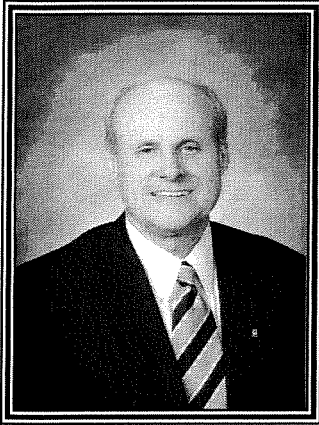


ASA Subcontractors Legal Defense Fund (SLDF)

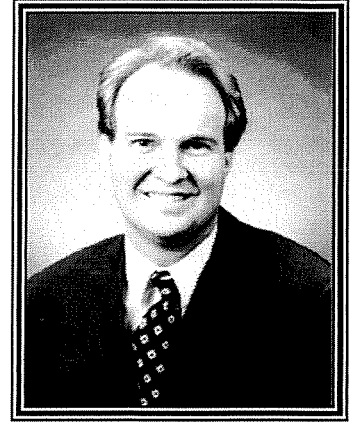


The courts are a key battleground in the fight for subcontractor rights.

Since its inception, ASA has led the fight for subcontractor rights through legislation. The SLDF allows ASA to fight for subcontractors in the courts.

The SLDF supports ASA's critical legal activities to protect the interests of all subcontractors. The SLDF is used to invest in precedent-setting litigation to establish subcontractors' rights.

Bill Crawford and Scott Holbrook (pictured) ASAC Legal Counsel, of Crawford & Bangs, LLP, are deeply supportive of the ASA Legal Defense Fund. They have written briefs on behalf of California subcontractors, most recently in the Crawford v. Weather Shield Mfg. case listed below.



It is important to remember that if you are involved in, or know about, a precedent setting legal case, funds are available from the SLDF. On the flip side of that is the opportunity to support judicial advocacy with your donation to the fund – use the form provided at the end of this article.

SLDF Case Updates

October 2006 ASA To Support Subcontractor Seeking Clarification of Wrap-Up Insurance Coverage Imagine that two subcontractors are working on a project under a single wrap-up insurance policy and that one subcontractor damages the other's equipment. Can the subcontractor with the wrecked equipment pursue a claim of damages against the insurance company as a third-party claimant? In June, a trial court in New York decided "no" on this question in the case of KSW Mechanical Services, Inc. v. American Protection Insurance Co., but now ASA has received permission to file an amicus curiae, or "friend of the court," brief in the appeal, bolstered by ASA's Subcontractors Legal Defense Fund (SLDF). In the case, KSW Mechanical's equipment was damaged by another subcontractor on a project covered by an owner-controlled insurance program (OCIP). The trial court ruled that KSW did not have the right to file the damages claim against the OCIP insurer, because KSW was a named insured under the program and could not be a third-party claimant at the same time. KSW appealed the decision, and last week, ASA received permission to file a brief in support of KSW's position that its status under the OCIP policy should not affect its eligibility for damages. The case broaches a topic not yet decided by the New York courts, and, as a case of first impression, the ultimate decision is likely to establish an important precedent. For more information, contact ASA Senior Director and Counsel, Government and Industry Relations, Bill Isokait at bisokait@asa-hq.com or (703) 684-3450, Ext. 1311. 105. Reprinted from [asatoday](#), October 5, 2006 (Vol. 8, No. 40) – The Weekly National News Bulletin for ASA Members Only.

June 2006 Welsbach Electric v. MasTec North America On June 5, ASA filed a motion seeking permission to file an *amicus* brief which would urge New York's highest court to prevent contractors from circumventing New York's prohibition against pay-if-paid clauses.

May 2006 Crawford v. Weather Shield Mfg. (construction defect, duty to defend) On May 24, the California Supreme Court granted ASA's April 14 request that it review this case for the limited purpose of determining the enforceability of the contractual hold harmless clause. ASA's request was based on California's anti-indemnity law, Civil Code § 2782, but the court's statement of the issue under review appears to allow argument based on public policy and other grounds as well.

May 2006 Mid-Ohio Mechanical v. Eisenmann Corporation (mechanic's liens) On May 22, ASA filed a brief urging an Ohio appellate court to overturn a decision that would strip Ohio subcontractors of mechanic's lien rights for most kinds of equipment installations. ASA's brief argues that the rule applied by the trial court would create uncertainty and inflate the cost of construction.

May 2006 TA Operating v. Solar Applications (mechanic's liens) On May 1, ASA filed a brief urging the Texas Supreme Court to overturn an appeals court decision that would force subcontractors to release their liens in order to preserve their customers' rights to payment from the owner in any case where the prime contract requires unconditional lien releases to be submitted with the application for final payment.

March 2006 Dugan & Meyers Construction v. Ohio State University (owner warranty of defective plans) On March 27, ASA filed a brief urging the Ohio Supreme Court to overturn an appeals court decision that would "emasculate" the owner's implied warranty of owner-provided plans and specifications. ASA's brief argues that by depriving contractors of the ability to recover extra costs caused by problems with owner-provided plans, the appeals court decision "will provide a disincentive for design professionals to carefully prepare their design documents ... since ultimately the cost of any errors will fall on the contractors." September 2005 ASA had filed another brief urging the Ohio Supreme Court to review the case because of its importance to the construction industry, and on December 28 the court agreed to review the case.

Continued next page

Subcontractors Legal Defense Fund Updates, continued

February 2006 *Lamar Homes v. Mid-Continent Casualty (construction defect)* On Feb. 1, ASA filed an *amicus curiae* brief, joined by the AGC Texas Building Branch and by PHCC, requesting the Texas Supreme Court to rule that property damage caused by a defective foundation is covered by a building contractor's general liability insurance, which most contractors and insurance agents assume includes coverage for "completed operations." The brief argues that the "marketing" of general liability insurance policies "emphasizes the availability of coverage for various categories of defective work," and that "the premium charged ... would be excessive to say the least," if the insurer's argument - that defective construction is not covered by the standard policy language - succeeds. The case was sent to the Texas Supreme Court on certified questions from the U.S. Court of Appeals for the Fifth Circuit, after ASA filed an amicus brief in that court on Jan. 11, 2005, which made similar arguments (AGC and PHCC were not parties to that brief).

See details of the above cases at www.asaonline.com