

How Liberty Mutual Prepared for Ballenger's Bankruptcy

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When Ballenger Construction Co., a well-known Texas contractor founded in 1937, sought protection from its creditors in federal bankruptcy court in Corpus Christi Dec. 7, equipment and material companies among the major creditors were left with millions of dollars in unpaid bills.

But while those companies may have been surprised by the bankruptcy, one company that probably wasn't is Ballenger's main surety, Liberty Mutual Insurance Co. It has been working with Ballenger since the summer first to try to sell the company and now to try to finish its bonded projects.

The Ballenger default and Chapter 11 bankruptcy caps a year of contractor and subcontractor defaults that many in the industry will associate with the end of the construction recession, razor-thin profit margins and intense competition. In Texas, however, the economy has been comparatively robust. So exactly what projects or problems weakened such a long-established company—Ballenger has stated in the past that it had 550 employees—remains to be learned.

A rough timeline of the San Antonio-based company's recent dealings can be gleaned from an affidavit from Liberty Mutual submitted to the bankruptcy court. The affidavit showed that the surety had loaned \$10 million to the contractor pending a possible sale. The money was to be used to complete projects and pay subcontractors and suppliers.

And "that's not chump change," notes Christine Kirchner, an attorney and shareholder with Chamberlain Hrdlicka, a Texas law firm that has worked on similar cases but is not involved in the Ballenger bankruptcy. Because that money helps complete projects and benefit the public, Liberty Mutual's efforts should put it in a favorable light with the bankruptcy court judge.

At the time of the loan from Liberty Mutual, Ballenger's owners agreed to notify the Texas Dept. of Transportation that Ballenger was in default of its 20 bonded contracts and couldn't continue the work. Liberty Mutual's affidavit states that, after the possible sale of Ballenger fell through, the company's owners complied and notified TxDOT Nov. 30th of Ballenger's default.

The terms of the loan agreement with Ballenger, and the requirement that Ballenger send default notices in the event that the company sale fell through, allowed Liberty Mutual to protect its interests and "to make sure it took over as soon as [a bankruptcy court judge lifted] an automatic stay [on Ballenger's business transactions]," observes Josh N. Bowlin, another Chamberlain Hrdlicka attorney and shareholder.

By taking “the bull by the horns” in the Ballenger bankruptcy in this way, Liberty Mutual helped avoid being ordered to pay twice, once to the project subs and suppliers and a second time for the debt involved in the bankruptcy, adds Kirchner.

Attempts to reach Ballenger executives and attorneys were unsuccessful. Sureties typically do not comment on litigation or ongoing bankruptcy proceedings.

Altogether, Ballenger's 20 TxDOT projects in various stages of completion have a total value of \$365.2 million. Ballard also had contracts with Bexar County and the city of San Antonio.

By TxDOT's account, \$112 million worth of work remains to be done and paid for on the Ballenger contracts.

“It's important to note that we are working with the bonding companies to help move these projects forward without any further delays than what's already anticipated,” says a spokeswoman for TxDOT.

According to the bankruptcy filing, Ballenger's top 20 unsecured creditors are owed amounts ranging from \$1.3 million (South Texas Trucking, Harlingen, Texas) to \$232,000 (Deloitte Financial Advisory Services, Dallas). The other biggest creditors include Bexar Concrete Works, San Antonio (\$612,790.56) and J&P Trucking, Edinburg, Texas (\$582,134.02).