

THIS WEEK

Gasket maker to open Utah branch

Lamons will be closer to its local refinery client. See page 3.

Avinti sold to Calif. firm

But operations will remain in Utah. See page 5.

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Golf in Utah

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THE Enterprise

PERIODICAL Postage Paid Salt Lake City, Utah

Golden Spoon to return to Wasatch Front with 20-30 locations

By Barbara Rattle
The Enterprise

Golden Spoon, a California-based frozen yogurt chain that once had 17 stores in Utah, most within Smith's grocery stores, is preparing to re-enter the northern Utah market.

After leaving the metro area in the early 1990s by selling its Beehive State stores to the now-defunct Golden Swirl, Golden Spoon is seeking franchisees to open between 20 and 30 stores along the Wasatch Front. The Rancho Santa Margarita-based company presently has one Utah store, in St. George.

CEO Roger Clawson said Golden Spoon is currently in negotiations with potential franchisees who would be required to open a minimum of three stores each, although a commitment for between five and 10 stores each is preferred. Interest, he said, is at "a very high level." The ideal location measures between 800 and 1,200 square feet and is located in a community strip center with easy ingress, egress and plentiful parking.

The per-store franchise fee is \$35,000 — 50 percent up front and the balance as leases are signed — plus a 6 percent royalty and 1 percent marketing fee, said



company president Ed Evans. The turnkey typical start-up cost, from real estate to initial inventory, is roughly \$400,000, he said. With the exception of grand opening events, the firm's advertising is confined to company-sponsored events designed to benefit community organizations such as schools.

The goal, Clawson said, is to have one store open by summer's end, three by the close of the year and 10 by the end of 2010. Sites are presently being sought in Salt Lake, Utah and Davis counties. Tai Biesinger of Pentad Properties, Salt Lake City, is assisting the company with site selection. Golden Spoon's locations are 100 percent franchised.

Today, Golden Spoon has more than 100 stores open in California, Nevada, Arizona and Utah. Six are open in Japan, another 100 are committed in that country and an additional 150 are under contract domestically. The

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Wall Street financial services firm opens Utah office in Sandy

First Investors Corp., a New York City-based financial services firm, has opened an office at 45 W. 10000 S., Suite 103, Sandy.

Managed by Travis Johanson, the 1,400 square foot office is presently staffed by Johanson and an administrator/recruiter, but several individuals are now in training and working toward their licenses, Johanson said.

"First Investors is always looking to expand, and Salt Lake City was a market in which we were not represented," he said. "Personally, ever since I started my career at First Investors, it has been my goal to open an office here. I was born and raised in Sandy, and attended Hillcrest High School. After graduating from Utah Valley University (formerly Utah Valley State College),

I moved to Phoenix, which is where my wife is from, and where I began my career with First Investors as a representative. I'm thrilled to be back home and among family — in fact, my parents' house is four blocks from the new office."

First Investors serves individual investors, small businesses and school districts by offering a broad array of products, including an extensive line of mutual funds, including stock, bond and money market funds, each with its own specific investment objectives and risks. Through an affiliate, First Investors Life Insurance Co., the firm also provide a range of life insurance and annuity products. First Investors also offers Traditional and Roth IRAs, 403(b)

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Utah top court declines to broaden Unfair Practices Act

By Barbara Rattle
The Enterprise

The Utah Supreme Court has declined to incorporate the so-called federal "Cigarette Rule" test into the Utah Unfair Practices Act, a move that would have expanded the act to protect consumers as well as commercial competitors, thereby exposing businesses to a broader array of lawsuits by individuals.

Utah's Unfair Practices Act was enacted to "safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented."

Similarly, the Federal Trade Commission Act declares "unfair methods of competition in or

affecting commerce, and unfair or deceptive acts or practices in or affecting commerce" to be unlawful. To determine if something is unfair or deceptive under the federal act, the U.S. Supreme Court adopted what is now known as the Cigarette Rule — a three-part test that considers whether the act is unlawful or violates public policy, whether it is immoral or unethical and whether it injures consumers. Ruling unanimously, the justices were unwilling to incorporate the test into the Unfair Practices Act on grounds the law is unambiguous and that its focus is on competition and monopolistic behavior rather than consumer protection. The Cigarette Rule, which dates back to 1972, was originally adopted to regulate unfair or deceptive advertising or labeling of cigarettes.

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BECKY ELENOR/ENTERPRISE

Philip Kearns, born in England, owns American Heritage Windows, which has performed restoration work on many historic Utah buildings.

Employer thought he was a citizen, but faces deportation

By Frances Johnson
The Enterprise

Philip Kearns, who has owned and operated Salt Lake City-based American Heritage Windows since 1988, was caught by surprise coming home from a Mexican vacation two years ago when he was arrested at the border and accused of falsely representing himself as an American citizen, though for the past four decades he has believed himself to be a legal and recorded citizen of the United States. Now Kearns, an employer who pays taxes and has voted in

every major American election since he was eligible, faces a deportation hearing in October.

Making his troubles particularly ironic is the fact that the largest client of Kearns' business, which provides politically and historically correct wood windows for historic buildings, is the federal government.

Kearns was born in England to British parents who immigrated to the United States when he was 10. Through his father's employment, Kearns and his parents became

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COURT

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The case involved an appeal by a man who, with his wife, in 1999 purchased a bedroom set for \$2,419 from Granite Furniture Co. after having agreed to a six-month financing agreement. The couple thought the agreement waived any finance charges if the balance was paid within six months. But the contract required monthly minimum payments, which the couple failed to make. Instead, they made two sporadic payments, then paid the remaining amount on Jan. 11, 2000, believing the six-month financing period to expire on Jan. 24.

Later, the couple received a letter with a copy of a default judgment of \$897 for unpaid interest and finance charges from Gateway Financial Services Inc., a collection agency. Prior to the letter, the couple was unaware that any legal

action had been taken against them. The couple's legal counsel asked Gateway for proof of service for a small claims affidavit delivered to the couple. Gateway faxed back proof of service that indicated the wife had been personally served on a certain date by Civil Process Services & Investigations LLC. However, on that date, the wife had been dead for more than a year. Gateway then provided proof that it had served the husband, but he was not at home at the time stated. Gateway eventually agreed to remove the judgment.

Subsequently the husband sued Civil Process Services to recover treble damages under the Unfair Practices Act, arguing that falsifying the civil process documents constituted unfair competition because it violated public policy, was unethical and immoral and caused substantial injury to consumers. He also sued Granite Furniture for violating the Unfair Practices Act. After a jury trial, the

companies moved for a directed verdict on grounds the husband failed to prove they had violated the Unfair Practices Act. The district court granted the motion and the husband appealed.

Writing for the court, Chief Justice Christine Durham said the Cigarette Rule was intended to make the consumer, who may be injured by an unfair trade practice, of equal concern before the law with the merchant or manufacturer injured by the unfair methods of a dishonest competitor. The Utah Unfair Practices Act, on the other hand, makes unlawful only "unfair methods of competition and commerce," she said. Durham acknowledged that while the Unfair Practices Act gives power to the Utah Division of Consumer Protection to bar unfair and discriminatory practices, it unambiguously does so only in reference to preserving competition.

In closing, Durham noted that in interpreting the current statute,

"we make no judgment on the wisdom of the legislative expansion of the Unfair Practices Act to protect consumers as well as commercial competitors. The legislature has already adopted an extensive framework of consumer protection laws in other areas, and there are numerous public policy reasons for extending the Unfair Practices Act to also protect consumers. We leave it to the legislature to consider those policy concerns."

"If the Supreme Court would have adopted [the Cigarette Rule], it would have made that statute so broad you could have almost any kind of case imaginable brought under that statute," said Reed Braithwaite, counsel for the victorious defendants. "It would have allowed individuals to sue companies under almost any legal theory you can come up with. The Unfair Practices Act would have been so broad that every time you have a complaint against a business you could have just thrown that on as a cause of action."

James Magleby, of Magleby & Greenwood P.C., and counsel

for the plaintiff, said he was disappointed with the outcome.

"We thought we had the right case for this argument, given the statute's language about its broad purpose and the particularly egregious facts of this case — claimed service of process on a deceased person — combined with the lack of other available remedies because our client was not in privity with the wrongdoer under traditional contract or tort law theories," he said. "Consistent with the purpose of the statute and for public policy reasons, we thought the statute intended to give a claim to plaintiffs like our client, who otherwise might not have a cause of action."

"Although it is not clear, I interpret the last portion of the opinion to mean that our public policy arguments made sense to the court, but that being judicially conservative the court was not willing to expand the statute on a public policy basis without more clarity from the legislature. In other words, it seems to be a call to action by the legislature."

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plans, SIMPLE-IRAs, Simplified Employee Pensions (SEPs), qualified pension and profit sharing plans, Education Savings Accounts (ESAs) and 529 Plans.

"I think our approach to investing, which is disciplined and focuses on the long-term, matches well with the needs of the community and the people who are looking to save for retirement or build a college fund," Johanson said.

Though located in the Salt Lake City area, First Investors will serve clients throughout the

state.

"One of the unique things about First Investors is that we are like old-fashioned doctors — we make house calls," Johanson said. "Our representatives meet with clients in their homes or places of business, wherever is convenient for them."

The Utah office joins more than 50 First Investors offices nationwide. The company was founded in 1930. The company leased its Sandy space with the assistance of Heather Bogden of Coldwell Banker Commercial NRT.

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