

# LEPATNER REPORT

CONSTRUCTION COST CERTAINTY

FALL - WINTER 2010 VOL. 30, No. 3

A QUARTERLY FOR OWNERS AND THE REAL ESTATE & CONSTRUCTION INDUSTRY FOR 30 YEARS

## Happy Holidays

Best wishes for a healthy and prosperous 2011.



## 30<sup>th</sup> ANNIVERSARY ISSUE

LePatner celebrated its 30th Anniversary with staff, friends, clients and colleagues at the Central Park Boathouse on October 27. The event also officially launched Barry LePatner's latest book, *Too Big To Fall: America's Failing Infrastructure and the Way Forward* - see Firm News on back cover for more.

Partner Henry Korn moderated the evening's short program. Partner Ronald Feingold spoke about the firm's history - and he should know - he joined Barry in early 1981 only a few months after the firm opened for business. Former partner Victoria Roberts-Drogin described the entrepreneurial culture and talented individuals that contribute to the firm's success. Dottie Dehart, Barry's inimitable p.r. champion introduced Sam Schwartz, a former Chief Engineer of the NYC DOT in the eighties who almost single-handedly ensured the safety and longevity of the Williamsburg Bridge for future generations of New Yorkers. Barry LePatner concluded the evening's remarks, part of which were derived from his essay included in this issue.

A special thank you to our clients and colleagues, whether working with the firm for twenty weeks or twenty years. Your confidence in us to always work tirelessly on your behalf is something that is never taken for granted. Here's to many more decades of great projects, friends, and memories.

### QUOTE OF THE QUARTER

"This time, like all times, is a very good one, if we but know what to do with it."

Ralph Waldo Emerson

## LePatner Launches Integrity Compliance Division

At its 30th Anniversary Party, firm founder Barry LePatner formally announced that Joseph Jaffe, Esq. had joined the firm as a partner. Along with Jonathan Newcomb, Joe will lead **Proactive Integrity Associates, LLC** an affiliated firm that will provide investigative, consulting, forensic, due diligence, oversight, and monitoring services. This exciting addition to the LePatner Team will oversee construction industry practices, construction cost management, and project management investigations on behalf of public agencies and private owners and developers. ▶

## Reflecting on the Past, Looking to the Future:

### 30 Years at LePatner & Associates

By Barry B. LePatner, Esq., Hon. AIA, Founding Partner

Managing a niche law firm over the past thirty years has been hard work. Starting out in the midst of a recession in late 1980 may not have been the smartest idea but that is what I did, and when I did it, and in retrospect, it turned out to have been a heckuva good time to be a start-up business.

All along the way there was always a two-year and a five-year game plan that helped me to organize my thinking and serve as a reference point in uncertain times. I have learned over these 30 years that nothing is linear and ever goes exactly according to plan. And while there was the need to make constant refinements as the nuances - and perils - of the marketplace presented themselves, the firm matured and grew stronger over three decades. Despite ▶



A nice crowd at our 30th Anniversary Party! See more party photos inside...

## Reflecting on the Past, Looking to the Future continued...

▶ several recessions where it seemed the business was just not there – and might never return – the nation always recognized that construction, i.e., building new structures and re-purposing old ones, was critical to facilitating economic upturns. So it will be as we come out of this toughest recession of the past 70 years.

I have never been one to sugarcoat a business reality. It is the role of a leader to honestly define a problem and then to set a course to wisely maneuver a business past dangerous shoals into calm waters. The imperatives we face as a law firm today indicate that we are in for an extended period of slow growth. These times present a unique set of challenges for our firm as we re-define the market for our services and go about building the next generation of clients and leaders within our midst who will manage our firm going forward.

What are the business parameters we must address going forward? What are the specifics of the challenges we are facing? What is the game plan for re-casting the firm to meet these challenges in a smart, well managed way that will ensure our future success beyond any of our previous successes over the past 30 years?

The economic picture in which we find ourselves is indeed singular. It has been identified as a “balance-sheet recession,” one that will require years of de-leveraging from the excesses of the past decade or so of ignoring long-term realities. Unlike any time in the past few decades, banks are not going about doing the business they have been chartered to do: they are not lending except to customers who are blue chip, leaving most individuals and small businesses and real estate developers unable to maintain or grow their operations.

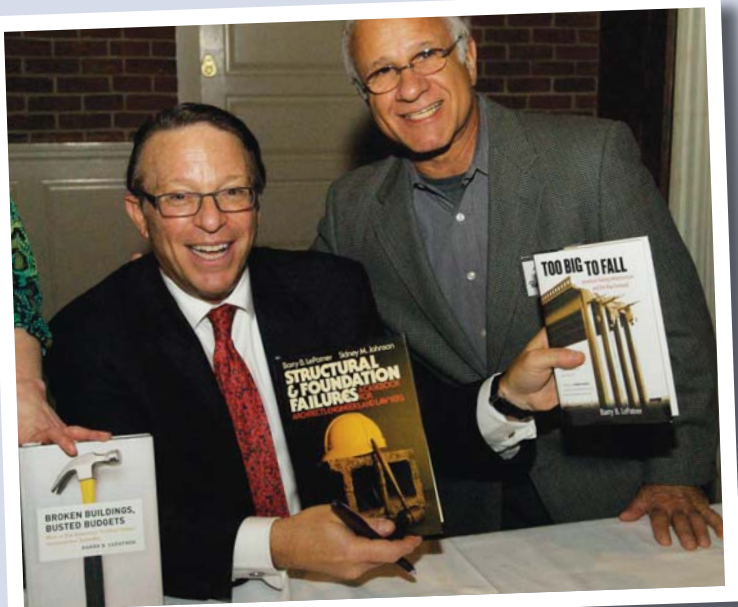
As bank lending has decreased, savings rates by individuals has increased. Debt is being paid off. Corporations are seeing huge profits on the backs of cost-cutting and layoffs. This has led to 10% unemployment, yet those numbers do not even recognize the millions who have just stopped looking for jobs that are nowhere in sight. Unemployment in the construction industry, which as recently as 2007 had 9.6 million workers across the nation producing \$1.26 trillion a year in projects, now is nearly twice the national average as work has dropped off by nearly \$300 billion over the 2009-2010 period.

This is a far different environment than any we have experienced for the last 70 years. Lenders, despite off-loading an enormous amount of “toxic” debt onto the Federal Reserve, still have scores of bad loans at unrealistic values. They are scared to create any new liabilities at “market prices”, lest they have to reset everything at these levels. They are also fearful of the changing regulatory regime that will alter their historically aggressive and excessive practices (wild fees on slightly-late credit card customers or no-documentation mortgages quickly off-loaded to third parties), and are waiting to see how the landscape may evolve following the November midterm elections.

Photos top to bottom: New partner Joseph Jaffe, Ronald Feingold, Henry Korn, Barry LePatner, Brad Cronk, Jeff Kleiner and Alex Tuttle. Barry auto-graphs copies of **Too Big To Fall** for the masses. Former partner Victoria Roberts-Drogin recalls what makes working at LePatner unique. Dottie DeHart introduces Sam Schwartz to say a few words about **Too Big To Fall**.







Photos top to bottom: Bruce Mandel shows off his Barry LePatner book collection: **Too Big To Fall**, **Broken Buildings Busted Budgets**, and **Structural & Foundation Failures**. Brad Cronk with Alec Strongin (left) and David Lavallee. Henry Korn shares a laugh with Al Weil. Alex Tuttle with Natasha Tomai and clients Andre Kikoski (far right) and Alan Berman.



If there is a bottom line for all of this, it is that our nation will be going through a tough environment for the foreseeable future. That is the reality of what happens when you have a de-leveraging end to a long “supercycle” of indebtedness and overspending. It is a time for us to deal with what I call the “capital-T Truths” of a situation so that we do not engage in the time-wasting fantasies and irrelevant business strategizing that many of our colleagues in firms big and small are dealing with today.

So how does all of this filter down to LePatner & Associates? What does a small law firm that relies heavily on the nation designing and building do in the face of these harsh realities? Let’s deal with the facts by acknowledging the Truths of the matter. Running a small business is never easy. You can never achieve the economies of scale of large organizations. Resources that large firms build up over years can be accessed in difficult times are just not available to a small firm. But the benefits of being small are not readily available to large organizations that can be bogged down by slow decision-making, internecine politics and the inability to make nimble – and business-saving – decisions that a small firm can make happen in a short period of time.

That is and has been one our greatest strengths. Over the past 30 years, some very good and very well known law firms have gone down in spectacular flames. I studied the reasons for many of these firms’ bad fortunes and had the benefit to speak with their principals to learn from their mistakes. I can recall a number of decisions made to adjust the business plan for our firm over the years; decisions that were the direct result of lessons learned from the mistakes of these firms, many of whom often faltered even when the economy was booming.

During the life of our firm, I have seen how markets have shifted drastically under my feet. And I’ve changed directions as new opportunities revealed themselves. That is how we made the shift in the early and mid-1990s from being the leading law firm representing architects and engineers in the nation to the only firm dedicated to representing the owner world on construction projects today.

Yet like every other small-business entrepreneur out there, we need to be smart and match up our game plan with the realities of our times. It is never easy. But that is what we do. Every day it is our imperative to wake up and identify new ways to successfully get our unique message out to our markets so that we are on their minds as the sole source provider of the legal and business services they need when they plan their next project. Fortunately, we are the best small firm in the nation at doing precisely that.

Our clients, past and future are in business to invest in real estate, have it financed and then build projects so they can make a profit. Like never before, every dollar of their capital will be quite dear and they are not going to idly stand by and let contractors eat into slimmer profits with unwarranted change orders and costly overruns. That is where we come in. Another Truth is that we are the only safeguard available to these owners if they wish to see their projects meet their profit projections. We have perfected a methodology of ensuring construction cost certainty that no other law firm or project management company can provide

# Reflecting on the Past, Looking to the Future

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► to see that owners achieve their business objectives. And a final capital-T Truth is that we are out there discussing and writing and speaking about our firm so that when our nation starts the next new round of construction, our firm will be uniquely positioned to take advantage of the groundwork we laid in the past few years.

An economic writer blogging to his readers recently wrote that “Recessions and tough times are God’s way of telling you that you need to adjust a few things, both on a personal and business level – also nationally and globally”. That sounds to me like another capital-T Truth for us to adopt. If you are like me, you are an optimist. I believe we will adjust to the current realities and we will grow anew and even better as we kick off the fourth decade of our firm. I look ahead and see unique and grand opportunities for us to pursue. I see each one of you making major contributions to meeting the goals we will be setting for ourselves. I see each of you becoming the new leaders in this specialized world we have carved out for ourselves. And I see something else that is crystal clear to me: for LePatner & Associates the best is yet to come.

Yes, we have to make our way out of these troubled times. It will be challenging, just as there were challenging times in the 1980s, 90s and the first decade of this century. But I can also guarantee you that there will always be new challenges. To quote another business guru, “If it was easy, everybody could do it and there would be no money in it.”

Our goal is to embrace the challenge! We have a true monopoly on what we do. You do not read of anyone or any law firm that is capable of offering what we do, and therefore we offer enormous value to the markets we are operating in. Think about the value of that in the business world. Think about what that would mean to many other law firms or businesses operating in their own sectors of industry. Think about what that will mean for each of you and for our firm in the years ahead.

*This article was excerpted from a speech Barry LePatner gave to LePatner employees on the occasion of the firm’s 30th Anniversary.*

## Integrity Compliance Division Formed

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► The integrity of those involved in a construction, development and investment projects is crucial to ensure a level playing field between the owners, professionals, contractors, partners, investors and financial institutions. While many involved in the construction and real estate industry are honest and deliver services on a good faith basis, there are others who look to take advantage of deep-pocketed or inexperienced owners using fraud, deception, intentional omission, corruption and other schemes.

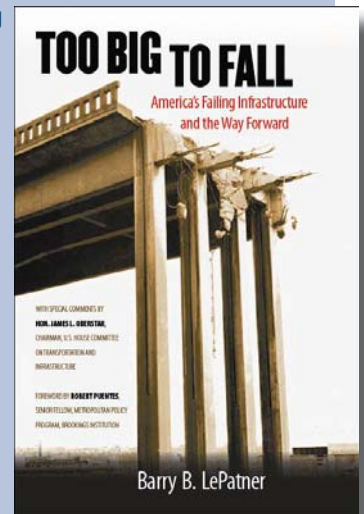
Actively identifying and assessing the mine field of risk for a given project and establishing its “known unknowns” is essential. Investigating the background and qualifications of those involved in a construction project, monitoring their activities on the project, and front running financial issues with forensic examiners can often be the critical difference between a project that is delivered on time and on budget and one that is not.

Proactive Integrity Associates, LLC, is a full-service, licensed, private investigative, risk management and consulting firm that supplements LePatner’s construction law and project services expertise. Its services include: developing integrity and compliance plans; monitoring contractors and vendors on public and private sector projects; investigative due diligence and background investigations; forensic examination of project accounting documentation; investigations of waste, fraud, abuse and corruption; and proactive monitoring.

Joseph Jaffe is a former federal and state prosecutor with more than 40 years of investigative experience in the public and private sector. Jonathan Newcomb has more than a decade of experience conducting and managing complex and sensitive investigations and is a licensed private investigator.

## FIRM NEWS

► Barry LePatner’s new book, **Too Big to Fall: America’s Failing Infrastructure and the Way Forward** (Foster Publishing / University Press New England), is available online and in bookstores now. His follow-up to **Broken Buildings, Busted Budgets** is a comprehensive overview of the shocking state of our nation’s infrastructure and what must be done to fix it. LePatner evaluates what the 2007 I-35W Bridge collapse in Minneapolis means for the country as a whole—outlining the possibility of a nationwide infrastructure breakdown. He exposes government failure on a national as well as state level, explains why we must maintain an effective infrastructure system—including how it plays a central role in supporting both our nation’s economic strength and our national security—and rounds out the book by providing his own well-researched solutions. **Too Big to Fall** presents an eye-opening critique of a bureaucratic system that has allowed political best interests to trump those of the American people. Learn more at [www.TooBigToFall.com](http://www.TooBigToFall.com).



\* LePatner is proud to announce that **Alex Tuttle** and **Jeff Kleiner** have been made partners of the firm. Congratulations to both on their outstanding work on behalf of the firm and its clients. Both have been with the firm for over three years and will continue to specialize in construction law and litigation.

► If you haven’t visited our Web site lately, visit [www.lepatner.com](http://www.lepatner.com) too see our new look, updated news, case studies, information on our new **Integrity Compliance** division, and a link to our **LePatner C3 Model**. Your feedback is welcome. Send it to [bcronk@lepatner.com](mailto:bcronk@lepatner.com).

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LEPATNER & ASSOCIATES LLP  
575 LEXINGTON AVENUE - 12<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10022  
(212) 935-4400

INFO@LEPATNER.COM  
WWW.LEPATNER.COM

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