

Tim Burson successfully defends Probate Decision upholding Surety Discharge

By October 9, 2010

The Supreme Court affirmed a ruling obtained by **Tim Burson** for State Farm Fire Insurance Company that its obligation under its bond for a conservator was not subject to a claim against the conservator for fraud, mismanagement and breach of fiduciary duty asserted for the first time almost three years after entry of an order discharging the conservator from office and liability. *Ray v. Stewart*, 287 Ga. 789, 700 S.E.2d 367, 10 FCDR 3025 (2010). This decision was issued in mid-September and recently appeared in the case reporters.

On behalf of State Farm, Mr. Burson persuaded the Probate Court at trial and the Supreme Court on appeal that the notice by State Farm's bonded principle/conservator to a guardian *ad litem* appointed by the Court satisfied due process requirements of notice to a representative of known heirs and will beneficiaries of the estate of the proceedings by the conservator seeking discharge and triggered the time to assert any complaint about the conservator's 17 year management of the the ward's estate. While the written ruling was clearly tied to statutory construction and interpretation advanced by Mr. Burson, the decision beyond doubt was prompted at least in part by the evidence developed by Mr. Burson that the party asserting the non-discharge claim had known about and participated in the subject guardianship proceedings without formal notice in the past.