



# ***American Subcontractors Association, Inc.***

## **NEWS RELEASE**

**1004 Duke Street • Alexandria, VA 22314-3588 • <http://www.asaonline.com>  
Telephone: 703.684.3450 • Fax: 703.836.3482 • e-mail: [ASAoffice@asa-hq.com](mailto:ASAoffice@asa-hq.com)**

**FOR IMMEDIATE RELEASE**  
February 12, 2007

**Contact:** David Mendes  
(703) 684-3450, Ext. 1335  
[dmendes@asa-hq.com](mailto:dmendes@asa-hq.com)

### **ASA Prevails in Trust Fund Claims Case Before Colorado Supreme Court**

ALEXANDRIA, Va. — Construction subcontractors and suppliers in Colorado came perilously close to losing one of the main methods provided by the state's mechanic's lien laws for recovering amounts due to them when they fail to receive payment for work they properly perform, but on Feb. 5, 2007, the Colorado Supreme Court made sure that didn't happen. Throughout the appeals process leading up to high court's ruling, the American Subcontractors Association (ASA) and ASA of Colorado (ASAC) defended subcontractors' and suppliers' rights to recover payment under the state's mechanic's lien laws.

"The Colorado Supreme Court upheld the promise made by the Colorado Legislature that subcontractors and suppliers are to be paid with funds held in trust for them," said 2006-07 ASA President Stephen Rohrbach, CPC, president of F. A. Rohrbach Inc., Allentown, Pa. "ASA believes in prompt and full payment, and furthermore believes that when payment isn't made, there should be a quick and effective means for collecting it. Colorado's legislators understood these principles when they passed the state's Trust Fund Statute. The Colorado Supreme Court saw the intent of the state's Trust Fund Statute and made a statement: Keep the 'trust' in trust fund."

The threat extinguished by the Colorado Supreme Court's decision arose in May 2005 when the U.S. District Court for the District of Colorado ruled in *Fowler & Peth, Inc. v. Regan* that a roofing material supplier could not exercise its right to collect funds as prescribed under the state's Trust Fund Statute. That law permits an unpaid subcontractor or supplier to make a direct claim on funds held in trust for it regardless of whether a perfected lien exists, ASA and ASAC argued in briefs filed during the appeals process.

The District Court ruled that trust fund protections applied only when the lien claim process for a lien on property had been followed, which the roofing supplier in *Fowler & Peth, Inc. v. Regan* had not. ASA and ASAC filed a joint friend-of-court brief in

**(MORE)**

September 2005 asking the 10<sup>th</sup> U.S. Circuit Court of Appeals to overturn the District Court's ruling, arguing that the interpretation of the District Court was flawed because it "undermines the intent of the Trust Fund Statute, which is to provide a remedy to lower-tier entities independent of the Colorado General Mechanic's Lien Statute," and for other reasons. Colorado's Trust Fund Statute at § 38-22-127(1) says: "All funds ... shall be held in trust for the payment of the subcontractors, laborer or material suppliers, or laborers who have furnished laborers, materials, services, or labor, who have a lien, or who may have a lien, against the property, or who claim, or may claim, against a principal and surety under the provisions of this article and for which disbursement was made."

The Circuit Court referred to the Colorado Supreme Court the question of whether claims against the trust described in this provision could be separated from the lien claims process. ASA and ASAC filed a joint friends-of-the-court brief with the high court and ASA member attorney Gilbert Egle of Denver-based Preeo, Silverman, Green & Egle, presented oral arguments in the case on ASA's and ASAC's behalf. In the Feb. 5 decision, the Colorado Supreme Court affirmed subcontractors' and suppliers' rights, ruling that the Trust Fund Statute "protects subcontractors, laborers, and material suppliers who add value to property but are unable to recover monies owed to them through the lien claim process."

ASA's involvement in this case was made possible by generous contributions of subcontractors and suppliers across the country to ASA's Subcontractors Legal Defense Fund (SLDF). The SLDF is funded entirely by voluntary contributions, and is earmarked for cases in which ASA determines that important legal precedents affecting subcontractor rights are at stake.

For more information, contact ASA Senior Director and Counsel, Government and Industry Relations, Bill Isokait at [bisokait@asa-hq.com](mailto:bisokait@asa-hq.com) or (703) 684-3450, Ext. 1311. Or, visit ASA's Web site at [www.asaonline.com](http://www.asaonline.com) and click on "Subcontractor Advocacy."

Founded in 1966, ASA amplifies the voice of, and leads, trade contractors to improve the business environment for the construction industry and to serve as a steward for the community. ASA's vision is to be the united voice dedicated to improving the business environment in the construction industry. The ideals and beliefs of ASA are ethical and equitable business practices, quality construction, a safe and healthy work environment, and integrity and membership diversity.

###