

# THE Enterprise

## UTAH'S BUSINESS JOURNAL

www.slenterprise.com

Oct. 8-14, 2012

Volume 42, Number 10

\$1.50

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## \$90 million hotel development coming to downtown Salt Lake

**By Barbara Rattle**  
*The Enterprise*

A \$90 million hotel development is coming to the west side of Salt Lake City's downtown.

Provo-based PEG Development is finalizing license agreements for a 159-room Hyatt House and a 175-room Courtyard by Marriott on 3.2 acres at 108 S. 300 W. Both will be six stories tall. The property currently consists of surface parking and a vacant building. PEG Development purchased the acreage about a year ago.

Plans call for construction of a three-story, 349-stall parking structure at the back of the property to begin within about 60 days, said Robert Schmidt, director of development for PEG. Ground should be broken in February or March for the Hyatt House, while a mid-summer 2013 groundbreaking is planned for the Courtyard by

Marriott.

Start to finish, the project should take about two years to complete, Schmidt said, noting PEG Development has partnered with Orem-based investment firm Blue Diamond Capital to pursue the project, the entirety of which has been designed by Beecher Walker Architects. Rimrock Construction will act as general contractor on the parking structure and Hyatt House; a builder for the Courtyard has not yet been selected.

Hyatt House is an extended stay concept with larger rooms and kitchenettes, catering to the traveler staying for several days. Schmidt said the Salt Lake City Hyatt House will have nearly 6,000 square feet of ground-level retail, a fitness room, meeting rooms and year-round outdoor pool. A large, contemporary lobby will feature plentiful lounge areas and communal space.

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## Dan England wraps up year as chair of national trucking group

**By Barbara Rattle**  
*The Enterprise*

Concluding a year-long stint as chairman of the American Trucking Associations this week, Dan England, a shareholder in Salt Lake City's venerable C.R. England Inc., may have fewer speaking and travel obligations, but he still frets.

The cause of his worry is an effort by the Federal Motor Carrier Safety Administration (FMCSA) to tweak its so-called hours of service regulations, which govern the working hours of truck drivers moving commercial goods in interstate commerce. The existing rules, put in place in 2004, limit the number of daily and weekly hours spent driving and working, and regulate the minimum amount of time drivers must spend resting between driving shifts.

Those existing rules are all for the good, according to England — “we’ve seen a dramatic reduction in the number of truck-related deaths and injuries, and



**England**

also accident rates as measured by accidents per mile” — but now FMCSA is proposing changes that England said would increase the number of trucks and drivers on the road.

The American Trucking Associations has filed suit in the federal District Court for the District of Columbia to block the rule changes. England characterized the feud as “one we feel we’re well positioned in... We

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## Shotgun manufacturer to move bulk of operations to West Valley City



Butler Arms could have as many as 125 Utah employees when in full production.

**By Brice Wallace**  
*The Enterprise*

Butler Arms USA, a shotgun company based in Montana, aims to bring manufacturing and most other operations to West Valley City as it begins production of what it considers a revolutionary target shotgun and a version of the same gun that will be used for hunting.

The company plans to begin production in early November at 17,000 square feet of leased office and manufacturing space at the Metro Business Park, 2355 S. 1070 W., and ramp up to full pro-

duction and assembly in the 2013 first quarter. At full production, the company could have about 125 employees. It currently has 22 people on staff.

“The engineering and production and development of the gun has been in the works for 12 years, and now we’re ready to launch this,” said Scott Smith, vice president of marketing.

Inventor and engineer Larry Butler of Hailey, Idaho, began working on the shotgun, called the XX12, after suffering a pinched nerve following several decades

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## Lawmakers mull treatment of unincorporated entities

**By Brice Wallace**  
*The Enterprise*

Utah's treatment of certain unincorporated business entities could become a lot smoother under a bill passed out by the legislature's Business and Labor Interim Committee at its September meeting.

As part of a push to get more-uniform laws from state to state, the bill would affect partnerships, limited partnerships and limited liability corporations (LLCs).

“I hope you realize that what you’re going to end up with, if you enact this statute, you’ll end up with a state-of-the-art set of statutes governing all unincorporated entities, and that’s a really important thing for the lawyers of

Utah because they’ll have a statute that they can work with [that is] a lot better than the existing statutes are,” Harry Haynsworth, a member of the Uniform Law Commission, told the committee.

“And you’ll be able to better attract businesses. You’ll be able to have businesses that are in Utah to actually use these Utah statutes instead of going to some other state like Delaware or somewhere like that to actually form a new business.”

While the bill would be similar to those in other states, it would contain certain Utah-specific provisions. And it is expected to be used because, Haynsworth said, there are three to four times as

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## ENGLAND

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don't see why there is motivation to want to change the rules. They [FMCSA] are required to complete a regulatory impact analysis, really a cost benefit analysis, and they couldn't make it work, so they added another element — they've done nothing like this before — the issue of driver health."

FMCSA believes, England said, that if a driver gets anywhere between a few minutes "up to maybe 30 minutes" a day more sleep, "there would be a benefit derived that would be reflected in the length of their life. And they placed a dollar value on that. We think this is a pretty flawed way to analyze this. Our people called it a sham in our initial brief. The only conclusion we can come to is there are political motivations behind making these changes. The current administration has had strong support from organized labor, and labor is heavily involved in this."

The most significant proposed change, England said, has been dubbed the 34-hour restart. In essence, a driver is limited to working 70 hours in eight days, but any time during that period, if a driver is continuously off-duty for 34 hours, his "clock" can be restarted. FMCSA proposes to "raise the restart to two consecutive nights from at least 1 a.m. to 5 a.m. off duty, and one restart per week. Particularly for carriers like us who run a lot of miles and have a lot of team operations," England said, "it simply reduces the amount of production we can get out of a truck and team of drivers.

If they [FMCSA] had good data to show that this would significantly improve safety, that would be one thing. But they don't. ... To our way of thinking, putting more trucks and drivers on the road has an impact on safety."

If FMCSA prevails, the modified rules will go into effect next summer, and would have an immediate impact on many trucking firms, including the mammoth C.R. England Inc.

"We run about 4,500 to 5,000 trucks. We have a dedicated division that has trucks that work exclusively for someone like Walmart or Coca-Cola. We have about 1,600 trucks, and they're easy to monitor. It would take us somewhere between 6 to 12 percent more hours to complete our runs. That's the impact of the 34-hour restart."

### Bellwether Industry

England said while trucking companies are considered a good barometer for measuring the health of the economy, "there are some dynamics to this recovery that are a little bit different. Over the last four or five years, as the economy went downhill, a lot of carriers downsized. Some went out of business, but most downsized. As things began to improve a little bit there was an under-capacity of trucks. We became very busy. You'd look at us and you'd think, based on how busy we are, the economy is better than it is. Since the first quarter, there's been an evening-out of that capacity. I think we are a good bellwether, and we've seen that year-over-year our numbers aren't as good. We've seen some softening, which is troubling. Last year we had

our biggest year ever in terms of revenues, and profits were good as a percent of revenues, but not the best we've ever had. This year it's flattened out, and there's concern."

### Drivers: More Plentiful But Underpaid

If there has been any upside to the way the recovery has progressed, it has to do with the availability of drivers, England said. Perennially in short supply, the number of people choosing to drive trucks in order to make a living has increased, but many may choose other professions when the economy gains strength.

"If we'd seen a precipitous increase in demand and we needed to put more trucks on in a big way, this driver thing would have choked so many carriers," England said. "Even today we're struggling to keep all our trucks full. It's sort of OK with drivers, but there's a lot of anxiety. The driver thing is always at or near the top of the list of things we're concerned about.

"I think that in most other places in the world a truck-driving job is highly regarded and turnover is not near what we have in this country. Here we have the nicest equipment and working conditions in the world. In my mind the bottom line is these people need to be paid significantly more that they're being paid now, and that can only be done by us succeeding in getting more rate increases out of our customers, which is a tough, tough battle."

England said entry-level solo drivers typically earn between \$35,000 and \$45,000 a year, while seasoned drivers can bring in \$60,000 to \$80,000

and beyond. But the job has its costs, "particularly in our type of operation where we run big miles and they're away from home a lot. Today, and this is a good thing, there are a lot of pressures for husbands — most of our drivers are men — to be closer to their families. It's a good thing overall for families, but kind of at odds at what we need: long-haul fleets with drivers away from home weeks at a time. It's changing the way we do business. We're setting up more regional fleets so people can get home more often. We're favoring those business units we have that allow drivers to have more predictable runs and to be home more often."

## HOTELS

from page 1

The lobby of the Courtyard will be on the second level, as the ground level will be devoted to retail space, ideally food-related tenants, Schmidt said. It will have a fitness center, meeting rooms and pool. Both hotels will be able to accommodate some outdoor dining, as PEG negotiated setback modifications from the city.

"We're just as excited as can be about the project," Schmidt said. "We think it's going to make a real difference in the downtown market and a beautiful addition to the block, with proximity to the Salt Palace, Gateway and the amenities that are there. We're hoping to bring a fun atmosphere with the ground-floor retailers."

PEG Development, founded in 2003, is relatively new to hotel ownership. While the firm has developed several hotel properties in partnership scenarios, it was just a little over a year ago that the firm purchased the Provo Marriott, whose lobby just received a major remodel.

The owners of PEG are Cameron Gunter, Reed Halladay, Marc Bingham and Michael Bingham. The Bingham are the founders of Blue Diamond Capital.

## One million square foot lease is largest of year

NAI West, The Sun Products Corp. and Freeport West Industrial Properties recently completed Utah's largest lease transaction in 2012.

The 1 million square foot lease, located at Freeport West Landmark Industrial Park, will allow Sun Products to better optimize its Salt Lake City distribution centers by consolidating its warehousing from six buildings to two main distribution centers. The property consists of two buildings but will operate as one primary distribution facility. One building was completed and delivered this month and an adjacent twin building will be completed in the third quarter of 2013. The buildings will provide warehouse, office and light manufacturing space. The buildings are being built by Big-D Construction.

"Due to the accessibility of major interstates and a large rail hub, the versatility of the property and buildings and proximity to other Sun Products facilities, Freeport West made the most strategic and economic sense," said Skip Tappan, corporate director of distribution and logistics for Sun Products.

Sun Products, headquartered in Wilton, Conn., is a leading provider of laundry detergent, fabric softeners and other household care products. Sun Products brands include Wisk, All and Snuggle, and the company also serves as manufacturing partner for many of North America's leading mass merchandisers, warehouse clubs and food, drug and dollar retailers.

NAI WEST executive vice presidents Zach Anderson, Bryce Blanchard and Kyle Roberts, and NAI WEST president Mike Falk managed the lease transaction. Freeport West Industrial Properties was represented by executive managing director Brad Ross.

# AUCTION

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Salt Lake City, UT 84103  
Telephone: (801) 533-0556  
Fax: (801) 533-0684

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Subscriptions are \$55 per year for online only, \$65 per  
year for print only and \$75 per year for both the print and  
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# Electronic payments firm to more than double size of footprint in Utah County

**By Brice Wallace**  
*The Enterprise*

Complete Merchant Solutions (CMS), a full-service electronic payments company, will move from Provo to Orem after purchasing a high-profile building near Utah Valley University.

CMS will move Oct. 15 into the former AMP Security building at 815 W. University Parkway after spending the past two years at Provo Riverwoods, 5132 N. 300 W., Suite 100. CMS will have about 13,000 square feet at the building, which has two floors and a basement and also served as a car dealership building. The company's current site has about 6,000 square feet.

Founded in 2008, CMS facilitates electronic payment processing for all credit and debit cards, gift and loyalty cards and checks. Its competitors include PayPal and the Square technology used with smartphones.

"We've doubled in revenue every year, and processing-wise we've doubled as well," said Dave Decker, CMS president. "We processed a half-billion dollars in 2011, and in 2012 we will process a billion dollars in electronic payments just in Visa and Mastercard. That's not counting checks or American Express.

"Our industry is a bit of a commodity. Everyone has to take

## Fulfillment company moves to larger quarters

Vision Automated Fulfillment, a Utah-based fulfillment and packaging company, has made an expansion move.

Previously located in 10,000 square feet at 5647 W. Wells Park Road, West Jordan, the firm now occupies 19,200 square feet at 7454 S. Airport Road, West Jordan.

"We'll be able to breathe more," company president Chad Brotherson said of the relocation. "We were just crammed to the roof."

Founded about 10 years ago, Vision currently employs roughly 15 people and that number is not likely to change in the near term, he said.

Vision handles shipping, warehousing and packaging for a number of e-commerce businesses, most regional but some national, Brotherson said. The firm also offers assembly and kitting and automated and manual packaging.

The company leased its new location with the assistance of Randy Atkin and Chris Terry of Commerce Real Estate Solutions.

credit cards. It's pretty competitive. Everyone is trying to find certain verticals where there is still margin," said Decker, who noted CMS is trying to find larger companies that specialize in transactions that occur in ways other than face-to-face, such as Internet-based transactions or those completed by call centers.

The company has 30 employees, but that figure will likely double over the next couple of years, Decker said. The company also has an office in Denver, occupied by the vice president of sales, and hiring is planned there as well.

The new location, for which CMS paid \$2.9 million, is advantageous for the company because of its high profile, Decker said.

"We're right in front of Walmart and right across the street from UVU," he said. "We feel like that location is important for us. We have a full-time sales staff and but we also use independent agents. A lot of summer sales companies that sell pest control or



The new Complete Merchant Solutions office was purchased by the company for \$2.9 million.

alarm companies have done really well utilizing summer sales and we're trying to reach the same target audience, which is the college students. We paid top dollar for the building but we feel the proximity will be worth it."

In fact, the company plans to finish the basement "and try to make it a big game room for these college students to hang out," he added.

The company's history has

been in either Orem or Provo. "We live here. We feel the quality of the workforce is perfect. There are a lot of able bodies, able minds and a strong work ethic, and there is a lot of entrepreneurial spirit in Utah," Decker said. "People aren't afraid to sell and go out and do hard work."

Coldwell Banker Commercial's Brandon Fugal worked with the company on the building sale.

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## BUTLER

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of firing traditional shotguns. Most traditional target shotguns have two barrels, in an over-under configuration, but the XX12 has one barrel, on the bottom, and its placement is designed to lessen the “felt” recoil when the gun is fired.

“The bottom-barrel configuration redirects the recoil,” Smith said. “Usually the recoil is up and into your face, with pivoting in the shoulder. With the bottom barrel, the recoil is straight back hori-

zontally. ... It’s just unbelievable the reaction of people when they shoot this gun.”

A group in Whitefish, Mont., bought Butler’s company and a few months ago realized that the talent pool needed to grow the firm was elsewhere, Smith said. While the corporate headquarters will remain in Whitefish, the sales, marketing, manufacturing and operations will be in West Valley City. The company will occupy the building in mid-October after contractor CRC Construction of Midvale completes renovations.

“There will be a lot of assembly and production, with a

smaller percentage [of workers] being skilled production machine operators, sales and marketing and administration,” Smith said. Some employees have migrated from Whitefish but most will be hired locally, he added.

The target-shooting version of the XX12 will have a manufacturer’s suggested retail price of \$11,500. Smith said many European-made guns sell for much more, including one going for \$95,000. The target-shooting environment often features people willing to pay lots of money for their guns, for the custom engraving on the guns and for expensive

motor homes to get them to competitions.

The XX12 will be sold through a direct sales force across the country, with the target gun available through a limited number of dealers. The hunting version, available at a fraction of the cost of the target version, will be more of a mass-market product.

Smith said the market is fertile, with about 900,000 shotguns sold each year. About one-fifth of that total is used for target shooting.

“We know that target shooting is one of the segments that has seen sustained growth,” he said.

“Target shooting is becoming more popular with women and there are kids joining in. The National Shooting Sports Foundation has big initiatives to attract people to target shooting. It’s something families can do. You don’t have to go camping for four days. Target shooting is something where we see sustained growth and it’s a big opportunity for us.”

## Insulation contractor to expand, hire

Elite Insulation, a Salt Lake City area commercial mechanical insulation contractor, will move to larger quarters in early November.

Currently doing business in 7,500 square feet at 1930 W. 2300 S., the company has leased 12,000 square feet at 1465 S. 700 W.

“The growth of our company has been faster than anticipated,” said Keith Noyes, vice president of operations. “We couldn’t ask for more, especially in this day and age.”

Noyes founded Elite in mid-recession, 2009, after being laid off from a mechanical insulation business.

“Nobody was hiring so I had no choice, I had to start my own company,” he said. “A lot of people had a lot of faith in me and liked the way I do things. Since I started there’s been the opportunity to bid 10 jobs a week; we get about 10 percent of what we bid.”

Elite currently has a staff of 18, but Noyes said that number should grow to between 25 and 30 by the end of the year. The firm does business solely in Utah, mostly in the Salt Lake and Utah valleys.

Noyes said his company worked on the new L.S. Skaggs pharmaceutical research building at the University of Utah and Tower 8 at City Creek Center. Current projects include a complete seismic upgrade at the Beehive Clothing building and a commons building at Dixie State College. Elite recently completed a renovation of Ogden High School.

Elite leased its new location with the assistance of Randy Atkin and Chris Terry at Commerce Real Estate Solutions, and CRC Nationwide.

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## • Earnings Roundup •

### Park City Group

Park City Group, based in Park City, reported a net loss of \$259,000, or 2 cents per share, for the fiscal fourth quarter ended June 30. That compares with a loss of \$49,000, or zero cents per share, for the prior-year fourth quarter.

Revenues in the most recent quarter totaled \$1.9 million, up from \$1.7 million in the year-earlier quarter.

For the full fiscal year, the company reported a net loss of \$1.7 million, or 14 cents per share, on revenues of nearly \$7 million. That compares with a loss of \$1 million, or 9 cents per share, on revenues of \$6.5 million in fiscal 2011.

The company said it had completed its three-year transition from licensing to a software-as-a-service subscription revenue model. Its primary customers are retailers and their suppliers.

"During that same period, we proved our ability to add new retailers 'hubs' and suppliers 'spokes' to our network, put in place the infrastructure to support rapid growth in connections between suppliers and retailers, and sell additional services to both suppliers and retailers in our net-

work," Randall K. Fields, chairman and chief executive officer, said in announcing the results. "With that process in our rear-view mirror, we are well positioned and will now accelerate the pace of growth."

Fields said the most recent quarter "marked an inflection point" in the growth of the company's subscription revenue. "With opportunities that we already have in place to provide base-level services to our existing retail/supplier network, we can reasonably anticipate significant revenue growth for the next several years," he said. "Beyond that, we expect to layer on additional growth as we take advantage of opportunities with food and drug safety, new retail verticals, new services, and continue to expand the size of the network."

### Dynatronics

Dynatronics Corp., based in Salt Lake City, reported net income of \$115,954, or 1 cent per share, for the fiscal fourth quarter ended June 30. That compares with \$68,776, or 1 cent per share, for the same quarter a year earlier.

Sales in the most recent quarter totaled \$7.7 million, down from \$8.2 million in the year-earlier

quarter.

For the full fiscal year, Dynatronics had a net loss of \$23,535, or zero cents per share, on sales of \$31.7 million. That compares with net income of \$270,888, or 2 cents per share, on sales of \$32.7 million during the prior year.

Dynatronics manufactures, markets and distributes medical devices, orthopedic soft goods and supplies, treatment tables and rehabilitation equipment.

"Fourth-quarter profits improved despite a weakness in top-line sales," Kelvyn H. Cullimore Jr., chairman and president, said in announcing the results. Cullimore said the company has implemented strategies to help move the company forward despite ongoing economic weakness. They include introducing a record number of products. "We fully expect that the record number of new products being introduced this year will help boost sales even in the face of a flagging economy," he said.

### Schiff Nutrition

Schiff Nutrition International Inc., based in Salt Lake City, reported net income of \$6 million, or 20 cents per share, for the fiscal 2013 first quarter ended Aug. 31.

That compares with \$4.7 million, or 16 cents per share, for the same quarter a year earlier.

Net sales totaled \$85.1 million, up from \$58.2 million a year earlier.

Schiff Nutrition produces vitamins, nutritional supplements and nutrition bars.

"We are pleased to report another strong quarter for Schiff Nutrition," Tarang Amin, presi-

dent and chief executive officer, said in announcing the results. "Net sales increased 46 percent and adjusted EBITDA (earnings before interest, taxes, depreciation and amortization) increased 81 percent versus a year ago, reflecting progress executing our growth strategy to build leading brands in four key conditions," which are heart health, joint care, immune support and probiotics.

## Bank's fall trucking outlook indicates steady growth

The Fall Trucking Report released by Ogden-based TAB Bank shows signs of steady growth according to monthly truck tonnage, fuel costs, perceived business conditions and invoice size. Historically, trends in trucking and transportation serve as good indicators of the greater economy.

Diesel prices have begun to increase again after the mid-summer decline and have once again eclipsed \$4 a gallon. Sales volume for TAB's core group of clients has grown each month since an 8 percent decrease from May to June. TAB Bank has experienced an increase of 6 percent from June to August as carriers nationwide

head into the pre-holiday shipping season. This increase also correlates with the slight uptick from April to July in the Industrial Production Index. This industry barometer has grown steadily in recent months.

A major factor contributing to both total sales increasing as well as larger average invoices is the fact that the fuel surcharge portion of an invoice has increased with the higher fuel prices.

"As the trucking industry is experiencing growth, the overall economy can expect to follow suit because as trucks transport more products, it represents a leading indicator of greater demand. Going into the pre-holiday season,

TAB Bank is funding even more receivables from our trucking clients, which is a strong signal for improved economic conditions," said Eric Myers, TAB Bank vice president of marketing

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## CORPORATIONS

from page 1

many LLCs than corporations established in Utah annually.

“So really what you’ve got is a major shift, a seismic shift, in terms of how businesses are formed and how they operate. So having a really modern, up-to-date set of statutes is very important in creating the type of business climate that you need to have,” he said.

Local attorney Russell Smith said the bill would replace “outdated and, in some cases, anti-business” provisions in current statutes.

“Our existing statute, the one we currently have on the books, is such that practitioners such as myself will often not form Utah LLCs,” he said. “Instead, we’ll go to other states such as Delaware, Wyoming or Nevada because of the provisions that are in our existing statutes.” The new statute would be “significantly better than what we currently have,” he said.

One example of the improvement involves oral agreements. Most LLCs are informal business relationships, but oral agreements currently are subordinated by the existing statutes, he said. “If Harry and I have a business deal and we did not memorialize it in writing,

whatever our business deal is, is trumped and the LLC statute kicks in and comes up with some very bizarre results.”

Haynsworth said the bill accommodates many developments regarding unincorporated entities that have occurred over the past 20 years.

If passed by the full legislature at the 2013 general session, the bill would take effect July 1, 2014. All LLCs formed after that date would operate under the new statute. All LLCs in existence at that time would have until Jan. 1, 2016, to be covered by its provisions but they could opt for an earlier date.

Utah’s LLC statutes have been viewed as outdated. Sen. John Valentine, R-Orem, said that with the new bill “I think we’re getting pretty close to getting it right.”

The bill’s sponsor, Sen. Lyle Hillyard, R-Logan, said the bill brings many positives.

“Everyone I’ve met agreed that our current law is outdated,” he said. “We need to change our current law. ... And what this bill is doing is bringing uniformity across the states. You’re going to see more and more states adopt this. So if I have an LLC in Illinois and I want to start doing business in Utah, there will be some changes, obviously, but I’ll have a better

idea how my LLC will be treated here in Utah as this uniform law takes hold.”

One legislator noted that the bill is lengthy and complicated, with many new components. There was a mention of a possible public hearing on the bill, but Hillyard said he will be sure that the bill is discussed in committee again at the general session.

### 48-unit apartment complex coming to Centerville

US Development, Layton, plans to break ground in three to four weeks for a 48-unit apartment complex called Legacy Crossing and Parrish Lane. It will be located on the corner of Parrish Lane and 1250 West in Centerville.

Craig Widmier, vice president of operations, said the one-building, four-story development should take nine to 10 months to complete. All units will be one-bedroom. Amenities will include a clubhouse, swimming pool and exercise area. The complex was designed by Eric Tuttle and will be marketed by US Development’s property management company, ANC.

US Development built the Megaplex theater in Centerville and the Hilton Garden Inn in Ogden, among other projects.

## Tech council to help launch new association aimed at medical device, biotechnology sectors

The Utah Technology Council (UTC) announced that it will initiate, help fund and support the creation of a separate and independent sister association to meet the specialized needs of its members and other Utah companies in the medical device and biotechnology sectors.

The soon-to-be launched association will focus entirely on growing the state’s 1,000-plus life science companies with their specialized needs, particularly in the area of federal advocacy, including FDA regulatory reform and CMS reimbursement issues. The new association will be named and formally launched Nov. 8, at the Utah Life Science Summit.

UTC’s medical device, diagnostic, biotechnology and natural products organizations will become members of the new life science trade association with complimentary membership through Dec. 31, 2012. UTC will increase its focus on the information technology sector, with nearly 5,000 companies, and the emerging clean technology sector of approximately 600 organizations with events focused on networking, education and funding

priorities.

As an organization that was previously focused solely on Utah’s IT sector, UTC initially brought Utah’s life science companies under its wing in 2006, at a time when Utah’s life science association was in need of assistance and had a much smaller population. However, UTC leadership and its medical device, diagnostic, biotechnology and natural products members now believe that the needs of the life science community can best be met through the creation of a new independent and UTC-aligned association.

The new association will be headed by Kimball Thomson, founding executive director of MD4 Utah and of the National Summit on Personalized Healthcare.

Utah’s IT, life science and clean tech sectors, combined, accounted for 103,000 of the state’s highest-paying jobs, 57 percent above Utah’s average annual non-agricultural wage at the end of 2010, and its \$6.5 billion of payroll accounted for 14.3 percent of the state’s total payroll with 8.6 percent of Utah’s workforce.

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## • Industry Briefs •

### BANKING

• **Bank of Utah**, Ogden, recently introduced a new personal financial management service powered by **MoneyDesktop** that is free to its online banking customers. Bank of Utah is the first bank in the state to adopt the online platform developed by the Provo-based company that serves as a one-stop financial hub for its users. The service securely aggregates all of a customer's accounts from various institutions (not just Bank of Utah), and provides tools for expense tracking, budget creation, debt management and financial reporting and a personal "guide me" function.

• **Mountain America Credit Union**, West Jordan, has taken home a **2012 WebAward** for "Outstanding Website" as part of the Web Marketing Association's 16th annual WebAward competition for website development. WebAward entries were judged on design, copywriting, innovation, content, interactivity, navigation and use of technology.

• **American Banker** magazine's October 2012 "Most Powerful Women in Banking" issue lists **Zions Bank** among its Top Banking Teams in the

nation. Additionally, **LeeAnne B. Linderman**, Zions Bank's executive vice president of retail banking, ranked No. 21 on the magazine's list of "The 25 Most Powerful Women in Banking." She is the only banker from Utah to be listed. Zions Bank will be honored for its distinction at an awards ceremony hosted by *American Banker* on Oct. 16 in New York City. This marks the third time Zions' senior-level women have been recognized by the publication as a top team. Other banks to receive the distinction in 2012 were Wells Fargo and U.S. Bancorp.

### COMPUTERS/ SOFTWARE

• **PublicEngines**, a Draper-based provider of cloud-based solutions that facilitate crime analysis, supply actionable intelligence and increase community engagement for law enforcement and governments, will soon release the **CityConnect mobile application**. CityConnect is billed as the first fully integrated mobile application that allows agencies to inform, connect and engage with their local community through their own agency-branded mobile application. The CityConnect app

will be available for iOS (iPhone and iPad) and Android devices in December. For more information and to view a video on how CityConnect can increase information and communication with the public, visit [www.publicengines.com](http://www.publicengines.com).

• **Ogden-based S4 Group Inc.**, a software and network appliance development firm, was presented with the **Fox Hound Award** by BACnet International. BACnet International presented the award as part of its annual "Leaders of the Pack" program to recognize the achievements of individuals and companies involved in the

BACnet community. BACnet International is an industry association that facilitates the successful use of the BACnet protocol in building automation and control systems through interoperability testing, educational programs and promotional activities.

### CONSTRUCTION

• Lightweight and stiff as a board, a plastic foam material is being used to **protect Utah's natural gas pipelines from rupturing during earthquakes**. **Steven**

**Bartlett**, associate professor of civil engineering at the **University of Utah**, has partnered with natural-gas company **Questar** to use large expanded polystyrene blocks called "geofoam" as a compressible, protective cover for natural gas pipelines buried underground. Geofoam has been used for decades in Europe, North America and Asia to lighten loads under roads and reduce settlement. One-hundredth the weight of soil with similar strength, geofoam blocks reduce construction time and don't erode or deteriorate. Bartlett previously researched the design and use of geofoam as a lightweight road embankment in the Interstate 15 reconstruction project through the Salt Lake Valley a decade ago, and more recently in the TRAX light rail line that opened last year to serve West Valley City. Geofoam currently is being used in the TRAX extension to the airport.

### EDUCATION/TRAINING

• **Cameron Martin** has been hired as vice president for university relations at **Utah Valley University**, Orem. He replaces Val Hale, who left UVU in July

*continued on page 9*



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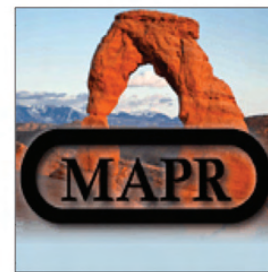
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**\$1,195,000**

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



Exclusive opportunity to preview this amazing Old Town home. This home boasts a 5 star rating by vacationers from around the world. It is over 90% booked for the season and for that reason, difficult at times to show. Please take advantage of this rare Priced to SELL, this beautiful remodeled home features new fireplaces, bathrooms and all new master suite. Nearly ski in ski out! Only 150 Yards to Park City Town Lift providing ski access to Park City Mountain Resort. Empire #1 located across the street from the Quittin' Time run allowing you to ski back to the home after a day on the slopes. This 3 bedroom, 2-1/2 bathroom, boasts a 5 star rating from rental guests who have stayed in the home! It is nicely situated in a quiet section of historic Park City within walking distance of Main Street (1/4 mile). This old town home has the RARE 2 car garage and sits on a lot and a half! Additional features include high vaulted ceilings, wood beams, slate, granite, travertine, new carpet, well appointed furnishings and art. For buyers looking to rent the home, this home has EXCELLENT rental income and bookings. Furniture negotiable.

641 E Windsor Ln Kaysville

**\$1,199,000**

Approx Sq Ft:	7400	Den:	1
Bed Rooms:	6	Living Room:	1
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Family Rooms:	2	Fireplace:	2



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from page 7

to become president and CEO of the Utah Valley Chamber of Commerce. Martin will officially assume his duties Oct. 15.

**FOOD SERVICE**

• **Nicholas & Co.** driver **Steve Tribe** was awarded first place in the Straight Truck category at the **2012 International Foodservice Distributors Association (IFDA) Truck Driving Championship**, held Sept. 14-16 in Nashville. The three-part competition included a written examination measuring driver knowledge of safety and operating procedures, a vehicle inspection where drivers worked to find 10 planted equipment defects or safety hazards that could affect vehicle readiness, and a driving course competition where drivers were evaluated on their ability to handle a series of six course problems simulating everyday challenges. Tribe is a 13-year veteran at Nicholas & Co., Salt Lake City, and won first place in the five-axle category in 2008 and 2009 at the IFDA Championship.

**HEALTH CARE**

• **Mountain Medical Physician Specialists**, Salt Lake City recently launched a 38-foot state-of-the-art digital **mobile mammography coach** to bring early breast cancer detection directly to the patient. The coach is available to travel to companies and organizations. Screenings provided to insured patients are billed to the individual's insurance company and take 30 minutes or less.

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• **The Sky Lodge**, a boutique hotel in Park City, has received a **Travelers' Choice award** from **TripAdvisor** for 2012. This marks the third consecutive year The Sky Lodge has received this Certificate of Excellence, which is based on guest ratings. The Sky Lodge is ranked as TripAdvisor's No. 1 of 60 hotels in Park City and is also included on TripAdvisor's Top 25 Hotels in the United States at No. 14 for 2012.

**INSURANCE**

• **David West**, CLU, ChFC, recently joined Salt Lake City-based **Intermountain Financial Group**, the Utah agency of Massachusetts Mutual Life Insurance Co. (MassMutual), as a financial services professional with over 30 years of industry experience. West is the principal and owner of a financial services consulting company, West Capital Advisors Inc., that assists insurance agencies and insurance agents in the development of revenue generating opportunities. West will not be changing West Capital Advisors, but rather join Intermountain Financial Group to provide additional products and services to his practice.

• The **Utah Insurance Department** has released the 2012 annual **auto and homeowners comparison tables**. They are compiled by the department to help Utah residents compare the rates of the top 20 insurance firms in Utah based on the volume of homeowner and private passenger auto insurance premiums. The tables can be accessed at [www.insurance.utah.gov/auto/comparison-table.html](http://www.insurance.utah.gov/auto/comparison-table.html). The tables compare various types of risks in Salt Lake City, Provo and Richfield. The tables do not constitute a recommendation.

• The national office of the **Women in Insurance and Financial Services (WIFS)** organization asked its more than 1,000 national members to nominate one of their peers for its highest level of recognition, the **Woman of the Year** award. **Amber Dixon**, marketing director for **Intermountain Financial Group LLC**, Salt Lake City, and current Utah WIFS chapter president, is one of three

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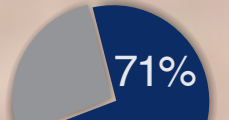
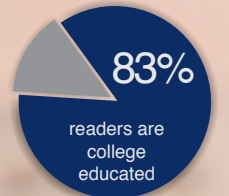
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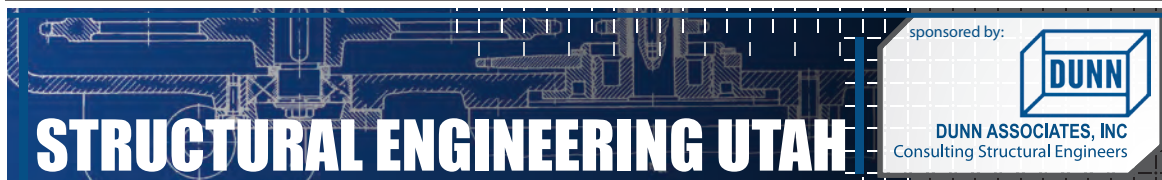
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## Experience is golden

By Ronald Dunn

There is no substitute for experience. In structural engineering, the lack of experience can be devastating and catastrophic. How structural engineers gain experience is of particular concern. In life we learn from our failures and mistakes. Unfortunately, this is not a good option for those responsible for designing structures.

Structural engineers design buildings and structures to withstand forces; specifically, they look for all of the reasons that a structure can fail and address each of those possibilities. This defines experience. The more experienced engineer could therefore translate into an ability to think of more reasons a building could fail. Unfortunately, this notion is flawed as well. Experience is not necessarily defined by the calendar.

Other methods of gaining experience include continuing education and research through books and case studies. While this is helpful, and indeed beneficial, there is only so much that a single person can absorb. Quality mentors are also an excellent resource for experience. Office peers can provide some of the best opportunities for experience. A team is always stronger than the individual. Growth opportunities that exist in a larger firm can provide a platform for faster growth and experience.

A common realization of younger engineers is that each year they discover more and more reasons how a structure can fail. As their experience and knowledge of the profession increases, their respect for consequences is validated. This can be a very

lonely place for a young engineer to work every day without a solid mentor. Without a mentor we simply don't have enough years to practice and learn all that is necessary to be truly successful and beneficial to our clients.

When I taught college I would tell my students that one of the first questions they should ask a prospective employer is, "Who will my mentor be and what access will I have to him or her?" Structural engineers don't have a "residency" as defined in the medical profession; however, the early years should be equally demanding and important. A mentor should be willing to make you better than they are without being threatened by this notion.

My mentor, Dr. Alexander Tarics, is currently the oldest living Olympic champion. He won a gold medal in the 1936 Olympics in Berlin, Germany. At the age of 97, his passion for structural engineering has not dimmed. In California he is still one of the giant icons of the profession and has been recognized with numerous awards. There are no words or monetary compensation worth the lessons and passion that he shared with me for the first 10 years of my career. He continues to mentor me and remind me of what a great opportunity it is to be a structural engineer.

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

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from previous page

nominees. To qualify for the award, the nominee must demonstrate strong leadership within the industry, including services to WIFS and other organizations, on both national and local levels; have made a significant contribution to supporting, encouraging and advancing other women in the insurance and financial services industry; and be a current member of WIFS for a minimum of three years.

## LAW

• **Prince Yeates** attorney **Erin Stone** was recently elected as the board chair-elect for the **Girl Scouts of Utah** for 2012. She will serve in this position until next August as training to be named the 2013 nominee for the board chair position. This is Stone's fourth year of serving on the GSU board after being elected as a member-at-large in 2009. In her time with the organization she has chaired the 2012 International Women's Day event and also serves on the fund development and board development committees.

• **Ray Quinney & Nebeker** attorney **Rick Thaler** has been elected to the **Economic Development Corp. of Utah's** board of trustees. EDCUtah is a public/private partnership that works with state and local government and private industry to attract and grow competitive, high-value companies and spur the development and expansion of local Utah businesses. Thaler is a shareholder and member of Ray Quinney & Nebeker's executive committee. His practice includes complex commercial litigation, general litigation, federal and state employment litigation, appellate litigation, tort and contract claims, administrative agency practice, tax controversies and consultation with companies on a wide variety of business and employee issues.

## MEDIA/MARKETING

• The **FDA** has picked six agencies — including Utah-based **RIESTER**, which has previously been involved in youth tobacco prevention and Utah's "End Meth Now" campaigns — to work on a **new anti-smoking initiative**, which together have a spend ceiling of \$390 million over the next five years. Ending a bidding process that began in September 2011, Grey, Mullen, Drafftcb, Campbell-Ewald, American Legacy Foundation and RIESTER were chosen for the task. The group of agencies will now be given assignments or will submit proposals in a competitive scenario. Through its acquisition of Harris and Love, RIESTER is the

oldest advertising agency in Utah, dating back to the 1930s.

## NATURAL RESOURCES

• **Lynn Cardey-Yates**, formerly vice president, legal, at **Kennecott Utah Copper**, assumed a new role in the company as the vice president of sustainable development. Cardey-Yates replaces **Rohan McGowan-Jackson**, who recently accepted the role of vice president, innovation and resource development. During her numerous years at Rio Tinto and Kennecott, Cardey-Yates has held vice president and general counsel positions, and currently serves as a board member of The Nature Conservancy in Utah and a trustee of the Rocky Mountain Mineral Law Foundation. Prior to joining Kennecott, she was a partner and member of the board of directors at Parsons Behle & Latimer in Salt Lake City and a partner at Burns, Wall, Smith & Muller in Denver.

## REAL ESTATE

• Members of the Utah chapter of Chicago-based **CCIM Institute**, which confers the Certified Commercial Investment Member (CCIM) designation to commercial real estate and allied professionals, recently volunteered at Road Home/Palmer Court as part of the group's **Community Caring in Motion** program. Chapter members and families participated by organizing books in the library, cleaning and organizing the donation room and food pantry and serving dinner to more than 200 residents of Road Home/Palmer Court.

• **NAI West Property Management**, a Salt Lake City-based third party property management firm, recently **added three new properties to its portfolio**. With the additions, the firm has added nearly 800,000 square feet of new property in 2012 and now has a total portfolio of more than 9.6 million square feet. The new properties are located in Park City, Midvale and West Valley and include office space, retail shops and restaurants, and corporate buildings.

## RESTAURANTS

• **La Caille restaurant**, Sandy, will present its inaugural **Argentinian Tango Dinner Dance** Oct. 13. Patrons will be able to experience a tango evening with professional instruction, performance during dinner and dancing beginning at 6 p.m. Black tie is suggested, but not required. Tickets are \$75 per person and include dinner, dancing, tax and gratuity. A cash bar will be available. Tickets are available by calling the restaurant or online at

www.lacaille.com.

• The **Thaifoon-Taste of Asia** restaurant at The Gateway in Salt Lake City **closed its doors** on Sept. 30. The management company of Thaifoon said in a written statement it is focusing energy on other brands and noted the Salt Lake eatery was the only Thaifoon-Taste of Asia still in operation. The restaurant opened in March, 2003.

**RETAIL**

• Salt Lake City-based **Associated Food Stores**, Utah's largest grocery retail chain, has signed with **Accelitec Inc.**, based in Bellingham, Wash., to kick off a customer relationship management platform to its independent retailers. Associated will launch the **Accelitec Wallet Builder** in its Macey's store with the introduction of the "Perks" program," which uses digital marketing to create higher levels of engagement with shoppers. The digital strategy will provide Associated's retail partners with an enterprise platform for precision marketing and real-time redemption of digital offers and promotions. The platform will be added to the firm's other retail brands, including Dick's, Lin's, Dan's and Fresh Market.

• **Sharp Imaging and Information Co. of America** rec-

ognized **Les Olson Co.**, Salt Lake City as a Hyakuman Kai Elite Dealer. Sharp awards Hyakuman Kai Elite status to exceptional dealers that have achieved \$5 million plus in sales during the past year. Les Olson Co. is among a select group of dealers recognized by Sharp from the hundreds of dealers that sell Sharp's advanced business products and solutions in the U.S.

• **Gardner Village**, an historic retail shopping area in West Jordan, has added three new tenants. **Plum Dandy** offers clothing and accessories and has the same ownership as **Post Peddler**, a specialty clothing shop also located at Gardner Village. **Spoiled Rotten** retails children's clothing, furniture and home decor. **Vintage Chic by Sweet Briar Hollow** offers an assortment of clothing, jewelry and shoes and also has a store in Draper.

• Salt Lake City-based retailer **DownEast** has started its fifth annual "LIVE for Pink" sales event. Through Oct. 14, customers can purchase special limited edition "LIVE for Pink" T-shirts and DownEast will donate 50 percent of the sales – up to \$25,000 – to selected grant recipients to support their work relating to breast cancer awareness, education, assistance for victims and other endeavors. With its previ-

ous "LIVE for Pink" events taking place in 2008 through 2011, DownEast has raised more than \$88,000 for charities in honor of National Breast Cancer Awareness Month. The DownEast limited edition "LIVE for Pink" tees are available in DownEast stores and online.

**SPORTS**

• **Ski Utah** has launched a new *Ski Utah* magazine and website. The magazine contains imagery, writing, insider tips and more. The organization had produced a factual vacation planner but the new magazine is designed to focus on the dream and aspiration of a Utah vacation. A free copy of the inaugural magazine is available at [http://www.skiutah.com/winter/plan/plan-other/travel\\_planner](http://www.skiutah.com/winter/plan/plan-other/travel_planner). The website, [www.skiutah.com](http://www.skiutah.com), has been revamped to reflect the same spirit, with photography, video, writing and an easier user experience. It features a new vacation planning tool with region-based listings that promote access and the proximity of Utah's 14 resorts, plus a Deals section featuring specials on lodging, lift tickets and equipment rentals. Ski Utah, the marketing firm owned and operated by the 14 Utah ski resorts that make up the Utah

Ski and Snowboard Association, hopes to increase skier day visits, which last season totaled 3.8 million.

**TRANSPORTATION**

• **Maureen Riley**, executive director of the Salt Lake City Department of Airports, has been elected secretary-treasurer of the board of directors of **Airports Council International-North America**. Simultaneously, she was appointed to the group's world governing board. ACI is a global

trade association consisting of 580 members operating 1,650 airports in 179 countries and territories.

• Park City-based **All Resort Group** has invested more than \$2 million in its **newest bus fleet equipped with seat belts**. The firm will have one motor coach (with seating for 56), a mini coach (with seating for 20 to 35), one Sprinter (with seating for 14), one van (with seating for 14), one SUV (with seating for seven) and a limousine (with seating for 12), all with three-point safety belts.

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\*APY=Annual Percentage Yield. Minimum to open Kasasa Cash account is \$100. APYs are accurate as of 04/02/2012. Balances up to \$25,000 receive an APY of 2.15% if qualifications are met each qualification cycle on Kasasa Cash. Balances above \$25,000 receive an interest rate of 0.50% on the portion of the balance above \$25,000 if qualifications are met each qualification cycle on Kasasa Cash. As a result, the APY for balances above \$25,000 will range from 2.15% - 0.83% if qualifications are met each qualification cycle on Kasasa Cash, depending on the balance in the account. If qualifications are not met, the APY will be 0.05% on all balances. The qualification cycle is not the same as your monthly statement cycle. Qualifying transactions must be point of sale transactions and must post to and clear the account during the qualification cycle. Transactions may take one or more banking days from the date the transaction was made to post to an account. Transfers between your accounts with us do not count as qualifying transactions. Contact us for more information about the qualification cycle. ATM fee reimbursements will be credited to your account on the last day of your statement cycle. ATM fees up to \$4.99 per transaction incurred in your Kasasa Cash account will be reimbursed up to \$15 if qualifications are met on your Kasasa Cash account during the monthly qualification cycle. Rates may change after the account is opened. Fees may reduce earnings. Limit one account per person and two accounts per household.

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# Legal Matters

## Utah court limits available remedies for misappropriation of confidential information

### Why Confidentiality Agreements Are Now More Important Than Ever

A business's proprietary data and information may often be more valuable than its tangible property. As trade secrets become an ever-increasing component of many businesses' intellectual property portfolios, it has become more important than ever for businesses to safeguard the confidentiality of this data and information. Businesses can find protection for their trade secrets under the Utah Uniform Trade Secret Act (UTSA), which provides remedies for actual or threatened misappropriation. But what about confidential information that does not rise to the level of a trade secret? A recent decision by the Utah Court of Appeals highlights the importance of confidentiality agreements in protecting this valuable proprietary information.



Lauren Sherman

Before delving into the details of the case, some general background on trade secret law might be useful. The Utah UTSA provides remedies for the misappropriation of trade secrets. Simply stated, misappropriation means the improper or unauthorized use or disclosure of the trade secret information. The UTSA provides for injunctive relief to enjoin actual or threatened misappropriation and damages for any loss caused by the misappropriation. To qualify for protection under the

UTSA, however, a claimant must show that its proprietary information actually qualifies as a trade secret. The UTSA defines a "trade secret" as information, including a formula, pattern, compilation, program, device, method, technique, or process, that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can

obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Trade secret law jurisprudence has made clear that this is not always an easy burden to meet. If the information at issue can easily be duplicated by someone skilled in the field or acquired by others through honest means, it will not be deemed a trade secret. Similarly, when an entity seeking trade secret status for information cannot show that the information was compiled or developed through the expenditure of substantial time, money or effort, the information is unlikely to be deemed a trade secret.

The Utah UTSA also contains a preemption provision which states that the UTSA's remedies displace or supplant conflicting tort, restitutionary and other laws providing civil remedies for misappropriation of a trade secret. The preemption provision states that the UTSA does not affect contractual or criminal remedies for misappropriation. Up until recent-

ly, Utah's district courts were split over whether the preemption provision in the UTSA meant that the statute preempts *all* claims for misuse of information or only claims involving information that meets the statutory definition of a trade secret. The Utah Court of Appeals recently resolved this disagreement in *CDC Restoration & Construction v. Tradesmen Contractors*. In that case, the plaintiff, CDC, was a concrete repair business. It sued a former employee and his new business for various claims stemming from the employee's alleged misappropriation of confidential pricing and bid data. The employee never signed a confidentiality agreement, but CDC claimed that it told the employee that the pricing and bid information was confidential. CDC claimed that the employee used CDC's pricing data and bid information to formulate a competing bid for a job at Kennecott, which CDC ultimately lost to the former employee's new business. CDC asserted statutory claims for trade secret misappropriation and

common law claims for breach of fiduciary duty, intentional interference with economic relations and civil conspiracy.

The appellate court held that each of CDC's common law claims was preempted, or displaced, by the UTSA. The court ruled that the UTSA preempts all civil remedies based on the unauthorized use of information, *irrespective of whether that information meets the statutory definition of a trade secret*. With its common law claims preempted, CDC could only proceed under the UTSA. CDC was therefore required to demonstrate that its confidential information qualified as trade secrets. It was able to do so for its bid information but not for its pricing information. The evidence showed that CDC's pricing information could have been ascertained from publicly available data or re-created by the defendants based on their years of experience in the industry. Because the pricing information was determined not to be a trade secret, CDC was simply out of luck on its claim that the defendants had

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improperly used this information in preparing their competing bid. The consequence of the court's ruling is that when a plaintiff seeks to sue for the unauthorized use or disclosure of confidential information but cannot prove that the information rises to the level of a trade secret under the UTSA, the plaintiff is barred from proceeding under any other theory. The only exception is when the plaintiff entered into a nondisclosure or confidentiality agreement, as the UTSA preemption provision does not affect remedies for breach of contract.

The *CDC* case instructs that employers and businesses should be wise to protect their proprietary information with confidentiality agreements. In the absence of such agreements, businesses can no longer rely upon common law tort theories to enjoin or seek damages for the misappropriation of confidential information by asserting, for example, claims for conversion, intentional interference with economic relations, unjust enrichment or breach of fiduciary duty. Instead, businesses will be required to prove that their proprietary information rises to the level of a trade secret in order to pursue claims for misappropriation of that information. As the *CDC* case shows, this is often a difficult burden to meet. Therefore, confidentiality agreements may be the only potential source of recourse.

Lauren Shurman is an associate in the Litigation group at Stoel Rives LLP. She focuses her practice on general commercial litigation and employment litigation. Shurman has litigated complex commercial disputes in federal and state courts and in arbitration, and has represented clients in administrative proceedings before the Utah Labor Commission, the Utah Public Service Commission, the Utah State Tax Commission and the Utah State Board of Education. She represents employers in matters relating to employment discrimination, harassment, wrongful termination, the Family Medical Leave Act and non-compete agreements and trade secret law. She has also represented condemning authorities in numerous condemnation actions and disputes involving power lines and electrical utility substations.

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## HOW SECURE ARE YOUR DIGITAL DOCUMENTS?



### Pete's Sharp Tips

Every day, companies and organizations do everything they can to limit their liability. What many decision makers don't know is that their copiers might be their biggest liability.

The use of networked office equipment helps businesses to achieve more than ever before. While this equipment is needed to stay productive and keep offices running smoothly, the confidential data retained by document systems can accidentally or maliciously be accessed if not sufficiently protected.

Just like a computer, your copier has a hard drive that stores data. This means that all of the information that is printed, copied, scanned or faxed by your business on a daily basis is stored on this hard drive. Imagine your company's personal information, financial statements, confidential reports, email, memos, customer data and employee information falling in the wrong hands. Organizations spend significant capital to protect their assets from threats, yet frequently overlook the data stored on their office devices.

#### How can you protect your data?

Many copier manufacturers offer data security options with their equipment. Typically, these options include high levels of encryption and overwriting, making your data irretrievable and secure. Data Security precautions are recommended for all businesses. Talk to your local document dealer about the data security options for the equipment you own. If your current devices do not have a data security option, you may want to consider upgrading to equipment that supports this functionality.

Before you purchase a new document system, or retire an old one, be sure to ask your service provider about their data security policies. They may offer services to remove the unit's hard drive or securely wipe the information stored on it to ensure that your sensitive information doesn't fall into the hands of anyone outside your organization. Always make sure you partner with a trusted document dealer that is committed to best practices in data security.

## The Eiffel Tower: an iconic monument and critical lesson

We went to visit the Eiffel tower again. Our fourth visit in five years.

What do you know about the Eiffel Tower?

When it was built it was, to say the least, the most controversial structure of all time. Hundreds protested it, criticized it, campaigned against it, said it was a disgrace to architecture and predicted it would be the ruination of Paris.

The story is fascinating. You can read about its history on Wikipedia, where I learned, "Some of the protestors eventually changed their minds when the tower was built. Others remained unconvinced. Guy de Maupassant supposedly ate lunch in the Tower's restaurant every day. When asked why, he answered that it was the one place in Paris where one could not see the structure."

EPILOGUE: The tower was built to world acclaim. It's one of the most impressive structures in the universe. It's not just stunning to look at, it's also inspiring to be in its presence. An estimated 10 million people a year visit to admire its glory. It is the heart and soul of Paris, France, and it's the symbol by which the city has been known for more than 100 years.

At the base of his tower there's an amazing statue in honor of Gustave Eiffel. Interesting to note that none of the people who criticized him have statues at the base.

How much more wrong could the protestors and critics have been? Were they trying to build up or tear down? Encourage or discourage? Encourage or disparage? In hindsight, the critics seem contrite, shallow, self-serving, prejudiced and baseless.

Kind of like today's critics.

Call it what you will, a naysayer, by any other name, is just that.

- Is it an opposing point of view, or criticism?
- Is it a "pundit," or a critic?
- Is it "commentary," or just criticism?
- Is it an op-ed column, or criticism?
- Is it a "panel discussion," or criticism?

And what are these people really saying?

- Are they debating? Or discussing and deciding?
- Are they blaming "it" or "them?" Or are they offering answers and taking responsibility for the remedy?

• Do they talk about what they WILL do? Or what someone else DIDN'T do?  
• Did they talk about what didn't happen, who's wrong and why it won't work? Or did they offer their ideas about what could be?

Do these critics (pundits) ever offer answers, ideas or recommendations?

Critics try to label the "wrong-doers" into a group for easier identification – unions, teachers, liberals, conservatives, left, right or in your familiar terms: the competition or the purchasing department.

THINK ABOUT IT: It's never *every-one*, is it?

And of course, today's world paints

criticism as some sort of pious, politically correct and necessary element of society. REALITY: People criticize to suit themselves, further their agenda or even make the sale.

In the late 1800s, Finnish composer Jean Sibelius said, "Pay no attention to people who criticize. No statue was ever erected to a critic." And in the late 1960s, the great Glenn W. Turner added, "But the people they have criticized, many statues have gone up."

Makes me stop and think. I hope it does the same for you.

Got statue? Or are you just criticizing?

How much of your time is wasted criticizing other people, their ideas or their thoughts? And how could you be investing that time to build your own monument? Your own Eiffel Tower.

YOUR REAL JOB: Convert your criticism to answers, resolve,

solutions and responsibility. You'll be thought of as a thinker, make more sales, build stronger relationships, earn a better reputation, be seen as a resource and be a happier person.

Dale Carnegie, author of the 70-year bestseller, *How to Win Friends and Influence People*, nailed it in 1915 when he penned his most dominant principle, "Any fool can criticize, condemn, and complain (and most fools do)."

There should be a law that says all criticism must be followed by a solution, an answer, a resolve or an idea. That would shut a lot of people up – or at least make them think and see the positive side of things.

FOOTNOTE: Apple just released the much anticipated iPhone 5. The critics lined up to tell you how it "falls short" or "disappoints" or some baloney about speed or connectivity or maps or keyboard. They gave it three-and-a-half stars. Meanwhile Apple, in spite of the jackass critics, sold 10 million phones in the first 30 days for \$400 a device. Do that math. I wonder how much critics earn?

Free GitBit: If you're looking for a change of language to launch your new "criticism-free" lexicon, I'm making available eight pages of positive quotes and ideas from Dale Carnegie. Go to [www.gitomer.com](http://www.gitomer.com), register if you're a first-time visitor, and enter the words CRITIC in the GitBit box.

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

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## • Calendar •

• Oct. 9, 11:30 a.m.-1:30 p.m.: **MountainWest Capital Network's Utah 100 Awards**, honoring the state's 100 fastest-growing companies in Utah. Location is the Grand America Hotel, 555 S. Main St., Salt Lake City. Cost is \$100. Details are at [mwcn.org](http://mwcn.org).

• Oct. 9, 5 p.m., repeating Oct. 10, 5 p.m.: **"What If Everything You Thought You Knew About Investing Was Wrong?"** presented by Draper-based Stonecreek Wealth Advisors. Topics will include market timing, picking stocks in advance, predicting future returns and retirement planning strategies. Location is Madeline's Steak & Seafood, 10290 S. State St., Sandy. Free, dinner included. Reserve a space by calling 1-800-689-0408.

• Oct. 9, 7:15-9 a.m.: **Association for Corporate Growth Utah breakfast meeting**. Guest speaker will be Peter Mouskondis, president and CEO of Nicholas & Co. Location is the Little America Hotel, 500 S. Main St., Salt Lake City. Register at [www.acgutah.org](http://www.acgutah.org) or by calling Linda Blake at (801) 359-8613.

• Oct. 9, 8:30 a.m.-3 p.m.: **"Managing the Impact of the Affordable Care Act,"** hosted by Infinisource, a national human capital management firm. The seminar will examine ACA requirements for employers to create a "Summary of Benefits and Coverage" for health care plans with open enrollment periods beginning on or after Sept. 23. Topics also will include overall ACA requirements, account-based plans, deadlines and enforcement, taxes and fees, Medicare Part D and HIPAA rules. Location is the Radisson Hotel Salt Lake City Airport, 2177 W. North Temple. Cost is \$200, with discounts available for groups of six or more. Attendees also receive a 150-page COBRA reference manual. Register online at [www.infinisource.com](http://www.infinisource.com) or call 800-300-3838.

• Oct. 11, 11:30 a.m.: **Building Owners and Managers Association (BOMA Utah) Legislative Town Hall Meeting**, featuring Sens. Curt Bramble and Wayne Niederhauser and Rep. Gage Froerer. Location is the Grand America Hotel, 555 S. Main St., Salt Lake City. Free for BOMA members, nonmembers pay \$45. Register at [www.BOMAUtah.org](http://www.BOMAUtah.org).

• Oct. 11-12: **Nano Utah Conference & Exhibition**. Event will include information about career opportunities, skill tutorials, research presentations and exhibit booths. Main activities are

at The Leonardo and the Salt Lake City Library Auditorium. Cost is \$175, \$65 for students and \$25 for the workshop only. Details are at [www.nanofab.utah.edu/nanoutah12](http://www.nanofab.utah.edu/nanoutah12).

• Oct. 11, 10-11 a.m.: **"The Ten Commandments of Hiring and Firing"** webinar, Posted by Webinar Masters of North Salt Lake. Michael Patrick O'Brien, labor and employment attorney, will discuss actions to avoid activities that lead to expensive employment lawsuits. Cost is \$49. Details are at [www.webinar-masters.com](http://www.webinar-masters.com).

• Oct. 11, 3-5 p.m.: **"Wider Net, More Fish: A 21st Century Marketer's Guide to Success,"** an Emerging Exec P2P Forum, presented by the Utah Technology Council. Event will be led by Mark Farr, managing partner and creative director at Jibe Media. The forum is reserved for UTC members who are decision-makers of start-up technology companies (fewer than 10 employees and under \$3 million in annual sales). Location is Sorenson Capital, 3400 N. Ashton Blvd., Lehi. Information is available at (801) 568-3500.

• Oct. 17, 10-11 a.m.: **"Building a Talent Pipeline: How to Stop Planning for Succession and Start Managing It"** webinar, posted by Webinar Masters of North Salt Lake. Claire St. Louis, human capital practice leader for MESA Research Group, will discuss a simple process for identifying critical positions within the organizations and for mapping out a succession plan for each. She also will discuss tips for engaging their business clients in the succession dialogue and implementing change management to ensure that leaders incorporate succession planning and talent development into their regular management

practices. Cost is \$49. Details are at [www.webinar-masters.com](http://www.webinar-masters.com).

• Oct. 17, 7:30 a.m.-5 p.m.: **Inaugural Small Business Summit**, hosted by the Utah Small Business Coalition. Keynote speakers will be Larry Chatterton of Chatterton Inc., and Mike Brian of Penna Powers Brian Haynes. There will be multiple breakout sessions on a variety of topics, as well as exhibitor booths and networking. Location is the Radisson Hotel Downtown Salt Lake City, 215 W. South Temple. Cost is \$30. Register at [www.utahsmallbiz.com/events](http://www.utahsmallbiz.com/events).

• Oct. 18, 6-9 p.m.: **Sandy Area Chamber of Commerce Titan Awards**. The Titan Awards banquet and presentation is held annually to honor individuals and businesses that have risen to the call to serve and strengthen the community. This year's honorees are Dr. Cynthia Bioteau, president, Salt Lake Community College; LaVell Edwards, former head football coach, Brigham Young University; and Tom Dolan, mayor, Sandy City. Location is the Little America Hotel, 500 S. Main St., Salt Lake City. To register, visit [www.sandychamber.com](http://www.sandychamber.com).

• Oct. 18, 1-6 p.m.: **Second Annual SLC Fall Employment Law Seminar**, presented by Ballard Spahr. Speakers Elisabeth Blattner-Thompson and Karen M. Clemes will provide updates on employment law developments and trends and discuss critical human resource issues and initiatives for 2013. Location is the Rice-Eccles Tower, 451 S. 1400 E., Salt Lake City. Details are available by contacting Rachel Lufkin at [lufkinr@ballardspahr.com](mailto:lufkinr@ballardspahr.com).

• Oct. 22, 10:30 a.m.-3 p.m.: **International Summit**, presented by the Governor's Office of

Economic Development, the World Trade Center Utah and the U.S. Small Business Administration. Presentations will focus on doing business in Asia, Europe, Latin America and the Middle East; small-business assistance from the U.S. Small Business Administration; and international export financing. Location is Salt Lake Marriott Downtown at City Creek, 75 S. West Temple, Salt Lake City. Cost is \$20. Registration and more information are at [www.business.utah.gov/ISUM](http://www.business.utah.gov/ISUM).

• Oct. 24, 2-3 p.m.: **"Creative Recruiting Ideas"** webinar, posted by Webinar Masters of North Salt Lake. Jeanine Wilson, owner of Corporate Talent Advisors LLC, a full-service human resources consulting, training and recruiting company, will lead the webinar. Cost is \$49. Details are at [www.webinar-masters.com](http://www.webinar-masters.com).

• Oct. 25, 4-6 p.m.: **Utah Technology Council Life Science Mixer**. Location is Sorenson Genomics, 2495 S. West Temple, Salt Lake City. Event is free for UTC members. Information is available at (801) 568-3500.

• Nov. 3, 6 p.m.: **107th Annual Utah Manufacturers Association (UMA) Awards and Installment Banquet**. Event will feature presentation of "Manufacturers of the Year" awards. Evening begins with 6 p.m. social, followed by dinner at 6:45 p.m. Location is Little America Hotel, 500 S. Main St., Salt Lake City. Cost through Oct. 15 is \$170 per couple and \$750 for a table of 10; thereafter the cost is \$195 per couple and \$800 for a table. Registration is available at [http://www.umaweb.org/custom\\_forms/uma\\_annual\\_banquet\\_registration.php](http://www.umaweb.org/custom_forms/uma_annual_banquet_registration.php). Each couple will receive the UMA's traditional "Utah Products Box." More information is available by calling Teresa Thomas at (801) 363-3885.

• Nov. 13-15, 5:30-8:30 p.m.: **Bi-annual seminar for young architects studying for the structural portion of the Architect Registration Examination**, hosted by BHB Engineers. Multiple engineers from BHB will present. Location is Big-D Construction, 404 W. 400 S., Salt Lake City. Free. Register by calling (801) 355-5656.



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# Why small businesses should sponsor charities and nonprofits

When companies sponsor charities and nonprofit organizations, they are participating in cause-related marketing, or CRM. This is when companies combine selling their brand with doing good for the world. Over the years, CRM efforts have increased significantly within businesses. According to the 2010 PRWeek/Barkley PR Cause Survey, two-thirds of business brands are engaged in some form of CRM, with 97 percent of marketing executives agreeing that CRM is a valid business strategy.

CRM is especially helpful for small and local businesses that want to increase their revenue and form a bond with the locals. Why is that? Here are just a few reasons:

### CRM Creates Brand Recognition

- Sponsoring an event or charity will give you opportunity to put your logo on fliers, T-shirts, posters, and more. This gets your brand out in the community, which increases recognition.

- When a brand is easily recognized, it will be more memorable to the consumer. Having a brand name at the forefront of a consumer's mind will ultimately drive customers to your business, increasing sales and revenue.

### CRM Gives You the Upper Hand

- When you are competing against companies that offer similar products or services, CRM sets your organization apart in a powerful way. It gives your brand differentiation and a uniqueness that your competitors do not offer.

### CRM Humanizes a Company

- Supporting local events and businesses is very appealing to locals. The community will see your company in a much more personal way. Seeing your company name associated with places, events or people that are near and dear to the community's heart will make them feel more connected to you.

- Seeing a less "corporate" side of the business will increase brand loyalty. Consumers will remember how your company supports meaningful causes and be more likely to support your company over competitors.

### CRM Offers Entertainment

- Often times when you sponsor an event, your company will get some perks. If you are sponsoring an event, more than likely you will receive a few tickets as a thank-you gift. These can be given to your other clients, employees or friends.

### CRM Helps Create Meaningful

### Relationships

- Sponsorships will inevitably bring you to new people and allow you to network. You could meet other sponsors who could benefit your company, allow you to recruit new employees and, of course, draw in new customers.

### CRM Can Be Done In Many Ways

- Helping a charity or nonprofit organization is not limited to monetary donations. Companies can of course make traditional donations, but they can also donate

products, create a "donate button" on the company's website, sponsor events or donate time. Any and all of these options will create a powerful brand image for the company as well as benefit the organization you are assisting.

I have recommended to clients for the past 30+ years that involvement with a charity is good business, both for the community and for the client, their customers and staff. There are so many needs in the community and every business needs to know both

demographics and psychographics of their business marketing area. There is little difference when someone is homeless – whether it's because they're out of work or because there was an earthquake. They have the same needs.

Linda P. Walton is the president and CEO of the public relations and advertising firm The Walton Group Inc. She has over 25 years of PR experience in Utah and has taught public relations at BYU and UVU. For more information, visit [www.thewaltongroupinc.com](http://www.thewaltongroupinc.com).



Linda Walton

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## Utah on the Rise

### Construction indexes: indicators of overall economic health

Many ask what is in store for our flagging U.S. economy. Construction, both residential and commercial, is a vast leading indicator of the health or sickness of our economy and how it relates not only to small business but also the individual consumer. Indices in the industry are indicators of an economy flagging or flourishing and are the pulse of the economy's performance. From a construction viewpoint, let's take a look at recent data that may shed some insight on projected growth of our economy.

Associated Builders and Contractors' (ABC) Construction Confidence Index (CCI) is an index that illustrates the nation's construction contractors' percep-

tions of the business environment over a six-month period, as well as the prospects for commercial and industrial construction spending growth in the months ahead. The data are collected from ABC

members from across the country through a confidential monthly survey. This national economic indicator provides members with a forward-looking view of the nation's nonresidential construction industry.

The CCI reflects three aspects of the U.S. nonresidential construction industry – sales prospects, staffing levels and profit margins. During the second quarter of 2012, all three indices declined, undoing much of the first quarter's progress

and indicating that nonresidential construction momentum is waning. Sales expectations fell from 68.3 percent to 62.3 percent. Profit margins fell from 57.9 percent to 53.9 percent. Staffing levels fell from 64.3 percent to 59.8 percent. However, index values remain above 50, indicating ongoing expectations of construction spending growth. Scores above 50 indicate expansion; below 50 indicate contraction.

For the second consecutive month, construction spending has fallen and August showed a 0.6 percent decline, according to the U.S. Census Bureau. The bright side of this data is that spending is up 6.5 percent from one year ago. Nonresidential construction fell slightly, by 1.3 percent in August 2012. However, from a year ago, spending is up 2.2 percent. Private nonresidential construction spending saw a decline of 1.7 percent for the month but continues to outperform spending in 2011 by a 7.2 percent increase. Public nonresidential construction spending dipped 0.9 percent in August and continues to decline. Public safety, sewage and waste disposal, and health care all saw a modest increase in construction spending with the lodging subsector experiencing a gain of

30.3 percent. Construction spending in power was up 11.5 percent and manufacturing up 6.3 percent from one year ago.

For the first time in four months, construction materials prices rose 0.9 percent in August, according to the Producer Price Index Report released by the U.S. Labor Department in September. Most categories experienced an increase, including softwood lumber, which jumped 3.4 percent in August. Concrete product prices rose 0.5 percent and iron and steel prices increased 0.3 percent for the month (although down 9.2 percent one year ago). In contrast, steel mill prices dropped 2.5 percent and are 8.2 percent lower than one year ago. ABC's chief economist Anirban Basu stated: "From a multi-month perspective, materials prices are only up 1 percent during the past year, a welcome respite from previous years when materials prices had been incredible volatile." Welcome news for the industry and the economy.

What does all this data tell us? While uncertainty about the European fiscal situation has somewhat abated for now, investors remain uncertain about our economy and the global economy. With the threat of our own fiscal cliff approaching, our elec-

tions, volatile energy prices and policy decisions still yet to be made regarding our money supply, the uncertainty that continues to plague our economy will continue to hinder any real growth efforts. In addition, banks aren't lending or have much higher restrictions and qualification requirements for loans. "While plenty of capital is potentially available to move construction projects forward, there remains a lack of capital willing to invest itself in risky economic endeavors," Basu said. According to Basu, until some of the uncertainty is resolved, the nonresidential construction market will continue to underperform.

Construction indexes illustrate the health of any economy. With construction unemployment at 11.3 percent, and the 0.9 percent increase in materials prices along with the continued construction spending decline, our economy will not see any signs of growth until these indicators improve.

Chris Hipwell is president of Associated Builders and Contractors, Utah chapter. ABC is a national association with 74 chapters representing 23,000 merit shop construction and construction-related firms. For more information call 801-294-5211 or visit [www.abc.org](http://www.abc.org).



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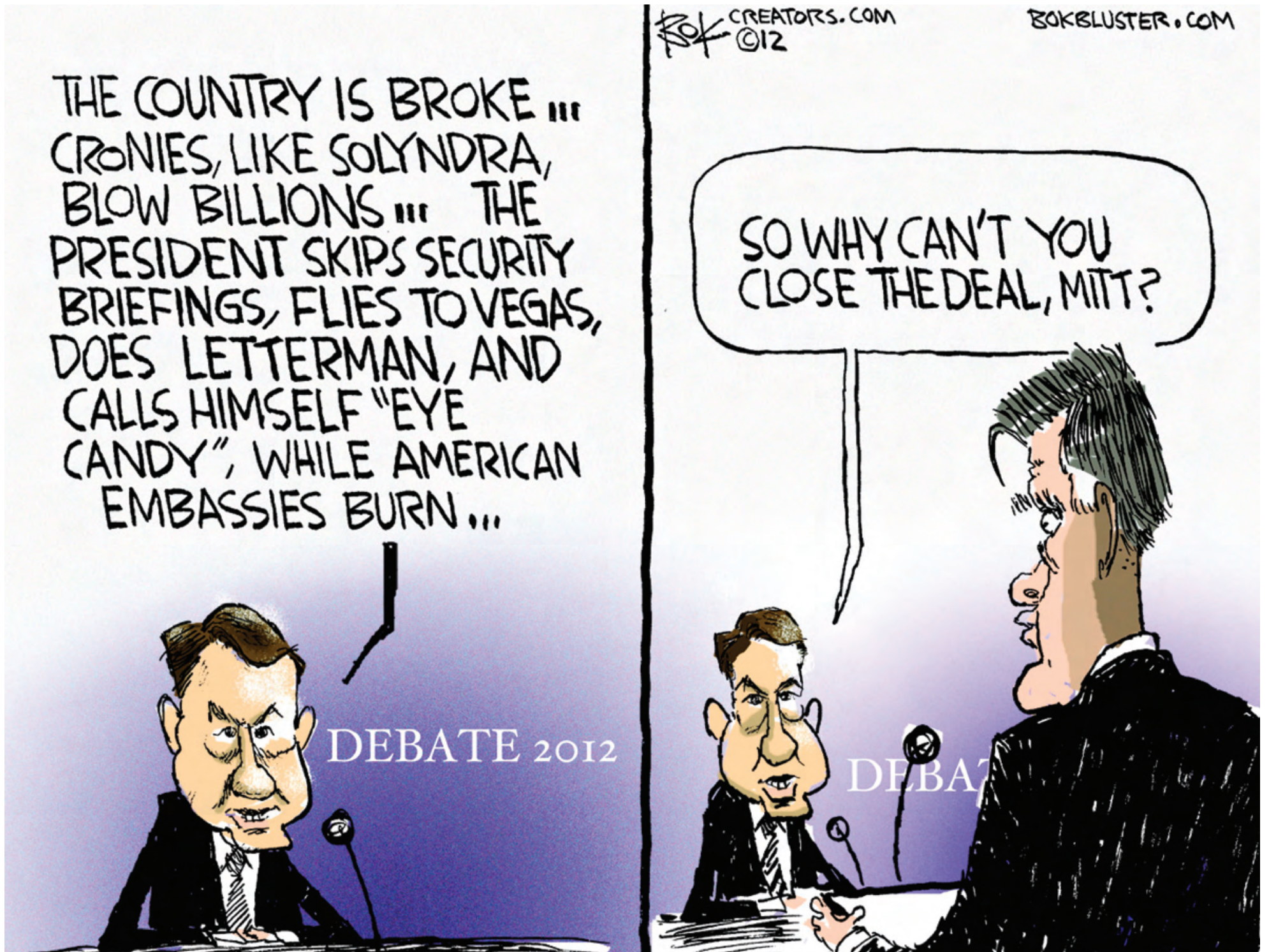
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## The tawdry tycoon who hosted that '47 percent' party

Amid the ongoing uproar over Mitt Romney's snooty remarks at a Florida fund-raiser concerning the "47 percent" who pay no federal income taxes, the party's high-rolling host hasn't drawn quite as much attention as he deserves. As the head of private equity firm Sun Capital Partners, Marc Leder is a longtime associate of the Republican nominee — and a practitioner of the same dubious behavior that has smudged Romney's reputation.

Leder has been dogged by tabloid headlines recounting his nasty divorce and wild partying (replete with reported nudity and public sex around the pool at a summer house he rented on Long Island's East End — for \$500,000 a month). What he has in common with Romney, however, isn't a

taste for bacchanalian revels but a record of business and taxation practices that working Americans might find troubling.

At the moment, Leder is under investigation by New York State Attorney General Eric Schneiderman, who subpoenaed internal records from Sun Capital, Bain Capital and several other private equity giants last July.

Issued by the Attorney General's taxpayer protection bureau, the subpoenas were evidently designed to probe whether Leder and other executives had misused "carried interest," a method of reducing tax liability by converting management fees into investment income — which is taxed at the lower

capital gains rate of 15 percent that keeps Romney's taxes lower than the rate paid by many middle-income families. (Tax analysts say that Bain Capital records released last August indicate that the firm may have saved more than \$200 million in federal taxes thanks to the carried-interest maneuver.)

If Leder did benefit from such aggressive practices, he would merely be typical of executives in an industry where tax manipulations are not just widespread, but fundamental.

Equally common in private equity is profiting from bankrupted companies in which other stakeholders — especially workers and government — are left to cope with the loss. During the Republican primaries, Romney's rivals helped to make Bain notorious for such practices — and his

fund-raiser Leder seems no different.

Although roughly 25 firms held by Sun have gone bankrupt, perhaps the best known example involves Friendly's, the family restaurant and ice cream chain that went under at the hands of Sun Capital in 2010 after more than 70 years in business. After acquiring Friendly's in 2007 for a premium price, Sun took the company into bankruptcy only three years later, supposedly due to rising milk prices.

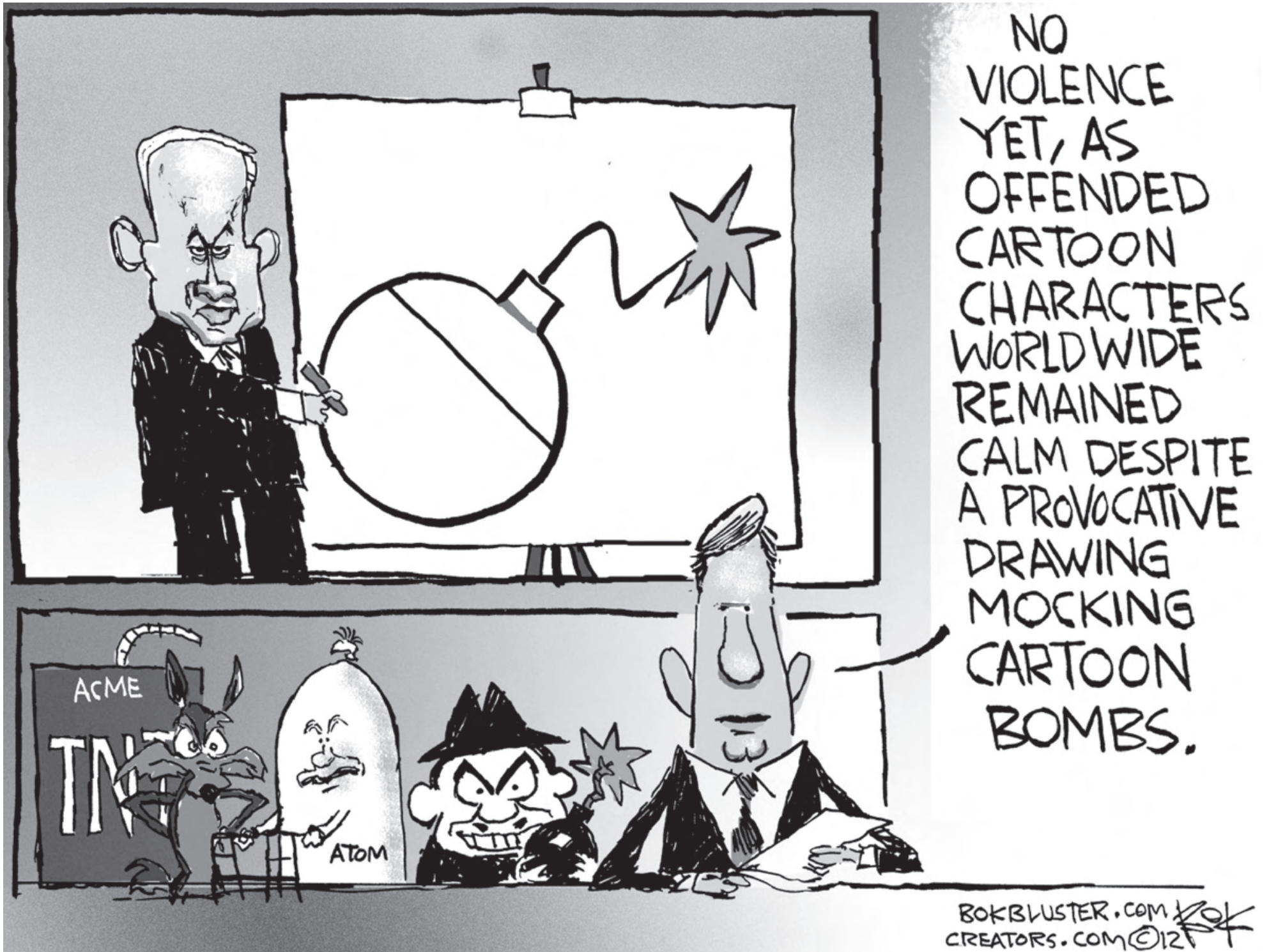
But the Pension Benefit Guaranty Corp. — the federal agency that insures benefits to workers victimized by failed corporate pension plans — accused Sun of sinking Friendly's to dump pension costs onto the government. By pushing the company's pension burden onto federal tax-

payers, who fund the PBGC, Sun could then reorganize Friendly's in bankruptcy, get rid of laid-off workers and less profitable restaurants, and, as Romney likes to say, give the company a "turnaround." So far, that is precisely what Sun appears to be doing, and getting away with it.

So there on the videotape shot in Leder's huge Boca mansion stood Romney, complaining about the income taxes that the working poor don't pay and their dependence on government assistance, while the host surely nodded in agreement. At \$50,000 a plate, the lobster was garnished with a nice helping of irony.

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

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## Capital gains taxes

One of the many false talking points of the Obama administration is that a rich man like Warren Buffett should not be paying a lower tax rate than his secretary. But anyone whose earnings come from capital gains usually pays a lower tax rate.

How are capital gains different from ordinary income?

Ordinary income is usually guaranteed. If you work a certain amount of time, you are legally entitled to the pay that you were offered when you took the job. Capital gains involve risk. They are not guaranteed. You can invest your money and lose it all. Moreover, the year when you receive capital gains may not be the same as the years when they were earned.

Suppose I spend 10 years writing a book, making not one cent from it in all that time. Then, in the 10th year, when the book is finished, I may sell it to a publisher who pays me \$100,000 in

advance royalties.

Am I the same as someone who has a salary of \$100,000 that year? Or am I earning \$10,000 a year for 10 years' work?

It so happens that the government will tax me the same as someone who earns \$100,000 that year, because my decade of work on the book cannot be documented. But the point here is that it is really a capital gain, and it illustrates the difference between a capital gain and ordinary income.

Then there is the risk factor. There is no guarantee to me that a publisher will actually accept the book that I have worked on for 10 years — and there is no guarantee to the publisher that the public will buy enough copies of the book to repay whatever I might be paid when the contract is signed.

Even the \$10,000 a year — which is less than anyone can earn on an entry level job — is not guaranteed. If my years of work produced an unpublished manu-

script, I would not even have been among the first thousand writers who met this fate.

Very similar principles apply to businesses. We pay attention to businesses after they have succeeded. But most new businesses do not succeed. Even those businesses that eventually turn out to be enormously successful may go through years of losing money before they have their first year of earning a profit.

Amazon.com spent years losing money before turning a profit for the first time in 2001. McDonald's teetered on the edge of bankruptcy more than once in its early years. Desperate expedients were resorted to by the people who ran McDonald's, in order to just keep their noses above the water, while hoping for better days.

At one time, you could have bought a half interest in McDonald's for \$25,000 — and there were no takers. Anyone who would have risked \$25,000 at that time would be a billionaire today.

But there was no guarantee at the time that they wouldn't be just throwing 25 grand down a rat hole.

Where a capital gain can be documented — when a builder spends 10 years creating a housing development, for example — then whatever that builder earns in the 10th year is a capital gain, not ordinary income. There is no guarantee in advance that the builder will ever recover his expenses, much less make a profit.

There are whole industries where no one can expect to make a profit the first year — publishing a newspaper, for example. Virtually every major American airline has lost money in some years, and some of the biggest and most famous airlines have ended up going bankrupt.

If a country wants investors to invest, it cannot tax their resulting capital gains the same as the incomes of people whose incomes were guaranteed in advance when they took the job.

It is not just a question of

“fairness” to investors. Ultimately, it is investors who guarantee other people's incomes in a market economy, even though the investors' own incomes are by no means guaranteed. Reducing investors' incentives to take risks is reducing the jobs their investments are likely to create.

Business income is different from employees' income in another way. The profit that a business makes is first taxed as profit and the remainder is then taxed again as the incomes of people who receive dividends.

The biggest losers from politicians who jack up tax rates are likely to be people who are looking for jobs that will not be there, because investments will not be there to create the jobs.

Thomas Sowell is a senior fellow at the Hoover Institution, Stanford University, Stanford, CA 94305.

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Thomas Sowell

*“Who better to advise us on our merger than the team that has been here from the beginning?”*

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