

## John 'Jack' V. Burch

Partner

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Office Location: Atlanta

Jack heads the surety, fidelity and construction group at Bovis, Kyle, Burch & Medlin, LLC. A lifelong Atlanta resident, he attended the University of Georgia, both as an undergraduate and a law student. While attending law school, he was a member of the Editorial Board of the Georgia Law Review, and a member of Phi Delta Phi Legal Fraternity. Jack had the good fortune of passing the Georgia Bar in 1966, six months before he graduated from law school. The first experience Jack had in fidelity and surety cases was over 40 years ago.

Jack's skills have long been recognized by Martindale-Hubbell with an AV rating and as a SuperLawyer. He has been involved in over one hundred matters cited by Westlaw, many of these important cases surety and construction decisions.

### Representative Cases

Jack has had many important cases for his clients. A sampling of these cases are:

- *Transamerica Ins. Co. v. U.S.*, 989 F.2d 1190 (Fed. Cir. 1993); holding that the surety with a loss on one project is entitled to recover the proceeds owed by a common owner on another project by virtue of the equitable right of subrogation and owner's right of set off.
- *Travelers Cas. & Sur. Co. of America v Winmark Homes, Inc.*, 518 Fed. Appx. 899 (11th Cir. 2013); holding that the surety was entitled to summary judgment compelling indemnitors to provide a Letter of Credit as collateral.
- *Anderson v U.S. Fid & Guar. Co.*, 267 Ga. App. 624600 S.E.2d 712 (2004); perhaps one of the best Georgia cases setting out the rights of the Surety under the Indemnity Agreement and



### Practice Areas:

- Fidelity/Commercial
- Fidelity and Financial Institutions
- Fidelity/Probate and Fiduciary
- Surety
- Construction Contracts and Disputes
- Construction Defects
- Mediation

### Admitted to Practice:

- Georgia, 1966

### Education:

- University of Georgia, School of Law, Juris Doctorate, 1967
- University of Georgia,

enforcement of the Agreement.

Bachelor of Arts, 1965

- *Johnson Controls, Inc. v. Safeco Ins. Co.*, 404 S.E.2d 556 (Ga. 1991); holding that the surety was discharged as a matter of law when a bond claimant failed to sue the principal when such a demand was made by the surety.
- *Ramsey v. Thomas*, 133 Ga. App. 869, 212 S.E.2d 444 (1975); a case showing the tenacity with presuming a motion for reconsideration. It states in its opening that this case is a good example as to why lawyers should not give up hope on motions for reconsideration.
- *Travelers Cas. & Sur. Co. of America v. Winmark Homes, Inc.*, 518 Fed. Appx. 899 (11th Cir. 2013); summary judgment in favor of surety ordering deposit of collateral and judgment for attorney's fees affirmed.
- *Anderson v. U.S. Fid. & Guar. Co.*, 265 Ga. App. 624, 600 S.E.2d 712 (2004); in one of the leading surety indemnity cases in Georgia, the surety's right to summary judgment for losses and expenses affirmed.
- *Accerbi v. Hartford Fire Ins. Co.*, 205 W.L. 2406150 (S.D. Ga. 2005); surety's liability on its statutory bonds are to be interpreted strictly in accord with the "read in-read out" rule, even if bond provisions are more liberal than the statute.
- *U.S. v. American States Ins. Co.*, 252 F.3d 1268 (11th Cir. 2007); there are very few Miller Act performance bond cases, but we were brought in to handle an appeal of a seven figure summary judgment in favor of the United States Government. This was reversed because a cause of action was barred by the statute of limitations.
- *L&B Constr. Co. v. Ragan Enterprises, Inc.*, 267 Ga. 809, 482 S.E.2d 279 (1997); this is the leading case in Georgia on a no-damage-for-delay clause, holding it was enforceable by a general contractor against a subcontractor.

- *Employer's Ins. of Wausau v. Constr. Mgmt. Engineers of FL, Inc.*, 297 S.C. 354 (Ct. App. 1989); in a significant South Carolina case, the Court of Appeals held surety was entitled to summary judgment, ruling that the surety's obligation cannot be extended beyond the terms and intent of the bond, and among other things a substantial modification to the construction contract discharged surety.
- *Cullum Mechanical Constr. v. South Carolina Baptist Hospital*, 336 S.C. 423 (Ct. App. S.C. 2001), *rev'd as to other parties*, 334 S.C. 426 (S. Ct. 2012); in another South Carolina case, the surety on a bid bond on a public project was not liable to an unpaid subcontractor for failing to provide a payment bond.
- *Rouse Construction, Inc. v Transamerica Ins. Co.*, 750 F.2d 1492 (11th Cir. 1985); the 11<sup>th</sup> Circuit held that a Mississippi state court judgment against principal was not entitled to extra territorial effect against surety in Georgia when surety was not privy or party to Mississippi litigation. The Georgia rule is that a judgment against the principal establishes a rebuttable presumption of liability against the surety, but this is rebutted when evidence creating a genuine issue of fact is introduced.

### **Professional or Trade Affiliations**

- State Bar of Georgia
- Georgia Court of Appeals and Georgia Supreme Court
- Fifth Circuit, Eleventh Circuit, and Federal Circuit Courts of Appeal
- Northern District, Middle District and Southern District Courts of Georgia and Northern District Court of Florida
- American Bar Association - Fidelity & Surety Law Committee and Forum Committee on the Construction Industry

### **Publications & Speaking Engagements**

Jack has presented a great many papers and frequently spoken at seminars. Some of these are:

- Takeover Challenges Under The Miller Act
- Performance Bond Claims When The Project Is Fully Completed and Accepted; Unique Problems with Government Bonds
- The Surety's Added Value To The Construction Project

- Performance Bond Claims, Handling Fidelity, Surety and Risk Claims, published by John Wiley & Sons
- Other Insuring Agreements in Commercial Crime and Other Fidelity Policies
- Cash Collateral Litigation and the Surety
- Crime Policies and Other Insuring Agreement (or Policy Interpretations Become Curiouser and Curiouser)
- Jurisdiction of Equitable Subrogation Claims Against the Federal Government -- How to Keep the Blue Fox Out of the Hen House
- The Surety's Responsibility Where There is a Variation Between the Bond & Statutory Requirements (Or Who Wrote This Damn Thing?) -- With Special Emphasis on Georgia Law
- Recent Developments in Georgia Law
- Life After *Transamerica v. USA* -- A Partial Overview of Cross-Collateralization
- Back to Bankruptcy Basics for the Bond Bunch
- Pre-Bankruptcy Agreement to Abandon an Executory Construction Contracts -- Or How to Stay Out of the Box
- A Potpourri of Payment Bond Problems
- The Inventory Exclusion Revisited -- The Search for Ariadne's Thread
- Third-Party Beneficiaries to the Construction Contract Documents
- Specific Performance of the Surety's Trust Fund Rights
- The Law of Performance Bonds

### **Community Involvement**

Jack has been active in church and civic affairs for years. He served as an Elder and was also on the Finance Committee at Central Presbyterian Church and was on the Board of Directors for Central Outreach and Advocacy. In addition, he has served on the board of his neighborhood association and was on the Board of the Buckhead YMCA for almost 20 years.