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Baldwin bonding company forced into liquidation

Sunday, July 12, 2009

By ALEX PAPPAS

Staff Reporter

A Lillian man, twice ordered by the state Insurance Department to stop his construction bond business, is being forced by a bankruptcy judge to sell assets to pay what could be millions of dollars in claims to nearly 100 creditors across the country.

Morris C. Sears, 63, who has run ABBA Bonding from his Lillian home since 2001, initially sought Chapter 11 bankruptcy protection to fight what he argues are illegitimate claims.

"It's not that I can't pay; I won't pay," Sears said before his June 30 bankruptcy hearing. "Any legitimate claim that has ever been presented to us has been paid."

But U.S. Bankruptcy Judge Margaret Mahoney has granted a creditor's motion to convert the case to Chapter 7, which forces asset liquidation.

Mahoney said in a July 2 ruling that Sears' testimony shows him to be "either very cavalier about very serious matters, or (someone) who is hiding things or trying to hinder the obtaining of information about his assets."

Sears sold surety bonds, which are used in the construction industry to ensure a project's completion. If a bonded contractor

doesn't perform to contract

standards, the surety steps in to make good.

Sears said last week that he has stopped his bonding business since the bankruptcy court's order but will continue doing construction consulting. And he reiterated his plan to fight the claims against the bonding firm.

Sears listed more than 100 creditors in court filings, and estimated his liabilities to be between \$1 million and \$10 million. Court records show that 20 creditors have already registered more than \$4.7 million in claims.

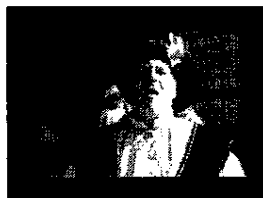
In testimony during his hearing in federal bankruptcy court in Mobile, Sears said most of his customers are out-of-state contractors, and that he has written only two or three bonds in Alabama.

Court records show his creditors also include the Internal Revenue Service, the city of Mobile,

TOP STORIES

- Construction contracts will likely be bid out in January or February, said Tony Zodrow, the museum's executive director. Construction will take 20 to 22 months, with the museum slated to open in late 2011, Zodrow said.
- 3 teens accused in gang rape
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VIDEO



MOBILE, Ala. — The eighth annual Mobile Renaissance Faire began Saturday, Nov. 14, 2009, at the Hank Aaron Stadium. It continues Sunday with a wide range of medieval attractions, including dancing, theater, falconry, games of skill, merchants and horseback jousting between armored knights.

- Sights and sounds of the

SURETY MARKET REPORT

BEWARE OF INADEQUATE OR FRAUDULENT SURETY BONDS

By Edward G. Gallagher, The Surety & Fidelity Association of America (SFAA)
and Mark H. McCallum, National Association of Surety Bond Producers (NASBP)

A surety bond is only as good as the surety issuing it. A surety that is not itself financially sound cannot add to the credit standing of its principal. Surety is regulated as a type of insurance, and to some extent an owner, contractor or subcontractor can depend on the state insurance departments and the United States Department of the Treasury to perform financial due diligence. There are also several private organizations, most prominently A.M. Best Company, that issue financial ratings of insurers. Although the bond is normally legitimate, a prudent owner, contractor or subcontractor should take steps to assure that the bond will, in fact, provide the promised protection.

CORPORATE SURETIES

Regulated insurance companies write the vast majority of surety bonds. Contractors and subcontractors should check with the insurance department of the state where the bond is issued to verify that the surety company is authorized to write surety bonds. Surety companies wishing to write Miller Act bonds on federal construction projects must possess a certificate of authority from the U.S. Department of the Treasury. A list of surety companies approved to write bonds to the United States, Department Circular 570, is available at www.fms.treas.gov/c570/c570_a-z.html. The name of the surety and the name of the insurance company should be an exact match. There are instances in which unlicensed entities used a name that was very similar to a legitimate surety company.

The fact that the surety company is genuine and solvent is not sufficient if the company did not authorize the bond. The easiest way to confirm that the bond was authorized is to contact the surety directly. Treasury Department Circular 570 includes the telephone number of the Treasury Listed sureties, and The Surety & Fidelity Association of America's website has a Bond Obligor's Guide that identifies whom to contact to verify bonds issued by its members.

The danger of relying on just the name of a legitimate surety is illustrated by a recent criminal case in the United States District Court for the Middle District of Florida in which a Maryland resident, William Raymond Miller, pled guilty to mail and wire fraud in furnishing fraudulent bonds that purported to be issued by legitimate sureties. The Department of Justice Press Release of December 11, 2008, describing the guilty plea stated, "On numerous occasions, Miller made it appear that he was issuing bonds in the names of legitimate insurers ... Miller issued surety bonds with a face value of over \$535 million and received premium payments of over \$22.5 million during the course of the fraud." (<http://jacksonville.fbi.gov/dojpressrel/pressrel08/bondfraud121108.htm>).

INDIVIDUAL OR PERSONAL SURETIES

There is a long history of fraud by individuals claiming to act as sureties on construction contract bonds. For state or private projects, surety

is regulated by the states as a type of insurance. Unfortunately, state insurance departments have typically enforced their laws by issuing cease and desist orders, which have not proven to be effective in preventing abuse. See, for example, <http://www.dora.state.co.us/Insurance/enforcement/2007/007-065.pdf> (ABBA Bonding/Morris C. Sears) and <http://www.insurance.wa.gov/oicfiles/orders/2004orders/D04-189.pdf> (Global Bonding/Robert Joe Hanson).

The United States will accept individual surety bonds on federal government construction projects if certain stringent requirements are met. The surety must place cash or cash equivalents equal to the amount of the bonds in escrow with a federally insured financial institution or provide the government with a deed of trust on real property to secure the bond. See Federal Acquisition Regulations (FAR) §28.203, et seq. (48 C.F.R. §§28.203 et seq.).

Prior to amendments effective on February 26, 1990, the FAR permitted acceptance of individual sureties based on a sworn statement from the surety that his or her net worth was sufficient to cover the bond obligations. In many instances, this sworn statement was found to be false and the assets illusory. The FAR amendments required the deposit of cash or cash equivalents, and excluded various types of assets that fraudulent individual sureties often claimed on their sworn statements. The change was comparable to a bank stopping unsecured lending based on the borrower's representations and instituting secured lending based on a security interest in specific, verified assets.

There is no central authority, such as the U.S. Department of the Treasury, to vet proposed individual surety bonds. The contracting officer has to evaluate them during the course of a particular procurement. This places a significant administrative burden on federal contracting officers who possess differing levels of knowledge regarding surety bonds and the kinds of assets required to back individual surety bonds under the FAR. Contracting officers are sometimes fooled by artfully crafted submissions that appear impressive but have no substance. See, U.S. Dept. of Treasury, Financial Management Service, "Special Informational Notice to All Bond-Approving (Contracting) Officers," dated February 3, 2006 at http://fms.treas.gov/c570/special_notice.pdf.

An owner or prime contractor tendered a bid or performance bond, or a subcontractor or supplier asked to provide labor or material in reliance on a payment bond, should not assume that someone else has done its due diligence. Anyone relying on a bond should obtain a copy and verify that there is a legitimate surety that will be financially responsible. If the surety is not a regulated insurer, the assets pledged to back the bond should be verified. An attorney can help check on any criminal record, bankruptcies, or cease and desist orders issued against the purported surety.

Edward G. Gallagher is general counsel for The Surety & Fidelity Association of America (SFAA). He can be reached at (202) 463-0600. Mark H. McCallum is general counsel and director of government relations for the National Association of Surety Bond Producers (NASBP). He can be reached at (202) 686-3700.

BEFORE THE DIVISION OF INSURANCE
STATE OF COLORADO

Case No. 202638
Order No. O-07-065

**EX PARTE EMERGENCY ORDER TO CEASE AND DESIST THE
UNAUTHORIZED AND UNLAWFUL TRANSACTION OF THE BUSINESS
OF INSURANCE IN THE STATE OF COLORADO**

IN RE THE MATTER OF ABBA BONDING; ABBA BONDING, INC.; ABBA
BONDING, LLC; MORRIS C. SEARS; JOANN SEARS; R. WADE LEE; KEN
ADAMS; MATT CAVENDER; JENNIFER FOSTER; JAMES E. WILSON;
MURFEE GERWIN; DWIGHT GREEN; MARY ROBINSON; BRAD ROBINSON;
GARY HEIBULT AND OTHER UNKNOWN INDIVIDUALS,

Respondents.

This matter comes before Marcy Morrison, the Commissioner of Insurance of the State of Colorado (the "Commissioner"), pursuant to the provisions of the Regulation of Unauthorized Insurance Act, C.R.S. Secs. 10-3-901 through 10-3-910, et. seq., wherein the Commissioner is authorized to issue an ex parte emergency cease and desist order regarding the unauthorized transaction of the business of insurance in Colorado when a person or business entity is engaging in the transacting of the business of insurance in Colorado without the benefit of legal authority to do so.

The Commissioner finds and orders as follows:

JURISDICTION OF THE COMMISSIONER

1. Pursuant to C.R.S. Sec. 10-1-108, the Commissioner has the duty and responsibility to supervise the business of insurance in Colorado, and to investigate and enforce Colorado insurance laws and regulations.
2. Pursuant to C.R.S. Sec. 10-3-904.5, when the Commissioner believes that an unauthorized person or business entity is engaging in the business of insurance in violation of the provisions of section 10-3-105 or 10-3-903 or is in violation of a rule promulgated by the Commissioner; and it appears to the Commissioner that the alleged conduct is fraudulent, creates an immediate danger to the public safety,