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A Bridge Too Far Gone: Why America's Infrastructure Is Broken and How We Can Fix It (Without Crushing Taxpayers)

*As last year's Minneapolis bridge collapse proved, we need to fix our nation's
infrastructure. And yes, it's going to cost us—but the sky is not the limit.
Construction attorney Barry B. LePatner says we must conserve tax
dollars even as we work to prevent future disasters.*

Chicago, IL (January 2008)—Remember the Minneapolis bridge collapse last summer? Had to stop and think a minute, didn't you? That's right. Americans have fallen back into our typical complacency, but our nation's infrastructure problems haven't gone away. Precious little action has been taken since this "wake-up call," and winter weather is, even now, further ravaging our weakened structures. It's only a matter of time before the next, inevitable tragedy. When it happens, expect to hear this knee-jerk reaction from politicians: *No cost is too high—we need to fix our nation's infrastructure, and we need to do it now!*

Barry B. LePatner, coauthor of *Structural & Foundation Failures* (McGraw-Hill, 1982, coauthored with Sidney M. Johnson, P.E.) and author of the new book *Broken Buildings, Busted Budgets: How to Fix America's Trillion-Dollar Construction Industry* (The University of Chicago Press, October 2007, ISBN-13: 978-0-226-47267-6, ISBN-10: 0-226-47267-1, \$25.00), says it's time to think rationally about this issue. A nationally-recognized construction attorney with 30 years of experience, he is in the perfect position to understand why the Interstate 35 West bridge may have collapsed, what our nation must do to prevent more such disasters in the future, and why throwing loads of cash at the problem—as politicians will inevitably try to do—is *not* the answer.

LePatner says structural failures are always the result of one or a combination of four factors: improper design, improper construction, defective materials incorporated

into the structure, or design loads being exceeded. Add the passage of time (*decades and decades* of time) and the fact that proper maintenance budgets are often shortchanged, and you're looking at the next potential disaster.

“Many of America’s big bridges were built around the turn of the century,” he says. “In such instances, patchwork solutions often only exacerbate already existing problems. These structures simply weren’t designed to last a hundred years or more without major renovations.”

The biggest problem, he says, has nothing to do with engineering—and everything to do with *politics*. To put it bluntly, politicians don’t get votes for refurbishing infrastructure. “If it’s not sexy, they’re not interested in backing it,” says LePatner.

“For decades our nation has closed its eyes to reams of engineering analysis and reports that have highlighted the deteriorating nature of our infrastructure and the costs of remediation—costs that increase exponentially as every year passes,” he warns. “Every politician has received these reports. Most push them aside for a successor to handle, or are willing to provide only a fraction of the necessary funds requested by their experts.”

As a result, the problem has snowballed to staggering proportions. Estimates vary on how much remediation of America’s infrastructure is needed, but most experts agree the cost is well into the hundreds of billions. The good news, says LePatner, is that we as a nation now have a chance to redeem our former neglect. That means transforming the way we think about not only our nation’s infrastructure, but the nature of the construction industry itself.

So what needs to happen now to prevent other Minneapolis-caliber disasters from occurring in the future? LePatner offers the following suggestions:

- **Establish a standardized nationwide system for categorizing the remediation needs of America’s infrastructure.** Right now, reporting is subjective, says LePatner. Different engineers categorize structural problems differently, often for political reasons. For example, in a situation where a decision maker knows money for remediation is not available, he may “dumb down” a report so that action will be deferred. The upshot is that the engineer reporting on Bridge A might write it up as being in dire need of repairs

because of early signs of corrosion. Meanwhile, Bridge B—which is in far worse shape—might be put into a less urgent category.

“We need a nationwide standard for categorizing these remediation needs—at both state and federal levels—and for training inspection engineers,” notes LePatner. “That way we can assure uniformity of infrastructure assessments, and serious problems in bridges, tunnels, and highways will be more likely to be reported and dealt with.”

• **Institute a national impetus for increasing the number of engineers and construction experts.** Right now we’re woefully undermanned, says LePatner. America simply doesn’t have the structural engineers it needs to perform the overwhelming amount of remediation that must be done.

“I would like to see a national effort aimed at increasing the numbers of civil engineers and construction experts needed to address America’s infrastructure problem,” he says. “Think of it as a 21st century version of the 1950’s push for science education in the aftermath of Sputnik. We need to tell our young people that construction is an exciting and noble career, and strengthen those areas of our school system accordingly.”

• **Ensure that tax dollars directed toward construction projects are spent wisely.** This is frequently *not* the case, says LePatner. He reports that a meta-survey of the construction industry’s productivity analyses recently concluded that up to 50 percent of all money spent on construction labor is wasted because of late deliveries, poorly coordinated subcontractors, and other circumstances preventing employees from engaging in productive, onsite work. These inefficiencies are due in large part to the inherent flaws in our nation’s \$1.23 trillion construction industry, which LePatner calls “the last mom & pop industry in America.”

The solution, he says, involves reforming the way public officials work with contractors. For instance, they must:

- ✓ Insist on true fixed-price contracts. Standard contracts devised by members of the industry are generally insufficient as they a) fail to properly allocate risk among the parties and b) provide proven loopholes for contractors to make claims for additional costs.
- ✓ Retain skilled, experienced onsite construction representatives with in-depth knowledge who can oversee not only quality, but the true cost for the work.
- ✓ Ensure that there are milestone dates for substantial completion and partial completion of remediation. Use both incentives and penalties to ensure timeliness.
- ✓ Purchase materials in bulk to leverage economies of scale.

“By implementing these suggestions even partially, our nation can save billions of dollars,” he insists.

LePatner admits there may be those who criticize his willingness to raise the subject of money at a time when our national focus is on public safety. But he insists that the two are intertwined and inseparable.

“Money is *always* an issue,” he says. “The taxpaying public does not have an endless ocean of cash for contractors to swim in. Don’t tell a town it’s going to cost \$5 billion to replace a bridge and then say, ‘Oops, we spent \$50 billion, our bad.’ It’s not just irresponsible, it’s immoral—and it’s the reason critical remediation projects get pushed aside.”

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About the Author:

Barry B. LePatner, Esq., is the founder of the New York City-based law firm LePatner & Associates LLP. For three decades, he has been prominent as an advisor on business and legal issues affecting the real estate, design, and construction industries. He is head of the law firm that has grown to become widely recognized as one of the nation’s leading advisors to corporate and institutional clients, real estate owners, and design professionals.

A nationally recognized speaker, Mr. LePatner has addressed audiences on topics central to trends affecting the real estate industry at recent events including: “Real Estate Outlook,” an annual seminar series for corporate and real estate executives; “Protecting the Owner from Pitfalls in Today’s Construction Projects,” a series of Continuing Legal Education lectures given to law firms and their in-house real estate departments; “Protection, Survival, Readiness: Project Strategy in the Post-9/11 World,” a seminar presented to institutional, developer and corporate real estate executives; “Secure Space,” a building security seminar for corporate owners and developers; and “Marketing for Design Professionals” at the Harvard Graduate School of Design’s Summer Program, with A. Eugene Kohn from 1990-2004.

He has written extensively and is widely quoted in the media on the subject of construction law. Mr. LePatner has previously coauthored the legal sections of the *Interior Design Handbook*, McGraw-Hill, 2001, and *Structural & Foundation Failures: A Casebook for Architects, Engineers & Lawyers*, McGraw-Hill, 1982, coauthored with Sidney M. Johnson, P.E.

Recently published articles include “Construction Cost Increases: Owners Should Know the Difference Between the Myths and Realities,” *New York Real Estate Journal*, October 2006; and “Are You Prepared—Disaster Management Plans Help Owners Protect Their Investments” in the March/April 2006 issue of *Commercial Investment Real Estate* magazine. Articles published in the *New York Law Journal* include: “Caveat Advocatus—Drafting Construction Agreements for Your Client’s New Construction Project Ain’t What It Used to Be,” March 27, 2006. Since 1980, he has edited and published the *LePatner Report*, a quarterly newsletter on business and legal issues for the firm’s design, real estate, and construction clients.

About the Book:

Broken Buildings, Busted Budgets: How to Fix America’s Trillion-Dollar Construction Industry (The University of Chicago Press, October 2007, ISBN-13: 978-0-226-47267-6, ISBN-10: 0-226-47267-1, \$25.00) is available at bookstores nationwide, from major online booksellers, and direct from the publisher at www.press.uchicago.edu.

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