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Client focused. Results driven.

April News from Jimerson & Cobb, P.A.



I love baseball/softball and the best part of the sport is hitting. It is no secret that I have spent my fair share of hours on the baseball diamond trying to perfect the single hardest act in sports: hitting a round ball with a round bat. I love it. What's more, I love practicing (even still to this day).

Yet, every year, with the start of a new softball season, I am reminded how rusty my swing gets. So what do I do? I review Ted William's *The Science of Hitting* and then I start swinging again. Ted Williams is the greatest expert on how to hit a baseball -- the last baseball player to hit .400 in the major leagues. He is an expert because he practiced, and I'll bet he practiced because he loved it.

Practice is the repeated performance or systematic exercise for the purpose of acquiring skill or proficiency. Pretty technical words for what I call "simply getting better." Psychologist [K. Anders Ericsson](#), a professor of psychology at Florida State University, has been a pioneer in researching deliberate practice and what it means. One of Ericsson's core findings is that expertise has more to do with how one practices than with merely performing a skill a large number of times. In other words, it's better to swing 10 times the right way than 100 times the wrong way.

What does this have to do with anything? Well, you have heard that if you love what you do, then you never have to work a day in your life. My dreams of playing centerfield for the New York Yankees have long subsided with my advancing age. Yet, I am blessed. I love what I do, and more importantly, I love practicing it.

Best Regards,

[Christopher M. Cobb, Esq.](#)

April 2012

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*J&C supports upcoming golf tournament
benefiting UNF students*



The Play a Round fore Scholarships golf tournament is coming up at the end of the month. The UNF Alumni Association golf tournament raises money to provide financial support for deserving UNF students and the Alumni Association. This will be an outstanding opportunity to enjoy a great day of quality golf with friends and associates while supporting a most worthy cause. UNF is raising funds through charitable donations, door prizes and sponsorships.

The tournament will take place Monday, April 30, at the Slammer & Squire in the World Golf Village. Players will enjoy 18 holes of golf (including cart), lunch, door prizes, goodie bags, skill contests and an awards banquet.

Visit the event [site](#) for more information or [contact](#) J&C shareholder Chris Cobb.

*Featured bLAWg Post: Will contracts with
merger clauses survive attacks based on fraud
in the inducement of that integrated
document?*

By: [Charles B. Jimerson, Esq.](#)

Most bank lending documents (and commercial contracts, for that matter) contain a merger clause, which explicitly states that the agreement itself embodies the entire understanding and agreement between the parties and further supersedes any and all prior agreements, promises, negotiations, representations, understandings, or inducements, whether express or implied, oral or written, regarding the terms of the agreement between the parties. Therefore, by the express contractual terms of the parties, the integrated agreement itself, subject to limited exceptions, will embody the entire agreement between the parties. The effect of this clause is to bar parties from reaching outside the confines of the written agreement to impose additional contractual duties upon the other party. This often becomes an issue when a claim or defense of fraudulent inducement is asserted in attempt to vitiate an integrated document. This blawg post will endeavor to analyze the interplay of a fraud in the inducement defense/claim with a merger clause.

[Click here to read the full bLAWg post.](#)

Additional bLAWg Posts



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analysis of current legal and
business issues.

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Client Focus



[Night Flight Concepts, Inc.](#),
assists organizations from
around the globe providing
comprehensive night vision
solutions featuring training,
equipment, maintenance
services, and consulting
options. Night Flight
Concepts was formed in 2006
by experienced civil and U.S.
Army aviators, maintenance
technicians, and safety
officers. Combined, the
company has over 50 years of
aviation experience and
performed flight operations
around the globe and in all
environments.

Jimerson & Cobb is very
proud and thankful to
represent Night Flight

UNDERSTANDING HOW CONTRACTS CAN BE EQUITABLY REFORMED UNDER FLORIDA LAW

By: [Charles B. Jimerson, Esq.](#)

Contract reformation is an equitable remedy that acts to correct an error not in the parties' agreement but in the writing that constitutes the embodiment of that agreement. It is designed to correct a defective or erroneous instrument so that it reflects the true terms of the agreement that the parties actually reached and, at its essence, acts to correct an error not in the parties' agreement but in the writing that constitutes the embodiment of that agreement. The doctrine has evolved such that if a document is to be reformed, it should reflect the true intention of the parties. Florida courts employ this equitable measure in order to preserve the sanctity of the contracting parties' negotiations and the spirit of the deal. Click [here](#) to read the full bLAWg post.

CONSOLIDATING LAWSUITS IN DIFFERENT FLORIDA DISTRICTS AND THE IMPACT OF RES JUDICATA ON NON-CONSOLIDATED ACTIONS

By: [Charles B. Jimerson, Esq.](#)

Occasionally we represent a bank that has multiple parcels of property to foreclose upon in order to obtain pledged collateral on a non-performing loan. Regretfully, we often have to maintain separate actions and are unable to consolidate those actions because the parcels are in different counties, which lie in different judicial circuits. Pursuant to Fla. R. Civ. P. 1.270 and case law, actions may not be consolidated if they are pending in different circuits. It is beyond the scope of a trial judge's authority to consolidate actions in those circumstances. Thus, in a North Florida pending action, we could consolidate a case that is pending in Duval County with one in Clay County (neighboring counties), because those counties are part of the Fourth Judicial Circuit, but we could not consolidate a case that is pending in Duval County with one in St. Johns County (neighboring counties), because St. Johns County is part of the Seventh Judicial Circuit. Click [here](#) to read the full bLAWg post.

CONVERTING A DISMISSAL WITH LEAVE TO AMEND INTO A DISMISSAL WITH PREJUDICE

By: [Kelly A. Karstaedt, Esq.](#)

Some might say it is logical to think that if a complaint is dismissed with leave to amend within a prescribed time period that, should counsel fail to file an amendment, the case would automatically become dismissed with prejudice. This is not the case under Florida law. In fact, in order for the dismissal to convert from without prejudice to with prejudice, the plaintiff must be provided notice of same by the defense. Therefore, if by some means of neglect you fail to file your amended complaint within the time allowed by the court, hope is not lost. Click [here](#) to read the full bLAWg post.

2010 BUILDING CODE

By: [Christopher M. Cobb, Esq.](#)

The 2010 edition of the Florida Building Code took effect March 15, 2012. Generally, the most significant changes were to wind load design and construction. Recent studies have confirmed what everyone in the state suspected: South Florida gets more hurricanes. Specifically, the most changes were those dealing with wind design in accordance with the new American Society of Civil Engineers (ASCE) pamphlet 7. The new standard creates a new wind map for the state and generally reduces design pressure across the entire state from 0 to 31 percent, depending on location. On the surface, it appears there is a substantial increase in wind speeds (ultimate wind speed); yet, the method of calculation has changed and the

Concepts and wishes it continued success and growth throughout 2012.

Results Driven

*Jimerson & Cobb attorneys argued Motion for Summary Judgment in business litigation matter for breach of contract.

*Jimerson & Cobb attorneys advised franchisor as to implications of bankruptcy restructuring on existing franchise agreements and vested claims.

*Jimerson & Cobb attorneys retained to assist regional trucking company with corporate restructuring.

*Jimerson & Cobb attorneys researched and advised hotel owner on application of fraudulent transfers and liability under Florida's Uniform Fraudulent Transfer Act and Florida's corporate wind down statutes.

*Jimerson & Cobb attorneys filed petition for arbitration on construction project dispute.

*Jimerson & Cobb attorneys obtained dismissal with prejudice on improperly filed business tort claims on two separate cases for two different clients.

*Jimerson & Cobb attorneys filed action for misappropriation of novel business concept and conspiracy when members of LLC improperly expelled managing member.

*Jimerson & Cobb attorneys obtained dismissal of breach of contract claims against drywall subcontractor on \$1 million Miami construction project.

*Jimerson & Cobb attorneys retained to pursue claims under Florida's Litter Law for improper garbage dumping on

design pressure shows a decrease in most cases.
Click [here](#) to read the full bLAWg post.

J&C Service Spotlight: Condominium Law



Jimerson & Cobb is a firm of knowledgeable attorneys and staff committed to providing legal representation in all areas of real estate law, including Condominium Law. Our firm is actively involved in issues concerning condominium and community associations through interpretation, analysis and drafting of condominium legal documents, while providing substantive legal opinions to the Association's Board of Directors regarding enforcement and interpretation of those documents. Our firm also assists in the collection of delinquent common assessment and represents the Association with construction defects and other matters related to the transition from the developer, including covenant compliance, daily operations and most any issue related to Florida real estate or construction law.

Our firm recognizes that condominium associations are neighborly communities, thus we are committed to the goal of helping boards prevent problems and lawsuits before they arise. We stay fully apprised of changes to Condominium Association laws in Florida, and we keep our clients informed through our education efforts. We interpret the law and the condo documents for our clients, and recommend changes that will make the language more understandable, address the population and needs of the community in question, and bring the documents into compliance with changes in Florida law. We are efficient and cost conscious, and we are committed to helping association boards effectively plan and maintain their budgets.

We are available to support Florida condominium associations in contract and other negotiation or enforcement, in addition to resolving Florida Condominium Law questions and other legal issues which sometimes occur in the everyday management and operation of the association. If you are in need of legal services from competent lawyers versed in Florida Condominium Law, please do not hesitate to contact our firm for help with any of the following issues:

- General legal counsel regarding the statutes, rules, and regulations for condominium associations in Florida
- Condo association and homeowner association litigation and alternative dispute resolution
- Structuring and operation of condominiums, planned communities, and their management associations
- Drafting, interpreting, amending and enforcing condominium association documents, including Declaration, Articles of Incorporation, Declaration of Covenants, Articles of Incorporation,

client's property.

*Jimerson & Cobb attorneys sustained objection to Chapter 11 plan on behalf of largest secured creditor until plan was modified to include beneficial payout to largest secured creditor.

*Jimerson & Cobb attorneys filed Federal court response in opposition to a Motion to Dismiss.

*Jimerson & Cobb attorneys analyzed and provided scholarly commentary on implication of recent case law affecting automobile dealers and lenders.

*Jimerson & Cobb attorneys retained to defend claims on sealant work for waste water treatment plants.

*Jimerson & Cobb attorneys obtained summary judgment for pharmaceuticals company on fraud and breach of duty of loyalty claims brought against competing former employee.

*Jimerson & Cobb attorneys retained to file lien foreclosure on residential construction project.

*Jimerson & Cobb attorneys mobilized on short notice to draft construction management agreement for large commercial general contractor in immediate need of solidifying contracting opportunity.

*Jimerson & Cobb attorneys retained to prosecute breach of contract claim and intentional interference with contract on construction project.

*Jimerson & Cobb attorneys recorded and served construction lien on last day available for roofing contractor with substantial lien claims.

*Jimerson & Cobb attorneys successfully mediated

- By-laws and Rules and Regulations.
- Counsel for vendor procurement and disputes
 - Covenant enforcement and disputes involving owner rights and responsibilities in condo living
 - Management and collection of association's assessments and fees, including lien enforcement and foreclosure
 - Administrative representation before the Department of Business and Professional Regulation
 - Developer claims and Florida construction defect litigation
 - Disputes arising from maintenance and repair of main and common areas

Please feel free to browse our [Condominium Law FAQs](#) for basics on Condominium Law. For more information about our practice, or to discuss your legal concerns with a lawyer who understands Condominium Law, [contact](#) our offices today.

Industry News

FLORIDA BANKS INCREASE SMALL BUSINESS LENDING BY \$211 MILLION

Florida's small banks have [increased small business lending by \\$211 million](#) since receiving capital through the Small Business Lending Fund, according to a report released by the U.S. Department of Treasury.

10 COMMUNICATION SECRETS OF GREAT LEADERS

It is simply impossible to become a great leader without being a great communicator. The key to becoming a [skillful communicator](#) is rarely found in what has been taught in the world of academia.

JACKSONVILLE HAS 18TH HEALTHIEST SMALL-BUSINESS CLIMATE IN THE SOUTH

Jacksonville's small-business climate [climbed seven spots to No. 18](#) in 2012, according to a report by On Numbers. On Numbers bases its rankings - called the small business vitality score - on a six-part formula that analyzes such diverse factors as population growth, employment gains or losses, and local concentrations of small businesses.

10 INDUSTRIES THAT ARE DYING IN AMERICA

Unemployment is declining and GDP is growing, but the recovery varies wildly from one industry to the next, and is entirely absent from some industries. IBISWorld, a market-research group, identified [10 dying industries](#) based on performance from 2002 to 2011.

SAVANNAH HARBOR PROJECT GETS GREEN LIGHT

The U.S. Army Corps of Engineers gave the go-ahead Wednesday to [deepen the Port of Savannah](#) to accommodate the next generation of containerized cargo ships.

WALL STREET HAS SOME OF ITS SWAGGER BACK

Just two days into this week, it was looking rough for Wall Street. Critics, investors and regulators and even the president called out the industry. Rules were coming. Investors were mad as hell. Taxpayers were fed up. All of this would be something if Wall Street cared or suffered. It doesn't - and it didn't. And why would it? Big financial interests are [beating back every broadside](#) with a vigor not seen since the financial-bubble days.

construction claim on commercial construction project.

*Jimerson & Cobb attorneys settled claims for full value of services for commercial and industrial machine servicer with outstanding balances owed by delinquent customer.

*Jimerson & Cobb attorneys argued motion to strike demand for jury trial and motion to dismiss counterclaim in large insurance contract dispute.

*Jimerson & Cobb attorneys advised national home builder on complex commercial loan workout strategies in advance of loan modifications with lender.

*Jimerson & Cobb attorneys attended Florida Bar Construction Law Conference.

*Jimerson & Cobb attorneys obtained pre-litigation full value payment from prominent Virginia healthcare organization.

*Jimerson & Cobb attorneys negotiated drastically reduced settlement agreement for struggling small business owner.

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JACKSONVILLE INTERNET CAFE LAW UPHELD

A Duval County judge has [upheld the constitutionality](#) of a Jacksonville ordinance that regulates Internet cafes. In a ruling last week, Duval County Judge John Moran said the Jacksonville ordinance does not conflict with state laws and is constitutional.

BANK OF AMERICA LAUNCHES SECOND ROUND OF BULK SALES OF FORECLOSED HOMES

Bank of America Corp., for the second time in five months, is seeking [bids on a bulk offering](#) of several hundred single-family homes, including some in Florida, Reuters reported.

J&C Firm News

*Shareholder Christopher Cobb was interviewed by First Coast News this week. Construction work on a local drainage ditch caused shifting to a nearby house. First Coast News' Ken Amaro interviewed Chris concerning some of the legal aspects of the construction damage. The interview aired locally on April 16. To see a replay, click [here](#).

*J&C shareholders, attorneys and staff supported both last month's Junior Achievement Bowl-A-Thon and the Jacksonville Bar Association's "Run for Cover 5K" race last weekend in Riverside. Click [here](#) to read more and see photos from the YLS race to promote awareness for early detection of skin cancer.

*Associate Matt Havice is commissioner of the Jacksonville Bar Association's softball league. J&C has formed a team and is prepared to dominate the JBA league this spring.

*J&C welcomes three new faces around the office: file clerk Jennifer Farber, file clerk Rebecca Dagrín and bookkeeper Stephanie Stubbs.

*Paralegal Dawn Archer is a proud new member of the Northeast Florida Paralegal Association.

*Shareholders Charles Jimerson and Chris Cobb attended the 5th Annual Florida Bar Construction Law Institute in Orlando. The conference put on many educational construction law seminars, but our shareholders enjoyed the large project negotiations and close out and schedule analysis presentations the most.

*J&C shareholders and associates were featured guest panelists at a forum on business law held by the Corporate and Business Law Society at Florida Coastal School of Law.

*J&C shareholder Charles Jimerson was an active member of the projects and screening committee of the Downtown Rotary Club that partnered with Dreams Come True and the The Tim Tebow Foundation to build Timmy's Playroom, a new healing and play area for children at the Jacksonville Dreams Come True facility. The rooms are designed like Florida Field and feature games and activities for children with sicknesses. Click [here](#) to read more and watch an interview with Tebow about the project.

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