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*Client focused. Results driven.*

### *September News from Jimerson & Cobb, P.A.*



The sudden and dramatic advent of social media and attention deficit enabling technologies into our lives seems to be causing me to go through a digital midlife crisis. My impulsive connection to my iPhone has often forced me to question whether technology is making my life better or worse. Does technology makes us unhealthy? Make us inattentive? Make us ignorantly informed? Make us depressed? Make us lonely? Make us narcissistic? Or better yet, is technology making us waste time worrying about whether it's making us fat, distracted, despondent, conceited and/or isolated? As many times as I am grateful that I can read five newspapers from around the world before I get out of bed each morning, I am equally loathe to answer texts or emails in the midst of my little girl's bedtime story. I'm not sure I am ready to abandon the whole enterprise, but I've got to learn how to moderate it. After all, the human mind and its boundless imagination is still the most extraordinary computer of all. Maybe if I turn the phones, TVs and plugged-in technology off more, I'll get more use of my own personal computer. Anyone else feel this way?

Very Truly Yours,

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

***J&C shareholder Christopher Cobb listed among top attorneys in 904 Magazine***

**September 2012**

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Jimerson & Cobb, P.A.



Jimerson & Cobb shareholder Christopher Cobb was listed in the June 2012 issue of *904 Magazine* as a Board Certified attorney in construction law.

To be certified by The Florida Bar, each attorney must complete an arduous three-step process including a detailed application, examination and continued maintenance of credentials. Only seven percent of attorneys in the state are Board Certified, making just 4,500 Florida attorneys credited as an "expert" in their practice area.

Click [here](#) to view the complete list.

### ***J&C shareholder Charles Jimerson profiled in Realty/Builder Connection***



J&C managing shareholder Charles Jimerson was profiled in this month's featured section of *Realty/Builder Connection* in last week's issue of the *Jacksonville Business Journal*.

As a member of the Northeast Florida Builder's Association (NEFBA), he is active in the membership drive, government affairs and its Political Action Committee.

Click [here](#) to view the article online or [here](#) to view the article as a PDF.

### ***Featured bLAWg Post: e-Discovery: What Is It and Why Amend Florida Rules to Include It?***

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

What do you think when you hear the word "e-discovery?" If you are thinking about CD copies of printed PDF documents and web site screen shots, you have a lot to learn. There is so much more a simple document can tell you when you obtain it in its native format instead of a printed sheet. What is native you ask? Well, we'll get to that. But first, we need to understand the basics of e-discovery and why it is so crucial to litigation that the Florida Supreme Court decided to amend the Florida Rules of Civil

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#### ***Visit Our bLAWg***

[The Jimerson & Cobb bLAWg](#) is a resource for news and analysis of current legal and business issues.

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#### ***Client Focus***



CenterState Bank has branches throughout the state of Florida, including three in Jacksonville.

As a community bank, CenterState drives decision making at the community

Procedure to specifically allow it.

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

## ***Featured bLAWg Post: Contractor Negligence in a Florida Construction Defect Case, Parts I & II***

By: [Christopher M. Cobb, Esq.](#) and Austin B. Calhoun

### **Part I: Elements & Duty**

Construction defects are a problem in Florida. In an environment that is hot, humid, and stormy, defective construction is magnified, often causing damaging water leaks, harmful mold intrusion and amongst other things, a serious disruption to our everyday lives. Typical sources of water intrusion are roofs, windows, sealant failures, stucco failures, and balconies. Aside from the obvious financial challenges, construction defect cases present many legal challenges.

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

### **Part II: Contractor Defenses to Negligence Claims**

Part I of this posting discussed various considerations with proving contractor negligence in Florida. Part II of this posting will discuss defenses and hurdles in proving such negligence. Just as the Plaintiff has the burden of proof on its negligence claim, the contractor defending such negligence claim has the affirmative burden to prove its defenses. Contractor defenses can be based in legal theory or factual accounts, but both are designed to thwart the notion that the contractor has breach its duty of care in the construction.

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

## ***Additional bLAWg Posts***

### **LIMITING FLORIDA'S HOMESTEAD EXEMPTION: COLLECTING ON HOMESTEAD PROPERTY IN EXCESS OF ONE-HALF ACRE**

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

For well over a century, Florida's Constitution has made the homestead exempt from the claims of creditors. Public Health Trust v. Lopez, 531 So. 2d 946, 948 (Fla. 1988). Florida's constitutional provisions provides one of the most debtor-friendly homestead exemptions in the country, and debtors are permitted to divert substantial assets to the purchase of new and extravagant homes that can be shielded from creditors. Florida's Unlimited Homestead Exemption Does Have Some Limits: Part I, 77 Fla. Bar J. 60 (2003). There are, however, exceptions to the rule. This blawg post will focus on one exception: the creditor's ability to collect on homestead property located in a municipality that exceeds one-half acre.

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

### **BE WARY OF THE EFFECT SUBSTANTIVE LAW PROVISIONS HAVE ON OFFERS OF JUDGMENT**

By: [Matthew F. Havice, Esq.](#)

It is well known that Offers of Judgment and Florida Courts' interpretations of the Statute and Rule governing them are continually changing. Certainly

level. They are best described as a family of small banks led by community presidents.

CenterState prides itself on a steadfast commitment to world-class service, relationship-building banking, and long-term growth, while maintaining and cultivating a family-centered culture within its leadership and staff.

If you need assistance, we welcome you to contact our good friend, [John Roberts](#). He is a trustworthy banker and will be happy to assist you.

Jimerson & Cobb is very proud and thankful to represent CenterState Bank and wishes it continued success and growth.

## ***Results Driven***

\*Jimerson & Cobb attorneys successful in blocking financial institution record production seeking privileged banking documents.

\*Jimerson & Cobb attorneys successfully forced a Chapter 11 bankruptcy debtor to voluntarily convert to a Chapter 7 action in order to liquidate assets and protect the creditor's collateral from additional loss in value.

\*Jimerson & Cobb attorneys filed Federal Court Motion for Summary Judgment in \$10,000,000 contract dispute.

\*Jimerson & Cobb attorneys negotiated payment and a final settlement of all claims in a franchise agreement breach of contract action.

\*Jimerson & Cobb attorneys mediated and settled business dispute over purchase of commercial truck.

Florida Rule of Civil Procedure 1.442 and Florida Statute § 768.79 provide the requirements for the form, language, method and timing of service of an Offer of Judgment; however, Florida Circuit Courts are still split on various issues related to the Offers. We will address these splits in a later entry, as in this entry we will focus on a recent Florida Supreme Court Decision that has answered several questions as to Offers of Judgments that are of particular concern to contractors and sureties. The Florida Supreme Court in Southeast Floating Docks, Inc., et al. v. Auto-Owners Ins. Co., 82 So.3d 73 (Fla. 2012) looked at the status of Fla. Stat § 768.79 as substantive or procedural law, the enforcement of an Offer of Judgment made in a matter in which the parties entered into a contract with a choice-of-law provision applying another states substantive law and the interplay of public policy concerns related to both Offers of Judgment and choice-of-law provisions.

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

### **SPECIAL CONSIDERATIONS FOR BRINGING A FORECLOSURE ACTION BY A JUNIOR LIENHOLDER**

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

In a standard foreclosure action, the lienholder with a first position of priority files suit to foreclose out all junior lienholders and recover the outstanding balance on a promissory note secured by the mortgage. But what happens when a junior lienholder decides to foreclose on its lien? The scenario is much the same as it would be for a senior lienholder moving to foreclose, but special considerations must be taken into account.

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

## **J&C Service Spotlight: Banking Law**



Jimerson & Cobb has extensive experience in representing clients in all aspects of commercial and residential lending, including loan default litigation, secured and unsecured loan structuring, loan negotiation and documentation, real estate and construction lending, garnishment response, loan workout and liquidation transactions.

Our services to lenders include:

- Commercial foreclosure actions (including pre-litigation enforcement of contract rights, enforcing assignment of rent provisions, pre-judgment Writs of Replevin, and deficiency actions)
- Loan modifications and workouts
- Structuring sophisticated loan transactions
- Real estate and construction lending consultation
- Garnishment response
- Priority disputes between secured creditors
- Lender liability representation

\*Jimerson & Cobb attorneys successfully appealed denial of student-athlete rights to compete in Florida High School sports programs in Pro-bono representation.

\*Jimerson & Cobb attorneys deposed majority shareholder in business break-up and secured on the record release of client's non-compete clause.

\*Jimerson & Cobb attorneys advised aggrieved high-rise condominium unit owners on issues pertaining to condominium association financial malfeasance and non-compliance with statutory requirements in board operations.

\*Jimerson & Cobb attorneys defended multi-day depositions in commercial dispute over insurance agent contract.

\*Jimerson & Cobb attorneys represented regional insurance brokerage in contract dispute regarding unpaid insurance premiums.

\*Jimerson & Cobb attorneys revised and updated Construction Jury Instructions for Florida Bar publication.

\*Jimerson & Cobb attorneys initiated proceedings supplementary action to set aside fraudulent transfer, eliminated tenancy by the entirety exemptions and partition marital homestead on behalf of defrauded lender.

\*Jimerson & Cobb attorneys engaged in preliminary hearing on commercial arbitration for storage unit damage.

\*Jimerson & Cobb attorneys advised The Tim Tebow Foundation on legal issues pertaining to risk management and exculpating liability.

### Bankruptcy matters

We specialize in representing lenders in all types of foreclosures, including those involving industrial developments, vacant lands, condominium developments, commercial office buildings, manufacturing facilities, distribution warehouses, retail shops and other commercial real estate. Our foreclosure professionals understand the complexities of foreclosure law, an arcane and complicated area. There are many pitfalls for lenders and lawyers who do not know their way around the intricacies of the law. Lenders can lose time and money if they trust their case to an attorney who lacks the vision and initiative to swiftly and cost-effectively ensure return of the pledged collateral and facilitate a resale. Should the borrower go into bankruptcy, we will work to get the automatic stay lifted in bankruptcy court so that you, as a secured lender, can proceed with foreclosure. Whether you are foreclosing on a modest home or a major office development, let us protect your interests.

Please feel free to browse our [Banking and Lending Liability law FAQs](#) for basics on Banking and Lender Liability law. For more information about our practice, or to discuss your legal concerns with a lawyer who understands banking and lender liability law, [contact](#) our offices today.

\*Jimerson & Cobb attorneys advised homeowners association on pre-suit considerations and preservation of evidence in inevitable construction defect claim against builder and contractors for malfunctioning roofing.

\*Jimerson & Cobb attorneys traveled to Tallahassee and met with construction and real estate industry lobbying team on behalf of industry trade groups to further industry legislative initiatives.

\*Jimerson and Cobb attorneys obtained favorable settlement for corporation and board members in suit brought by former employee and shareholder in company regarding value of shares and alleged malfeasance. In addition to the favorable settlement, J&C attorneys negotiated with former shareholder to obtain signature on time sensitive documentation needed to obtain a Small Business Administration loan to reshape the company and make it viable moving forward, as well as coordinating with multiple lenders and government representatives to ensure the granting of the loan.

\*Jimerson and Cobb attorneys obtained desired result for condominium association client in forcing bank to finalize foreclosure suit and complete trial on same, despite continued stalling by the bank due to their desire not to take possession of the unit in question and avoid paying future assessments as a result of their ownership.

## Industry News

### FORECLOSURE RATE FALLS NATIONALLY, BUT FLORIDA STILL TRENDING UP

Foreclosure rate falls nationally, but Florida still trending up and claiming the nation's [second highest foreclosure rate](#) with one in every 328 housing units in foreclosure.

### FLORIDA CREDIT UNIONS REBOUND IN AUTO, MORTGAGE LENDING

Florida's credit unions collectively posted their [first quarterly growth](#) in auto loans since 2007 and their first gain in first mortgage loans since 2009.

### JAY WELCOMED TO THE FOURTH CIRCUIT BENCH

Jacksonville formally welcomes the honorable [Judge Harvey Jay, III](#), to the Circuit bench at his ceremonial swearing in at the new courthouse on September 13.

### MORTGAGE LENDING SLID TO 16-YEAR LOW IN 2011

[Mortgage lending slide](#) continues, reaches 16-year low in 2011 with just 7.1 million home loans.

### MAKE SURE YOUR SALES STAFF IS EARNING ITS OWN WAY

Your [sales staff is key to your profit](#); make sure they are earning their own way.

### FLORIDA BAR POLL SHOWS OVERWHELMING SUPPORT FOR SUPREME COURT JUSTICES, APPELLATE JUDGES IN MERIT RETENTION ELECTIONS

Results of the recent Florida Bar Poll shows [overwhelming support for sitting justices and judges](#) in the upcoming Merit Retention Elections.

### AT&T LOOKING FOR OFFICE SPACE, COULD LEAVE DOWNTOWN JACKSONVILLE

With its lease ending in two years, AT&T is [considering leaving office](#)

Join Our Mailing List!

[space outside of downtown](#) Jacksonville.

### **NLRB RULES ON KEEPING EMPLOYEES FROM DISCUSSING HR INVESTIGATIONS**

Companies [must review internal policies regarding employee confidentiality requirements](#) during HR investigations following the NLRB's recent ruling that that a blanket policy requiring employee confidentiality in the course of an HR investigation violates employees' rights to engage in concerted activity under Section 7 of the National Labor Relations Act.

### **JULY HOME SALES UP IN FLORIDA, PRICES RISE**

The median sale price of existing homes in Florida for July rose to \$148,000, [up 7.8 percent](#) from July of 2011.

## **J&C Firm News**

\*Last month, J&C celebrated Loving Litigating Lawyers Day. The celebration was catered by Discovery Litigation Services who provided a tasty spread of food and drinks. Discovery Litigation Services provides court reporting services to J&C. The center point of the celebration was a contest where the J&C Litigating Lawyers answered questions and the non-litigating members of the firm had to guess which answer fit the attorney. A special thanks to Discovery Litigation Services for making this event a success!

\*J&C welcomes a new attorney to the team. Hans Wahl is a graduate of Florida Coastal School of Law, the University of Florida and is a former investment manager with a national finance firm. While at FCSL, Wahl amassed quite a resume, with accolades as Law Review Staff Editor, Moot Court Team and Mock Trial Team and graduating in the top 3 percent of his class. Welcome!

\*J&C also welcomes Kristen Eshleman to the firm as a new Paralegal/Legal Assistant. She joins us as a recent graduate from Florida Coastal School of Law. She is awaiting her bar results. She is an achiever, having graduated in the Top 20 in her class, booking 4 classes and was a member of Law Review and Moot Court. Kristen originally hails from Wasilla, Alaska.

\*In a *Jacksonville Business Journal* article titled, "Body Central shareholder files suit over stock plunge," Charles Jimerson was asked to comment on the case. The article appeared in the September 14-20, 2012, issue. Click [here](#) to view the article.

\*Please join us as we welcome Katherine Thomas to our staff as a part-time Marketing Coordinator. Katherine is from Bartow, Florida, and is currently a senior at Jacksonville University. She has a budding interest in law and politics and has been involved in many leadership organizations. Welcome to our team, Katherine.

\*As many of you might have sent your children off on their first day of school in the past month, so have J&C attorneys and staff. Below, find Chris with his lovely wife, Joy, and their two children, Charlotte, 4, and Madison, 2, as they head off to their first big day.



Charlie takes his daughter, Lila, 2, to her first day of school.



Law clerk Austin Calhoun accompanies his two daughters, Audrey, 7, and Lauren, 5, to school to kick off the school year, along with Grandma!



\*Charles Jimerson has been named to the inaugural class for Girls Inc.'s Rising Leader Society. Girls Inc. is a national organization focused on providing afterschool, literacy, outreach and summer programs for at risk girls. In all, its programs focus on inspiring all girls to be Strong, Smart, and Bold leaders for our families and community.

\*With the voting period officially open to nominate lawyers for the 2013 Super Lawyers list, we encourage you to go [here](#) to nominate a deserving fellow attorney for the prestigious list.

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