



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

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ASA Wins for Subcontractors in Critical “Pay When Paid” California Case

ALEXANDRIA, Va.—The American Subcontractors Association is pleased to report on a significant win for the Subcontractor community in *Crosno Construction, Inc. et al v. Travelers Casualty and Surety of America*. Last year, ASA produced a friend-of-the-court brief affirming a California Superior Court’s judgment regarding “pay when paid” provisions used to withhold payment from a subcontractor. On April 17, 2020, the California Court of Appeals ruled in favor of subcontractors to limit enforcement of “pay-when-paid” clauses that delay those payments to subcontractors.

At issue was a 2014 Public Works Project for construction of an arsenic water treatment plant in North Edwards, California. The Subcontractor in the case was within one week of completing when a dispute arose between the Owner and Contractor and the Subcontractor was instructed to stop work. The Subcontractor subsequently made a payment bond claim for its work, but because the contract stated that the Surety “shall have reasonable time to make payment to Subcontractor” and defining that time as not less than the time the required to pursue conclusion of legal remedies against the Owner, the Surety denied the claim. The trial court held that the obligation of the bond is enforceable without reference to any contract between the contractor and the materialman. As such, the contract’s definition of “reasonable time” was unreasonable and unenforceable because it impairs the Subcontractor’s right to timely payment under the bond.

In its *amicus* brief, ASA encouraged the Court of Appeals to affirm the Trial Court, citing the importance of maintaining current law on mechanics’ liens, stop notices, and payment bonds in the State of California. These laws provide meaningful security for payment for all interested parties involved in public and private construction.

In this decision, the California Court of Appeals sided with ASA and the Subcontractor, ruling that a surety cannot rely on a “pay-when-paid” clause that defined “when” as after the conclusion of litigation on the contract between the owner and contractor to delay payment for undisputed work. The Court ruled that the Subcontractor is entitled to enforce payment rights and the Surety is obligated to pay surety bond claims before the conclusion of litigation between the General Contractor and Owner.

The Court specifically referenced ASA's argument in its opinion, using it to rebut a countervailing argument from the defendant's amicus.¹ In a message to ASA Counsel, Crosno Construction expressed its "most sincere gratitude for the support provided by the American Subcontractor's Association for our appellate efforts in this case," singling out Counsel Scott Holbrook for his persuasive brief and stellar oral argument. ASA is proud of the work of our members, Counsel and the Subcontractor Legal Defense Fund in this case.

E. Scott Holbrook, Jr., Esq., Crawford & Bangs, LLP, Covina, California, prepared the brief for ASA. ASA's [Subcontractors Legal Defense Fund](#) financed the brief. [Contributions](#) to the SLDF may be made online.

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.

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.

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¹ "Travelers responds that statute of limitations concerns could be resolved by filing and immediately staying the payment bond action pending resolution of Clark's litigation against the District. Amicus curiae Construction Employers' Association (CEA) suggests that a payment bond action filed after Clark's litigation concludes could avail of equitable tolling to overcome a limitations bar. But as the American Subcontractors Association points out in its amicus curiae brief, either procedure delays the payment bond action for an indefinite period, thereby unreasonably affecting or impairing Crosno's payment bond rights in violation of section 8122. Open-ended delay likewise conflicts with the purpose behind the payment bond of providing subcontractors like Crosno an expedient means of recovery." California Super. Ct. No. CIVDS1511273