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*Internal*  
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**From:** Priscilla Burton  
**To:** OGMCOAL  
**Date:** 11/19/2008 10:11 AM  
**Subject:** Bear Canyon Mine C/015025 Incoming  
**Place:** OGMCOAL  
**Attachments:** 07 06 08 CW Mining\_20081119100539.pdf; 11 12 08 CW Mining\_20081119100436.pdf; 11 18 08 affiliated co.\_20081119091134.pdf

2008 Salt lake Tribune articles concerning Bear Canyon Mine and CW Mining involuntary bankruptcy.

UTAH'S INDEPENDENT VOICE SINCE

# The Salt Lake Tribune

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## HOLDING, OLY & SNOWBASIN LAND

Notorious deal subject of new book, D1



## STAY-CATION

Don't cancel that vacation, just move

## PCL ALL-STAR TEAM: BEES PI

SUNDAY ❖ JULY 6, 2008

### Coal mine accident

# 'I'd give anything to have him snore in my ear again'

Newlywed, dad-to-be killed when he was crushed between his rig and a front-end loader

By MIKE GORRELL  
*The Salt Lake Tribune*

ELMO, Emery County — They were sweet, those last few months of David Whiting's life, before he was crushed to death on a gravel road leading to the Bear Canyon coal mine in the pre-dawn darkness of a snowy Dec. 12 morning.

He had gotten married barely seven weeks earlier to Layci Schrawyer, who was teaching him to play the piano.

Her three young children from a previous marriage had accepted him into their family.



LEAH HOGSTEN/The Salt Lake Tribune

The Schrawyer kids, from left, Aspynn, 6, Christian, 7, and Larry, 4, play outside their home. Mom, Layci Schrawyer Whiting, is at left.

They called him dad.

And just days before, he and Layci learned they were going to have a child of their own.

"It was like a fairy tale,"

said Layci, who is due to give birth July 24. "It's a boy, so he will be David Junior."

See **COAL MINE**, A4

### Lehi shooting

# Do gun law for the men

Families struggle with a sy little or no way to 'control t

By ERIN ALBERTY  
*The Salt Lake Tribune*

The guns and mind of Kelly Wark were beyond anyone's control.

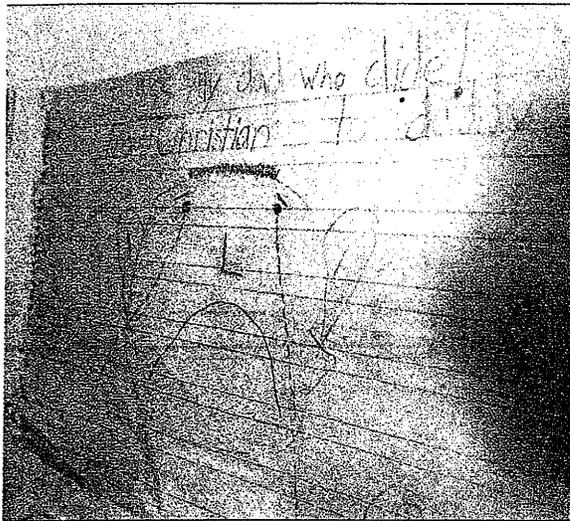
That's the only resolution her mother, Mary, has found since her 34-year-old daughter was gunned down by Lehi police officers after shooting a captain during a traffic stop.

Wark legally bought her .38-c in Washington state. Mary War she had to protect herself.

The family felt "horrible" about her so," Mary Wark said. "less someone has been involunt allowed. . . . There wasn't anything the situation."

See **MENTALLY ILL**, A9

Kelly Wark  
Killed at shooting



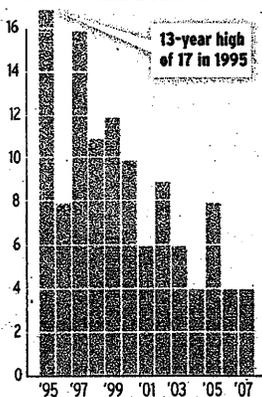
PHOTOS BY LRAH HOGSTEN  
The Salt Lake Tribune

Left, Christian Schrawyer's drawing titled "I miss my dad who died!" Above, the engagement photo of David and Layci Whiting taken in September 2007.

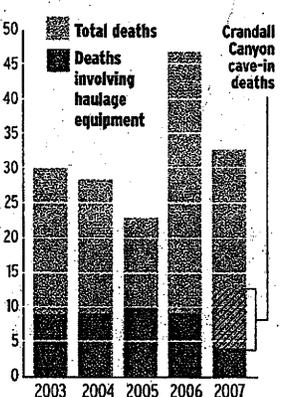
### Many mining deaths involve equipment

Accidents involving haulage equipment have accounted for 115 deaths in the mining industry since 1995. Within the coal-mining industry alone, powered haulage accidents are among the leading causes of fatalities.

#### MINING HAULAGE DEATHS



#### COAL-MINING ACCIDENT DEATHS



Sources: Federal Mine Safety and Health Administration TODD ADAMS/The Salt Lake Tribune

when it slid down the road, crushing Whiting between the bumpers of the big rigs.

MSHA investigators determined the operator did not inspect the loader before running it that day and that the machine was not maintained, allowing moisture and debris to build up in its braking system, which failed. Other citations accused C.W. Mining of not equipping haulage equipment with blocks to prevent slides and said the operator did not turn the loader's wheels to keep it from slipping down the soggy road.

"This is a clear-cut case of liability," said Sonny Olsen, a Price attorney retained by Layci Whiting, along with the Salt Lake City firm of Dawson

prevented. They need to be held accountable."

Multiple calls to C.W. Mining were not returned.

Securing compensation from the company will be a challenge. C.W. Mining is in involuntary bankruptcy after a federal judge ruled the company defaulted on a contract to supply tons of coal to a Kansas City-based utility and owed Agulla Inc. nearly \$25 million.

**How to move on:** Into the wee hours of the night before her husband died, Layci Whiting was struggling with morning sickness. "We had just found out about a week before that I was going to have a baby and I was really sick," she said.

house was a mess and I wasn't all the way dressed. I thought they'd go away, but they didn't. They kept knocking," she said. "So I got decent and I went downstairs and there was a [Emery County] sheriff and a woman from his work. She told me 'Sorry, Dave was killed today.' I thought she was out of her mind."

But she wasn't. And now Layci Whiting is trying to figure how to move on with four young children amid the emptiness of a romance cut short.

Layci and David actually met about eight years earlier when she was lined up on a blind date with a guy from her LDS singles ward in Utah County. David was the guy's friend. Nothing much happened then, but Layci made enough of an impression that Whiting contacted her again several years later when both were in Nebraska — he was visiting his mother, she was living there after having married, given birth to three

children and split from her husband.

She moved back to Mapleton and, early last year, re-established contacts through a friend with Whiting. "He sent me flowers and we went out to dinner. The timing was right, so we pretty much courted and got married in October."

The relationship thrilled Whiting's brother, Melvin, a Helper resident who works at the Skyline coal mine.

"I'd seen him in dating and friendship relationships, but there hadn't been anything that resembled to the way he got along with Layci," Melvin said. "You could see the spark. You could see the respect and the relationship grow."

David Whiting sold his motorcycle, Jeep and dirt bikes to raise money for the wedding. Pictures from that day adorn the walls of the modest home Layci inherited from her late husband, including one with David flashing a big grin as he teased his new wife. "He was goofy. Most of the time that's how he was."

He dedicated himself to Layci's three kids — Christian,

7; Aspyynn, 6; and Larry, 4 — spending the fall building a sandbox for them. And Layci was teaching him to play Canon in D major on the piano he gave her as an engagement present.

Memories such as that make it hard for Layci Whiting to play the piano these days. She spends her time caring for her children and, occasionally, crying.

"When we go to the cemetery, Christian will ask 'Are you going to cry this time?' It's really emotional," she said. "He was really scared if he did anything wrong. He didn't want me to hurt anymore. That really concerned me because he's only 7 and taking it on himself."

Layci has tried to keep life as normal as possible, planting trees near her home as she and David had planned. "The things that we were going to do together, I'm doing," she said.

But the void in her life never goes away.

"I'd give anything," she said, "to have him snore in my ear again."

mikeg@strib.com

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# OIL FALLS TO 20-MONTH LOW



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### NYSE

167.68  
634.37

### S&P 500

-20.26  
898.95

### In Utah

The Bloomberg/Utah index measures the performance of the state's major publicly held companies.

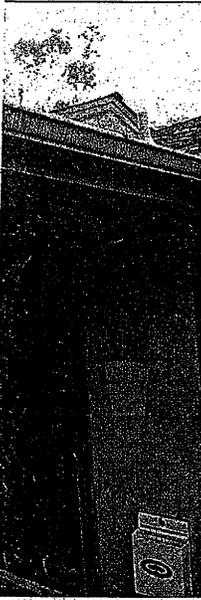
### UTAH INDEX

-51.59  
233.27

### Inside

Market summary on Page D-3

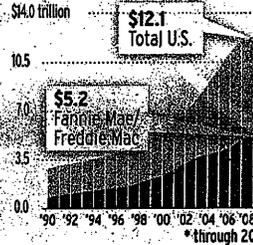
# Mortgage help



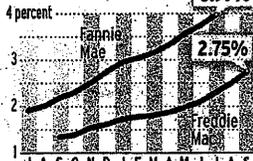
NOAH BERGER/The Associated Press  
troubled loans comes too  
didn't convince Countrywide  
moving out soon.

**Outstanding debt**  
Mortgages and securities at Fannie Mae and Freddie Mac account for 43 percent of total U.S. residential mortgage debt outstanding.

**Residential mortgage debt outstanding**



**Single-family delinquency rate, credit-enhanced mortgages**



Sources: Fannie Mae; Freddie Mac; Office of Federal Housing Enterprise Oversight  
The Associated Press

## About mortgage assistance

In addition to a broad new effort by mortgage giants Fannie Mae and Freddie Mac to reduce the burden on homeowners facing foreclosure, some banks are stepping up. Here are some questions and answers about

**Q** Will the new mortgage assistance programs help me if I'm behind on my payments?

**A** Yes, but it's important to act quickly. Many programs have deadlines for when you must be behind on your payments to qualify. Some programs also require that you have a steady income and a good credit history.

**Q** What are the steps I should take to get help?

**A** Start by contacting your lender or a housing counselor. They can help you understand the different options available and guide you through the application process. Some programs may require that you complete a financial counseling course.

**Q** How long will the assistance last?

**A** It depends on the program. Some programs offer temporary relief for a few months, while others may provide more long-term assistance. It's important to understand the terms of any program you're considering.

**Q** What if I can't afford my mortgage?

**A** If you're having trouble affording your mortgage, it's important to talk to your lender as soon as possible. They may be able to work out a payment plan or offer other options to help you stay in your home.

# Kingston affiliate Mining company loses on appeal

Original ruling says  
C.W. Mining owes \$24M  
to Midwestern utility

By MIKE GORRELL  
The Salt Lake Tribune

The 10th Circuit Court of Appeals has rejected an attempt by C.W. Mining, which is affiliated with the polygamous Kingston family, to overturn a ruling that says it owes a Midwestern utility \$24 million for coal it failed to supply.

Last week, a panel of four Appeals Court judges affirmed U.S. District Judge Tena Campbell's October 2007 decision that the coal company had breached its contractual obligation to supply coal to Aquila Inc., a Kansas City, Mo.-based utility. Her ruling led C.W. Mining to file for involuntary bankruptcy.

"We agree with the district court's legal conclusions and find no clear error in its factual findings," the judges wrote.

C.W. Mining attorney Carl Kingston and a spokesman for Aquila's parent company did not respond to Tribune requests Tuesday for comment.

The legal fight stems from a 2003 contract in which C.W. Mining pledged to supply about 1.5 million tons of coal over five years to Aquila. The utility provided electricity in Missouri and Colorado and natural gas in four Midwestern states before it was sold in July for \$2.6 billion and divided between Great Plains Energy Inc., also of Kansas City, and Black Hills Corp. of Rapid City, S.D.

See C.W. MINING, C-3

# Apollo Group settles non-Mormon bias suit

BLOOMBERG NEWS

Apollo Group Inc., the owner of the for-profit University of Phoenix, agreed to pay \$1.88 million to the U.S. Equal Employment Opportunity Commission to settle a lawsuit charging the school discriminated against non-Mormons.

The suit, brought by the commission, alleged that the University of Phoenix discriminated against non-Mormons when hiring and promoting enrollment counselors, who recruit students, the commission said in a

statement. The settlement will be divided among 52 non-Mormons in the class of individuals represented in the lawsuit.

Apollo, based in Phoenix, is the largest for-profit provider of college degrees, with 362,100 college and graduate degree students enrolled as of Aug. 31, according to a regulatory filing. The company gets 95 percent of its revenue from the University of Phoenix.

Marla Sheiner, a company spokeswoman, didn't immediately respond to calls seeking comment,

# C.W. Mining loses appeal against utility

► Continued from C1

Also known as Coop Mining Co., C.W. Mining operates several mines in Bear Canyon, off of Huntington Canyon in Emery County.

C.W. Mining did not dispute Aquila's claim that the contract to supply coal was not fulfilled. But the mining company argued the contract could be terminated because its failure resulted from a labor dispute that qualified as a "force majeure," involving causes beyond its reasonable control.

Campbell and the Appeals Court concurred with Aquila, which said the shortfalls were caused largely by controllable geological hazards

— including roof falls, an underground fire and mud. The judges also determined that C.W. Mining never notified Aquila geological conditions rose to "force majeure" status.

"To the contrary, [C.W. Mining] downplayed its geological problems and represented that they would be overcome shortly."

They also chastised C.W. Mining for not documenting accusations that Aquila could have secured better prices for coal bought to replace the non-delivered Utah coal.

"C.W. Mining provides no citation in the voluminous record . . . to support its claim about the price of coal," the judges said.

"When a party's brief fails to provide citations in support of its factual assertions, we are left to scan volumes aimlessly for asserted facts. But reading a record should not be like a game of 'Where's Waldo?'"

[mlkeg@sltrib.com](mailto:mlkeg@sltrib.com)

# PATENTS

**Pipe extraction tool**, patent No. 7,448,303, invented by Ryan V. Sweat and Douglas R. Allred of Heber.

**Ice cream vending machine**, patent No. 7,448,516, invented by Robert Davis of Peoria, Ill., Otis Westerfield of Peoria, Ill., and Jorgen Bailey of Sarasota Springs, assigned to Sunshine Ice Cream of Peoria, Ill.

**Ebullated bed hydroprocessing methods and systems and methods of upgrading an existing ebullated bed system**, patent No. 7,449,103, invented by Roger K. Lott of Edmonton, Calif., and Lap-Keung Lee of West Windsor, N.J., assigned to Headwaters Heavy Oil LLC of South Jordan.

**Diagnosis and treatment of herpes simplex virus diseases**, patent No. 7,449,294, invented by John D. Kriesel of Holladay, Mark F. Leppert of Salt Lake City, Sportswood L. Spruance of Salt Lake City, Brith E. M. Otterud of Salt Lake City, Maurine R. Hobbs of Salt Lake City, and Brandt B. Jones of Bountiful, assigned to University of Utah Research Foundation of Salt Lake City.

**Trench-gated FET for power device with active gate trenches and gate runner trench utilizing one-mask etch**, patent No. 7,449,354, invented by Bruce Douglas Marchant of Murray, Thomas E. Grebs of Mountain Top, Pa., Rodney S. Ridley of Scarborough, Maine, and Nathan Lawrence Kraft of Pottsville, Pa., assigned to Fairchild Semiconductor Corp. of South Portland, Maine.

**In-pipe heat trace system**, patent No. 7,449,661, invented by Steven D. Bench of Murray.

**Magnetic transmission**, patent No. 7,449,807, invented by Neldon P. Johnson of Salem, assigned to N.P. Johnson

Family Limited Partnersh of Salem.

**System and method for converting text-to-voice** patent No. 7,451,087, invented by Eliot M. Case of Denver Colo., and Richard P. Phillip of Salt Lake City, assigned to Qwest Communications International Inc. of Denver Colo.

**Autonomic relevant building**, patent No. 7,451,14, invented by Paul Thomas Arellanes of Austin, Texas, Mary Catherine Burton of Springfield, Ill., Elizabeth Halliday-Reynolds of Austin, Texas, William S. Liu of Cupertino, Calif., Jason Thomas Read of Provo and Douglas Dwaine Yakesch of Georgetown, Texas, assigned to International Business Machines Corp. of Armonk, N.Y.

**Reliable method and system for efficiently transporting dynamic data across network**, patent No. 7,451,38, invented by Michael J. Mill of Pleasant Grove, Lyman Horne of Salt Lake City, Paul Willes of Alpine and Douglas M. Grover of E Ridge, assigned to Phon Broadband Corp. of Midvale

**System and method for document and data validation** patent No. 7,451,394, invented by Jesse Perla of New York N.Y., Oleg Dulin of Staten Island, N.Y., and Vishvas T. Chanan of Jacksonville, FL assigned to Convergys CM Utah of Salt Lake City.

**Cloth accessory with cleable flap**, patent No. D580,11, invented by Darren Jones of American Fork, assigned to Alpine Innovations LLC of American Fork.

**Camera case**, patent No. D580,167, invented by Darr Jones of American Fork, assigned to Alpine Innovations LLC of American Fork.

► **EVERETT ROBINSON**, who registered with the U.S. Patent and Trademark Office, compile this list weekly for *The Salt Lake Tribune*. He can be reached at 801-649-5858.

# Omniture

customers. But he also said economic downturns like the



## Legal Notices

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## Coal mining firm is ordered liquidated

**C.W. Mining »**  
Kingston clan  
affiliate owes \$24M.

By **STEVEN OBERBECK**

*The Salt Lake Tribune*

A coal mining company affiliated with the polygamous Kingston clan has been ordered liquidated by the U.S. Bankruptcy Court for Utah.

C.W. Mining Inc., which until mid-year mined coal near the base of Huntington Canyon in Emery County, was ordered into Chapter 7 after the 10th Circuit Court of Appeals upheld a lower court ruling that found it owed a Midwestern utility \$24 million for coal it failed to supply.

The order by U.S. Bankruptcy Court Judge Judith Boulden represents the latest twist in the case that began in early January.

At that time, Kansas City, Mo., utility owner Aquila Inc. and two Utah companies — House of Pumps and Howell Precast of Sandy — filed a petition contending C.W. Mining wasn't paying its debts and asking the court to place it involuntarily into a Chapter 11 reorganization.

C.W. Mining, which also conducted business as Co-op Mining Co., was ordered into Chapter 11 in late September despite its contention that it was "generally paying its debts as they became due." Aquila subsequently requested that either a Chapter 11 trustee be put into place to take over the company, or that it be ordered into Chapter 7.

"Essentially we were seeking an independent third party to gain control of the company's remaining assets and ensure they were distributed fairly [to the creditors]," said Chuck Caisley, spokesman for Kansas City Power & Light, which acquired Aquila in July.

Yet F. Mark Hansen, an attorney for a C.W. Mining affiliate Standard Industries, contended in documents filed with the bankruptcy court that there were no assets remaining from the mining company that could provide value to Aquila.

"Aquila, who stands alone as the only [unsecured] creditor seeking bankruptcy relief, would not receive anything in Chapter 7," said Hansen, who also argued that dismissal of the Chapter 11 case was in the best interest of C.W. Mining's secured creditors who hold an interest in the company's remaining property.

He said that since the involuntary bankruptcy petition was filed Standard Industries has paid nearly all of C.W. Mining's 120-plus trade creditors, including the two Utah companies that requested the mining company be placed into Chapter 11.

After weighing those arguments, however, Judge Boulden ordered C.W. Mining into Chapter 7 bankruptcy. The bankruptcy means that the company's remaining assets, if any, will be sold and the proceeds distributed to creditors.

## Delta- SLC tr

STAFF AND WIRE REPORTS

An expanded marketing alliance Delta Air Lines has entered into with Alaska Air Group will help Salt Lake City travelers get to more destinations in Alaska and Mexico, the carriers said Monday.

Delta and Alaska Air said they will offer customers connecting service to more than 50 destinations to and from Los Angeles, more than 70 destinations to and from Seattle, more than 30 destinations to and from Portland, Ore., and nearly 20 destinations to and from San Francisco.

Salt Lake travelers will be able to reach 16 destinations in Alaska not currently served by Delta by flying

## Japan slid first time s

By **TOMOKO A. HOSAKA**

*The Associated Press*

**Tokyo »** Recession is back in Japan after a seven-year hiatus, and fingers this time are pointing outside the country as the latest global boom quickly deteriorates into bust.

Government data Monday showed that the economy contracted at an annual pace of 0.4 percent in the July-September period after