grand Summit, Park City. Cost is $900. Details are available at www.mhlc.com or by contacting Cheryl Falk at cheryl.falk@dematic.com or (262) 860-6715.

Sept. 10, 7:15-9 a.m.

"Building Momentum" breakfast program, presented by the Association for Corporate Growth (ACG) Utah Chapter. September event is the first of the 2013-14 program series. Keynote presenter is Jeff Edwards, president and chief executive officer of the Economic Development Corp. of Utah. Location is the Little America Hotel, 500 S. Main St., Salt Lake City. Registration and details are available at (801) 359-8613 or www.ACGUtah.org.

Sept. 10, 7:30 a.m.-5 p.m.

Second annual Utah Small Business Summit, presented by the Utah Small Business Coalition. Theme is "Focus 2013: Health Care," with concentration on the Affordable Care Act. Geared to small-business owners and managers. Features keynote speakers, breakout sessions and exhibitors. Location is the Salt Palace Convention Center, 100 S. West Temple, Salt Lake City. Cost is $50. Details are at http://www.slchamber.com/page/list/view/events_calendar?event=4167.

Sept. 10, 11:30 a.m

ChamberWest's Women in Business meeting, featuring a special program to honor veterans and military service men and women. Location is Arbor Manor Reception Center, 2888 W. 4700 S., West Valley City. Cost is $20 with RSVP, $30 without. RSVPs can be completed at http://www.chamberwest.org/rsvp.

Sept. 10, 11:30 a.m.-1 p.m.

Brown Bag Workshop titled "Social Media Made Simple," a Sandy Area Chamber of Commerce event. Presenter Lisa Smith, a speaker, trainer and marketing consultant for small businesses, will discuss why businesses must be involved in social media and how to use it strategically to bring real results. Location is Salt Lake Community College Miller Campus, Miller Free Enterprise Center Building, Room 223, 9750 S. 300 W., Sandy. Free, with lunch provided. Details are available by contacting Jaymie Osborne at jaymie@sandychamber.com.

September 10-12

PERS (Personal Emergency Response System) Summit, presented by alarm monitoring company AvantGuard, based in Ogden. Event will provide alarm dealers with the information and tools they need to successfully market and manage their PERS businesses. Keynote speakers will be Elizabeth Smart, an abduction survivor and strong supporter of alarm monitoring for homes; and Kristin Simmons, partner and customer experience architect at Lightswitch. Location is Deer Valley Resort, Park City. Registration is $350 for AvantGuard dealers and $450 for non-dealers and vendors. Registration is at perssummit.com.

Sept. 11, 11:30 a.m.-1 p.m.

Building Owners and Managers Association (BOMA) of Utah Annual Social Luncheon. Location is Little America Hotel, 500 S. Main St., Salt Lake City. Event is free for BOMA members, $35 for BOMA member guests and $45 for nonmembers. Details and registration are at www.BOMAUtah.org.

Sept. 12, 8 a.m.-4 p.m.

"Utah's Manufacturing Future," a first-ever manufacturing summit sponsored by the Utah Manufacturing Association. Keynote speaker Jason Dorsey, "The Gen Y Guy," will discuss "Gen Y, Gen X, Boomers and Traditionalists All Sharing One Workplace — This Was Not Supposed to Happen." Location is Salt Lake Community College Miller Campus, 9750 S. 300 W., Sandy. Cost is $100. Registration and details are at (801) 363-3885.

Sept. 12, noon-1:30 p.m.

Sixth annual Women Tech Awards, presented by the Women Tech Council. Event will honor 17 finalists and award recipients. Speaker will be Jennifer Lawton, president of MakerBot. Location is Grand America Hotel, 555 S. State St., Salt Lake City. Cost is $75 for council members, $85 for nonmembers. Details and registration are at http://www.womentechcouncil.org/.

Sept. 13, noon-1:30 p.m.

Salt Lake Chamber's 126th Annual Meeting. Location is Salt Lake Marriott Downtown at City Creek, 75 S. West Temple, Salt Lake City. Cost is $75. Details are available by emailing annualmeeting@slchamber.com or by calling (801) 328-5060.

Sept. 14, 9 a.m.-5 p.m.

"Take Your Business Global," presented by Global Eventions Network. Dolf de Roos will discuss "Take Your Business Global." Taira Koybaeva will discuss "What You Have Going For You and Against You in Globalization as an American." Darnell G. Davis will discuss "Using Networking to Increase Your Exposure — Nationally and Internationally." Event kicks off with Sept. 13 VIP dinner with the speakers (limited to 25 people). Location is Snowbird Ski Resort. Cost for both events is $179. Conference is $129. VIP dinner only is $50. Details are at http://goingglobalwithdolf.eventbrite.com.

Sept. 17-18

Utah Crossroads Conference, hosted by the Utah Human Resources State Council, an affiliate of the Society for Human Resources Management (SHRM), and Utah State University Partners in Business program. Speaker and author Steve Gilliland will discuss "Making a Difference." Ryan Estis, chief experience officer at Ryan Estis & Associates, will discuss "Generation NeXt." Motivational speaker Jody Urquhart will discuss "I Love My Job, It's the People I Can't Stand." Benson Porter, managing director of human resources for the Church of Jesus Christ of Latter-day Saints, will discuss "Building Leadership Capacity." Event also will feature a silent auction. Location is the Utah Valley Convention Center, 220 W. Center St., Provo. Cost is $399 for full conference ($150 for students) or $225 for either day ($90 for students). Details are at www.utahcrossroadsconference.org.

Sept. 17, 3:30-5:30 p.m.

"Leadership Workshop for SLC Professionals," presented by Clearlink. Speaker Dr. Daniel Crosby will discuss what makes a superhero a superhero and how that translates into leadership. Location is Gallivan Center (Upstairs), 239 S. Main St., Salt Lake City. Free. Registration information is available by contacting Marki Perkins at marki.perkins@clearlink.com or Chuck Melick at chuck.melick@clearlink.com.

Sept. 18, 6:30-8:30 p.m.

Entrepreneur CrowdPitch Event, presented by Grow Utah Ventures. Attendees and judges will decide the winners of the "Consumer Products" Concept to Company Contest. Location is NorthFront Business Resource Center, 450 S. Simmons Way, Kaysville. Free, but registration is required. Details are available at https://www.eventbrite.com/directory/ by searching "CrowdPitch."

September 19-20

Utah Business Sustainability Conference, produced by P3 Utah and Net Impact Utah. Pre-conference Sept. 19 from 8:30 a.m.-4:30 p.m. Conference Sept. 20, 8 a.m.-6 p.m. Event includes industry discussions, workshops, networking opportunities and a reception. Keynote presentation will be by George Bandy, vice president for sustainability at Interface Carpet. Leader panel will include Mark Miller of Mark Miller Toyota and Rene Oehlerking of Garbett Homes. Location is the Wasatch Retreat and Conference Center at the Episcopal Church Center of Utah (ECCU), 75 S. 200 E., Salt Lake City. Cost is $175, with discounts for students. Details are at https://eccu.wufoo.com/forms/3rd-annual-utah-business-sustainability-conference/.

Sept. 19, 7:30-9 a.m.

NAIOP (Commercial Real Estate Development Association) Utah Member Meeting. Event will feature a Utah County commercial real estate update from a panel including moderator Christian Gardner, president and CEO of the Gardner Group and NAIOP Utah's 2012 Developer of the Year; David Baird of the Economic Solutions Group; Russ Fotheringham, the Economic Development Corp. of Utah (Utah County); Brandon Fugal of Coldwell Banker Commercial; and Ryan Speirs of Zions Bank. Location is RiverPark Building Two, 10701 S. River Front Parkway, Suite 200, South Jordan. Free for NAIOP members, $100 for nonmembers. Registration can be completed at http://bit.ly/NAIOPUTsept19Mtg.

Sept. 19, noon-1:30 p.m.

"Tax Incentives for Exporters," a World Trade Center Utah event. Presenter is Eric Fischer, an international tax expert with BDO, who will discuss incentives that exist for exporters, who qualifies for the incentives, how the incentives work, structuring techniques and steps that can be taken to qualify. Location is WSRP, 155 N. 400 W., Suite 400, Salt Lake City. RSVPs can be completed by contacting Merrill Taylor at mjtaylor@wsrp.com or (801) 931-3858. Details are available at https://www.wtcutah.com/events.

Sept. 24, 8-9:30 a.m.

"Tax Considerations Surrounding Cloud Technologies," sponsored by the Utah Technology Council (UTC) and KPMG. Speakers will be Brett Weaver and Thomas Hayes of KPMG LLP. Location is Joseph Smith Memorial Building, Bonneville Room, 15 E. South Temple, Salt Lake City. Free for UTC members, $30 for nonmembers. Registration and details are available at www.utahtech.org/events or by calling (801) 568-3500.

September 25-27

Property Solutions Summit: "Portals to Platforms," a summit focused on property management and its technology. Event includes keynote presentations, breakout sessions, workshops and networking. Sept. 25 keynote will be by Stephen Dubner, *The New York Times* best-selling author of *Freakonomics* and *Super Freakonomics*, who will discuss how to create behavior change and the value of asking unpopular questions. Sept. 26 keynote will be by Ann Rhoades, co-founder of JetBlue and chief people officer for Southwest Airlines, who will discuss the principles of her best-selling book *Built on Values* and the competitive advantages that arise from a values-based strategy. Location is Stein Eriksen Lodge, 7700 Stein Way, Park City. Cost is $725. Details are at http://propertysolutions.com/summit2013.

Sept. 26, 11:30 a.m.-1 p.m.

Urban Land Institute Utah September box lunch program. Speaker Molly O'Neill Robinson, project manager for Salt Lake City's Downtown Master Plan, will discuss the details of the plan. Location is Hunt Electric, 1863 Alexander St. (2410 South), Salt Lake City. Cost is $20 for members, $25 for nonmembers. Registration is available by calling (800) 321-5011.

Sept. 27, 7:30 a.m.-9:30 p.m.

Social Enterprise and Crowdfunding Conference. Topics include how to launch a social enterprise, raising money with crowdfunding, applying for 501(c)(3) status, doing effective due diligence for impact investors, and how to make effective grant applications. Speakers will include Devin D. Thorpe, executive, entrepreneur, author and speaker; Eric Weinberg of Impact Capital Strategies; Alan Hall of Grow America; Fraser Nelson of the Community Foundation of Utah; and Richard Swart of the University of California-Berkeley. Location is Snowbird Ski and Summer Resort. Ticket prices vary. A limited number of stu-

see CALENDAR pg. 10

Legal Matters

Just how limited is your limited liability protection?

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

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

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

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

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

Another factor courts consider is whether the business observed its business formalities. Thus, a business should hold an organizational meeting when the business is first organized, adopt bylaws for a corporation or an operating agreement for an LLC, issue certificates for stock or clearly provide documentation that the shares are uncertificated if the entity is a corporation, maintain complete business and financial records, hold regular annual meetings and keep minutes, file business income tax returns, ensure named officers and directors are involved and play a role in the business, file annual business renewals with the state, adopt resolutions reflecting approval of all major corporate actions (even LLCs should take steps to document action by appropriate records), pay dividends when possible and maintain arm's length relationships among the owner and the business.

In addition, Utah courts consider whether the business owner

see LIABILITY pg. 16

Calendar

CONTINUED FROM P. 8

dents and nonprofit leaders will be invited to attend for free. Details are at http://secfc.eventbrite.com/.

October 1-2

APWA Fall Conference and Storm Water Expo, presented by the Utah chapter of the American Public Works Association (APWA), the Utah Stormwater Advisory Committee (USWAC), the American Society of Civil Engineers (ASCE) and Utah City Engineers Association (UCEA). Event includes 50 exhibitors and 64 classes. Tracks include transportation, utilities, technology, safety and emergency management, storm water and construction, municipal storm water and operations and maintenance. Location is the South Towne Exposition Center, 9575 S. State St., Sandy. Details are available at utah.apwa.net.

Oct. 11, 6 p.m.

Utah Technology Council Hall of Fame Gala, a black-tie event honoring accomplishments of the Utah technology industry. Networking reception begins at 6 p.m., following by 7 p.m. dinner and program. Keynote speaker will be Shantanu Narayen, president and CEO of Adobe Systems Inc. Location is the Grand America Hotel, 555 S. Main St., Salt Lake City. Details are available at (801) 568-3500.

Oct. 18, 7:30 a.m.-6 p.m.

2013 nanoUtah Conference, hosted by the University of Utah and the Nano Institute of Utah. Conference begins at 8 a.m. with remarks by Tom Parks, vice president for research at the U.; Richard B. Brown, dean of the College of Engineering at the U.; and keynote speaker Dennis Discher, professor of chemical and biomolecular engineering at the University of Pennsylvania. Conference will feature several nanotechnology-related sessions on topics including materials and characterization, devices and sensors, energy and environment, nanomedicine and commercialization; research presentations; a poster session and exhibit booths. Location is the Utah Science Technology and Research (USTAR) initiative's Sorenson Molecular Biotechnology Building at the U. Cost is $175; $65 for students. Details are at http://www.nanofab.utah.edu/nanoutah13/.

Oct. 22, 7:15 a.m.-5 p.m.

Eighth annual Utah Procurement Symposium, presented by the Governor's Office of Economic Development (GOED). Designed for companies interested in government contracting. Event includes speakers, breakout sessions, a vendor fair and networking opportunities. Location is South Towne Exposition Center, 9575 S. State St., Sandy. Price before Oct. 15 is $50 for single attendees and $40 for companies. Details and registration are at http://business.utah.gov/contracting/PTAC.

Oct. 24, 6 p.m.

ChamberWest 50th Anniversary Gala. Emcee will be KUTV's Sterling Poulson. Location is Hilton Salt Lake Airport, 5151 Wiley Post Way.

Oct. 29-Nov. 5

Salt Lake Chamber trip to Eastern Europe. Includes visits to Prague, Czech Republic; Vienna, Austria; and Budapest, Hungary. Cost is $2,799. Details are available by contacting Maria Nelson at (801) 328-5047 or mnelson@slchamber.com.

November 12

Thirty-seventh annual **American Express Women & Business Conference and Wells Fargo Athena Awards Luncheon**, presented by the Salt Lake Chamber Women's Business Center. Event includes speakers and breakout sessions. Location is the Little America Hotel, 500 S. Main St., Salt Lake City. Cost is $75. Details are at http://www.slchamber.com/page/sandbox/view/womenandbusiness.

Vivint Solar secures new funding worth $200 million

Vivint Solar of Provo, a residential solar integrator, has announced it has secured two new tax equity funds worth $200 million. The funding will be used to continue developing solar solutions for Vivint Inc.'s 775,000 home automation customers.

"This new funding reinforces market confidence in our ability to expand our leadership in the residential solar space," said Brendon Merkley, CEO of Vivint Solar. "Since 2011, we have leveraged Vivint's sales and internal infrastructure to build a solar business that has exceeded our installation goals consistently each quarter."

Vivint Solar was the second largest U.S. residential solar installer in the first quarter of 2013, according to the *U.S. PV Leaderboard* published by GTM Research. The residential solar market continues to show consistent growth with solar being more affordable than ever. Through a power purchase agreement (PPA), a homeowner can buy the power generated by a solar photovoltaic system at a lower rate than they could get from a local utility provider. Vivint Solar designs, installs, monitors and services the system with no additional out-of-pocket costs to the homeowner.

Vivint Solar currently operates in California; Hawaii; Maryland; Massachusetts; New Jersey, New York and Washington, D.C.

Innovators of Utah

Sponsored by Workman Nydegger

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Corbin Church

Jennie Platt

Jayma Woods

EDITORS NOTE: Each month the intellectual property law firm Workman Nydegger sponsors this spotlight on a firm leading the way as an "Innovator of Utah."

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STRUCTURAL ENGINEERING UTAH

sponsored by: DUNN ASSOCIATES, INC Consulting Structural Engineers

What do numbers tell us?

Similar to statistics, we can manipulate numbers to justify and support our desired outcome. Our ability to be exact to several significant figures easily can be achieved with the simplest calculator. What does each numeral to the right of the decimal point actually mean? It can be quite different if you are comparing the amount of poison or a virus in a solution to your handicap in golf. Numbers make us feel good; statistics make us feel even better. If something is 99.9 percent pure it may sound safe, unless that 0.1 percent is bad enough to make a difference.


Ron Dunn

Structural engineers work with numbers constantly. We make best guess estimates, examine numbers precisely and interpret complicated numerical results. It is what structural engineers do with these answers that can actually make the real difference. Gravity has been around a long time, and structural engineers are constantly battling these effects.

On a typical project a structural engineer will develop a set of structural calculations which represent the assumptions, potential load cases, procedures, material stresses and structural solutions to the required parameters of the particular building in design. More and more these calculations are now performed within computer models and complicated software programs. The structural engineer with then interpret their calculations and graphically convey these results in the form of structural drawings. Chances are these numerical results will be interpreted differently by different engineers. These drawings complement the architectural drawings from which a Contractor will build.

Our reputation as engineers is usually centered on our math and science strengths, yet I would defend that a significant amount of art and creativity can complement our true abilities and success as a structural engineer. It is ultimately what structural engineers do with the numerical results they obtain that can truly influence a project for good or bad. Numbers themselves can provide a good solution, but an engineer's ability to be creative with those numbers can provide the best solution.

Rule 506 exemptions do not apply when felons and other 'bad actors' are involved in issue of securities

Part Two in a Two Part Series

On July10 the Securities and Exchange Commission (SEC) approved an amendment to Rule 506 under Regulation D of the Securities Act of 1933 disallowing the use of the exemption for offerings in which certain felons and other "bad actors" are involved. That amendment was required by the DoddFrank Wall Street Reform and Consumer Protection Act (Dodd-Frank). That same day the SEC also lifted the long-held ban on general solicitation and advertising for offerings that are limited to accredited investors under Rule 506, as was addressed in part one of this two part series. These amendments were issued by the SEC in its Release No. 339415 and will become effective on Sept. 23.


THOMAS R. TAYLOR

This article addresses the new felon and "bad actor" disqualification provisions under Rule 506 of Regulation D.

EXCLUSION OF "BAD ACTORS" AND "DISQUALIFYING EVENTS"

Under the felon and "bad actors" requirement of Dodd-Frank, issuers of securities cannot rely on the Rule 506 exemption (including both the "traditional" Rule 506 exemption (now renumbered as "Rule 506(b)") and the new Rule 506(c) exemption, which allows general solicitation and advertising in sales to accredited investors) if the issuer or any other covered person has been the subject of a "disqualifying event." Persons covered by the rule include the issuer (and its predecessors and any affiliated issuers), as well as the following:

• Directors and certain officers, general partners and managing members of the issuer.

• 20 percent beneficial owners of the issuer.

• Promoters.

• Investment managers and principals of pooled investment funds.

• Persons compensated for soliciting investors as well as the general partners, directors, officers and managing members of any compensated solicitor.

"<u>DISQUALIFYING EVENTS</u>."

Disqualifying events include, among others:

• Felony or misdemeanor criminal convictions in connection with the purchase or sale of a security, making a false filing with the SEC, or arising out of the conduct of certain types of financial intermediaries. The criminal conviction must have occurred within 10 years of the proposed sale of the securities in questions (or five years in the case of the issuer and its predecessors and any affiliated issuers).

• Court injunctions or restraining orders in connection with the purchase or sale of a security, making a false filing with the SEC, or arising out of the conduct of certain types of financial intermediaries. The injunction or restraining order must have been issued within five years of the proposed sale of the securities in questions.

• Final orders from federal banking agencies, or state regulators overseeing securities, insurance, banking, savings associations or credit unions, that:

1. bar the issuer from associating with a regulated entity, engaging in the business of securities, insurance or banking, or engaging in savings association or credit union activities; or

2. are based on fraudulent, manipulative or deceptive conduct and were issued within 10 years of the proposed sale of the securities in questions.

• SEC cease and desist orders related to violations of certain anti-fraud provisions and registration requirements of the federal securities laws.

•Suspension or expulsion from membership in a self-regulatory organization (SRO) or from association with an SRO member.

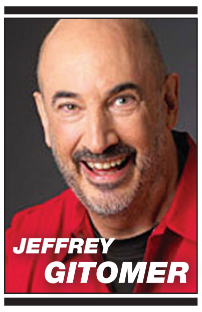
Interestingly, only disqualifying events that occur <u>after</u> Sept. 23 will disqualify an issuer from relying on either of the exemptions provided under Rule 506. However, matters that existed before that date and that would otherwise constitute a disqualifying event <u>must</u> be disclosed to investors.

Furthermore, an exception from disqualification exists when the issuer can that show it did not know and, in the exercise of reasonable care, could not have

see TAYLOR pg. 16

Here's a list of leadership actions that are not optional for leaders

"Where's the action? Where's the game?" is a line in the song "Oldest Established" from the immortal Broadway show (and my personal favorite) *Guys and Dolls*.



For the uninformed, the show is about a craps game and a leader named Nathan Detroit. The movie version stars Frank Sinatra and Marlon Brando and won all kinds of awards. The plot is about gambling, winning, attracting and making it happen no matter what. It's just a great show and movie with great music and a happy ending.

The theme is one of looking to the leader to make things happen. And it's the same in your business — just without the craps game and the songs. BUT not without gambling. All business is a gamble and all businesses look to their leaders to "make it happen."

Here are the actions I have observed about leadership that are mandatory for leadership success. They're internal actions that build trust, earn respect, and create a team of inspired people – inspired to be productive and do their best:

• **Great leaders are value providers, not order givers.** At the TOP of every employee's list of job wants (besides more money) is to be appreciated and valued. When appreciation for a job well done is conveyed, positive environment thrives.

• **Great leaders tell the truth.** Truth creates trust and confidence and a reliance on the consistency of message. All other leadership characteristics and outcomes fade if there is a lack of truth. (Same in life.)

• **Great leaders are in control and earn respect.** Quick to decide and not afraid to make or admit mistakes, great leaders are respected because they take action and respected because they are vulnerable.

• **Great leaders focus on OUTCOME to ensure completed tasks.** Don't focus on task or project completion. Rather, think what will happen AFTER the project is completed. Outcome, not task. Outcome, not results.

• **Great leaders are responsible by example and expect the same from their people.** Everyone "looks" to — and at — leaders. Watches their every move. If the leader is slack, lacks work ethic, or is slow to decide, they have given tacit permission to their team to be and do the same. The best leaders are first in, last out, and work their butts off in the middle.

• **Great leaders value and display tolerance and temperance. First in themselves — then from others.** I'm not a fan of leaders who rant. Lots of successful ones do rant, but there are rules to follow if you're one of them.

RULE 1: Praise in public.

RULE 2: Reprimand in private.

RULE 2.5: Record yourself doing both praise and reprimand. See how you sound to others by listening to yourself. You may not like it.

• **Great leaders are excellent communicators that are listened to intently, and are clearly understood.** The one characteristic that gets more productivity and generates more achievement and positive outcome is clear communication. Leaders have a responsibility and a challenge to be excellent at it.

• **Great leaders train WITH their people, continuously.** If training is to have a lasting value, it must have leadership support AND participation. Leaders must train to be better leaders. Start by rating yourself 1 to 10 on the qualities I have listed here. Anything less that a 7 (out of 10) requires immediate attention.

• **Great leaders are wide open to new ideas and innovation.** "That's the way we've always done it" is a recipe for failure. Leaders are readers, constantly searching for new ways to be better.

• **Great leaders are tech-savvy.** Leaders need to be tweeters, and need to lead the way by communicating value and ideas through social media. A leader's example can create an avalanche of great service, goodwill, loyal customers, increased sales, and better reputation – or not.

• **Great leaders concentrate on and think BEST.** It always takes extra effort to be or strive to be "best." That's why so many people fail. Failure occurs when people (leaders or not) fail to do their best and be their best — daily.

• **Great leaders remain committed.** The best leaders never waver. They're loyal, steadfast examples of what and who others aspire to be and be like. They're not just mission driven; they're also "personal mission" driven. They are respected and followed because of their commitment.

• **Great leaders encourage.** They build pride with a "you can do it" philosophy and communication style. They encourage their people to succeed, and do so with a helpful, positive attitude. A coach and a teacher, not a manager or a boss. Big difference, both in results and morale.

Did I just define your leader? Did I just define how you are inspired to be and do your best every day? I hope so, but I doubt it.

The challenge for you, whether you're a leader or a team member, is to study these qualities, and talk about them openly. One of the tragedies of leadership is that the (overrated) 360-degree feedback process usually only goes 180 degrees.

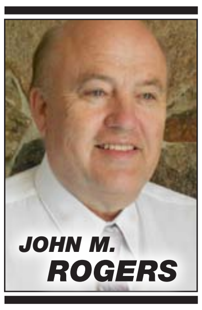
Great leaders don't just lead by example — they set the standard. What kind of standard are you setting?

Jeffrey Gitomer is the author of 12 best-selling books including The Sales Bible and The Little Red Book of Selling. His new book, 21.5 Unbreakable Laws of Selling, is now available

Opinion

Diet sodas promise something for nothing, but can they deliver?

Years ago the media company that employed me purchased a small group of weekly newspapers in suburban Phoenix. The owner was retiring and I was chosen to pack up my young family and head south to try to make a go of the struggling enterprise.



Within weeks it became apparent that success would come only at the expense of extraordinary effort. Six days a week I would rise in the predawn hours, buy a sack of pastries and two six-packs of soda pop at the "Sev" and head to the office. The drinks went into a small fridge in my office on the days I wasn't selling ads and into a cooler in my car on the days I was. By late evening all the pop was gone and a couple of fast-food meals had been supplemented with large fountain drinks.

I was convinced that the caffeine in the pop kept me going 70-plus hours each week. But as my wife was fond of reminding me, the regimen was not conducive to good health. At age 32 I had my first heart attack.

Thus began my relationship with diet soda.

I had always believed that diet soda was a good thing because it had fewer — and in most cases no — calories than regular soda. I never actually stopped to think about what was going into my body in place of those regular soda sugars and calories. Like so many diet soda drinkers, I wanted easy answers with a side of no consequences.

As the years have come and gone and convenience stores have sprung up on every corner, the size of the "gulp" has grown accordingly. You can now pick up the equivalent of my 1970s two six packs in a single cup with a 24 inch soda straw.

And as it turns out, my double-six-pack habit of the sugary pop was probably less of a health risk than the occasional Diet Coke I've limited myself to these day. The chemical makeup of diet pop has now been blamed for everything from kidney problems, messed-up metabolism and cell damage to rotten teeth and obesity.

Wait a second. Obesity, you say? Yes, obesity. Seems those chemicals disrupt your body's natural ability to regulate calorie intake. A University of Texas study found that as few as two 12-ounce cans a day can increase the likelihood of obesity by up to 500 percent.

Sometimes, even the vessel for your beverage can be the culprit. Diet or not, soft drink cans are coated with what science calls endocrine disruptors which have been linked to everything from heart disease to obesity to reproductive problems. Wow, who would have guessed? That's a lot of risk-taking for a can of pop.

There's even evidence that suggests diet pop sitting in the broiling heat of Iraq and Afghanistan is responsible for Gulf War Syndrome. Prolonged heat apparently changes the sweetener aspartame into all sorts of toxic agents.

But, for the most part, no one can tell us for certain just what zero-calorie pop does to our bodies. It's a scientific mystery, right up there with the Higgs boson or why a sweet and innocent Miley Cyrus has suddenly gone x-rated. The key phrases in all of this seem to be "linked to" and "caused by." There's a big difference. Science requires quantifiable data and most of what we have is anecdotal.

I've talked to a lot of diet pop drinkers over the years. Some still get the biggest cup available, day after day. Some say it makes them feel better. Others have said they quit drinking copious amounts of the unleaded stuff, and nothing changed. They felt the same one day or one year later. Still others saw their health improve.

This is important. Not everyone who drinks diet soda experiences health problems. Not everyone who quits sees their health improve.

So, diet soft drinks are harmful. Or maybe they're not. Or maybe they negatively affect some people and not others. No one knows for sure.

So what are we supposed to do until science sorts it out?

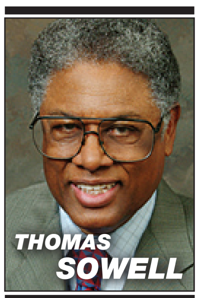
Maybe there's a philosophical answer. Diet sodas are popular because they promise something — the sweet taste of a regular soda — in return for nothing. Ask yourself this: Do you believe you can actually receive something in return for nothing? Or do you believe in some universal/philosophical/political version of Newton's Third Law, which says that every action has an equal and opposite reaction?

My own experiences are the equivalent of extensive field research on actions and reactions. I think I know the answer.

John Rogers is the managing editor of The Enterpsrie. Let him know how you feel by email at john@slenterprise.com

Syrian bold talk, inaction does not address mundane realities

Why are we even talking about taking military action in Syria? What is that military action supposed to accomplish? And what is the probability that it will in fact accomplish whatever that unknown goal might be?



What is painfully clear from President Obama's actions, inactions and delays is that he is more or less playing it by ear as to what specifically he is going to do, and when. He is telling us more about what he is not going to do — that he will not put "boots on the ground," for example — than about what he will do.

All this is happening a year after issuing an ultimatum to the Bashar al-Assad regime in Syria against the use of chemical or biological weapons. When the President of the United States issues an ultimatum to another sovereign nation, he should know in advance what he is going to do if that ultimatum is rejected.

But that is not the way Barack Obama operates. Like so many people who are masters of lofty words, he does not pay nearly as much attention to mundane realities. Campaigning is his strong suit. Governing is not.

With the mainstream media ready to ooh and aah over his rhetoric, and pass over in silence his policy disasters as president, Obama is home free as far as domestic politics is concerned. But, on the world stage, neither America's enemies nor America's allies are hypnotized by his words or his image.

Nations that have to decide whether to ally themselves with us or with our enemies understand that they are making life and death decisions. It is not about rhetoric, image or symbolism. It is about whether nations can count on the realism, wisdom and dependability of the American government.

Make no mistake about it, Barack Obama is a very clever man. But cleverness is not wisdom, or even common sense.

When he was in the Senate, Obama — along with senators Joe Biden, Chuck Hagel and Hillary Clinton — was critical of the Bush administration for not being favorable to the Assad regime.

Hillary Clinton said that she and other lawmakers who visited Assad considered him a "reformer." Back in 2007, when Secretary of State Condoleezza Rice appeared before the Senate Foreign Relations Committee, both Sen. Biden and Sen. Hagel chided her for not being more ready to negotiate with Assad.

Sen. John Kerry in 2009 said, "Syria is an essential player in bringing peace and stability to the region."

Some people said that having Joe Biden as vice president meant that President Obama had someone with many years of foreign policy experience. What they ignored was that Biden had decades of experience being wrong on foreign policy issues, time and time again.

Biden opposed President Ronald Reagan's military buildup that countered the Soviet Union's buildup, and helped bring about both the end of the Cold War and the end of the Soviet Union. General David Petraeus' "surge" strategy that greatly reduced the terrorist attacks in Iraq was opposed in 2007 by Sen. Biden, who said, "We need to stop the surge and start to get our troops out."

Senator Hillary Clinton not only opposed the surge from the outset, she was among those who refused to believe that it had succeeded, even after all the hard evidence had convinced most other people.

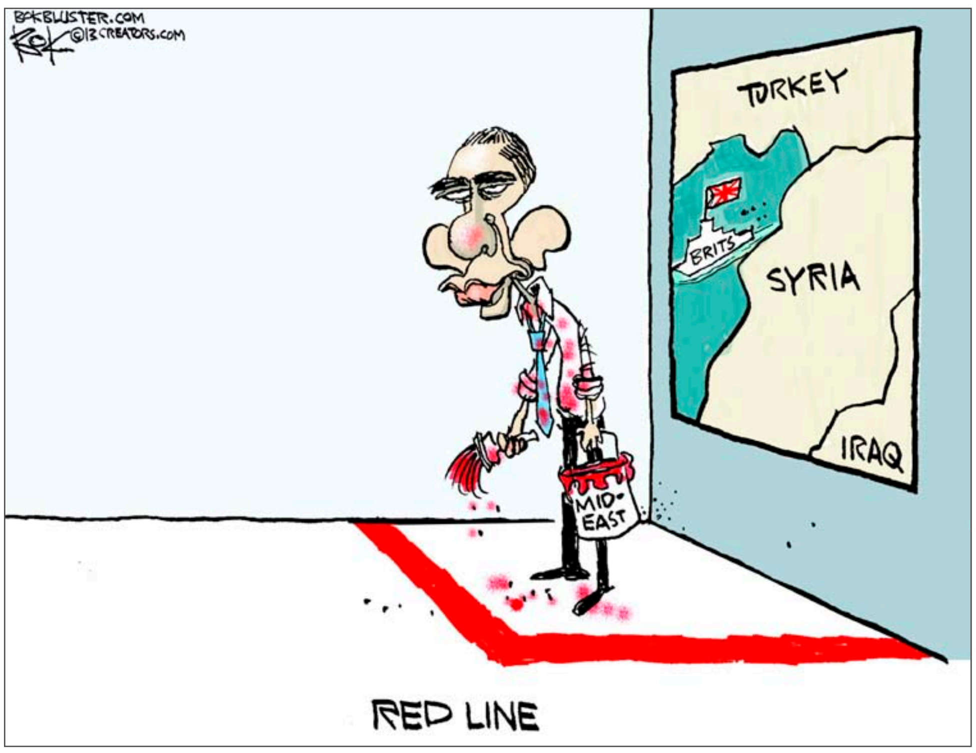
The grim reality is that key people in positions to shape our foreign policy during the Obama administration — the president, the vice president, two secretaries of state, and the current secretary of defense — all have a track record of grossly misconceiving the issues, our enemies and our national interest.

This is the administration that is now asking for a blank check from Congress to take unspecified military action to achieve unspecified goals.

"Military action" is a polite phrase for killing people. It would be nice to believe that this has some larger purpose than saving Barack Obama from political embarrassment, after having issued an ultimatum without having thought through what he would do if that ultimatum were ignored.

He has the authority to take military action if he wants to. The question is whether he can sucker Congress into giving him political cover by pre-approving his unknown actions and unknown goals.

Thomas Sowell is a senior fellow at the Hoover Institution, Stanford University. His website is www.tsowell.com.



Opinion

Utah's lawyer-legislators follow path set by Abraham Lincoln

The 22 lawyer-legislators in the Utah House and Senate — an increase from 15 in 2012 — are following in the footsteps of lawyer-politician Abraham Lincoln. While he was a representative in the Illinois State Legislature, Lincoln taught himself law by reading cases and legal codes.

Before, during and after his time in the U.S. Congress, civil actions made up a majority of Lincoln's law practice, so he got a sense of the problems ordinary people faced. Lincoln's work on the circuit court in Illinois' 15-county, 130-square-mile district became the root of his political education. The court traveled from one county seat to another, sometimes on horseback, sometimes in buggies or wagons, and sometimes on foot.

Utah's 22 lawyer-legislators have rich and varied backgrounds, and they arrived in different ways at law as a career, and service in the legislature. Here are a few examples:

Utah state representative Kay McIff served a slightly larger, six-county area of Utah as a Sixth District Court judge for 11 years. He traveled to courthouses in Manti, Richfield, Loa, Junction, Panguitch, and Kanab, and was glad he never had to do so on horseback. McIff was first drawn to the law in the ninth grade when his class observed the beginning of a murder trial; he was so intrigued that he went back by himself for a few days to see the rest of the trial. McIff has engaged in most aspects of the legal profession, including serving as county attorney in Sevier and Piute counties. Appointed by the governor to the Board of Regents, McIff has served in all three branches of Utah government.

Representative Michael Kennedy was in his second year as a medical resident when he decided to go to law school. "I realized that lawyers knew more about doctors than doctors knew about lawyers," said Kennedy. It took him six years to become a lawyer, during which time he also became a family doctor at University of Utah Health Care. According to Kennedy, "Everybody should have some legal training; law is everywhere; we breathe it; it's the glue that holds society together." This is Kennedy's first term, and he looks forward to helping the House with health care legislation.

Representative Patrice Arent ran for the legislature because she is a bit of an idealist and truly believes one person can make a difference. She was first elected in 1996 and has vast experience in legislative jobs at the capitol from student lobbyist, to intern, to associate general counsel to the Utah Legislature, to chief of the legislative division of the Attorney General's office. Her service includes membership in both the House and the Senate, and during her time in the legislature, she has sponsored almost 60 bills that the legislature passed.

Representative Lowry Snow was in his early 20s when he met a trial lawyer who took him under his wing. Since then, Snow has had an active legal career, and has dedicated himself to service, including positions with the Utah State Bar (past president), Judicial Performance Evaluation Commission (past chair), Washington County Economic Development Council (past chair), Governor's Office of Economic Development board, Southern Utah Community Legal Center advisory board (past chair), Kane County Hospital Foundation board, Economic Development Corporation of Utah board, and the St. George Rotary Club. Snow said, "Lawyers who serve are well equipped to help with policy issues and long-range planning for the state."

When Senator Todd Weiler was 8, Perry Mason inspired him to one day become an attorney. His experiences as a Bluffdale city attorney and Woods Cross City Council member help his work in the Senate, where he has worked on sponsoring bills, including one this session to protect vulnerable users of highways (Weiler was hit twice while riding his bicycle in 2010).

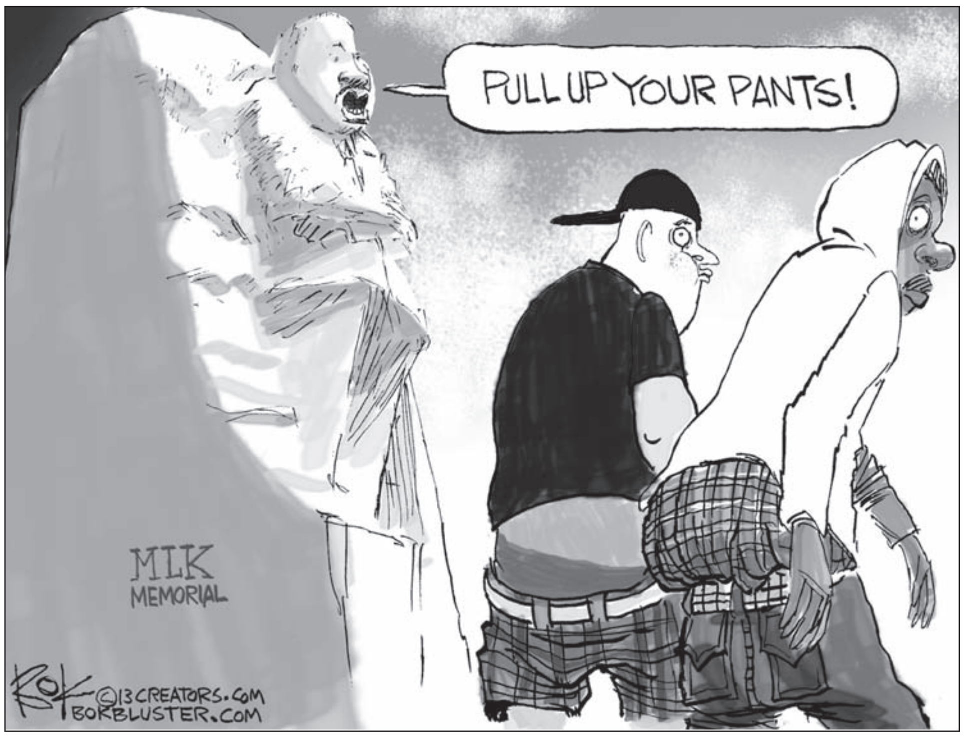
Representative Daniel McCay set his sights on joining the legislature when he observed the difficulties teachers had with unfunded and unsupported mandates. He implemented a life strategy that took him from being a high school social studies teacher, through law school, and into the House. Now he is in a position to write smart laws that positively affect teachers.

It was the experiences of an individual teacher — his seventh grade French instructor — that put Representative Earl Tanner on the path to law school. The teacher had immigration problems, and Tanner's father helped her solve them without charging for his work. Tanner still remembers his teacher's gratitude and the pride he took in his father.

Law was an alternate plan for musician Derek Brown. His father-in-law, Lex de Azevedo, was a professional musician who persuaded him not to take a similar career path. Representative Brown remains connected to music; his childhood piano teacher — who is 95 years old — teaches piano to his two boys. Brown believes that an important role for lawyers in the legislature is to watch for unintended consequences, wherein attempting to resolve one problem, additional problems arise. Lawyers can help craft bill language to focus on the issue at hand.

It was Representative Brian King's father's sharing enjoyment of his general law practice around the dinner table that drew him and his two brothers to the law. King

see TOOMEY pg. 16



What can you do to lessen probate impact for your heirs?

Probate subtly reduces the value of many estates. It can take more than a year in some cases, and attorney's fees, appraiser's fees and court costs may eat up as much as 5 percent of a decedent's accumulated assets. Think tens of thousands of dollars, perhaps more.

What do those fees pay for? In many cases, routine clerical work. Few estates require more than that. Heirs of small five-figure estates may be allowed to claim property through affidavit, but this convenience isn't extended for larger estates.

So how you can exempt more of your assets from probate and its costs? Here are some ideas.

Joint accounts. Jointly titled property with the right of survivorship is not subject to probate. It simply goes to the surviving spouse when one spouse passes. There are a couple of variations on this. Some states allow tenancy by the entirety, in which married spouses each own an undivided interest in property with the right of survivorship. A few states allow community property with right of survivorship; assets titled in this way also skip the probate process.

Joint accounts may be exempt from probate, but they can still face legal challenges — especially bank accounts when the title is modified by a bank employee rather than a lawyer. The signature card may not contain survivorship language, for example. Or, a joint account with rights of survivorship may be found inconsistent with language in a will.

POD & TOD accounts. Payable-on-death and transfer-on-death forms are used to permit easy transfer of bank accounts and securities (and even motor vehicles in a few states). As long as you live, the named beneficiary has no rights to claim the account funds or the security. When you pass away, all that the named beneficiary has to do is bring his or her I.D. and valid proof of the original owner's death to claim the assets or securities.

Gifts. For 2013, the IRS allows you to give up to $14,000 each to as many different people as you like, tax-free. By doing so, you reduce the size of your taxable estate. Please note that gifts over the $14,000 limit may be subject to federal gift tax of up to 40 percent and count against the lifetime gift tax exclusion, now at $5.25 million.

Revocable living trusts. In a sense, these estate planning vehicles allow people to do much of their own probate while living. The grantor — the person who establishes the trust — funds it while alive with up to 100 percent of his or her assets, designating the beneficiaries of those assets at his or her death. A pour-over will can be used to add subsequently accumulated assets but it will be probated.

The trust owns assets that the grantor once did, yet the grantor can use these assets while alive. When the grantor dies, the trust becomes irrevocable and its assets are distributed by a successor trustee without having to be probated.

The distribution is private (as opposed to the completely public process of probate) and it can save heirs court costs and time.

Are there assets probate doesn't touch? Yes. In addition to property held in joint tenancy, retirement savings accounts (such as IRAs), life insurance death benefits and Treasury bonds are exempt. Speaking of retirement savings accounts — make sure to list/update retirement account beneficiaries. When you open a retirement savings account (such as an IRA), you are asked to

see LUND pg. 16

SOLAR

from p. 1

"Utah Clean Energy receives multiple inquiries about solar energy every week, and we understand it takes time and energy to track down reputable information," said Baldwin. "We wanted to demystify and simplify the solar process with SolarSimplified.org with the end goal of getting more solar installed more quickly."

The new website boasts several one-of-a-kind features, including a Utah-specific solar return on investment (ROI) calculator, which provides estimates on costs, benefits and environmental impacts of residential rooftop solar projects. Additional resources for homeowners and businesses include a Utah solar contractor directory, step-by-step guidelines, and a revamped solar resource mapping tool for Salt Lake City and Salt Lake County.

"We know that Utah gets a lot of sun, but individuals don't often have a good understanding of their own solar resource potential," said Salt Lake City geographic information systems coordinator Kevin Bell. "The hope is that this mapping tool will help everyday citizens of Salt Lake City and Salt Lake County get one step closer to installing solar on their home or business."

The interactive map can estimate both solar duration (i.e., number of hours of sun in a day) and solar intensity (i.e., quality of the solar resource throughout the day) in a specific geographic location, and take into account shading from surrounding trees, buildings and other objects. Users are able to get a simple, accurate look at the "solar resource" at their home, business or even potential new building site.

"I'm always looking for opportunities to collaborate and develop partnerships with other government agencies," said Salt Lake County surveyor Reid Demman. "My office was thrilled to contribute to this effort and to help generate countywide data used to build the solar mapping tool. We consider the development of solar resources an important and worthwhile endeavor for the future of our citizens."

For building officials, fire officials and utilities (i.e., entities responsible for approving solar projects), SolarSimplified.org offers extensive technical information on solar, including the latest solar reports, available solar training, frequently asked questions and a plethora of resources on permitting and zoning, including a solar-friendly Zoning Toolbox and Best Practices for Solar Permitting. The goal is to see greater standardization among local solar processes, which will ultimately help reduce solar costs for end-users. The website provides local officials with tools to facilitate their adoption of more streamlined and expedited solar processes. Some jurisdictions have already started; both Park City and Summit County recently adopted the Solar ABCs Expedited Solar Permit Process — a nationally standardized solar permit available on SolarSimplified.org.

"Salt Lake City knows firsthand how critical zoning and permitting can be to solar development," said Salt Lake City Mayor Ralph Becker. "As we continue to improve and align our own processes with best practices, we hope this website will be an essential toolbox for all jurisdictions to help them streamline and attract more solar development. In a state blessed with over 300 days of sunshine, it just makes sense to make going solar simple."

Utah Clean Energy and Salt Lake City hope to see the website expanded in the future to include more jurisdictions and more solar tools.

TOOMEY

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says that lawyer-legislators offer unique contributions to the bill drafting process: "Having practiced law, we know what gets worked out by judges and lawyers case by case, so we can help ensure that laws don't over-reach their intended purpose, which can inadvertently make them less effective."

As with Lincoln, Utah's lawyer-legislators benefit from their education and experience in a profession that emphasizes logical thinking and reasoning, the ability to build an effective argument and excellent speaking skills. Additionally, their specialized training helps draft statutes that pass constitutional muster and avoid ambiguity.

The lawyer-legislators in the House are Patrice M. Arent, Derek E. Brown, LaVar Christensen, Spencer J. Cox, Brian M. Greene, Craig Hall, Kenneth R. Ivory, Michael S. Kennedy, Brian S. King, Daniel McCay, Kay L. McIff, Mike K. McKell, Merrill F. Nelson, Kraig J. Powell, V. Lowry Snow, Keven J. Stratton and Earl D. Tanner.

The lawyer-legislators in the Senate are Lyle W. Hillyard, Mark B. Madsen, Stephen H. Urquhart, John L. Valentine0 and Todd Weiler.

Sean Toomey is the director of communications for the Utah State Bar Association.

LIABILITY

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

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

Casey Jones is an attorney at Strong & Hanni Law Firm and a member of the business group. He is an active member of the Business and Securities Sections of the Utah State Bar.

UACPA

from p. 4

tween St. George with Las Vegas — was completed as recently as the 1980s.

"Physical connections to the outside world and we've seen our economy become more much diversified," Perlich cited as recent Utah characteristics. "Meanwhile, Wyoming sticks at around a half a million people, so you wonder 'why us? Why our growth? Why our change?' It's these connections to people, ideas and markets to the outside world."

She described the downturn as "this horrible, gut-wrenching, grinding recession that we are continuing to dig our way out of. … The depth of the decline is unprecedented and the extent and duration of the economic event is unprecedented in the post-World War II era."

Financial history indicates this recession was "decades in the making," with the dot-com boom and bust being "just a little windup to this thing." Severe leveraging of mortgages added to the troubles, prompted by what she called "all kinds of unique, shall we say, innovative and creative financial instruments."

Perlich said people have suffered through centuries of occasional economic woes caused by "financial follies" in which people were "falling for pretty words and pretty ideas" and believing things will be different each time. "It's hundreds of financial booms and busts," she said. "But this was a doozy, people, and on the backside of this we have a mountain of debt that's going to take us a long time to dig out from."

TAYLOR

from p. 12

known that a covered person with a disqualifying event was involved in the offering. The SEC can also grant a waiver of a disqualification upon a showing of good cause.

RECOMMENDATION

• Issuers should work closely with their securities counsel, investment banker or placement agent (if any), and other advisors to adopt and implement procedures to identify the involvement of any "bad actors" or other disqualified persons in any offering being made in reliance on Rule 506.

• Issuers should implement appropriate procedures and exercise reasonable care in determining whether any "bad actors" or other disqualified person is involved in any Rule 506 offering. Doing so will allow the issuer to demonstrate that it did not know and, in the exercise of reasonable care, could not have known a covered person with a disqualifying event was involved in the offering.

• Issuers and covered persons must be diligent in complying with all applicable laws, rules and regulations—and particularly those related to securities—in all of their business dealings. Because any conviction, injunction or restraining order issued in connection with a securities transaction, any order by a state securities regulatory agency, or a cease-and-desist order issued by the SEC will constitute a disqualifying event, such an event can bar such person from any involvement in a Rule 506 offering.

This article is provided for educational and informational purposes only and is not intended to, and should not be construed as, legal advice. Readers should consult their own lawyer regarding the applicability of the information discussed herein to their particular situation and facts.

Thomas R. Taylor is a corporate, securities, finance and M&A lawyer in the Salt Lake City office of Durham Jones & Pinegar, P.C.

LUND

from p. 15

designate eventual beneficiaries of that account on a form. This beneficiary form stipulates where these assets will go when you pass away. A beneficiary form commonly takes precedence over a will, because retirement accounts do not fall under probate. Your beneficiary designations need to be reviewed, and they may need to be updated. You don't want your IRA assets, for example, going to someone you no longer trust or love.

If for some reason you leave the beneficiary form for your life insurance policy blank, it could be subject to probate when you die. If you leave the beneficiary form for your IRA blank, then the IRA assets may be distributed according to the default provision set by the IRA custodian (the brokerage firm hosting the IRA account). These instances are rare, but they do happen.

To learn more about strategies to avoid probate, consult an attorney or a financial professional with solid knowledge of estate planning.

Mark Lund is an independent investment advisor, investor coach and author of The Effective Investor. Lund has written articles for or been quoted in The Wall Street Journal, The Salt Lake Tribune, and The Enterprise.

BIOFIRE

from p. 1

FDA clearance of the company's FilmArray system, BioFire took a giant step in molecular diagnostics. FilmArray's comprehensive respiratory panel tests for 20 viral and bacterial targets in one 60-minute test, unique on the market can match, according to officials. The test sharply reduces the time required to identify such diseases as flu, streptococcus and drug-resistant microbes. Physicians attain answers quickly and laboratories maximize productivity and reduce costs.

BioFire is currently working on development of new diagnostic panels like a blood culture identification panel, gastrointestinal panel, meningitis panel and a lower respiratory panel.

Eric Gorrell, BioFire general counsel and spokesperson, told *The Enterprise* that no changes are expected to the senior management team at BioFire and that none of the current workforce will be displaced. "Our operations will remain largely the same and we will continue to deliver our products to our customers around the world," Gorrell said. "BioFire currently employs more than 500 people in the Salt Lake Valley and we anticipate that we will be adding significantly to that number over the coming months and years."

Jean-Luc Belingard, chairman and chief executive of BioMerieux, said, "This is a great complement to our business. It reflects our aim to carry out targeted, bolt-on acquisitions to give us access to technology and local markets."

KENNECOTT

from p. 1

of material that moved was at the high range of their estimate. That prediction, based on inspections and geotechnical equipment, allowed the mine to be shut down and people moved out of harm's way. No one was injured when materials from the mine's northeastern wall slid and "shot across the pit" at 120 mph. The slide left, on average, 300 feet of material at the bottom of the pit.

"We will remove all that," Sanders said. "There's quite a bit of ore at the bottom of the pit and we're anxious to get back to that."

In addition to copper, the mine produces gold, silver and molybdenum. Sanders noted that the slide occurred in an area where the company had worked since about 2004 to remove waste material and "was just getting ready" to mine the ore underneath. "That [slide] was the reward for all of that seven years of hard work of removing waste," he said.

The company had hoped to continue mining in spite of the slide, having created a switchback road in a different location to access the bottom of the pit. Tires, diesel fuel, blasting caps, maintenance equipment and other items were placed there. The only problem was that the slide traveled 2,500 feet farther than expected. About $200 million worth of equipment was covered, including 13 large trucks — five have been recovered — three shovels and 100 tires.

Still, the company was back in production at a new cut within 53 hours of the slide and was producing ore from the pit's bottom within 17 days.

"We're at full production today," Sanders said. "Our issue isn't getting back to full production. Our issue is a gap that might come in the future, so that as we move all of the ore that is available to us, we have to move the waste that has come down into the pit as well in order to get to the next slot of ore. If we don't accomplish that, then we'll end up with a gap, and some of the gap estimates are up to six months, so that would be very significant to the business."

The company had to reduce headcount, including 450 roles reduced, mostly voluntarily. "The game was to get the costs down so the business survived," he said. "If you're not cash-positive, you're not in business."

Likewise, many construction projects were put on hold, resulting in more than 2,000 contractors moving on to other jobs. "We'll come back someday and start those back up," Sanders said. "We'll complete those projects, but we don't have the cash flow to do that today."

Sanders said the workforce is "rising to the occasion."

"The complaint meter, as another measure, has hit zero and hasn't come off since the slide," he said. "The issues that you or I may have thought were major issues before the slide are non-issues today. People realize that their jobs are dependent on how well they do in the recovery. And as we get better and better, we'll recover and will start to attract capital back into the business for rebuilding."

A major emphasis of his Rotary presentation was on preparation. Once the slide was predicted, officials had to "keep our black hat on" and consider all possibilities for what could happen. "You've got to be chronically uneasy about what's about to occur and ask the same questions over and over and maybe in different ways," he said.

But Kennecott Utah Copper already had many processes and equipment in place — inspections, radar and sonar among them — to enable the company to pinpoint "within hours" when the slide would occur. "That [preparation] does not come because we wake up one morning and decide to be safe," he said, adding that it took years of hard work, a change in the culture, the proper training of employees and having the right people and equipment in place.

In the days after the slide, company officials were hailed as being brilliant for the way they handled the situation. Not long after that, people said the company had been "lucky."

"We are neither lucky nor are we brilliant. We were simply prepared," Sanders said.

"I think the message is about being prepared and monitoring so that you do have that [advance] notice. We had that. That was due to hard work and investments over a long period of time. Whether it's your business or your community, you need to make those investments, you need to put that hard work in, so that you're not relying on brilliance or luck."

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- President's Club
- Consistent top producer in Commercial Lending
- Member of Crew Utah since 2008.
- Board of Directors, Co-Chair Marketing Committee

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