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# LEPATNER

## CORPORATE CONSTRUCTION COUNSEL

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A QUARTERLY FOR THE DESIGN, CONSTRUCTION AND REAL ESTATE INDUSTRY FOR OVER 27 YEARS

## Celebration Time

### On September 27, Barry LePatner unveiled **Broken Buildings, Busted Budgets: How to Fix America's Trillion-Dollar Construction Industry**

at the Instituto Cervantes in Midtown, a project LePatner helped guide to a timely completion in 2002. Published by The University of Chicago Press, the launch party represented a three year journey by Barry to conceive, write, re-write, edit and publish what has already been referred to as the first comprehensive analysis of the construction industry providing a macro-economic perspective and pragmatic solutions for all sides.

## LEPATNER'S OPENING REMARKS HIGHLIGHT CRITICAL THEMES AND A CALL TO ACTION

Thank you very much Dottie [DeHart]. Thank you very much Clarke [Pile] for all your kind words. Thanks to all of you for joining us here tonight for this kickoff party for *Broken Buildings, Busted Budgets*.

We live in an era when economic power has decisively shifted from suppliers to consumers. Information about companies, their products, their prices, are readily available through resources such as the Internet as never before.

When we buy an automobile, we can identify the exact cost of that automobile through information available on the Internet, and when we go to pay, we can end up paying as little as \$100 over cost because we are informed consumers. That transparency is what makes us a more informed buying public. Similarly, when we buy a camera or a washing machine the information on what it costs from responsible reputable purveyors of that particular product is there to help and guide us through making an astute purchase.

Unfortunately, none of these expectations apply to our dealings with the construction industry. As the last "mom and pop" industry in America, construction travels along a unique path. For our nation's largest projects, governmental, corporate, and institutional owners and the public have come



Barry LePatner delivers his remarks at the **Broken Buildings** launch party.

*Continued on next page*

to mistakenly believe that the construction companies doing the work are like General Motors or IBM. Nothing could be further from the truth. The reality is that of the 7.6 million construction workers in our nation today 92% of them work in companies that have 20 employees or less. It is truly a “mom and pop” shop industry. And these companies utilize the least amount of technology in performing their work of any industry in the America. They have the least and spend the least amount of money on research and development to improve their efficiency. And they are the only industry where, when they start a project and sign a contract, they have no clue as to whether or not they are going to make a profit.

As a result, the price that our nation pays for this inefficiency is quite costly. Construction worker performance has fallen unlike any other industry. Over the past 40 years, if you combine all the other non-farm industries in our nation today, per worker productivity has increased through implementing technology, research and development by over 225%. In the construction industry per worker productivity has fallen by nearly 25%.

This industry-wide challenge does not extend to the work of contractors themselves who, on a daily basis, do a yeoman’s job and serve our nation well. But they work in what most knowledgeable construction experts agree is a highly dysfunctional and low-profit industry.

My thirty plus years in the industry and three years of research and writing has culminated in *Broken Buildings, Busted Budgets*. I hope that it will challenge our nation to begin to change the way we do business

when we build. I hope the construction industry will recognize that this book sets out a path for them to improve efficiency, to improve the levels of their performance and ultimately lead to improvements in their profitability.

During the writing of this book I had the distinct privilege of working with Tim Jacobson. And Tim, I want to say personally to you, thank you, because your assistance and contributions during the whole course of the work was truly invaluable. I had the privilege also of working with Brad Cronk of my office. His contributions and his ideas and insights because of his experience in the industry made writing the book fun and also hugely interesting. And of course, from The University of Chicago Press, I came to make a wonderful friend and had the special privilege of working with our editor, David Pervin, who’s here from

## As the last “mom and pop” industry in America, construction travels along a unique path.

Chicago. David, your guidance made the book stronger, and in the end you made the thesis and our arguments more understandable. So thank you very, very much.

I hope all of you do get a chance to read it. I hope you find it interesting, and I hope you get a chance to spread the word if you think it makes some good points. I hope over time that, most importantly, we continue our friendship and enjoy the relationships we’ve had for many, many years. So thank you all very much for being here.



L to R: Contributing author, Timothy Jacobson; The University of Chicago Press editor, David Pervin; and author Barry LePatner.



Friends Ted Domuracki of MAST Construction, Richard Wurster of MG McLaren P.C. Consulting Engineers and his wife, Judith, and Charlie Shorter of Ernst & Young pose with the author.

## Dottie DeHart, publicist for Broken Buildings, introduces Barry



First, I'd like to take a moment to welcome everyone to the launch party for Barry's new book, *Broken Buildings, Busted Budgets*. I've specialized in book publicity for the past fifteen years, and during this time I've been acquainted with a lot of great literary works and some others that are probably not so great. It's an incredibly competitive field. So when people come to me with book ideas all the time and books that they have

written, I'm lucky to be in the position to be incredibly selective about who I take on and who I don't.

I think back to my first meeting with Barry. Because I don't come from the construction industry, I had a little understanding of what he was talking about, but not much. But the only thing I can remember thinking is whatever the subject is, this man is on fire for it. So as a publicist, it's a gift to have someone who is so passionate about what they do.

I really think there is something very special about Barry and about Barry's new book. I believe there is a perfect storm brewing, and I believe he's on the cusp of something big breaking wide open. And I'll tell you a couple of reasons why. First of all, the book is fantastic. It's engaging. It's well written. Covering the subject from an economical and an historical perspective, it takes you through the incredible journey of how the construction industry got to where it is and then, what we should do about it now. As an expert, I can tell you it's hard to find books that are this incredibly well written.

The other thing that I think is incredibly relevant about what's about to happen with this book is that it coincides with the

onset of global competitiveness and all the infrastructure failures and the budget deficits that are crippling our country. Incredibly, Barry has written a book that not only explains an industry problem, but he provides the necessary impetus for really making the changes needed to address these problems in a forthright and constructive manner.

I agree with Clarke Pile, that this book is going to start the dialogue for change in the construction industry. I don't necessarily know that all of his prescriptives are going to be adopted overnight, but what I do know is that, for the first time, people are already talking about prospects for change instead of just wringing their hands saying, "this is how it has to be."

Probably our real ace in the hole in this effort is the author. As most of you know, he's a brilliant attorney, and he's recognized as one of the nation's leading construction lawyers. You would be hard pressed to find someone who cares more about this topic and who's more passionate about it than he is. All the ingredients are there not only for a best seller, but for a book that can serve as a stepping stone for something bigger. Change is imminent in the construction industry. I think all of you know that and that's probably why you're here. But I think that Barry is on the front end of a groundswell that's going to lead to huge industry changes, and we're all lucky to have been part of this on the ground floor, and we're all very supportive of the path he's taking.

He's lucky enough to have probably some of the best friends, and the smartest colleagues of anybody I've ever been around. Speaking of great friends and great colleagues, Clarke Pile who heads the New York office of Hill International is going to say a few words about the book and Barry from the industry's perspective.



Frank Marino and Steve Vitoff from The Marino Organization greet University of Chicago Press editor, David Pervin.



Instituto Cervantes Director, Raul Alonso receives his autographed book.



The entrance to Amster Yard, Landmarked home of the Instituto Cervantes.

## D. Clarke Pile, SVP of Hill International, introduces Barry at the BBBB launch party



Over thirty-two years ago, I joined this industry and have had the privilege of having worked on projects in Saudi Arabia, the southern states, the west coast, throughout the east coast, and here in New York City. I've worked on projects that are lump sum, not-to-exceed, design-build, fixed fee, and target incentives. Just about any combination you can imagine. And what I know is that it's a lot harder today to build than it was when I started many years ago. I've seen this evolution.

Today, while it's a lot easier to actually do the construction, it's a lot harder to administer the projects. You see, there are so many facets to construction today, with each party trying to guard their turf, that the contracts have gotten more complicated. The specifications are more intense. And it is difficult in so many ways now for contractors or for owners who are looking for a new facility to go out and build lump sum work. Each is trying to push the risk onto the other.

Contractors sign a contract for lump sum work on a new facility and before the first shovel of soil is turned the project is already doomed. And it's something that we see in our company on projects throughout the world, and we try to guard against it and look for solutions. Now, with great interest, I took a look at Barry's book and read every word. I saw so many parallels to my experiences. As I was reading I thought, how bold to capture in a single writing all of these issues that we see every day!

Now the good news is that Barry offers a lot of great solutions that are going to be the subject of discussion and debate for quite some time. Barry spends some time discussing in his book the issue of how to balance the risks on fixed price work.

As you may know, the federal government's GSA, is also looking at solutions that are very similar to some of the solutions that Barry calls for. It's called "Contractor as Construction Manager."

I was very pleased and felt fortunate to have received an advance copy of the book. The really great news is that *Broken Buildings, Busted Budgets* will be a great subject for a national debate and hopefully push our industry into better project deliveries for all parties. So I am pleased to be here tonight and to have had the opportunity to share my thoughts on this important book with all of you.

Barry LePatner and Henry Korn, along with Anthony Chan from accounting firm Berdon LLP, published "Sarbanes-Oxley's Wake-Up Call to the Construction Industry" in the December 2007 issue of *The CPA Journal*. The article takes a hard look on whether cost overruns on major construction projects for public companies could be grounds for investigation under the controversial law.

The Wall Street Journal published a great review of *Broken Buildings, Busted Budgets* on December 5, 2007. Link to it from the BBBB Web site, [www.brokenbuildings.com](http://www.brokenbuildings.com).

Barry LePatner traveled to Toronto to speak before the *Mayors' International Conference on Infrastructure* on the topical subject of infrastructure construction and remediation. LePatner shared the stage with panelists including the Mayor of Turin and the former Prime Minister of France, Alain Jupe, as well as the former Governor of Colorado.

Barry LePatner gave a televised interview to *Connecticut News 12 CT/12 on the Money*, a news show in Connecticut for their show on the topic of infrastructure and the critical themes of *Broken Buildings, Busted Budgets*.

LePatner has been retained by veteran New York City developer Solow Realty & Development Company to provide legal and construction advisory services to major projects including the \$150 million York Avenue Tower and the \$5 billion East River Redevelopment on the old Con Edison site south of the United Nations.

### QUOTE OF THE QUARTER

"The road to ruin is always kept in good repair"

- anonymous

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LEPATNER & ASSOCIATES LLP  
600 LEXINGTON AVENUE - 21ST FLOOR  
NEW YORK, NEW YORK 10022  
(212) 935-4400

E-MAIL: [MAIL@LEPATNER.COM](mailto:MAIL@LEPATNER.COM)  
[WWW.LEPATNER.COM](http://WWW.LEPATNER.COM)

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