

THIS WEEK

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Legal outsourcing firm to open 100-employee center in Provo

By **Barbara Rattle**
The Enterprise

Mindcrest, a Chicago-based firm that provides legal process outsourcing services in the areas of litigation, corporate legal services and legal content and publishing, is in the process of setting up a Utah office that will employ 100 people. The firm said the expansion was prompted by “significant client demand.”

Company spokesperson Teju Deshpande said the firm presently occupies temporary office space in Salt Lake City, but plans to move to Provo within 30 days. Mindcrest is presently “scoping out a couple of different facilities,” she said.

Utah was chosen as an expansion site because “we wanted to be able to provide foreign language support in addition to services that can’t go offshore for a variety of reasons,” she said, noting all job candidates — most of them attorneys — have been identified. “Clients typically use us for foreign language as business gets more global. Also, translation is not so good with legal



documents.”

The Utah undertaking is a major one for Mindcrest, as Deshpande said the company currently employs approximately 500 people at offices in Chicago; Washington, D.C.; San Francisco; New York and in Mumbai and Pune, India.

Mindcrest offers services in Spanish, German, French, Chinese, Japanese, Korean, Dutch, Tagalog and numerous other languages and is known as an LPO (legal process outsourcing) company. Mindcrest has been consistently recognized as a leader in legal process outsourcing by Frost and Sullivan, *The Black Book of Outsourcing*, International Association for Outsourcing Professionals and *India Business Law Journal*.

2011 was a banner year for Mindcrest, which doubled revenue in relation to the same period of time from 2010. Its client mix

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Largest-ever group of film firms get incentives, will spend millions

By **Brice Wallace**
The Enterprise

From the Lone Ranger to ballet dancers, from the paranormal to a dog that saves Christmas, a group of incentives awarded by the Governor’s Office of Economic Development board last week are for film and TV productions that will showcase Utah in many different ways.

The group was the most ever brought before the GOED board at a single meeting since the state established the film incentive program. Marshall Moore, director of the Utah Film Commission, told the board that the reasons included great work by film commission staffers, plus the fact that productions tend to increase heading into the summer season. “I think the word is out that Utah has a really great [incentive] program and I think that’s why we’re seeing an increase of applications coming to

our state,” Moore said.

The largest incentive, totaling between \$1.8 million and \$2.2 million, is for Silver Bullet Productions Inc.’s “The Lone Ranger” for Disney. It stars Armie Hammer in the title role and Johnny Depp as Tonto. Directed by Jerry Bruckheimer, the feature film will shoot in the Moab and Castle Valley areas through Aug. 11. Total spending in Utah is expected to be about \$9.1 million. Portions of the film will be shot in New Mexico and Colorado.

“It is going to be such a huge hit, I can’t even tell you,” Amy Rees Anderson, a GOED board member who reviewed the script, told the board. “It was kind of like reading ‘Pirates of the Caribbean’ western-style. It’s going to be perfect.”

The board also approved an increased incentive for Salty

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Court: prescribers can be sued for actions of patients against others

By **Barbara Rattle**
The Enterprise

Health care providers are not categorically immunized from liability when the medications they prescribe to a patient cause the patient to do harm to others, the Utah Supreme Court has held.

“It is not too much to ask of a healthcare provider faced with a choice between two otherwise equivalent medications to choose the one that poses the least risk of causing the patient to injure third persons,” Justice Thomas Lee wrote for the unanimous court.

The case involved a man who received medical treatment from a nurse practitioner who prescribed him at least six medications, including Concerta, Valium, Doxepin, Paxil, pregnenolone and testosterone. Later, with all the drugs in his system, the man shot and killed his wife. He later pleaded guilty to aggravated murder. The couple’s young children

brought suit through a conservator against the nurse practitioner, her consulting physician and the medical clinic for which they worked, alleging negligence in the prescription of the medications. The lower court found that the nurse practitioner owed no duty to the children because no patient-health care provider relationship existed between the parties.

The defendant health care professionals asserted that creating a duty to nonpatients by physicians would reduce the availability of prescription drugs because health care providers would become afraid to prescribe them.

“This argument gives undue emphasis to the benefits of prescription drugs as a whole while ignoring their costs,” Lee wrote.

“As some courts have recognized, prescribed medications have significant social utility. But the unquestioned utility of pharma-

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Technology bundler to launch SLC area training center

Elevate Inc., a San Clemente, Calif.-based firm that sells and services residential and small-business data, voice, video, mobile and security systems, is preparing to ramp up its recruiting and training operations in Utah.

The company, founded in 2007 in Utah, is working with several developers to create an 8,000 to 10,000 square foot facility that would employ, at any given time, between 150 and 200 people, according to chief marketing officer Bryan Ferre. It is hoped the facility will open late this year.

Elevate was in an R&D phase for the first several years of its existence. In 2011, the company went public (OTC) by buying the publicly-traded Highland Business Services, and while its headquarters were moved to the West Coast for business reasons, the bulk of the people who work for the company are either from Utah or still live here, Ferre said.

Elevate Inc. recruits people — largely college students



— to act as independent sales and service contractors. Dubbed “Certified Geniuses,” they go through a comprehensive training period and are then tasked with building their own book of business, much like an independent insurance agent, Ferre said. Their compensation is based not only on new customer acquisition but also for customer retention and loyalty. The “Geniuses” offer to package, or “stack” services such as home automation systems, digital phones, entertainment, mobile and broadband using in-house networks and partnerships with national carriers. The “Geniuses” are then the single point of contact for customers should they have a technical issue. Ferre said the goal is to have a “go-to” person at customers’ fingertips rather than

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FILM

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Pictures Inc. for the shooting of "The Mistletones" in Utah. The original incentive was for \$943,000 but was boosted to more than \$1 million. The film, about a Christmas choir, will debut in December on the ABC Family Channel during its "25 Days of Christmas" series. It will use several Utah locations, particularly Ogden and other sites along the Wasatch Front.

Other productions awarded incentives include:

- The independent feature film "3 Days in Vegas." Red Tie Films LLC will get an incentive of between \$411,000 and \$500,000

for spending \$2 million while shooting in Utah from May 1 to June 2. The film is the story of a couple that wins a lottery.

- White Grizzly Productions LLC's independent feature film titled "White Grizzly," described by Moore as "'Jaws' in the snow with a bear." The company is expected to spend \$3.5 million from April 16 through May 31 while based in Heber. The incentive is between \$700,000 and \$875,000.

- "Forks in the Road," an independent feature film production of EPH Film LLC. The story is a continuation of the "17 Miracles" saga. The rebate is for \$96,900, based on the company spending \$646,000 shooting in Utah from July 12 through Sept. 6.

- "K-9 Christmas," an independent feature film about a police dog that saves Christmas. Dewi I LLC was awarded an incentive of \$52,500. The production is expected to spend \$350,000 while shooting March 20 through April 12 in Heber.

- "Breaking Pointe," a reality TV series being produced by BBC Worldwide Reality Productions LLC and scheduled to air on The CW Network. The show will focus on the auditions process of Ballet West. The incentive of \$147,000 covers episodes of the show's first season, which will feature 33 days of production from March 12 through May 26. The company is expected to spend \$980,000 while in Utah.

MINDCREST

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evolved to include major law firms in the U.S. and in the U.K.

"In order to be flexible to meet client requirements, we have opened a new domestic delivery center in the United States," president and CEO Ganesh Natarajan said of the new Utah operation. "This is not so much an issue of a dichotomy between onshore and offshore. Rather it is an issue of Mindcrest moving from a geographic location model to a capabilities model. In other words, the goal is to perform work where it can be best performed. Mindcrest continues to find innovative solutions for its clients and is moving to a 'best shore' model reflecting the maturity of the industry, the sophistication of client needs and the growth of deeper client relationships."

According to the International Bar Association, "law firms' historic antipathy toward outsourcing began to change in late 2008 when the sudden economic downturn caused clients to increase their demands for lower legal costs. LPO companies can certainly provide them a useful service as they are particularly experienced in carrying out volume work. Mindcrest, for example, is often called on to review loan documentation for legal completeness, look through contracts as part of a due diligence exercise, or carry out document reviews in the litigation context."

Mindcrest was founded in 2001.

COURT

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ceuticals is not enough to justify the general disavowal of a duty to use reasonable care in prescribing them. Pharmaceuticals also carry costs, including not just side effects to patients but also risks to third parties. At least in some circumstances, the benefits of a particularly dangerous drug would clearly be outweighed by its risks. Because there are some pharmaceuticals in some circumstances whose costs outweigh their benefits, it makes no sense to categorically eliminate a duty of care for physicians who prescribe them," Lee wrote. "When potential risks might outweigh potential benefits for a given activity, tort duties incentivize professionals — whether physicians, mechanics, or plumbers — to consider the potential harmful effects of their actions on both their clients/patients and third parties. And questions about which circumstances pose such a high degree of risk that a physician should have taken greater precautions are questions of breach of duty; they are insufficient to defeat the categorical existence of a duty."

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Revised ADA regulation fulfillment deadline looms for businesses

With only days to go before businesses are required to implement the Department of Justice's revised regulations for fulfilling the Americans with Disabilities Act (ADA), there is widespread confusion and concern regarding some of the new standards.

The Rocky Mountain ADA Center, which provides information on the ADA to individuals and organizations in Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming, has compiled a list of the top five questions that local businesses are asking about the new regulations.

The revised rules, which include the 2010 Standards for Accessible Design, were adopted by the Department of Justice in September of 2010 and went into effect on March 15, 2011. Beginning on March 15 of this year, all state and local government entities and privately owned places of accommodation such as restaurants, hotels, hospitals, stores, factories and warehouses are required to comply with the new regulations.

"There has been a lot of misinformation and confusion out there; March 15, 2012 is not a deadline. If anything, it should be viewed as a starting point to building an accessible future for the more than 54 million Americans with disabilities," said Jana Burke, the director of the Rocky Mountain ADA Center. "March 15, 2012 has been designated by the [justice department] as the compli-

ance date where all government and business must begin using the 2010 ADA Standards when doing new construction or making alterations to existing facilities, making them the new accessibility standards of the land."

Despite this, Burke said myths regarding the compliance date persist. The top five questions the Rocky Mountain ADA Center has received from businesses in the region are:

- Is March 15, 2012 a deadline or starting point for existing facilities?

The reality is that existing facilities should already be in compliance with the 1991 standards. If they are, a safe harbor provision is applied on an element-by-element basis to these existing facilities and does not require them to be brought into compliance with the 2010 standards until those elements are scheduled for alteration. If an existing facility is not in compliance, it needs to make March 15, 2012 the date to commit to using the 2010 standards to make its facility fully accessible for people with disabilities.

- Are regulations for the recreation industry new?

Yes. For the first time since the passage of the ADA more than 20 years ago, there are now accessibility standards specific to the unique features of recreation facilities. All new construction of recreation facilities must begin using the new standards. Because there weren't any requirements

of recreation facilities included in the 1991 standards, they are not subject to safe harbor, meaning existing business facilities must remove architectural barriers to meet compliance when it is readily achievable to do so, or in other words, easily accomplished without much difficulty or expense. Recreation facilities outlined in the 2010 standards include swimming pools, amusement parks, play areas, exercise machines, miniature golf facilities, recreational boating facilities and bowling alleys.

- Do I need to have pool lifts by March 15, 2012?

For the first time, the 2010 standards set minimum requirements for making swimming pools, wading pools and spas (pools) accessible. Newly constructed and altered pools must meet these requirements. Public entities and public accommodations also have obligations with respect to existing pools. State and local governments must make recreational programs and services, including swimming pool programs, accessible

to people with disabilities. Public accommodations must bring existing pools into compliance with the 2010 standards to the extent that it is readily achievable to do so. Pool lifts and sloped entries are common means for creating access to existing pools.

- What are readily achievable barrier removals?

The ADA requires that private businesses remove architectural barriers in existing facilities when it is readily achievable to do so, meaning that it can be easily accomplished without much difficulty or expense. Readily achievable barrier removal may include providing an accessible route from a parking lot to the business's entrance, installing ramps, making curb cuts in sidewalks and entrances, widening doors, installing accessible door hardware, installing grab bars in toilet stalls, rearranging toilet partitions to increase maneuvering space, insulating lavatory pipes under sinks to prevent burns or creating designated accessible parking spaces. When removing barriers,

businesses are required to comply with the 2010 standards to the extent possible.

- Which accessibility features take priority?

All businesses should do the best they can with what they have to achieve a level of usability that balances user needs, the constraints of existing conditions and available resources. To help balance accessibility needs with costs, the Department of Justice recommends following this accessibility priority list:

- * Take measures to provide access so people can get into your business.

- * Take measures to provide access so that people are able to use the space where goods and services are provided.

- * Take measures to make restrooms accessible.

- * Take any other measures necessary to make your business' goods, services, facilities, privileges, advantages or accommodations accessible to people with disabilities.

Utah home sales increased 6 percent in January

Utah home sales increased for the eighth consecutive month in January, up more than 6 percent compared to the prior year, according to a new report from the Utah Association of Realtors.

Utah Realtors sold 120 more homes this year than they did last January, closing 1,985 transactions. In fact, this was the best January in five years in terms of homes sold. Among the more populated areas, sales were particularly strong in Salt Lake, Uintah and Davis counties where sales were up 30, 29 and 6 percent, respectively.

The number of contracts signed to buy homes in January increased 20 percent, signaling a likely rise in February closed sales. The number of January pending sales has not been higher since 2007.

Another positive sign is the fact that the number of homes available for sale is declining. In January, inventory fell 24 percent compared to the prior year. With about 20,000 homes listed for sale at the end of January, this is the lowest inventory since February 2007.

The Utah Association of Realtors estimates that at the current pace of sales, it would take 7.1 months to clear the entire inventory, the lowest level since July 2007, before home prices began falling. This indicator has seen significant improvement since last year when it stood at 10.4 months. The lower inventories can be attributed to the pickup in home sales and a decline in new listings. The number of newly listed properties fell 12 percent in January. Over the past 12 months, new listings are down an average of about 13 percent.

The median price was \$166,000, down about 7 percent compared to January 2010. During the 12 months ending in January 2012, homes priced \$150,000 and below accounted for 39 percent of all home sales. The year earlier that share was only 30 percent. Over the past year, sales of homes priced \$150,000 and below have soared, rising nearly 40 percent.

At the same time, sales declined in each of the higher price ranges.

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• Earnings Roundup •

Boart Longyear

Boart Longyear Ltd., based in Salt Lake City, reported net income of \$160 million, or 35 cents per share, for the full year 2011. That compares with \$85 million, or 18.5 cents per share, for 2010.

Revenues totaled \$2.02 billion, up from 1.5 billion in 2010.

Boart Longyear said its 2011 full-year revenue and net income were records for the 120-year-old company.

The company reports financial figures for half-years and therefore had no fourth-quarter breakout. Its net income in the second half of 2011 was \$86 million, or 19 cents per share.

The company provides mineral exploration products and services worldwide.

"Demand in 2011 remained strong, particularly in the emerging markets of Africa and Latin America," the company said in

announcing the results. "Sales for drilling capital equipment doubled, indicating ongoing optimism for a robust drilling market."

Craig Kipp, the company's CEO, said the strong results came from "ongoing organic investment in the business," consistent with plans developed in 2009 after the global financial crisis. "We expect continued margin and revenue expansion for both the products and services businesses over the short term," he said. "Our ongoing initiative to convert manufacturing fixed costs to variable cost, coupled with the introduction of rigorous standards for commercial contracts and utilization, are driving these improvements."

Nature's Sunshine

Nature's Sunshine Products Inc., based in Provo, reported net income from continuing operations of \$7.6 million, or 48 cents per share, for the 2011 fourth quarter. That compares with a net

loss of \$386,000, or 2 cents per share, in the year-earlier quarter.

Net sales totaled \$92.1 million, up from \$89.9 million in the 2010 fourth quarter.

For the full year 2011, net income from continuing operations was \$17.6 million, or \$1.12 per share, compared with \$8.5 million, or 54 cents per share, in 2010. Excluding certain contract termination costs related to an arbitration settlement with NutriPlus LLC, net income from continuing operations was \$27.6 million in 2011.

Net sales in 2011 totaled \$367.8 million, up from \$349.9 million in 2010.

Nature's Sunshine manufactures and direct-sells nutritional and personal care products.

Black Diamond

Black Diamond Inc., based in Salt Lake City, reported net income of \$3.5 million, or 16 cents per share, for the 2011 fourth quarter.

That compares with a net loss of \$500,000, or 2 cents per share, for the same quarter in 2010.

The 2011 fourth quarter included a benefit and non-cash items. Without those, net income was \$2.3 million, or 10 cents per share.

Sales in the fourth quarter totaled \$36.3 million, up from \$34.2 million in the year-earlier quarter.

Net income for the full year 2011 was \$4.9 million, or 22 cents per share, which includes certain items that otherwise would have left the company with net income of \$11.9 million, or 54 cents per share. That compares with \$51.2 million, or \$2.56 per share, in 2010, which includes a \$65 million benefit.

Sales in 2011 totaled \$145.8 million, up from \$125 million in 2010.

The company designs, manufactures and markets outdoor recreation equipment and other lifestyle products. It formerly was known as Clarus Corp.

"As we move through 2012, we believe we are in a strong position to sustain our organic growth through product innovation and further capture macro active lifestyle trends currently working in our favor," Peter Metcalf, president and CEO, said in announcing the results. "In addition, the

February 2012 closing of our \$63.4 million common stock offering is the first incremental equity capital that Black Diamond has raised since its predecessor was created in 1989, and we plan to deploy it thoughtfully toward our strategic objectives, including our expected fall 2013 apparel launch and acquisition strategy."

InContact

InContact, based in Midvale, reported a net loss of \$3.1 million, or 7 cents per share, for the fourth quarter of 2011. That compares with a loss of \$1.2 million, or 3 cents per share, for the 2010 fourth quarter.

Revenues for the most recent quarter totaled \$23.8 million, up from \$20.3 million in the year-earlier quarter.

For the full year 2011, InContact reported a net loss of \$9.4 million, or 23 cents per share, which compares with a loss of \$1.1 million, or 3 cents per share, in 2010. Revenues totaled \$89 million in 2011, up from \$82.2 million in 2010.

The company provides contact center software.

"I'm pleased to report that in the fourth quarter, we achieved record software segment revenue, as well as a 40 percent increase in bookings over the fourth quarter."

see EARNINGS next page

ELEVATE

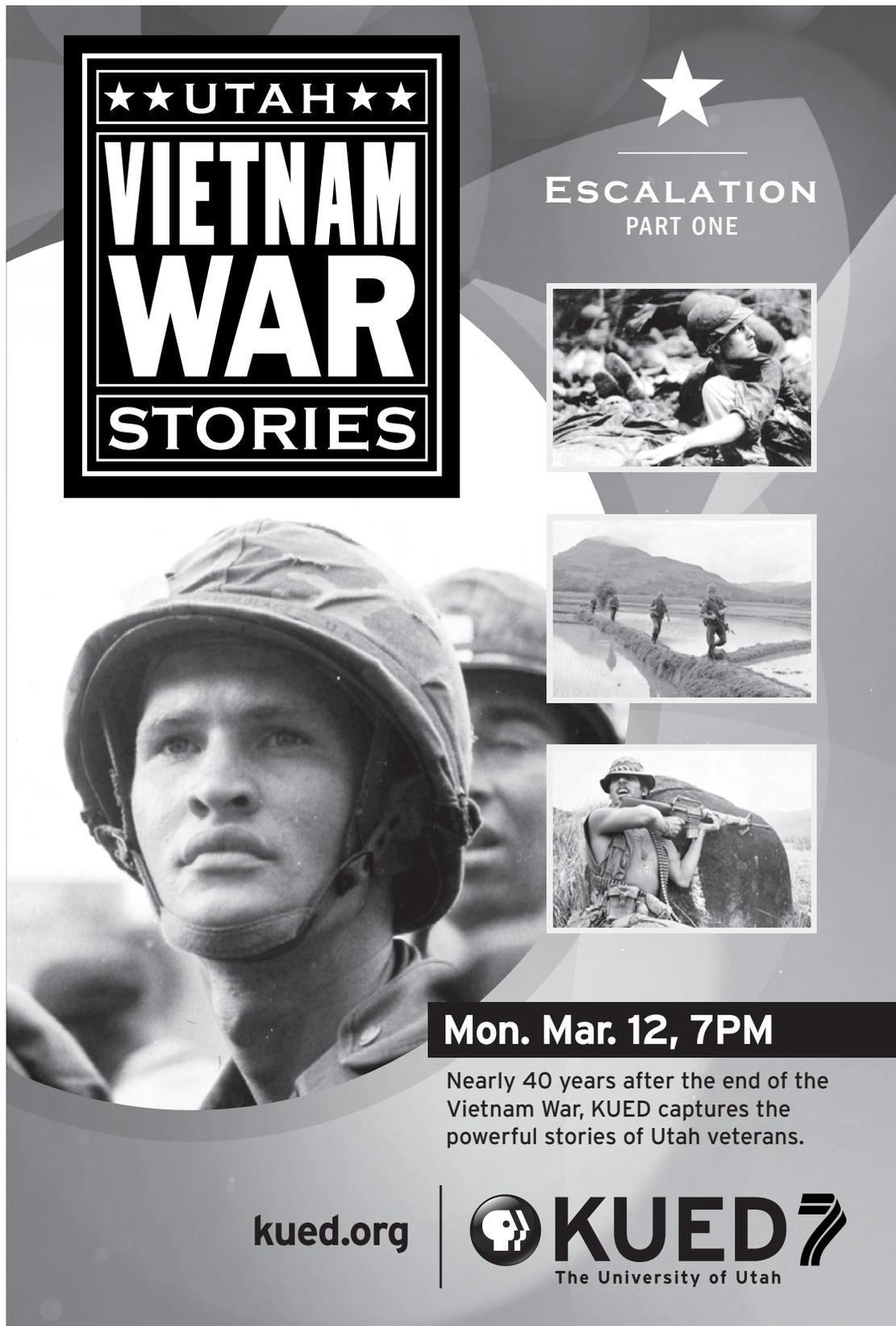
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multiple points of contact that often lead to frustrating communications with service representatives overseas. Some technical issues can be dealt with remotely while others require hands-on, on-site work at the customer's residence or place of business. When "Geniuses" retire from Elevate, they can sell their book of busi-

ness either to a colleague or back to the company itself.

Elevate currently has about 150 "Geniuses" and Ferre said the goal is to have 800 by the end of this year, although "if we get to 500 this year I'll be really happy."

Ferre said Elevate is currently in seven markets, will enter another five in May and an additional 20 in September. Customers typically save 10 to 15 percent by signing up with Elevate, he said.



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EARNINGS

from previous page

ter of last year, representing the strongest software bookings in the company's history," Paul Jarman, CEO, said in announcing the results. "We are seeing a marked shift in the size, type and number of contact centers that are choosing inContact to power their business and, during the quarter, we closed 44 new customers and 20 expansions for a total of 64 new contracts."

Overstock.com

Overstock.com Inc., based in Salt Lake City, reported a net loss of \$3.4 million, or 15 cents per share, for the fourth quarter of 2011. That compares with net income of \$14.9 million, or 63 cents per share, for the same quarter in 2010.

Revenue totaled \$314.4 million in the most recent quarter, down from \$348.9 million in the fourth quarter of 2010.

For the full year 2011, the company reported a net loss of \$19.4 million, or 84 cents per share, compared with net income of \$13.9 million, or 59 cents per share, in 2010. Revenue totaled \$1.05 billion in 2011, compared with \$1.09 billion in 2010.

The company is an online closeout retailer.

ZAGG

ZAGG Inc., based in Salt Lake City, reported net income of

\$9.9 million, or a company-record 32 cents per share, for the fourth quarter of 2011. That compares with \$3.4 million, or 13 cents per share, for the same quarter in 2010.

Without adjustments for one-time items, net income would have been \$8.6 million, or 27 cents per share, in the most recent quarter.

Revenues in the fourth quarter were a company-record \$67.5 million. That compares with \$29.3 million a year earlier.

Net income for the full year 2011 was \$18.2 million, or a company-record 63 cents per share, up from \$10 million, or 41 cents per share, in 2010. Revenues for 2011 were a company-record \$179.1 million, up from \$76.1 million in 2010.

The company produces mobile device accessories.

Strong holiday sales, record online sales and an expanded presence through big-box retail partners for both ZAGG and iFrogz brand products contributed to the record fourth quarter, according to Robert G. Pedersen II, the company's CEO. "With the operating initiatives we have put in place, and our alignment around a product-centric structure, we are building a company that can keep pace with the global growth we are seeing for mobile device accessories in 2012 and beyond," he said in announcing the financial results.

Immigration law firm sets up offices in Salt Lake, Provo

Atlanta-based Kuck Immigration Partners LLC has opened offices in Salt Lake City and Provo. Kuck is a nationwide immigration law firm providing services to businesses, investors, families and individuals in all areas of immigration law, including employer compliance, immigrant and non-immigrant visa processing, family immigration matters, removal defense and asylum.

The Salt Lake City office is located at 136 E. South Temple, Suite 100, while the Provo facility is located at 1215 N. 500 W.

Heading up Utah operations are Timothy Wheelwright and Barbara Melendez. Wheelwright, formerly of Durham Jones & Pinegar, is a member of the Utah Commission on Immigration and Migration. Additionally, he is the chairman of the Salt Lake Chamber of Commerce's Immigration Task Force, the chairman of the Davis Chamber of Commerce's Immigration Subcommittee and the vice-chairman of the Ogden-Weber Chamber of Commerce's Immigration Task Force.

Melendez, formerly of Kirton & McConkie, brings to the firm more than 15 years of experience in immigration and

nationality law. She is a former adjunct professor of immigration law at Brigham Young University, J. Reuben Clark Law School, and is a frequent national lecturer on immigration issues. She is on several advisory boards, including the Salt Lake Chamber's Immigration Task Force, and has been appointed by Governor Herbert as a member of Utah's Commission on Immigration and Migration.

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• Industry Briefs •

BANKING

• The **SBA** Utah District Office has experienced early success in recruiting private lenders to participate in the **Export Express** "36-hour" loan guarantee program. Eighteen local banks covering most counties in Utah signed agreements to participate in the permanent program, creating additional points of access for small businesses interested in beginning

or expanding their export activity. Since October 1, the Utah District Office has approved six export express loans for \$495,800. The new SBA Export Express lenders are **Central Bank, Zions First National, Celtic Bank Corp., Bank of American Fork, Bank of Utah, American Bank of Commerce, American First Federal Credit Union, Brighton Bank, Cache Valley Bank,**

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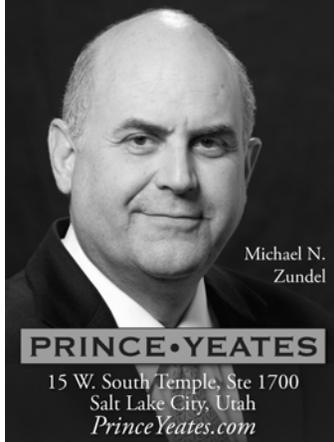


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Capital Community Bank, Cyprus Federal Credit Union, First National Bank of Layton, First Utah Bank, Goldenwest Federal Credit Union, Mountain America Federal Credit Union, State Bank of Southern Utah, USU Charter Federal Credit Union and Utah First Federal Credit Union.

• **America First Credit Union**, through its community outreach fund, has purchased a new battery and charger for a forklift owned by **EnableUtah**, a Riverdale-based nonprofit organization that offers job training, job skill assessment and remunerative employment and greater independence to people with disabilities.

COMMUNICATIONS

• **UTOPIA**, the open-access fiber-optic network consisting of 16 member cities that joined together to provide critical telecommunica-

tions infrastructure to their residents, has added **DISH Network** to its roster of service providers. This will provide a greater variety of television channels and viewing options for UTOPIA customers who desire them. Internet, phone and satellite-TV services are being offered through UTOPIA's Triple Play, starting at \$99 per month.

• **Veracity Networks**, a Provo telecommunications provider, has extended its **high-speed Internet and phone services to residents and businesses in the downtown Salt Lake City area.** Veracity Networks will provide telecom support for more than 10,000 homes and businesses serviced through the Salt Lake main telecommunication central office. Veracity Networks' next-generation telecommunications technology, such as the ADSL2+ and Ethernet over Copper offerings, give customers the ability to increase bandwidth while decreasing cost. On average, companies save 29 percent by switching to Veracity Networks, according to the company.

COMPUTERS/ SOFTWARE

• Draper-based **Vertster Inc.**, a Web marketing solutions firm, has launched a newly **redesigned website** at www.vertster.com. Vertster's software update introduces several new changes and improved features to Vertster's A/B and multivariate testing platform, which enables online retailers and online lead generation companies to increase conversions, generate more revenues and improve the effectiveness of their websites.

• **Wendia**, an Orem-based provider of IT service management, has launched **POB (Point of Business) G6**, now based on the .NET platform. It features a new graphical interface that gives greater access to the feature set found in prior versions, and enables faster deployment, enhanced flexibility for customized solutions and seamless integration with dissimilar systems. POB G6 can be deployed in cloud or traditional on-premise versions or as a unique hybrid model.

CONSTRUCTION

• Salt Lake City engineering firm **Dunn Associates** has promoted **Christopher Olson** to principal engineer and **David Dunn** to associate. Olson received his B.S. in civil engineering from the University of Utah in 1996. He has more than 16 years of experience and has been with Dunn since 2001. He is currently working on the Salt Lake Public Safety Building, which will be the first public safety building

in the nation to approach a Net Zero building. Dunn received his B.S. in civil engineering from the University of Utah in 2005, graduating summa cum laude. He joined Dunn Associates in 2005. His portfolio includes a number of large complicated projects with multiple design firms in collaboration, most recently The Utah Museum of Natural History.

• **KEPCO+**, an architectural cladding firm headquartered in Salt Lake City, recently received three **International Pinnacle Awards** from the **Marble Institute of America**. The awards are given to projects whose beauty, creativity, ingenuity and craftsmanship exemplify professional mastery in the use of natural stone. Applicant submissions circled the globe, including several projects from Europe, Asia, North and South America. The local LDS Church History Library (15 East N. Temple) with its 53,000 square feet of natural stone received the Award of Merit for Commercial Exterior. The two other Commercial Exterior Pinnacle Awards received by KEPCO+ were for the LDS Vancouver Temple (53,000 square feet of intricately carved granite) and the Irvine Spectrum Towers (225,000 square feet of Roman Travertine) in Irvine, Calif.

EDUCATION/TRAINING

• **Stevens-Henager College**, a provider of on-campus and online higher education, has launched a **Good Neighbor Initiative**, created to strengthen communities by providing free education, training and development opportunities to help all Utahns improve their lives. Some of the Good Neighbor Initiative's free courses and workshops include GED test preparation, nurse assisting, phlebotomy, basic computer skills and how to get a job workshops. Courses are offered selectively at campuses in Utah, Idaho, Colorado, Wyoming, Arizona and California. For more information, visit www.goodneighborinitiative.com.

• The **Utah Student 25** announced its 2012 winners on March 1, representing the best and the brightest student entrepreneurs from colleges and universities across the state of Utah. In its third year, the Utah Student 25 recognizes the achievements of student entrepreneurs, the innovative companies they founded and their contribution to the Utah economy. **React Games**, a digital game development company founded by BYU students, was honored as the top student-founded business in Utah. Find more information at www.utahstudent25.com.

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continued on page 8



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FINANCE

• Consumer expert **Clark Howard** released his updated 529 Plan Guide for 2012, stating, "Utah [The Utah Educational Savings Plan (UESP)] is by far the single best plan in the country." Howard is a nationally syndicated radio personality who advises consumers how to save more, spend less and avoid financial mishaps. His radio show is heard daily on more than 200 U.S. radio stations.

• **Aquila Investment Management LLC** has **relocated** its Utah portfolio management office from Salt Lake City to 485 S. 100 E. in Bountiful. J.T. Thompson heads up the office, where he will continue to serve as co-portfolio manager for Aquila's Tax-Free Fund For Utah. Established in 1992, Tax-Free Fund For Utah seeks to provide as high a level of current income that is exempt from both Utah state and federal income taxes as is consistent with preservation of investors' capital.

HEALTH CARE

• The **John A. Moran Eye Center**, Salt Lake City, will present "A Night for Sight" March 24, 2012 at Snowbird Ski and Summer Resort to raise awareness and funds in support of the Division of International Ophthalmology. Funds from the dinner and auction will support international eye surgeries and training of medical staff in developing countries. The keynote speaker will be Sanduk Ruit, M.D., a leading Nepalese eye surgeon known for pioneering cataract surgery in the underserved world. "Night For Sight" begins at 5:30 p.m. in the Cliff Lodge Ballroom at Snowbird Ski and Summer Resort with silent and live auctions followed by dinner. Tickets can be purchased for \$100 a seat or \$1,000 for a table of 10 by calling Heidi Reid at (801) 213-4103.

• West Jordan-based **TruHearing**, which bills itself as the nation's first discount medical health organization to provide significant savings on hearing aids, will now offer its TruHearing MemberPlus discount hearing services program to **Schneider National Inc.**'s more than 20,000 employees. Schneider National Inc. is a \$3.1 billion premier provider of transportation, logistics and intermodal services. Schneider National Inc., joins dozens of employer groups and health care plans across the country that provide TruHearing's discount programs to a collective 100 million employees and members, including BlueCross BlueShield Blue 365, Humana and VSP Vision Care.

HUMAN RESOURCES

• Utah's **nonfarm wage and salaried job count** for

January 2012, as generated by the U.S. Bureau of Labor Statistics (BLS), **expanded by 2.6 percent** compared against the employment level for January 2011. This is a 12-month increase of 30,300 jobs, and raises total wage and salary employment to 1,207,400. The seasonally-adjusted unemployment rate — generated by BLS — is Utah's other primary indicator of current labor market conditions and registers 5.7 percent. Approximately 76,100 Utahns are considered to be unemployed.

INSURANCE

• **Allstate** insurance agency owners in Utah and four other states are aiming to **hire more than 80 employees** through the online social media tool **Twitter**. Candidates can learn about licensed sales professional positions by messaging recruiters at the Twitter handle @werecruitagents. Interested candidates can avoid the hassle of loading their resumes to career websites by emailing their resume to a recruitment team member to LSPrecruit@allstate.com or call 877-711-1006 to speak with a recruiter.

LAW

• **Mary Ann May** has joined the Salt Lake City law firm of **Parr Brown Gee & Loveless**. She is in the Litigation group with an emphasis in employment law. May received her B.S. degree, cum laude, in psychology from Utah State University in 2003. She earned her law degree, Order of the Coif, with highest honors, from the University of Utah S.J. Quinney College of Law in 2010. Previously, May served as a judicial law clerk for Matthew B. Durrant, Associate Chief Justice of the Utah Supreme Court.

MANUFACTURING

• For the third year in a row, **Tahitian Noni International**, Provo, was chosen from more than 1,400 corporations in the United

States as one of the "Healthiest Companies in America" by Interactive Health Solutions. The award recognizes the health and well-being of employees and encourages corporations and individuals to take responsibility for their health. Companies throughout the nation participated in a series of evaluations using an index of health indicators established by IHS. Tahitian Noni, which will change its name to Morinda Bioactives in April, is a global, research-driven bioactive products company that was the first to introduce the health benefits of the noni plant.

• **University of Utah** engineers have designed a **new kind of video game controller** that not only vibrates like existing devices, but pulls and stretches the thumb tips in different directions to simulate the tug of a fishing line, the recoil of a gun or the feeling of ocean waves. The latest game controller prototype looks like controllers for Microsoft's Xbox or Sony's PlayStation but with an addition to the controller's normal thumb joysticks, on which the thumbs are placed and moved in different directions to control the game. In the new controller, the middle of each ring-shaped thumb stick has a round, red "factor" that looks like the eraser-head-shaped IBM TrackPoint or pointing stick now found on a number of laptop computer brands.

MEDIA/MARKETING

• **DECA**, an international association of marketing students that provides members and advisors with development activities, will hold its 66th annual International Career Development Conference April 28-May 1 in Salt Lake City, and is **seeking Utah businesspeople to sign up as judges**. High school and college students, from all 50 states and around the world, will gather for career-focused competitions in finance, hospitality and tourism, marketing, management and entrepreneurship. Nearly 1,000 local business leaders are needed to judge the competitions on Monday, April 23 (college) and Monday, April 30, (high school.) Local business leaders interested in judging should contact Shane Thomas, DECA's Director of Competitive Events, at (703) 860-5000 or Hshane_thomas@deca.org. More information about judging can be found at <http://www.deca.org/events/judge>. On-site training is also provided the day of the event.

REAL ESTATE

• **Coldwell Banker Residential Brokerage** has added **Tracy Parker** to its Bountiful office as a sales associate specializing in residential sales in Davis

County. Previously, Parker worked at The Canterbury Place Reception Center in Bountiful. Her responsibilities included facilitating wedding and business events while providing exceptional customer service to both clients and guests.

RESTAURANTS

• Salt Lake City-based **Costa Vida Fresh Mexican Grill**, one of the nation's fastest-growing fast casual dining concepts, achieved **74 percent unit growth** for its fiscal year 2011. In 2010, Costa Vida reached an agreement to aggressively convert many of the Bajio Mexican Grill restaurants to the Costa Vida brand. With those conversions, plus new stores in new markets, Costa Vida opened 17 locations throughout Utah, Arizona, Idaho, Missouri and Washington. The 39th and 40th units opened in Missouri and Utah, respectively.

• **Cafe Rio Mexican Grill**, Salt Lake City, was recently awarded the Sandelman & Associates' **2011 Quick-Track Awards of Excellence**, for the second straight year, edging out some of the nation's strongest competition including Chipotle, In-N-Out Burger, Chic-fil-A and Pei Wei. The Quick-Track Award is based solely on customer reviews and dining experience. Categories include taste of food, overall service, speed of service and value.

RETAIL

• Sugar House-based **Game Night Games** has **relocated** to 2148 S. 900 E., Suite 2, approximately one block south of its former location. The new space is approximately 40 percent larger than the previous location and will allow for a larger selection of merchandise and more space for in-store gaming events. Founded in 2004, Game Night Games sells board and card games, role-playing games, tabletop miniatures and puzzles. The store also hosts a variety of board gaming and other gaming events such as casual play game nights, tournaments and private parties.

SERVICES

• Provo-based **MultiLing Corp.**, an international translation service provider, experienced a **28.1 percent increase in sales revenue** since 2010. The growth is based primarily on increasing demand for patent and IP translation and MultiLing's new branch in China. Among the growing number of high-revenue corporate clients added over the past two years are several small and medium enterprises, which are requesting MultiLing's services more frequently due to increasing global business needs that require publication grade translation and

localization.

• **CertaPro Painters** of Salt Lake City has received the 2011 **Angie's List Super Service Award**, an honor bestowed annually on approximately 5 percent of all the businesses rated on the nation's leading provider of consumer reviews on local service and health providers. Paul Limburg opened CertaPro Painters of Salt Lake City in 2001. The franchised painting company serves the Wasatch Front, Park City, Salt Lake City, Sandy, Draper, Bountiful and everything in between.

• Logan-based **Chem-Dry**, the nation's leading carpet cleaning firm and a top-rated franchise company, has made **Entrepreneur** magazine's **Annual Franchise 500** list of top franchise opportunities for the 24th consecutive year. In the magazine's most recent Franchise 500 list, Chem-Dry ranked 46th, up 10 spots from last year's edition. Chem-Dry was the highest-ranked carpet cleaning franchise on the list.

TECHNOLOGY/LIFE SCIENCES

• The **Governor's Office of Economic Development** has opened the fiscal year **2012 Round 3 Technology Commercialization and Innovation Program (TCIP)** grant applications. This is the final application round for fiscal year 2012. There is more than \$23 million in combined follow-on funding being reported from previous recipients. Previous technologies range from a new flu vaccine that would require flu shots only every several years, rather than each year, to a new nanotech-based light-emitting diode (LED). The TCIP is a state-funded grant and mentoring program that was developed for the purpose of commercializing cutting-edge technologies developed at Utah's colleges and universities. For information and instructions for the online application, go to <http://business.utah.gov/programs/coe/>. The deadline for applying is at noon on Thursday, March 29 and final grant award decisions will be made at the end of April.

• **IAT**, a West Jordan-based firm that develops dialing and messaging technology to the collections industry, celebrated its **26th anniversary** on March 6. The firm was founded by Scott and Kent Sorensen and is now a leading provider of predictive dialing and IVR messaging technology in the collections industry. Over the years IAT's product list has grown to include other tools such as call recording, cell phone number scrubbing and disaster recovery/risk management capability.



Staffing Matters

How to retain talent today for success and stability tomorrow

Many employers today feel secure in the stability of their workforce. Unemployment is high while opportunities are few. Competition for what little career mobility does exist remains intense. In these challenging times, isn't simply *having* a job satisfaction enough? Could employees really be looking elsewhere? The answer is yes. With one-third of today's workers stating their employer is doing less to retain them now than compared to previous years, it isn't surprising that one in four employees say they are likely to look for a new job in the next 12 months.

Smart organizations have rejected the notion that retention and cost containment is an either/or option and instead have acknowledged the necessity to embark on both. So, what can companies do today to help curb potential retention failure in the short and long-term? Realign workplace initiatives to more closely mirror worker priorities.

A Vast Disconnect Between Employer-Employee Retention Drivers

Aligning employee priorities with employer-driven initiatives continues to be a struggle for many companies. The truth is employers and employees vehemently disagree on what drives retention. Differences in opinion can be good, except when it results in financial and competitive losses. In fact,



Ron Zarbock

the Emerging Workforce Study has tracked this same level of disconnect when it comes to retention over the past five years. The latest findings illustrate little movement in the top drivers of retention for employers or employees — leaving the vast disconnect unresolved.

Workplace initiatives that are of high importance for employees are in many cases off the radar screen for employers. Realigning workplace priorities is the first

step in addressing turnover at all levels. In addition, few would argue the role that job satisfaction plays in keeping employees on the payroll. For the second consecutive year, the survey has found that workers' satisfaction remains alarmingly low as it pertains to many of their retention drivers.

For all factors, with the exception of supervisor relationship, less than 40 percent of workers are satisfied with what they are currently receiving from their employers. Less than 30 percent of workers are satisfied with their training and growth and earnings opportunities.

This year's Emerging Workforce Study has once again honed in on what can best be described as a moving target — changing attitudes of workers. Employees have spoken loud and clear when it comes to key workplace initiatives that will directly impact their retention and satisfaction: flexibility, connection to and belief in their company's mission, and opportunities for growth.

Significant repercussions and implications will occur if the workforce continues to change while employers do not. An already vast disconnect between worker and employer will continue to widen, and companies will struggle to be competitive in the marketplace for talent.

Low-Cost Solutions to Solve Retention Challenges Corporate Mission

According to the Emerging Workforce Study, clarity and commitment to a company mission has the power to change the role of employees from spectators to active participants. Simply put, the more employees believe in their organization and feel company leadership is equally passionate and forthright in following-through on their vision, the greater the barrier to exit.

In fact, 23 percent of workers whose employers have a clear mission and follow-through say their employer has put in more effort into retaining them, compared to only 2 percent of employ-

ees whose employers have a clear mission but do not follow-through. Further, 44 percent of workers at companies missing a clear mission say they are likely to look for a new job in the next 12 months, compared to only 16 percent of workers at organizations with a clear mission and follow through.

Using Social Media to Retain Talent

Arguably, the foremost reason behind the growth of the social media sector is it allows people to be heard. Suddenly, millions of Americans have an outlet and venue to speak their minds and to weigh in on issues of importance to them. This same phenomenon is why infusing social media initiatives into the workplace can dramatically improve employee retention and the added benefits of curbing low morale, providing career development opportunities and fostering a sense of community in the workplace. Social media can be a cost-effective way to not

see STAFFING page 13

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• Calendar •

• March 13, 8-9 a.m.: **“The State of the Economy,”** sponsored by Bank of Utah and the Economic Development Corp. of Utah. Guest speaker will be Lt. Gov. Greg Bell. Bank of Utah president Douglas L. DeFries will host the event and provide his perspective on the economy. Location is the Marriott City Center, 220 S. State St., Salt Lake City. Free for Bank of Utah customers. Those who are not Bank of Utah customers pay \$20. A breakfast buffet will begin at 7:30 a.m. Self-parking will be free. Register at https://www.bankofutah.com/economic_breakfast.html.

• March 13, 11 a.m.-1 p.m.: **The Building Owners and Managers Association (BOMA Utah) Utah Lien Law Class.** Utah’s lien laws have seen extensive changes over recent years that may have significant impact on the real estate industry. This class will discuss the State Construction Registry and the protection it provides to the construction industry and property owners. This information could

help to improve the advice and service provided by companies and clients. Location is 3 Triad Center, 345 W. North Temple, Salt Lake City. Cost is \$10 for BOMA members, \$20 for nonmembers. Register at www.bomautah.org.

• March 15, 8-9 a.m.: **“International Incidents: Building Your Global Brand Without Getting Your Foot Stuck in Your Mouth,”** presented by the World Trade Association of Utah. Speaker will be Laura Shafer, director of product marketing at StorageCraft Technology Corp., a software company that focuses on security and stability for computer systems and data. Shafer will discuss the pitfalls of international marketing. Location is Miller Free Enterprise Center Room 223 at the Salt Lake Community College Miller Campus, 9750 S. 300 W., Sandy. Cost is \$12 for World Trade Association members, \$25 for nonmembers. RSVPs are requested by March 12 at wtaofutah@gmail.com.

• March 21, 9-11 a.m.: **“Doing Business**

in Mexico,” hosted by the Governor’s Office of Economic Development and its partners Ballard Spahr, the Mexican consulate in Salt Lake City, H-11 Digital Forensics, the World Trade Center of Utah and ProMexico LAX. GOED’s trade representative in Mexico, Guadalupe Escalante, will be a presenter at the seminar and will meet with Utah companies by appointment March 20-22. Location is Ballard Spahr Andrews & Ingersoll, 201 S. Main St., Suite 800, Salt Lake City. Meetings can be scheduled by contacting abecker@utah.gov.

• March 21, 11:30 a.m.-1 p.m.: **Society of Marketing Professional Services Utah Chapter Networking Event.** Those in the architectural, engineering and construction industries are encouraged to attend. Speakers will include Todd Provost from the Utah Transit Authority and Terry Johnson from the Utah Department of Transportation. Location is the Little America Hotel, 500 S. Main St., Salt Lake City. For cost information and to register, visit www.smpsutah.org.

org.

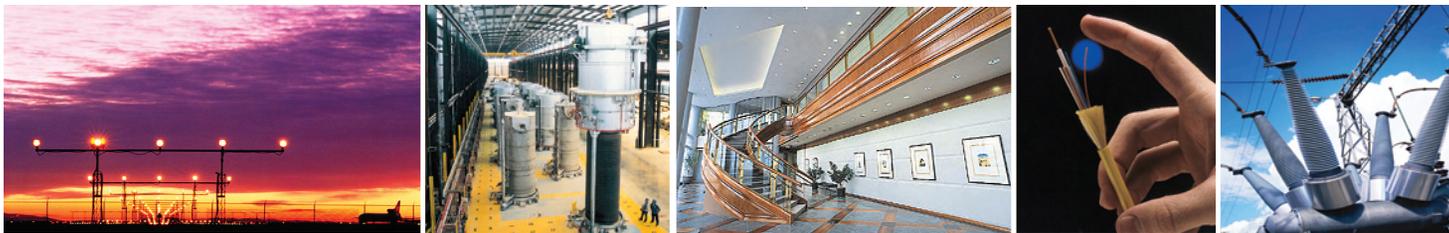
• March 21, 8 a.m.-4:30 p.m.: **ARC FLASH Compliance Training,** hosted by Hunt Electric. Participants will learn how to reduce the chances of violating OSHA rules when it comes to electrical safety. Instructor will be Joseph Gierlach Jr., vice president of technical training and support at TEGG Corp. He will be available to answer questions. Location is the Hunt Electric Training Center, 1863 W. Alexander St. (2410 S.), West Valley City. Cost is \$140 if registered by March 14, \$160 thereafter. The cost is \$120 per person for groups of five or more from the same company. Sign-in begins at 7:20 a.m. A continental breakfast and lunch will be provided, along with a certificate of participation. Register at www.huntelectric.com/training.htm or by calling Cheri Holbrook at (801) 975-8844 ext. 8851.

• March 23, 7 a.m.-5 p.m.: **International Council of Shopping Centers 2012 Mountain States Idea Exchange.** Keynote speaker will be William Taubman, COO of Taubman Properties, the Michigan firm that is developing the retail component of the new City Creek Center in downtown Salt Lake City. There will be a number of roundtables, a retail panel and a Tour of City Creek Center. Location is the Sheraton Salt Lake City, 150 W. 500 S. Cost is \$190 for ICSC members in advance (by March 16), \$240 on site. Nonmembers pay \$420 in advance, \$525 on site. Register at www.icsc.org.

• March 28, 3:30-5:30 p.m.: **Deal Forum,** sponsored by The Wayne Brown Institute. The institute has been mentoring three high-tech companies that will introduce their deals to a panel of investors, with feedback and a Q&A session to follow. Location is the Zions Bank Founders Room, 1 S. Main St., 18th floor, Salt Lake City. Cost is \$10. Register at www.venturecapital.org.

• April 8, 6 p.m.: **Salt Lake Chamber 125th Anniversary Gala.** Location is the Grand America Hotel, 555 S. Main St., Salt Lake City. Cost is \$100 per person. A reception will begin at 6 p.m. followed by dinner and a program at 7 p.m. For more information, visit www.slchamber.com.

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Legal Matters

What's in a name?

In the most famous scene of Shakespeare's "Romeo and Juliet," Juliet asks "What's in a name?" Juliet is trying to dismiss the notion that her family name, Capulet, forbids her from loving Romeo, a Montague. However, Romeo and Juliet's names are precisely what predetermine their fate. Similarly, a name can also determine the fate of your business.

Choosing a name is an important process for your business. The first thing to know when naming your business or its products is that choosing the wrong name can cause a colossal-size problem. The last thing you want is to create something profitable, only to be forced to change your name because another company has a similar name. For example, you couldn't open up an ice cream shop and call it Ben & Jerry's, or even Ben & Harry's, without shortly receiving a cease and

desist letter containing a threat of a trademark infringement lawsuit.

I include "Ben & Harry's" to make a very important point.

Trademark infringement does not require the name to be exactly identical. It only has to be similar enough to cause a "likelihood of confusion" for consumers. You do not want to be involved in a trademark infringement lawsuit. Trademark litigation is expensive and can result in injunctions and hefty penalties against trademark infringers.

How to Avoid Trademark Infringement

Do not copy. Be original. Choose a unique name. After you have chosen a name, the uniqueness of your name may be verified by conducting a trademark search. The obvious first place to search for a similar name is an online search engine. Take time to con-

duct an exhaustive online search for identical or similar names. In addition, you should search the trademark database United States Patent and Trademark Office's (USPTO) website (uspto.gov) for similar pending and registered trademarks.

To prevail on a trademark infringement lawsuit, a plaintiff must prove that the defendant's use of the mark would likely cause confusion as to the origin or sponsorship of the defendant's goods with plaintiff's goods. What constitutes a likelihood of confusion? This is clearly not a black and white question. Courts consider a number of different factors to determine whether there is a likelihood of confusion, including but not limited to, similarity of the names, similarity of the goods and/or services, and similarity of channels of trade. Different (unrelated) goods with the same mark may be registered. For example, the trademark "Lucent" may be registered by a telecommunications services

company and "Lucent" may also be registered by a floor wax company. There is not a likelihood of confusion because the goods/services provided by the two companies are unrelated.

Due to the complexity of the search and the great potential for liability, I recommend consulting with a trademark lawyer to conduct the search and analysis for you.

Should I Trademark My Business Name?

A trademark typically protects brand names and logos used on goods and services. Registration of your name is not required. You can establish rights in your name based on use of the name in commerce, without a registration. However, having your name registered provides a number of advantages, including public notice of your claim of ownership of the name; a legal presumption of your ownership of the name and your exclusive right to use the name nationwide on or in connection

with the goods/services listed in the registration; the ability to bring an action concerning the name in federal court; the right to use the federal registration symbol ®; and the use of the U.S. registration as a basis to obtain registration in foreign countries.

You can file for a trademark registration online at www.uspto.gov. The filing fee for most applications is \$325. Although not necessary, I recommend using an experienced trademark attorney to file your trademark application. A properly registered trademark makes a big difference in protecting your name from competitors.

Choosing a Strong Name

As mentioned, trademarks must be distinctive. They cannot be merely generic or descriptive of the goods or services. They must be arbitrary and fanciful or suggestive. For example, "Apple" for computers is arbitrary because fruit are not related to computers. Therefore, Apple Computers is a

see NAMES page 13



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Referrals defined in a way you and your boss won't like

QUESTION FROM A READER:

I am taking a new business development job for a wellness and surgery center. We need doctors to refer their obese patients to us. Doctors seem so hard to get in front of, and they don't like sales tricks. Do you have any new suggestions besides networking and dropping off literature?

Kelly

Kelly, Before you go looking for referrals, ask yourself: HOW REFERABLE AM I? WHY WOULD SOMEONE REFER

ME? Do you interview each patient after surgery or treatment to ask about his or her experience? How the doctor's bedside manner was? What the administrative ease or pain was? Are you recording the interview? Is anyone posting on Facebook about their experience? Are you encouraging them to? You

seem to be asking me for answers that your patients can give you — and can talk to their doctor about. Once the patient has debriefed the doctor about how amazing their treatment was, you can film it, and referrals will be automatic. BEST IDEA: Meet with doctors who are already referring and ask them WHY they refer. That will help you understand your present status, and give you reasons to share with other doctors.

Best regards,

Jeffrey

Kelly's question begs more questions and a longer response, because referrals are the single best (and most profitable) source for new sales. They are also the LEAST used source. WHY? They require work. Hard work.

REALITY: Most salespeople are not willing to do the hard work it takes to make selling easy.

QUESTION FROM JEFFREY TO READERS: Why are you (still) ASKING for referrals?

ANSWER: You haven't EARNED them!

SECOND ANSWER: My boss says I have to.

REALITY ANSWER: When I ask a new customer for a referral, it makes them (and me) uncomfortable.

Salespeople and sales managers are always looking for the fast way out. Their two-word cry is: MORE NOW!

Maybe if I explained the one-word definition of the word referral — which is RISK — you'd get a better idea. Your customer is willing to *risk* their relationship with someone else, and refer them to you. That's why they're hesitant.

What could you do to win more referrals? I just gave you the answers! You probably thought I was talking to Kelly. No, I was making a universal challenge to you about referrals, and the strategy used to obtain them. Lots of them.

Think about your referrals:

How do you get them?

How should you get them?

Why are you still asking for them?

QUESTION: Do you really know, do you really understand, how a customer feels when you ask for a referral?

ANSWER: You are defined in their mind as a "taker." They don't just feel uncomfortable, they will now avoid your calls and not return your e-mails. You'll wonder why, and BLAME THEM.

How's that for building loyalty?

RULE ONE OF REFERRALS: Don't ask.



Jeffrey Gitomer

SIMPLE UNIVERSAL RULE OF REFERRALS: Think EARN, not ASK.

Anyone can "ask." Only the top salespeople "earn."

I love the pathetic line at the bottom of a card or e-mail, "I love referrals." Even the softer version, "I appreciate referrals."

What kind of a statement is that?!

It's a begging one. A greedy one. The statement should be, "I earn referrals." Or "I earn referrals by giving referrals." Or "I love earning referrals."

OK, so what CAN you do to make yourself more referable?

• **Deepen the relationship. Create regular dialog.** Help them as much as you are able.

• **Give weekly value via your e-mail magazine.** Look at mine (www.salescaffeine.com) as an example. Free, weekly advice to salespeople. Put yours together and press send.

• **Promote your customers in your social media.** Post them and tag them — good news and compliments only.

• **Create and offer incentives.** This gives someone who really likes you a reason to go out of his or her way for you.

• **Have coffee and a three-way — you, your customer and a potential customer for them.** A referral or a great connection. Invite a prospect for your customer to breakfast and they will have a 100 percent on-time attendance record. By far, the best way to get a referral is to give a referral.

And keep in mind that a referral is way more than a sales lead. A referral is a report card. A referral — especially an unsolicited one — tells you that you did everything else great. They're rewarding you and thanking you for helping them.

Nice feeling in the heart — and in the wallet.

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

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Time for small ball

In my last column I talked about the power of relationships in marketing. I want to take that a bit further this time, in this light ...

It's no secret the world of marketing has literally been turned upside down with the advent of the iPhone (smart phones), the iPad (tablets) and online and mobile media in general.

But in the end, it's not the technology, but the way it has allowed society to return to its roots — without even realizing it — that has revolutionized the world of marketing and advertising.

The result of the technology is the "social media." And while I have decried the expected longevity of online societies like Facebook and Twitter as viable marketing channels in the long run, specifically because there is no barrier to entry — everybody can get in for FREE — they have created societies that return us, in some sense, to the ways societies worked in yesteryear.

Maybe you'd have to be as old as me to remember this, but it used to be that people knew their neighbors. It used to be they knew most, if not all their neighbors. They went for walks, they sat on the porch or on the stoops. They got into conversations with each other. And it didn't end there. They played pokenuckle together, had backyard picnics and barbecues, went to church together. They socialized.

Enter the television, commutes to work, two-income households, crime, fear, excessive government intrusion into our lives "to keep us safe," and we saw an erosion of the societal rituals and norms that had sustained civilization for generations.

The result was a society that increasingly "holed up" at home, in front of the tube. Shoot, we even stopped talking to each other *in* our families.

And the early electronic and digital technologies exacerbated the situation. Transistor radios, then personal cassette players, then iPods (MP3 players). We got more and more separated; isolated.

Things began to swing back, ironically enough, with the introduction of the Internet. Yes, now we were even more tied to that computer, but with e-mail, then chat, we were able to connect with others, anywhere and anytime, so easily, that we began to do it again.

The communication is different, to be sure. It's not as intimate in many ways, lacking a certain depth, perhaps, but it *is* taking place again.

Enter the mobile media. Texting, Facebook, Twitter and their ilk. The online hook-ups have us back on the figurative stoops, sharing our experiences one with another. We're slowly getting used to "the neighborhood" again, even if that neighborhood literally spans the globe.

As in days of old, if you screw up in business with a customer today, the whole world is going to hear about it in minutes. It won't take months, weeks or days. My son Dave did a controversial YouTube video a few weeks ago and within six days, more than 636,000 people had not only heard about it, but actually saw it.

So the collective appetite for relationship has been re-whetted. Still, there appears to be a longing for more, a longing

for a greater than digital connection.

And this is where marketing "small ball" has an opportunity.

Big ball — tall ball, if you will — was the old foundation of mass marketing. Advertise on radio, TV, in the newspaper, in the yellow pages, and people will come. True once, much tougher anymore.

The numbers, as I've discussed in this column in the past, simply are no longer there.

But the people are. The population is still growing, so they're around somewhere. Just not in one place anymore.

Well, that's not exactly true. Fact is they ARE in one place. Your place. Your customers have gathered in one place and it's your customer database.

By now, you see where I'm going. Whether they know each other or not, your clients, customers or patients — every single one of them — have at least one thing in common. YOU. They all know you and you know them.

A neighborhood is born!

Now it's your job to pull that neighborhood together. Here are some ways to do it:

1. Do a newsletter. It can be delivered electronically, if you want, but make sure it contains lots of acknowledgement of specific individuals in your "neighborhood." Welcome newcomers to your business or practice. Thank referrers for their referrals and name who they referred, and how you rewarded the referrer. Make offers. Tell case histories. Include testimonials.

2. Use the telephone. Ashley Green Miller of Green's Jewelers in Roxboro, N.C., was chatting with another jeweler about the perils of unmoved inventory. The other jeweler indicated he was going to do a mass ad campaign to get the product turned. Ashley said, "Why don't you just call your best clients and offer it to them?"

Indeed, why not? Don't the people in your "neighborhood," your circle of influence, the ones who have already shown you the most loyalty, deserve the best you have to offer, before the inventory gets picked over by bargain-hunters you may never even have met?

And if you have employees you're paying during slow times just to be there, the phone is a great way to make them more productive. Trust me, your clients won't be offended, they'll be thrilled!

3. Use e-mail, but more importantly, use SNAIL MAIL. Open rates for e-mail are below 10 percent, often even with people who have said they want to hear from us. Most snail mail gets looked at, and at least opened. Especially among people we know and like, and especially when the mailing doesn't look like advertising.

Use an announcement sized envelope. Hand address it. Use a first-class stamp. Sure it'll be more expensive per unit, but I'm betting your cost per lead and cost per sale drop like a rock. (Again, you have dormant employees. Have them stuff and address. After all, you're playing small ball here. You're not mailing to 10,000. You're mailing to 500. Maybe less. That's what small ball is all about.)

see ACKERMAN next page



Jim Ackerman

The economic doomsayers

OK, I will admit it right off the bat.

I do not think much of those economic forecasters whose only message is, and nearly always has been, that U.S. economic and global collapse is just around the corner.

They do sell a lot of books and high-priced newsletters. After all, “bad news does sell newspapers.”

A recent story in *USA Today* noted three authors or writers (I won't insult them by referring to them as economists) who all predict economic devastation pretty much just around the corner.

Harry Dent, author of the new book *The Great Crash Ahead*, says another stock market crash is coming because of a bad end to the global debt bubble. While he did predict some major stock market hits last fall (didn't happen), and had focused on a domestic and global meltdown in 2012, he now sees the crash coming in 2013 or 2014.

Dent suggests the combination of aging baby boomers exiting their big spending years and a shift toward debt reduction and austerity around the world will cause the economy to suffer another let down, making it more difficult for the government and Federal Reserve to avoid a new meltdown. Surprisingly, Dent used to be on the other side, writing *The Great Boom Ahead* in 1993, as well as other books focused on stocks going to much higher levels.

Gerald Celente, a trend forecaster at the Trends Research Institute, says Americans should brace themselves for an “economic 9/11” due to policymakers' inability to solve the world's financial and economic woes. The coming meltdown will lead to growing social unrest and anti-government sentiment, a U.S. dollar with far less purchasing power and more people out of work, he believes.

He won't rule out a panic that could spark enough fear to cause a run on the nation's banks by depositors. That risk, in his opinion, could cause the government to invoke “economic martial law” and call a “bank holiday” and close banks as it did during the Great Depression.

Note: My view would suggest that a bank run is a virtual impossibility. As long as the Federal Reserve has the ability to “create” money, banks WILL have sufficient access to funds.

And then there is Robert Prechter. He is always bearish, and makes a very nice living scaring people all of the time. He says today's economy has similarities to the Great Depression and warns that 1930s-style deflation is still poised to cause financial havoc. Prechter predicts that the major stock indexes, such as the Dow Jones Industrials and the Standard & Poors 500, will plunge below their bear market lows hit in March 2009 during the last financial crisis.

The Consensus View

Note that these doomsayers obviously do not represent the more optimistic view of dozens of seasoned forecasting economists. Yes, risks are out there. Yes, the European sovereign debt crisis could end in a very ugly way. Yes, Iranian actions to destabilize oil flows in the Strait of Hormuz could impair the economy by forcing oil prices temporarily higher. Yes, an Israeli or U.S. (or coordinated) attack on Iranian nuclear facilities could sharply raise global tensions.

Here is a mostly useful piece of advice. Ignore the forecasts of economists. After all, forecasting the future is not easy. Economists make forecasts of the future not because we know what is going to happen, we make fore-

casts because we are asked to. Big difference.

But do look at what the stock market is saying. This is where the real brains are. The stock market, with the Dow Average at 13000, a four-year high, suggests that there is enough underlying strength in the U.S. and global economies to weather the storm, weather the risks that the market can see.

Very bullish views of Dow 15000, or Dow 17000, or even Dow 20000 are starting to appear. Perhaps these overly optimistic views should be rubbed against the “doomsday” view of the few.

Predicting the Great Recession



Jeff Thredgold

It is amazing how many economists and stock market watchers, and people I meet on airplanes, and people who come up to me after I speak, tell me they correctly predicted the timing and the depth of the Great Recession, which officially ran from December 2007 to June 2009. As you know, the Great Recession led to the Dow falling by more than one-half, with an economy losing more than eight million jobs. Housing prices are down 35 percent from the 2006 peak.

I have traditionally been an economist who thinks of myself as “realistic and long-term optimistic.” Yes, we have some very major decisions to make in Washington, D.C., about reining in the growth of government spending and associated damaging budget deficits.

While I live in the Salt Lake City area, one of my banking clients is a top Colorado bank. As a result, I get called frequently by *The Denver Post* newspaper for quotes or analysis on news stories.

Over the years, the Denver media would many times contrast my reasonably optimistic view against those of the “Duchess of Doom,” a very nice, now largely retired economist whose views were always negative, whose constant forecast was that economic disaster was just around the corner.

She was right — finally — in 2008 and 2009. Without any disrespect intended, even a broken clock is right twice a day.

Back to the “Doomsayers”

While each of the three aforementioned “doom and gloomers” have similar views, their recommendations differ like night and day. Harry Dent says to invest in short-term U.S. Treasury bills, where the current annual return is effectively zero, as well as the U.S. dollar, whose value will benefit from safe-haven cash flows.

Prechter simply says keep your powder dry and buy when things get really bad. No doubt he will let us know when that is, for a princely sum.

Celente's advice centers on survival. He says buy gold so you don't lose purchasing power when the U.S. dollar plummets. Buy a gun to protect your family against desperate people in search of food and money. He says plan a getaway to places with more stable finances and governments. Again, such places can most likely be had for a fee. Not sure if the airlines will be running in such devastating times, but maybe he knows something.

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

STAFFING

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only support existing retention programs, but to add a whole new dimension to your retention strategy.

Provide a Venue to Be Heard

New media such as Facebook and blogs offer workers an opportunity to share their opinions, connect with coworkers and, yes, even blow off some steam. Employees who feel they are listened to and are contributing their ideas to the workplace are far more motivated and engaged and less likely to leave. Providing and encouraging workers to share their thoughts, fears and opinions can give them a sense of ownership and control in an environment of uncertainty and chaos.

Make Work Fun Again

What's the fastest way to derail anxiety and fear? Laughter. Innovative companies are leveraging the entertainment value that social media outlets offer and the departure from traditional “corporate messaging” it can deliver to laughter-starved workers. Consider creating a cartoon series for your intranet that spoofs the organization, or hosting a viral video contest on YouTube.

Satisfy Workers' Career Development Needs

Podcasts, webinars and MP3s present an opportunity for employees to grow their career and personal development through training and education. Many companies have developed career development centers online, even handing over the decision about training topics to employees. For more information on the Emerging Workforce Study, visit www.spherion.com/emergingworkforce.

Ron Zarbock is the area owner and manager for Spherion Staffing and Recruiting and Today's in Utah, with several locations along the Wasatch Front. Zarbock has more than 30 years of business experience in process and distribution, automation and workforce solutions.

ACKERMAN

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4. Integrate. Use all three systems — snail mail, e-mail, the phone. Bill Warren is another jeweler client of mine does exactly that. He has response rates to his promotions that range from a low of around 6 percent to highs above 30 percent. What would happen to your bottom line if you were able to get response rates like that?

Want to find out? Play small ball this spring and watch your sales go big.

Jim Ackerman is a Salt Lake City-based marketing speaker, marketing coach, author and ad writer. For his speaking services, go to www.marketingspeakerjimackerman.com. Subscribe to his VLOGS at www.YouTube.com/MarketingSpeakerJimA, where you get a video marketing tip of the day, and at www.YouTube.com/GoodBadnUglyAds, where Ackerman does a weekly ad critique and lets you do the same.

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NAMES

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strong name and easy to protect, for the same reason that Nike and Google are strong marks. In contrast, “Apple” cannot be registered if it relates to a business of growing or distributing apples because it would be descriptive of the product. The more arbitrary the name, the stronger the trademark.

Already Own a Trademark? Maintain It

If you own a trademark, you must maintain it. Renewals must be filed after the first five-year period after registration and every 10 years thereafter. You must also use the mark after it is registered, or you will lose it. In addition, you must re-file every time your use of the trademark changes. Further, a good practice is to identify the trademark in distinctive text (color, font, caps, etc.) and mark the trademark with a ® for federally registered trademarks and ™ for other trademarks.

So remember what's in a name. It can create great wealth or great problems. Take the time necessary to ensure that your name is distinctive and unique.

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

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Romney's budget-balancing for dummies

Seeking applause from a right-wing audience in Michigan, Mitt Romney recently vowed: "I will cut spending, I will cap spending, and I will finally balance the budget," saying that he will end federal funding for all the usual Republican budgetary scapegoats — the Public Broadcasting System, the National Endowment for the Arts and the National Endowment for the Humanities. He has said much the same thing many times in recent months, hoping to woo the tea party extremists who keep rejecting his candidacy.

But Romney must think these "conservatives" very stupid if he's promising to balance the federal budget by eliminating nominal amounts spent on the nation's cultural programs. And he

must think they're even dumber if they believe he can do that while delivering the massive tax cuts and defense increases he has also promised. As a former corporate investor and state governor, he certainly knows that his numbers simply don't work.

Or at least not in the foreseeable future, as the Committee for a Responsible Federal Budget explained in a study of Romney's latest tax plan. Rather than bringing the budget into balance, as he has repeatedly promised, that plan would substantially increase the national debt over the coming decade by reducing taxes on people like Romney himself — the wealthiest 1 percent.

"Estimated roughly, ignoring interactions and microdynamic

effects, we find that without offsets Gov. Romney's plan on the whole would increase the debt by about \$2.6 trillion," according to the nonpartisan committee. The roughness of that estimate was unavoidable because Romney's plan leaves out most of the vital details — such as which tax loopholes he would close and which vital programs and entitlements he would cut. It is full of tax cuts pleasing to gullible Republican audiences, but not much else.

So far, the hints that Romney has offered about proposed changes to the budget would increase rather than reduce deficits. Aside from his tax cuts — which represent an even bigger orgy of irresponsibility than the George W. Bush cuts — Romney often insists that he will substantially increase rather than reduce the defense budget, raising the total spent as

a percentage of gross domestic product from 3.8 to 4 percent. That doesn't sound like much until someone does the math, which results in an additional \$40 billion or so annually. Again, there are few substantive details so far, except his promise to build another 15 Navy warships annually, at a cost of roughly \$21 billion alone.

Eventually all the unbridled spending that Romney wants to enact on tax breaks for his rich donors and yet more Pentagon waste will add up to real money — unlike the cuts he has loudly aimed at the country's cultural programs. Total annual spending on the National Endowment for the Arts, the National Endowment for the Humanities and the Corporation for Public Broadcasting — all hated by "conservatives" who behave like vandals intent on

sacking the national heritage — amounts to less than \$700 million, with an "m."

In a national budget of nearly \$4 trillion, with a "t," \$700 million is a truly meaningless amount, representing some miniscule fraction of military cost overruns. And Romney — our new Spartan leader who avoided the draft in France — surely knows that, too.

So why does he talk about those cuts and avoid discussing the real tax increases and spending reductions that would be required to balance the budget? He seems to think that his tea party audiences can't do simple arithmetic. He may well be right.

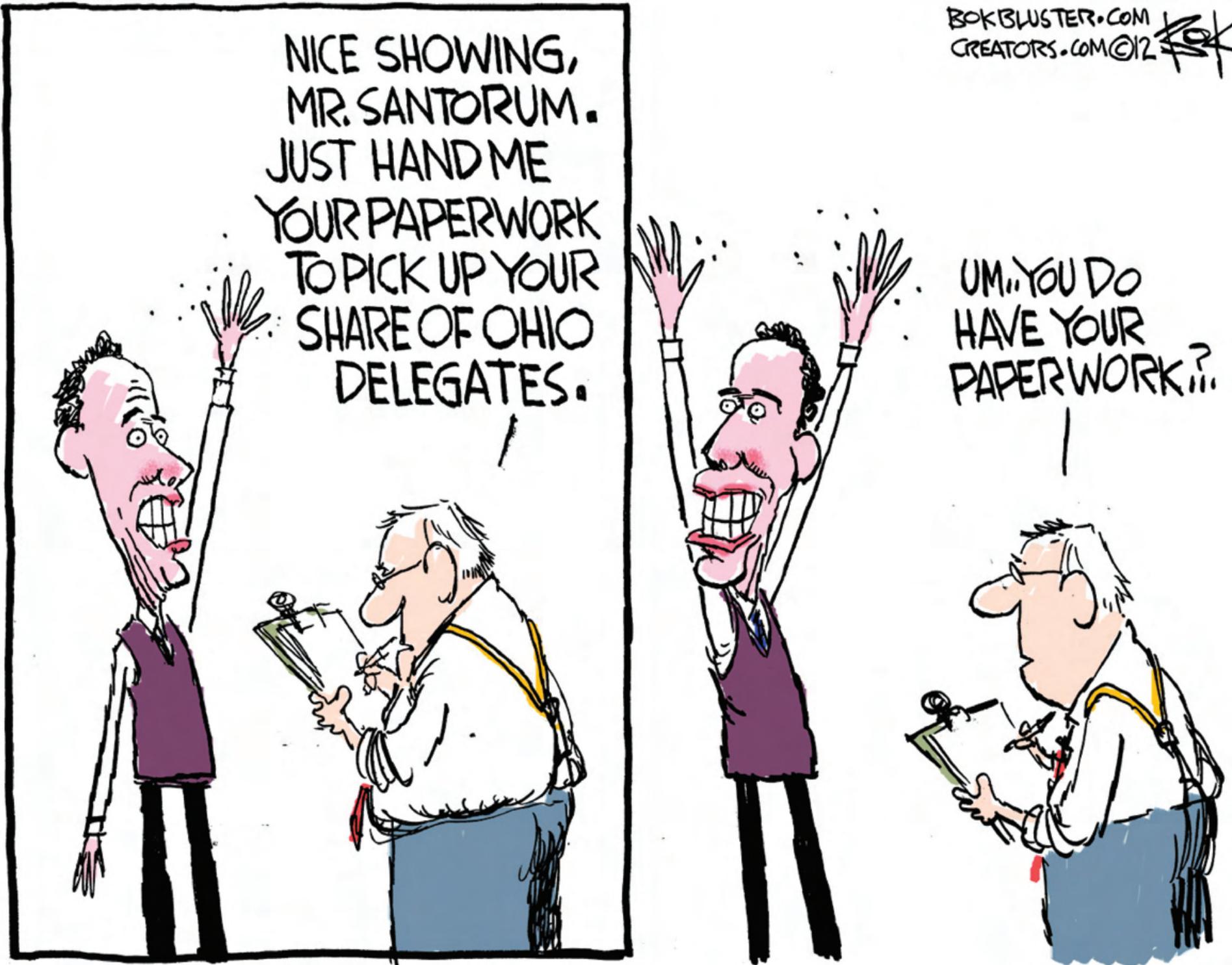
Joe Conason is the editor in chief of NationalMemo.com.

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Iran and Obama

What are we to make of President Barack Obama's latest pronouncements about Iran's movement toward nuclear bombs? His tough talk might have had some influence on Iran a couple of years ago, when he was instead being kinder and gentler with the world's leading terrorist-sponsoring nation. Now his tough talk may only influence this year's election — which may be enough for Obama.

The track record of Barack Obama's pronouncements on a wide range of issues suggests that anything he says is a message written in sand, and easily blown away by the next political winds. Remember the "shovel-ready projects" that would spring into action and jump-start the economy, once the "stimulus" money was available? Obama himself laughed at this idea a year or so later, when it was clear to all that these projects were going nowhere.



Thomas Sowell

Remember how his administration was going to be one with "transparency"? Yet massive spending bills were passed too fast for the Congress itself to have read them. Remember the higher ethics his administration would practice — and yet how his own Secretary of the Treasury was appointed despite his failure to pay his taxes?

If you were an Israeli, how willing would you be to risk your national survival on Obama's promise to stand by your country? If you were a leader of Iran, what would you make of what Obama said, except that an election year might not be the best time to attack Israel?

Members of the Obama administration have been pointing out how hard it would be to destroy Iran's nuclear facilities, now that they have been built deep underground and dispersed.

That would have been some-

thing to consider during the time when President Obama was taking leisurely and half-hearted measures to create the appearance of trying to stop the Iranian nuclear program, while vigorously warning Israel not to take military action.

Time was never on our side. The risks go up exponentially the longer we wait. When the Iranian nuclear program was just getting started, it could have been destroyed before it became so big, so dispersed and so deeply dug in underground. Now, if we wait till they actually have nuclear bombs, the same kinds of arguments for inaction will carry even more weight, when the price of an attack on Iran can be the start of a nuclear Holocaust.

Nor should we assume that we can remain safe by throwing Israel to the wolves, once the election is over, as might well happen if Obama is re-elected and no longer has any political reasons to pretend to be Israel's friend.

That kind of cynical mis-

calculation was made by France back in 1938, when it threw its ally, Czechoslovakia, to the wolves by refusing to defend it against Hitler's demands, despite the mutual defense treaty between the two countries. Less than two years later, Hitler's armies were invading France — using, among other things, tanks manufactured in Czechoslovakia.

This was just one of the expedient miscalculations that helped bring on the bloodiest and most destructive war the world has ever known. Dare we repeat such miscalculations in a nuclear age?

At the end of the Second World War, Winston Churchill said, "There never was in all history a war easier to prevent by timely action than the one which has just desolated such great areas of the globe." It might even have been prevented "without the firing of a single shot," Churchill said.

Early in Hitler's career as dictator of Germany, the Western powers — indeed, France alone — had such overwhelming mili-

tary superiority that an ultimatum to Hitler to stop rearming would have left him little choice but to comply. But the price of stopping him went up as time went by and he kept on rearming.

When Hitler sent troops into the Rhineland in 1936, in defiance of two international treaties, he knew that Germany at that point had nothing that would stop the French army if it moved in. But France was too cautious to act — and caution can be carried to the point where it becomes dangerous, as France discovered when a stronger Germany conquered it in 1940.

Churchill warned, "Do not let us take the course of allowing events to drift along until it is too late." But that is what expediency-minded politicians are always tempted to do.

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

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