



Infrastructure Focus: Recognizing Crisis

Barry B. LePatner

How can we separate the good guys from the bad guys?



Two separate, but related, news stories addressing the desperate state of our nation's failing infrastructure were quietly reported in recent weeks. The first involved a study issued by the American Association of State Highway and Transportation Officials showing that our national investment in our roads, ports, waterways, railroads and airports is falling far short of needed demand. The study indicated the nature of the crisis: within 10 years, our roads will include 1.8 million more trucks, and in 20 years, we will have 50 percent more

trucks beating up our fragile roads than are on our highways today.

The second story flows from ongoing litigation in Minnesota where dozens of plaintiffs who were either injured or had loved ones die as a result of the collapse on Aug. 1, 2007, of the I-35W Bridge added new claims seeking punitive damages against URS, the engineering consultant who had a multiyear contract to recommend improvements to the bridge.

While the National Transportation Safety Board issued an ill-advised report placing blame for the collapse, which killed 13 and injured 145, on defectively designed gusset plates when the bridge was first designed in 1967, evidence from the files of the Minnesota Department of Transportation has shown there were other causes that contributed to the failure.

What the new allegations hinge on is that the engineering firm responsible for the bridge's maintenance and safety oversight should have been the ombudsman of the bridge's safety and that the bridge's collapse was more than "a culmination of bad luck, design fault and simple oversights in inspection." Were the consulting engineers to be found liable for these transgressions – which tie them to an alleged failure to factor all the problems of the bridge including the fact that it was designed to collapse if even one structural member failed – it will result in major changes in the way state transportation departments around the nation hire consulting engineers and the way they report on their studies.

These two news articles should be sending chills up the spines of every governing agency – federal, state and local – in charge of the nation's 600,000 bridges.

Shockingly, nearly one in four bridges is deemed either structurally deficient or functionally obsolete, terms that even a neophyte on the subject must understand

means they are in very bad condition. More importantly, there are 7,980 bridges in the nation that are designed as fracture critical, i.e., facing the same fate as the I-35W Bridge if they are not given the necessary remediation.

Which brings us to my final point: except for a relative handful of citizens and politicians, no one – let me repeat this – no one is raising a fuss over the fact that our commercial and transportation network is falling apart and is receiving anywhere close to the funding appropriations needed to prevent the eventual collapse of the system.

Anyone in any position to understand how critical this situation is – which includes governors, transportation commissioners, bridge engineers, consultants hired to monitor them and traffic experts – must remain silent on the subject because there is little they can do but pray the next collapse happens elsewhere, as there is literally little funding help on the way.

This is a massive call for a decade of commitment to saving our infrastructure and the safety of all of our commerce, friends and family who are crossing roads and bridges that a knowledgeable engineer would not permit their family members to cross. We are all paying for the delays in attending to these needs. Major highway bottlenecks add significantly to the cost of food and other goods for American consumers. Congestion makes it nearly impossible to anticipate that more new roads are the answer. Governments in every state must begin to accept their moral and legal responsibilities to:

1. Understand the risks inherent with bridges that are long past their intended life spans and the perilous condition they are in;
2. Begin to utilize the best available technology to determine their actual condition and monitor them closely for incipient signs of failure to avoid collapse; and
3. Ask that their outside engineering experts to accept their legal and moral obligations to the public by stating their findings in clear, easy-to-understand language.

The good guys in this increasingly bad situation are those who have been out front on the topic and speaking clearly to our capital constrained leaders. Governors Arnold Schwarzenegger (R-Calif.) and Ed Rendell (D-Pa.) and Mayor Michael Bloomberg (I-New York City), U.S. Rep. James Oberstar (D-Minn.) – who is chairman of the House Committee on Transportation and Infrastructure – as well as thought leaders such as Robert Puentes of the Brookings Institution and Bob Herbert of the New York Times have all trumpeted the imperatives for making this a national calling before future disasters strike.

The clarion call is being sent out, calling the nation's attention to yet another perilous disaster that can and should be headed off before a lonesome few can say, "I told you so." With the tragic oil spill in the Gulf focusing attention on lax administration of drilling one mile below sea level, we cannot afford to address the pressing problems of our infrastructure, all of which are above ground and visible for all to see, if they will only open their eyes.

*Barry B. LePatner is the founding partner of LePatner & Associates LLP, a New York City-based law firm that serves as business and legal advisor for construction projects to corporations, institutions and real estate developers. He is the author of the forthcoming book, *Too Big to Fall: America's Failing Infrastructure and the Way Forward*, to be published by the University Press of New England this October.*