



American Subcontractors Association, Inc. **NEWS RELEASE**

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SLDF in Action in Oklahoma: ASA Files to Defend Subcontractor in Lien Waiver Case

ALEXANDRIA, Va.—The American Subcontractors Association produced an application to file an *amicus curiae* brief in the Oklahoma Supreme Court this week, asserting that the outcome of the case at hand could have significant adverse consequences for subcontractors and suppliers. The case, *H2K Technologies, Inc. v. WSP USA, Inc. and Fidelity and Deposit Company of Maryland* is currently on appeal to the Supreme Court of the State of Oklahoma.

This appeal arises following the judgment by a trial court in favor of an Owner, dismissing the lien claim of a Subcontractor who provided labor and materials to improve the owner's property. In the original contract, the Contractor agreed to waive its lien rights and to insert similar lien waivers into any subcontracts it entered into. When the Contractor hired Subcontractor, however, the agreement did not contain any such lien waiver language, did not refer or incorporate the prime contract and did not advise Subcontractor its lien rights were purportedly waived. This Contractor eventually filed for bankruptcy without having paid Subcontractor anything for its work. The Subcontractor then filed a lien against Owner's subject property.

The trial court held that even though Subcontractor had no knowledge of the lien waiver agreed to by Contractor, it was held to have "constructive notice" of the terms of the prime contract, and thus its lien rights had been waived by Contractor. The Subcontractor is appealing this ruling to the Oklahoma Supreme Court.

According to David Walls, who prepared the brief on behalf of ASA, "The effect of this ruling by the trial court is devastating on subcontractors, vendors and suppliers. If allowed to stand, subcontractors would be bound by the terms of any and all contracts above it in the chain of contracts on a private project, whether it had knowledge and receipt of them or not. Extended to its logical end, this means financing agreements, prime contracts and upper tier subcontracts. This holding turns the letter and intent of Oklahoma's mechanics and materialmen's lien laws on its head, and effectively strips subcontractors of their most useful tool in making sure they get paid."

The American Subcontractors Association is actively involved in the promotion of legislative action across the nation and has regularly intervened in legal actions that affect the construction

industry at large through its Subcontractor Legal Defense Fund. The issues presented in this case implicate the ability of its' members to be paid for the work they do in all facets of the construction industry. ASA encourages the Supreme Court of Oklahoma to grant permission to the Association to present its argument on behalf of H2K Technologies in this case.

David Walls, Esq., David A. Walls, PLLC, Oklahoma City, OK, prepared the application for ASA. ASA's [Subcontractors Legal Defense Fund](#) financed the brief. ASA's Subcontractors Legal Defense Fund supports ASA's critical legal activities in precedent-setting cases to protect the interests of all subcontractors. ASA taps the SLDF to fund *amicus curiae*, or "friend-of-the-court," briefs in appellate-level cases that would have a significant impact on subcontractor rights. [Contributions](#) to the SLDF may be made online.

Founded in 1966, ASA promotes the rights and interests of subcontractors, specialty contractors and suppliers by building strength in community through education, advocacy, networking and professional growth. ASA adheres to and promotes quality construction, ethical and equitable business practices, safety in the work environment, and best industry practices. For more information about ASA, visit www.asaonline.com, and for more information about the SLDF, visit www.sldf.net.