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Client focused. Results driven.

February News from Jimerson & Wilson, P.A.



So how are those New Year's resolutions working out for you? Studies show that 40 to 45 percent of American adults make one or more resolutions each year. Among the top are resolutions about weight loss, exercise and money management, with 25 percent of those resolutions cast away in the first week, 35 percent forgotten after the first month and only 40 percent surviving six months.

While a lot of people who make New Year's resolutions do break them, research shows that making resolutions is useful. People who explicitly make resolutions are 10 times more likely to attain their goals than people who do not explicitly make resolutions. As our firm challenged its employees, we challenge all of our clients, friends and colleagues to stick with their resolutions and make 2011 the year which you obtained the goals you set out to achieve. I hope you are all off to a great start!

Very truly yours,
[Charles B. Jimerson, Esq.](#)

Featured bLAWg Post: Condominium Association Director Liability

By: [Harry M. Wilson, IV, Esq.](#)

Being the director of a condominium association can be a thankless job for many reasons. Directors are called upon to use their best judgment to manage the affairs of the condominium, including adopting an annual budget, managing reserves and allocating capital expenditures. In addition to this, they owe a fiduciary duty to the unit owners. This article provides some detail as to how Florida courts have defined this fiduciary duty.

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



February 2011

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Featured bLAWg post: Been Caught Stealing: Expelling or "kicking out" members from Florida Limited Liability Companies when a member is diverting assets

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

Often in a small, member-managed Limited Liability Company, managerial and financial disputes arise among the members regarding business affairs of the company or distribution of company assets. Clients often come to our firm to analyze and litigate issues regarding one or more fellow members who have committed breaches of the operating agreement, common law or statutory duties. In some cases, the members have gone as far as violating criminal laws. In analyzing the aggrieved member's rights against these rogue members, practitioners must first turn to the LLC operating agreement before utilizing Fla. Stat. §608 and case law to fill in the gaps. As a case study for expulsion, we analyzed scenarios where a member is diverting company assets as interpreted under a standard form operating agreement and the Florida Limited Liability Company Act.



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

Additional bLAWg Posts

[Garnishment: Know Thy Debtor](#)

By: [Harry M. Wilson, IV, Esq.](#) and [James D. Stone, III, Esq.](#)

In these troubled economic and times, collections lawsuits are on the rise. As a result, courts are issuing more judgments. A judgment is more than a piece of paper. It turns the Plaintiff into a "judgment creditor" with unique powers to collect the debt he or she is owed.

[From a Creditor's Perspective: An Overview of Florida Automobile Repossession](#)

By: [Harry M. Wilson, IV, Esq.](#)

When a purchaser buys a vehicle on credit, the lender usually possesses the right to repossess the vehicle in the event of a default of payment terms. The following article sets forth the procedure by which a creditor takes back a vehicle and why it is not incompatible with every American citizen's right to due process.

[Holding the Construction Lender Liable](#)

By: [Harry M. Wilson, IV, Esq.](#) and [James D. Stone, III, Esq.](#)

In these tough economic times, many construction liens are often erased by superior mortgages, such as when the lender forecloses on the property. In the past, this would often lead to the lienor being left without a way to collect if the project owner was insolvent. Florida Statute §713.3471 and a recent ruling in *Whitehead v. Tyndall Federal Credit Union* has, however, provided another avenue for a lienor to recover costs.

[Rescinding job offers in At-Will employments in Florida](#)

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

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Client Focus



For more than 45 years [Safariland](#) has produced some of the finest and most innovative products for the law enforcement, competitive shooting and military industries.

In 1964, following his father's request for a custom holster, Neale Perkins launched a holster business from his garage in Sierra Madre, California. He named his new company after the African safaris he and his father enjoyed together. From these humble beginnings, Safariland quickly went from making a few hundred holsters to more

The prevailing rule in Florida is that an offer of at will employment does not constitute a promise which induces reasonable reliance when the prospective employee is leaving another at will employer.

J&W Service Spotlight: Business and Commercial Litigation

In addition to our creditors rights, construction law and financial services industry practice, we also offer a wide range of legal expertise to our clients, including our [Business and Commercial Litigation](#) services. Jimerson & Wilson has extensive experience representing businesses and entrepreneurs in all types of commercial litigation and handles all types of business and commercial litigation, including:

- Breach of contract or note
- Breach of Lease
- Fraud, Misrepresentation, Civil Theft
- Construction disputes
- Breach of Fiduciary Duty and Business Torts
- Florida Deceptive and Unfair Trade Practices
- Shareholder conflicts
- Violation of non-compete and confidentiality agreements relating to trade secrets
- Infringement on Intellectual Property rights and Unfair Competition claims
- Dissolution of corporations, limited liability companies and partnerships

Litigation is the strength of our practice and foundation for the firm's success. The firm has far-reaching experience handling disputes born out of the interpretation and enforcement of contractual rights. We develop and adapt our litigation strategies to the particular facts of each case with every matter sharing the common goal of achieving a resolution that best addresses our client's specific business needs. The firm advises clients regarding the costs and benefits of different strategies, including settlement and trial in assessing and minimizing potential litigation risks at each stage of the case's life cycle. As part of this process, we evaluate the feasibility of less expensive alternatives to litigation, including but not limited to alternative dispute resolution.

Jimerson & Wilson takes a professional yet down-to-earth approach to the practice of law. We understand that, for commercial clients, sound legal decisions must make good business sense and be in line with corporate moral philosophies. We employ this approach through every step of the litigation process, from pre-suit diligence, to pre-trial discovery and on through trial and appeals. Without sacrificing aggressive advocacy, we pride ourselves on finding a balance between asserting rights and reducing liability exposure.

For more information about our [Business and Commercial Litigation practice](#), or to discuss your legal concerns with a lawyer who understands creditors rights and commercial collection law, [contact](#) our offices today.

than 5,000 within a few months.

In 1996, American Body Armor and its shareholders joined forces to form Armor Holdings, a diversified holding company with three manufacturing locations and plans for significant additional growth. Over the course of 11 years, Armor Holdings acquired many of the most-recognized equipment brands in the law enforcement industry, including Safariland. Each company brought with it the spirit of innovation and a passion for its customers and products.

In July 2007, BAE Systems acquired Armor Holdings and BAE Systems Products Group was formed. That acquisition created a significant opportunity to grow the business further in the United States and foreign markets. In addition, the acquisition enabled Armor Holdings' customers to benefit from the talent, business resources and technology a leading defense contractor brings to the table. In January 2009, BAE Systems Products Group became Safariland. Under the Safariland name, 19 of law enforcement's most recognized and well respected brands came together as one-signifying a new era to those who buy, sell and use Safariland products.

Throughout these changes, Safariland has maintained the same spirit of innovation and passion for protecting its customers that existed in Neale's small California garage back in 1964. The spirit of Safariland's new motto remains largely unchanged: Together, we save lives™.

Jimerson & Wilson, P.A. is very proud and thankful to

Industry News

Courts divided on constitutionality of health care bill

Since our last newsletter, a [second federal judge has ruled that it was unconstitutional for Congress to enact a health care law](#) that required citizens to obtain commercial insurance. At present, the lower courts are divided 2-2 in their conflicting opinions regarding the constitutionality of the Affordable Care Act.

Low Florida foreclosure filings not due to improvements in market

[Foreclosures slowed to a relative trickle in January](#), dropping to their lowest level in 42 months. However, experts believe the decline in foreclosure filings is related to the foreclosure processing mess rather than to any improvement in the housing market.

Lack of replacing retiring judges strains courts

[Federal judges have been retiring at the rate of one per week](#) this year. Dozens of judges have left since President Obama took office without being replaced. Experts blame Republican delaying tactics, slow White House nominations and a dysfunctional Senate confirmation system.

Condo associations foreclosing on those not paying fees

As condominium associations are strapped for money to pay for maintenance, many [associations are foreclosing on owners](#) who do not pay fees, then renting the units to bring in cash.

State budget cuts could affect courts

In the view of Chief Judge Lee E. Haworth of the 12th Judicial Circuit, it is the [justice system's "groundworkers" - the legal assistants, case managers and others who don't get the glory but who are indispensable to criminal and civil cases- are most at risk](#) under Gov. Rick Scott's plan to cut \$4.6 billion from the state budget and lay off 6,700 state workers.

"Lawyers Helping Lawyers" to assist those facing tough economic times

A program to help lawyers stung by the down economy has been approved by the Bar Board of Governors. Dubbed "[Lawyers Helping Lawyers](#)," the program will be run through the Bar's website and feature employment information, educational programs about starting and building practices, links to discounted services, access to mentors, and other assistance.

Disputed foreclosure ruling could bog down courts

Many homeowners in Pinellas and Pasco counties could get at least a [temporary reprieve from foreclosure](#) pending the outcome of a case now before a Florida appeals court.

The Awakening

As change sweeps through the Middle East, the world has many reasons to fear. But it also has [one great hope](#).

Weiss: Florida among worst for banking

When it comes to strength and solvency, [Florida is among the worst states for banking](#), according to a new report released by Weiss Ratings. Nearly 80 percent of the 532 banks and thrifts in Florida are considered weak and have received a D plus or lower Weiss Financial Strength rating.

Bar supports raising the judicial retirement age

The Florida Bar Board of Governors at its January 28 meeting in Tallahassee, endorsed the concept of [raising the mandatory retirement age for judges and justices](#) from 70 to 75. But it tabled taking a position requiring lawyers to be members of The Florida Bar for 10 years, instead of

represent Safariland™ and wishes it continued success in 2011.

Results Driven

*Jimerson & Wilson attorneys prevailed in hotly contested discovery hearings regarding requiring disclosure of key information sought in prosecuting fraud claims.

*Jimerson & Wilson attorneys filed emergency attachment and replevin pleadings and motions to recover cross-collateralized property securing personal loans.

*Jimerson & Wilson attorneys reviewed and edited employment agreements for a physician transferring practices and an out-of-state chemical manufacturing company looking to ensure compliance with Florida legal requirements.

*Jimerson & Wilson attorneys successfully defended subcontractor against claims of non-payment against suppliers for defective building construction materials.

*Jimerson & Wilson attorneys obtained full recovery for fire & water cleanup and restoration company on claims of lien asserted for emergency work performed.

*Jimerson & Wilson attorneys negotiated 100 percent recovery from home builder for land clearing subcontractor on six-figure construction dispute.

*Jimerson & Wilson successfully advised construction client on contract termination and quelled attempts by residential siding subcontractor to improperly lien project.

*Jimerson & Wilson attorneys drafted HVAC contract for \$500,000+ project.

the current five, before seeking to become trial judges.

J&W Firm News

*Jimerson & Wilson are moving offices and will be settled into our new digs on March 1. We will be in the Riverside Center building just a few blocks away from our current location. All phone and fax numbers remain the same. Our new address will be:

Jimerson & Wilson, P.A.
Riverside Center
701 Riverside Park Place
Suite 302
Jacksonville, FL 32204

*Save the Date! Jimerson & Wilson will be hosting a meet-and-greet for City Council candidate [Juan Diaz](#) on Tuesday, March 15, at the J&W offices. Mr. Diaz will be discussing what his plans are for the city to stabilize its financial condition and maintain quality of life for the next generation. Click [here](#) to visit his website, and remember to vote on March 22!

*Jimerson & Wilson is thrilled to announce 100% participation in the 2011 Gate River Run on Saturday, March 12. All attorneys, staff and 2 spouses have been adhering to a strict training schedule of running on Wednesday nights and Saturday mornings. Mary Nussbaum is coaching the crew up as usual. For more information on the largest 15K in the United States, visit the [Gate River Run site](#).

*The J&W office was home to its first marriage ceremony on Friday, February 4. James and his longtime girlfriend, Tierney, were wed in a ceremony performed by our very own executive director, Mary Nussbaum. Celebrations followed with champagne and cupcakes. Best wishes to the happy couple!

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*Jimerson & Wilson attorneys registered parent and subsidiary corporations, drafted requisite agreements and obtained proper intellectual property registrations for retail apparel company.

*Jimerson & Wilson attorneys performed pro bono contract review, business plan consultation and employment law counsel to newly formed non-profit private high school.

*Jimerson & Wilson attorneys hosted nationwide conference call continuing education seminar for credit professionals on topics relating to sound credit policies and collection practices.

*Jimerson & Wilson attorneys negotiated favorable consent judgment and payment plan for client with Georgia construction lien.

*Jimerson & Wilson attorneys negotiated with financial management company to obtain favorable settlement of balance owed in assignment for the benefit of creditors.

*Jimerson & Wilson attorneys helped a pro bono client successfully garnish the wages of a former tenant who left his the property in shambles.

*Jimerson & Wilson attorneys located a debtor who had been dodging service and hiding assets and successfully settled the case.

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