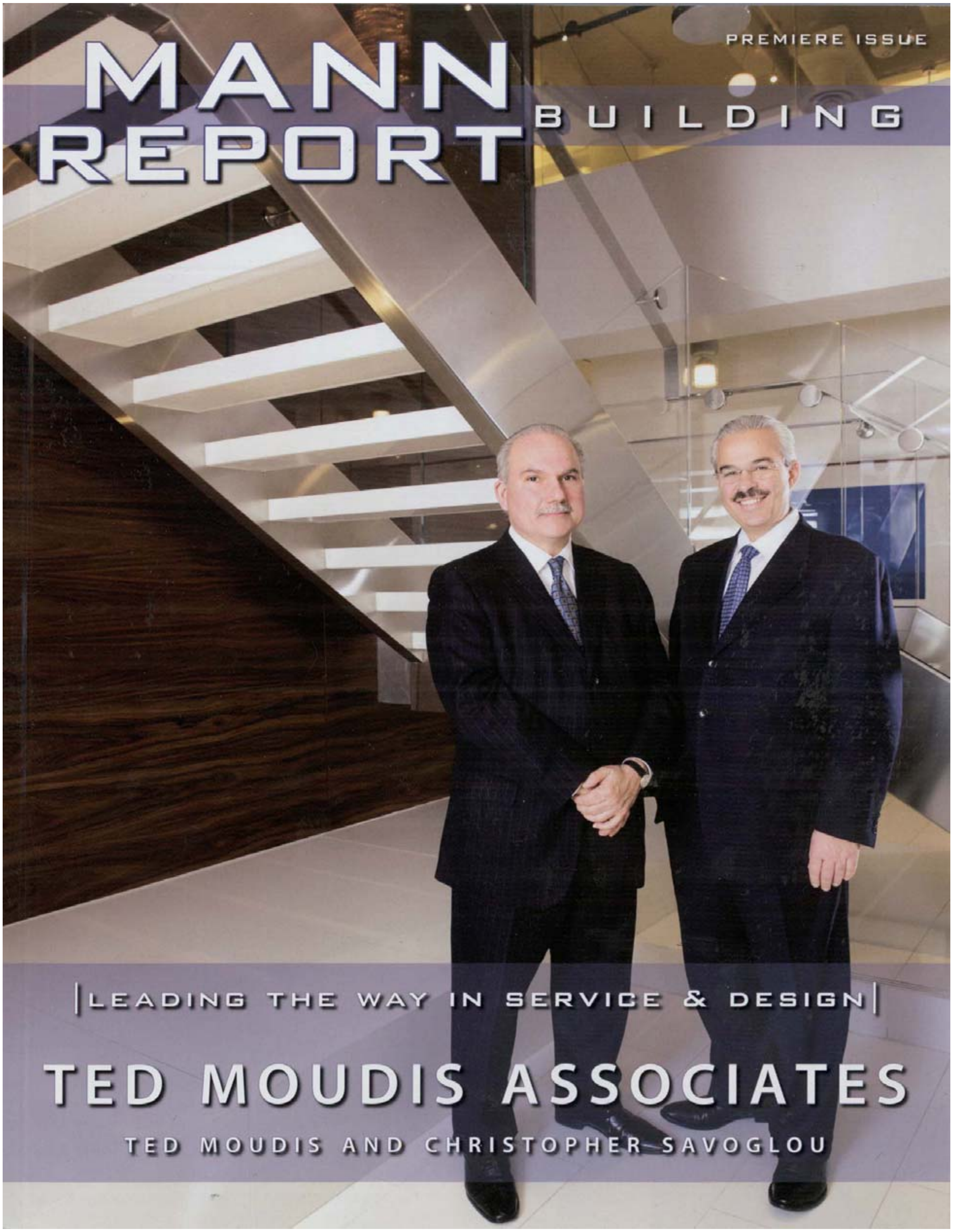
Mann Report Building

March 2009

Mann Report Building is a regional real estate publication that focuses on the real estate industry in New York. It offers in-depth profiles of industry leaders. It provides special events, current real estate regulations and industry news updates.


PREMIERE ISSUE
MANN
BUILDING
REPORT
|LEADING THE WAY IN SERVICE & DESIGN|
TED MOUDIS ASSOCIATES
TED MOUDIS AND CHRISTOPHER SAVOGLOU

Time To Challenge Old Assumptions As We Go About Reconstructing Our Nation

by Barry B. LePatner, Esq.
Law Offices of Barry B. LePatner & Associates LLP

Amidst the financial tsunami sweeping our nation, the entire business world has begun to raise profound questions about the way we have managed our business affairs. We no longer can take for granted that private institutions such as banks and insurance companies operate in a risk-averse manner with built-in limitations to prevent meltdown. And government agencies across the board have failed in their mandates to protect us. Across our economy, we have ignored the constraints intended to limit the excesses for which we are now paying a terrible price.

NY Times economist Paul Krugman says business and political leaders should have learned lessons from earlier crises—and thereby avoided the mistakes leading to this economic blowout. He points to the housing bubble, the collapse of Long Term Capital Management, and the Bank of Japan's fruitless, decade-long effort to jump-start a stalled economy.

We in the design, construction, and real estate world should learn that these lessons carry over to our businesses, too. We must question the assumptions we have operated on throughout our entire professional lives. When we hear the statement, "This is the way we have always done it," we must now begin to question the rationale as to why it was done that way.

For too long, we unquestioningly accepted doctrines dictating how we design, build, and set budgets-and how owners always pay for cost overruns. We have been sold on the benefits of fast-track projects where construction managers promise owners that it makes financial sense to start construction months before architects and engineers have completed their designs, even though such savings almost never materialize. These projects inevitably go over budget and get delayed because of conflicts over the late delivery of designs after work was well under way.

For too long, we have bought into the illusion promised by guaranteed maximum price contracts, even though construction managers frequently and knowingly exclude certain costs that, inevitably, contribute to major overruns and delays.

For too long, we believed that low interest rates and widespread liquidity would always keep funding flowing, no matter the project price tag.

Such assumptions are no longer viable. Lenders will no longer permit ten percent equity from a developer as a basis for a construction loan—forty and fifty percent are the new ten percent. No longer will lenders provide mezzanine loans to bailout owners victimized by ineffective standard-form construction contracts, false GMP assurances, and questionable change orders and claims. No longer should contractors be permitted to file unsupported mechanics lien's to secure profits after bidding at or below cost, only to inflict unwarranted and costly litigation on owners.

Nor should it be acceptable as 'typical' for owners to bid out work without first obtaining 100% complete and coordinated construction drawings so that a true fixed price contract—one ensuring that contractors accept the risk of completing on time and on budget or pay for their ineptness—provide a sense of certainty to owners and lenders about final costs.

In the construction world for the past several decades, similar to the financial services world, there has been a lack of transparency about how contractors operate. This must end. Few, if any. owners—private or governmental—can understand a project's true cost. Few owners can control or challenge contractors' schedules. Few owners know whether a construction manager's requests for more time, which could add tens or hundreds of millions more to the final cost, are justified.

When the price of the Giants\Jets Stadium in New Jersey migrated from $750 million to an astounding $1.4 billion or more, did any owner's advisor try to explain this surprise? Did the advisors ever have a real budget for the project? Did the team owners know this or were they duped into believing that a roofless stadium could ever cost more man the price in the contract? Perhaps these owners didn't care—as they recently announced that the overruns would be covered by season ticket holders who could only retain their status by paying up to $20,000 per sear in license fees.

Pricing construction work for too long has been the sole domain of the construction industry. This notoriously inefficient industry is documented to cost America more than $120 billion annually. Accountability is long overdue.

Owners must retain skilled ombudsmen and project managers to tear down these walls and permit only those who reveal their true costs to work on their projects. Contractors should be entitled to make a true and fair profit for the capable and timely performance. With this new transparency respected by all parties, the industry will no longer have to rely on claims gamesmanship—and its attendant additional costs and ill will—to reap 'manufactured' profits.

We must establish a new baseline of assumptions for the construction industry as we work to revive our economy.

Let's start with new paradigms for how to rebuild our nation. There will be plenty of work for qualified contractors across our country. There will be large sums available to rebuild our infrastructure—some estimating as much as $2.2 trillion. But let's do it with a commitment to shed the outdated and inefficient methods of a construction industry that, however belatedly, must be brought into the 21st century.

Barry B. LePatner, Esq., Hon. AIA
Law Offices of Barry B. LePatner & Associates LLP
600 Lexington Avenue, 21st Fl.
New York, NY 10022
Tel: 212-935-4400
Fax: 212-935-4404