

Tim Burson Wins Appeal Affirmation of Judgment for Surety and Fee Award

By March 13, 2012

On March 13, 2012 the Georgia Court of Appeals affirmed a judgment obtained by **Tim Burson** for Western Surety Company defeating a claim by two adult heirs against a \$310,000 bond for alleged waste, mismanagement and self dealing by a bonded conservator. ***In Re Estate of Clorina Haring***. A11A2282, ___ Ga. App. ___, ___ SE.2d ___ (March 13, 2012). The Probate Court suit for accounting, and bond surcharge was brought by two adult heirs--one as Executor against a caretaker Conservator (and his Surety) of their mother. The Conservator had paid an unlicensed caretaker and himself at least \$222,690.02 for the supervision of the Ward for more than 5 years after she had been diagnosed with Alzheimer's and declared incompetent. The payments had been made without express prior or subsequent approval by the Probate Court. Through Mr. Burson, the Surety successfully persuaded the Probate Court (in the face of the claimant's contrary expert testimony) that a licensed care-facility or licensed caretaker could not have reasonably cared for the Ward for less costs than the amounts charged by the unlicensed caretaker and the bonded Conservator and moreover could not have cared for the Ward with the love and attention she actually received. The Surety's defense strategy was premised upon the facts that the bonded Conservator--who had lived with the Ward for more than 32 years though the two were never formally married--treated the Ward with more love and affection than she could ever receive in a licensed facility and that the costs incurred were significantly less than the amount a licensed facility would have charged for this particular non-ambulatory, non-communicative Ward--who required supervision and attention 24 hours every day. The Court of Appeals upheld the entirety of the Probate Court judgment including an award of attorneys' fees and expenses in favor of the Surety and against the Ward's executor heir and his sibling.