

## Marketing in Conflicted Economic Times

The following is an excerpt from a seminar session presented by Barry B. LePatner, Esq. entitled, Marketing in Conflicted Economic Times and Transforming Trends in Building Security Into New Services For Your Clients Presentation of at the Harvard Graduate School of Design Marketing for Professionals July 29, 2002

By Barry B. LePatner, Esq.

E C O N O M Y

Since the early days of this program, back in the recessionary years of 1991 and 1992, there has never been a more uncertain picture for the marketing of design and construction services. Why is this so? Let me highlight eight reasons why I believe this to be the case:

- 1 The latest plunge in the stock market has brought stock prices to their lowest level in four years;
- 2 At the same time, the U.S. economy remains strong by almost every measure – The gross domestic product grew at an average 4.3% annual rate for the first half of 2002 and earlier this month, the Federal Reserve raised its projections to a 3.5% growth rate for the second half of the year;
- 3 In the past three years alone, corporate defaults – of which there were \$110 billion in 2001 and \$115 billion in the first half of 2002 – have wiped out about \$4trillion in debt and equity value.
- 4 At the same time, inflation is not only low, it promises to remain low for many years to come. In addition, interest rates, thanks to Alan Greenspan, continue to hover at their lowest levels since 1958 and continue to offer the home buyer and the real estate developer tremendous opportunities for long term investment;
- 5 Primary concerns among economists and government officials remain about a new, growing federal budget deficit as well as a dollar that is declining in value overseas. So far in 2002, the dollar has declined about 6% in value and has reached parity with the Euro - a first since the Euro's introduction two years ago.

6 At the same time, wage increases have stabilized, industrial competition is healthy, the available supply of goods and services in our nation is strong, and these figures hold true throughout the industrialized world.

7 Most architects and engineers and construction companies, though facing less work than in the past few years, have not been experiencing more than moderate layoffs in an economy that reflects the ambiguities and uncertainties noted above.

8 Finally, mix into these conflicting issues, our nation's declared a war on terrorism is infusing billions of dollars into military and security-related industries and will, in the short and long runs, compel major changes in the way that buildings old and new are designed and constructed.

So what does one make of all this? How do you view these realities and make informed decisions about your firm, your future, your marketing, your needed capital investment for computers and the like? Consider this: For most of the 1990s, the spectacular boom we all experienced – both corporate tax profits and earnings as well as those of most design professional firms doubled – provided most of you with the best years in your professional lives. Business magically appeared; the sizes of the projects your firm handled were substantially larger than previously; and you likely grew in size, complexity and in fees earned.

The largest A/E firms grew exponentially. Overseas or satellite offices in the U.S. were opened to handle client needs.

*Continued on page 3*

### Table of Contents

Marketing in Conflicted Economic Times _____	1
Eulogy - In Memoriam: Robert Bien _____	2
The Payment Bond _____	3
Quote of the Quarter _____	4
Firm News _____	4

# Eulogy

*in memoriam:*

## ROBERT BIEN

*The following eulogy was given by Barry B.*

*LePatner at The Players Club memorial*

*service to honor Robert "Bob" Bien, a for-*

*mer partner at The Eggers Group and*

*Hillier, who died on May 24, 2002.*

There are a great many architects in this nation who had built more illustrious reputations, or had won more design awards than my dear friend and longstanding client, Bob Bien. But if, as John F. Kennedy once said about Robert Frost,

*"A nation reveals itself not only by the men it produces but also by the men it honors, the men it remembers"*

then Bob Bien belongs in the pantheon of those honorable souls who have truly left their mark on those they touched during their lives.

As the son of an architect who left a legacy of many fine buildings that still grace our city, Bob took his role as architect and historian with serious purpose. He learned well the lessons taught to him by his father. He had an amazing grace about him and cared deeply about so many things – his family, his firm and his many friends.

Whenever I would walk around town with Bob it was as if I were on a tour accompanied by The AIA Guide to New York City. He had a fascinating story about every building; about the great architects, contractors and builders he had worked with; and about the curmudgeon he occasionally encountered and for whom he seemed to impart equal admiration. His love of the city was infectious. He made you want to share his enthusiasm and sense of the dynamic that made New York so exciting to him.

Bob was a serious professional who brightened our lives with a ready smile and an easy elegance. Though his architectural commissions were often on behalf of corporations, governments and institutions, his talented ideas reflected a deep concern for the individuals who would work, learn and play in the wonderful buildings he designed.

As counsel and later general counsel for The Eggers Group for over twenty years, I had the pleasure of working with Bob on many occasions and through at least three recessions. When the firm prospered, Bob's equanimity kept his fellow principals from imagining that, heaven forbid, the good times would continue interminably. When difficult times ensued – and for architects in general and The Eggers Group in particular, this occurred on more occasions than one would choose to recall – Bob could always be counted on to provide the reasoned and steady comment or suggestion. He always had the secure perspective of the confident professional; he exhibited the calm demeanor of a man who knew that events generally turned out for the best; and he had the clear sense to bring a passionate discussion back to its essentials. In

short, Bob was the consummate partner, friend and client.

When The Eggers Group was eventually merged into Hillier's New York office, Bob along with David Finci, Peter Halfon and I, would meet regularly – quite often right here at The Players Club – for a long luncheon of wonderful discussion, catching up on all the Eggers alumni, sharing humor and affection.

It was the great 19th Century orator, Robert Green Ingersoll whose words today speak so eloquently of how we feel about Bob:

*He believed that happiness was the only good, reason the only torch, justice the only worship, humanity the only religion, and love the only priest. He added to the sum of human joy; and were everyone to whom he did some loving service to bring a blossom to his grave, he would sleep tonight beneath a wilderness of flowers.*



For so many of us, the tears we have shed at his loss, will be more than offset by the countless memories in the years ahead of the wonderful times we shared at his side. ■

*The inset image of Robert Bien and Barry LePatner was taken at BBL&A's 20th Anniversary Party held at the Loeb Boat House in Central Park.*

## Marketing in Conflicted Economic Times

The boom came to an end in 1998 when foreign global crises, such as the financial crash in Russia and the continuing problems in Japan and Asia, halted a great deal of work overseas. But a strange thing then happened. Corporate earnings of your clients continued to rise and rise in 1999 and 2000 bringing the stock market to a thunderous roar in March 2000 before the latest plunge of the past two years began. What happened?

We now know that there was a clear disconnect between what were the real earnings of many companies and the way in which they accounted for stock options and pension funds. Treating employees' exercise of stock price gains as expenses against profits skewed the results. If any of your firms accounted for profits this way, you would have called in the accountants at the end of the year, scratched your heads at the wonderful bottom lines of your firms, and then retreated behind closed doors with your fellow principals to ask why there was no money to distribute in such a "wonderful" year.

There will, undoubtedly be some uncertainty for the next year or so about whether the stream of corporate greed and scheming will abate or continue until all of the sickness has left the corporate body. The other key question is whether the effect of the scandals will be limited to the stock market or carry over to the presently healthy economy.

But many forecasts are indicating that the worst of the downturn for A/E/C industry may be behind it. Consider that the most recent AIA Work-on-the-Boards survey of business conditions in April 2002 provides continued evidence that the recession for US architects has ended, although the recovery will be slow in

unfolding. The survey showed architects actually enjoyed strong billings gains in March followed by a more stable April. Inquiries for prospective business was also strong in the first quarter before stabilizing in April. However, the pace of recovery has varied by region: Business patterns show continued strong improvement in the Northeast, modest gains in the Midwest and South, but a modest slowdown in the West. Similarly, the prospect of recovery for architectural firms varies greatly within each construction sector: Residential oriented firms reported sharp increase in billings and an even sharper rise in inquiries for business; Commercial/industrial oriented firms report stable billings and modest increase in inquiries; Institutional oriented firms report stable billings and unchanged inquiries. As inquiries develop into design projects, and design projects translate into construction projects later this year, construction activity in the commercial/industrial sectors is expected to emerge from its 18-month downturn.

So what does a smart principal of an architectural, interiors, engineering or construction firm do in this type of marketplace? How do you decide whether to hunker down, wait it out or aggressively market against these uncertainties and plan for the upturn which may not get here for most of you for another two years or so? Here are some suggestions for you to follow ... if you wish to be proactive; if you are a student of past cyclical downturns; and if you wish to get the jump on your competitors in the years ahead.

### Pointing to the Future

**1** If your firm's core disciplines are in solid areas of the marketplace, it is time to recruit the best talent in your field –

hire a recruiter to steal them away from your competitors if necessary – and aggressively expand your marketing to prospective clients in need of your services.

**2** If your firm strengths are in areas with no immediate growth possibilities, networking in your markets with calls on existing and prospective clients will ensure that when the market turns your firm will be right there to pick up the new business.

**3** Retain a newly-retired expert from your client's world as a principal advisor and market maker. Make his or her role one of networking through their experience and Rolodex. If they have a track record of business development, lining up meetings and prospects for your firm will be relatively easy and repay their compensation many times over!

**4** Use the downturn in the economy to explore the possibility of turnkey work with a local, friendly construction firm that knows your firm and can provide financial backing for small to medium sized projects.

**5** As will be noted in greater detail below, there is a huge need for increased attention to security in facilities of all kinds. Become your area's premier advisor on this subject or, better yet, develop an affiliation with a security consultant whose reputation will ensure that you get short listed for key projects where security will, undoubtedly, be high on the list of a client's priorities. ■

# The Payment Bond

By: Ronald B. Feingold, Esq.

In many owner contractor agreements involving large scale projects, the owner requires the contractor to furnish a performance bond and a labor and material payment bond. A performance bond is used on a construction project to shift the risk of loss incurred as a result of a contractor's non-performance and breach away from the owner and to the surety. The payment bond is designed to protect subcontractors who provide labor and material to a project against nonpayment by the contractor. The payment bond also protects the owner against the filing of mechanic's liens by subcontractors against the project.

In New York, public improvements undertaken by the State, public benefit corporations and municipal corporations require payment bonds. These are commonly known as Section 137 bonds.

Generally, the payment bond protects the same persons who are protected by the New York Lien Law. The bond protects subcontractors, material men and suppliers when a general contractor is the principal. In the event the principal fails to pay the subcontractors, the surety is liable to the obligee on the bond or to the subcontractors up to the penal amount of the bond. Lost profits and damages, however, may be not recovered under the bond.

The notice provisions that are included in the payment bond must be complied with and the claim will be denied if there is a failure to comply. Under Section 137 bonds, a bond claimant who has a contract with a contractor and has not been paid in full within 90 days of the day on which the bond claimant

performed labor or supplied material, may sue the surety without a notice of the claim.

If a surety defaults in paying a legitimate claim under the bond, it will be liable for interest above the penal sum, calculated from the refusal to pay the claim.

A surety under a payment bond has almost all of the same defenses to the payment of a claim as the Owner may have. For example, a surety may assert that the claimant is not protected by the bond; the claimant did not give proper or timely notice; the surety was discharged by a breach or a modification of the construction contract; or the suit to enforce the bond was not brought within the time required by statute.

A surety may seek the recovery of its losses once it has honored and defended against a claim. A surety is entitled to indemnity against the principal's default. A surety is also entitled to assert the claims of its principal against an obligee. A few examples include liability due to a breach of the contract by the obligee, increased costs due to obligee caused delays, and claims for extra work required by the obligee that were not part of the contract scope.

Owners on large scale projects should always keep in mind the availability of the payment bond which affords protection to an owner against the contractor's default.



BBL&A was recently retained by a developer to assist it in completing a high-end residential apartment building in White Plains, New York.

Barry LePatner, Esq. and Victoria Drogin, Esq. were recently published in the May 2002 issue of Projects & Profits a trade journal and monthly digest on Project Management published in India. The article, "Drafting Construction Contracts," was originally published in the New York Law Journal, March 31, 1999.

Come listen to Barry LePatner present current issues affecting the real estate and design communities at the annual summer seminar program entitled, "Marketing Strategies and Presentation Skills," at Harvard's Graduate School of Design. Dates: July 29 - 31, 2002.

For more details visit:  
[www.gsd.harvard.edu](http://www.gsd.harvard.edu)

BBL&A was recently retained by Con Edison to advise on project and legal issues concerning construction for Con Ed's generator facility to be re-constructed at the new 7 World Trade Center just North of Ground Zero in New York City.

BBL&A welcomes Jeffrey Gdanski as a new associate. Jeff has extensive experience in construction law and has negotiated and litigated disputes involving construction related issues in state and federal claims courts.

BBL&A was recently retained by a coop owner in New York City to seek an injunction against construction repairs at their apartment project. Our firm successfully negotiated with opposing counsel and was able to prevent the coop board from proceeding with construction without the full consent of BBL&A's client.

BBL&A's David J. Pfeffer, Esq. and Roy R. Pachecano, AIA will present a one-day seminar entitled, "Solving Water Intrusion and Mold Problems in New York" with DuPont Tyvek Specialist Thomas Whipple, CSI. The program is sponsored by Lorman Educational Services and will be held in White Plains, New York on August 27, 2002. Attendees will receive AIA/CES credits for 6 LUs. Attorneys who attend will receive 7 CLE credit hours. Interested parties should visit [www.lorman.com](http://www.lorman.com) to pre-register.

Barry LePatner was interviewed on the subject of "Success Tactics for CPA Firm's Strategic Alliances" in the June 2002 issue of Partner's Report: "The Monthly Update for CPA Firm Owners."

## Quote of the Quarter

*"Forget Terrorism, I'm going to become an accountant."*

— Osama bin Laden

From a recent cover of Private Eye, a British satirical magazine.

## LePatner Report

is a publication  
of the Law Offices of  
LePatner & Associates  
101 East 52nd Street - 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)

© 2002, Barry B. LePatner, Esq.  
All Rights Reserved