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*Client focused. Results driven.*

*August News from Jimerson & Cobb, P.A.*



Is it football season yet? Charlie....hold on a second while I check. National League East Standings: Marlins - 53 Wins and 65 Losses. 20 games behind first place. Yep! It's Football Season!

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

*J&C shareholders appointed to leadership of  
JBA Construction Law Committee*



Jimerson & Cobb shareholder Christopher Cobb was appointed by the Jacksonville Bar Association to chair its Construction Law Committee for 2012-2013. Jimerson & Cobb shareholder Charles Jimerson was appointed as the vice-chair. Congratulations!

*August 2012*

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*Contact Us*

Jimerson & Cobb, P.A.  
Riverside Center  
701 Riverside Park Place  
Suite 302  
Jacksonville, FL 32204  
Phone: (904) 389-0050

## *J&C continues its "lunch and learn" program for its attorneys and staff*



J&C launched its own version of the "lunch and learn" program two months ago in an effort to reinvigorate its professional development offerings in the workplace.

J&C staff learned all about the new administrative rule (Florida Rule of Judicial Administration 2.516) that requires every pleading subsequent to the initial pleading, and every other document filed in a court proceeding, with certain exceptions, to be served by electronic mail. It takes effect on September 1 and is an absolute requirement for all civil litigation attorneys.

Associate Kelly Karstaedt and file clerk Henry Farber researched the rule and created a plan for the firm to effectively implement the new rules. At the lunch and learn, Kelly and Henry presented all the information and conducted a firm-wide discussion on the proposed procedures for implementing the new service by e-mail system.

Thanks for educating us, Kelly and Henry! We applaud them for their thorough research, presentation and plan for implementation. We will certainly be a more efficient, technologically up-to-date and rule-compliant firm.

## *Featured bLAWg Post: Protecting documents given to testifying experts*

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

In preparation for trial, expert witnesses are often retained and briefed based upon reports and documents provided to them from counsel. Two types of work product may be used to prepare documents and internal memorandum which are subsequently given to an expert witness: 1) fact work product, and 2) opinion work product. If memorandum prepared by a law firm in anticipation of litigation contains the attorney's opinions relating to potential theories of liabilities, references to the expert's opinions, and factual summaries of his client's records, the attorney's personal notes and records about the proposed arguments constitute protected work product. *Whealton v. Marshall, et al.*, 631 So. 2d 323, 325 (Fla. 4th DCA 1994) (holding the law firm's internal memorandum used in preparation for litigation were not discoverable work product).

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

## *Additional bLAWg Posts*

Facsimile: (904) 212-1269

[www.jimersoncobb.com](http://www.jimersoncobb.com)

[info@jimersoncobb.com](mailto:info@jimersoncobb.com)



## *Firm Contacts*

[Charles B. Jimerson, Esq. -  
Managing Partner](#)

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

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

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

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## *Client Focus*



[Planet Five Development](#)

[Group, LLC](#), is a privately held real estate firm that develops, owns, invests and manages a variety of residential commercial, retail and industrial properties.

Founded in 2003, Planet Five Development Group also provides its clients with real estate brokerage and construction management services through strategic partnerships and affiliated companies. Guided by an

**NEGATING DEFENSES OF PROCEDURAL  
UNCONSCIONABILITY IN LOAN DOCUMENTS**

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

Defaulted borrowers often attempt to argue that the waiver of defenses language included in loan documents is unconscionable and therefore unenforceable. However, for a contract to be held unenforceable under Florida law, the contract must be both procedurally and substantively unconscionable. See *Golden v. Mobile Oil Corp.*, 882 F.2d 490, 493 (11th Cir. 1989); *Gainesville Health Care Center v. Weston*, 857 So. 2d 278, 284 (Fla. 1 st DCA 2003). If a contract is found to be either procedurally or substantively conscionable, then the contract is enforceable. See *Eldridge v. Integrated Health Services, Inc.*, 805 So. 2d 982 (Fla. 2d DCA 2001)(emphasis added).

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

**WHY AND WHAT ARE BANKS PROHIBITED FROM  
DISCLOSING SUSPICIOUS ACTIVITY REPORTS (SAR) OF  
FRAUD BY FEDERAL LAW?**

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

In 1992, Congress passed the Annunzio-Wylie Anti-Money Laundering Act (the "Act") which requires banks to report suspicious activities to the appropriate federal authorities. *Cotton v. Privatebank and Trust Co.*, 235 P. Supp. 2d 809, 812 (N.D. Ill. 2002). The laudable goal of the requirements contained in the Act was to encourage banks to make such reports related to criminal activities. *Id.* In fact, the stated purpose of the Act is to:

- require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. 31 U.S.C § 5311.

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

**J&C Service Spotlight:  
Construction Law**



Not every construction dispute can be resolved amicably. Issues involving alleged construction defects, scheduling, the interpretation of contracts, specifications or drawings, or involving payment sometimes require legal intervention. When that is necessary, how effectively your interests are protected is directly affected by the quality of legal service you secure. Where disputes are inevitable, Jimerson & Cobb provides representation in arbitration, mediation, and litigation in court.

unwavering commitment to product, service, and quality, Planet Five Development Group's mantra is "excellence in everything we do."

The company is headquartered in Jacksonville but maintains offices in New York and Washington D.C.

Jimerson & Cobb is very proud and thankful to represent Planet 5 Development Group and wishes it continued success and growth.

***Results Driven***

\*Jimerson & Cobb attorneys obtained judgments against two Jacksonville area companies on behalf of a temporary staffing services provider in separate breach of contract actions.

\*Jimerson & Cobb attorneys obtained a dismissal for client wrongfully sued for bankruptcy preference action.

\*Jimerson & Cobb attorneys retained to prosecute large scale condominium construction defect lawsuit.

\*Jimerson and Cobb attorneys negotiated a reduced balance, multi-payment settlement agreement on behalf of a local small business owner in a commercial collection matter.

\*Jimerson & Cobb attorneys deposed business valuation expert in shareholder dispute arbitration.

\*Jimerson & Cobb attorneys negotiated and drafted contracts for perpetual intellectual property rights licensure of franchise.

\*Jimerson & Cobb attorney selected by Florida Bar Construction Law Committee to update Construction Jury

Whether you're an owner, a licensed Florida contractor or subcontractor, construction supplier, builder, or a design professional, avoiding and successfully litigating construction-related legal issues are crucial to your company's survival. Jimerson & Cobb diligently works with its construction industry clients to ensure they stay abreast of salient construction law issues and are taking the proper steps to protect their rights in advance of and during a construction-related dispute. Through our proactive litigation approach, the most important service we can provide is to ensure that our construction clients are devoting their energy and attention to running a profitable business, rather than wasting verve and resources anguishing over the intricacies of the oft-entangled Florida construction laws ex-post facto.

While we strive to resolve disputes through negotiation and preventive action, we specialize in vigorously representing our clients in litigation through aggressive prosecution of their construction lien claims. Our lawyers emphasize business realism and focus on reaching practical solutions in a timely manner with strict adherence to Florida's myriad of notification and filing deadlines.

The following is an overview of who Jimerson & Cobb's construction law team represents and the services we are able to provide:

*General Contractors, Subcontractors & Suppliers*

- Construction litigation (lien foreclosure and priority, prompt payment law, change order disputes, retainage disputes, surety claims, delay claims, defect claims)
- Administrative representation in licensure and permitting matters
- Construction contract drafting and review
- Interruptions and cessation of work
- Pay-when-paid clause litigation
- Change order negotiation, including scope disputes
- Property damage claims
- Warranty and punch list administration representation
- Collections and issues pertaining to payment outside of lien/bond law
- Creditors' rights in bankruptcy
- Defective construction and design claims
- Time-related damage claims including delay, acceleration, and lost productivity
- Contractually stipulated damages disputes
- Differing site condition issues
- Environmental disputes
- Construction lien noticing, recording and lien waivers/releases
- Private construction project bond claims
- Public construction project bond claims
- Minority business certification and denial appeal
- Advance payment procedures
- Construction insurance coverage disputes

*Developers/Owners (both public and private)*

- Defective construction and design claims (design errors and omissions)
- LEED building design and build
- Change order negotiation, including scope disputes
- Buyer rescission claims
- All construction litigation defense (lien foreclosure and priority, prompt payment law, change order disputes, retainage disputes, surety claims, delay claims, defect claims)

Instructions.

\*Jimerson and Cobb attorneys stopped a former employee from competing with employer client under the terms of the Non-compete Agreement executed by former employee and negotiated the payment of client's fees associated with enforcement of the Non-compete Agreement by former employee.

\*Jimerson & Cobb attorney appointed chairman of the Construction Law Committee for the Jacksonville Bar Association.

\*Jimerson & Cobb attorneys filed Motion to Dismiss action brought against large bank in Federal Court regarding frivolous constitutional allegations.

\*Jimerson & Cobb attorney presented at trade association on Asset Protection for Contractors.

\*Jimerson and Cobb attorneys obtained final summary judgment for goods delivered in favor of medical supply company client in Georgia from Defendant in Alabama using Georgia's long-arm statute.

\*Jimerson & Cobb attorneys retained to represent local developer in various real estate litigation matters.

\*Jimerson & Cobb attorneys filed Motions to Dismiss action in Southern District of Florida based upon allegations of trademark infringement, fraud in the inducement and civil conspiracy pertaining to failed music festival.

\*Jimerson & Cobb attorneys obtained ex-parte Temporary Injunction ordering escrow agent and lender to deposit \$700,000 fund into registry of Court pending action.

- Construction contract drafting and review
- Property damage claims
- Warranty and punch list administration representation
- Defective construction and design claims (individual and class action basis)
- Time related damage claims including delay, acceleration, and lost productivity
- Contractually stipulated damages disputes
- Differing site condition issues
- Environmental disputes
- Construction bonding
- Construction insurance coverage disputes

*Homebuilders*

- Defective construction and design claim defense
- Issues pertaining to payment or construction litigation
- Administrative or regulatory representation in licensure and permitting matters
- Construction contract drafting and review
- LEED building design and build
- Purchase and sale transactions or litigation
- Construction contract drafting and review
- Construction bonding
- Construction insurance coverage disputes

*Condominium Associations*

- Defective construction and design claims
- Disputes with developers and owners
- Warranty claims
- Assessment collection and delinquent unit foreclosure
- Fiduciary duty disputes and other violations of Florida Condominium Act
- Breach of Declaration of Condominium claim defense

*Sureties*

- Payment and performance bond claims
- Assist sureties, contractors and obligees in the full range of performance bond issues arising, both prior to and following default and termination, and throughout the completion process
- Indemnity and recovery litigation
- Work in conjunction with experienced design and construction consultants to evaluate work in place and to be performed, negotiating completion agreements, preparing re-let packages, monitoring completion work, applications for payment, and defense of claims
- Subrogation, delay and warranty claims

Jimerson & Cobb has the experience and knowledge necessary to help clients identify and avoid potential problems so that their construction projects proceed smoothly. Please feel free to browse our [Construction Law FAQs](#) for basics on Construction Law. For more information about our practice, or to discuss your legal concerns with a lawyer who understands construction law, [contact](#) our offices today.

\*Jimerson & Cobb attorneys negotiated and drafted closing documents for complex deed in lieu of foreclosure transaction with stipulated forbearance requirements.

\*Jimerson & Cobb attorneys deposed certified general contractor on code violations at multi-family construction project.

\*Jimerson & Cobb attorneys rewrote all direct contracts and credit contracts for materials supply and generator services company with four different divisions and scope of work.

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**CONSTRUCTION SPENDING REACHES HIGHEST LEVEL SINCE DECEMBER 2009**

According to the Associated General Contractors of America, construction spending has reached its [highest levels](#) since December of 2009.

**FULLER RULED INELIGIBLE TO RUN FOR FOURTH TERM**

Current Clerk of Courts for Duval County, Jim Fuller, ruled [ineligible to run for fourth term](#) in November's election.

**LAW SCHOOL DEFEATS FRAUD SUIT BY GRADUATES**

The attorneys behind a rash of class action suits against various law schools for fraud based on alleged claims of misrepresentations of employment numbers are now 0-2 following the July [dismissal of the suit](#) against Thomas M. Cooley Law School by a Michigan judge.

**NEW FLORIDA E-DISCOVERY RULES CONTINUE FEDERAL TREND**

Florida became the 29th state to [adopt specific electronic data discovery rules](#) for its state court. The new rules take effect September 1, 2012, and closely resemble the Federal Rules of Civil Procedure regarding electronic discovery. The Florida rules do provide greater specificity, a tighter framework and better guidelines.

**CAN EMPLOYERS ASK APPLICANTS FOR SOCIAL MEDIA LOGIN INFORMATION?**

Recently legislation has been introduced at both the federal and state levels in an attempt to prohibit prospective employers from asking potential new hires for their [personal social medial site login information](#), following an increase in the frequency of such requests.

**CONTRACTORS LINE UP FOR SHOT AT OLD FEDERAL COURTHOUSE MAKEOVER**

Fourteen construction companies have informed Jacksonville city leaders they intend to bid for the contract to [refurbish the old federal courthouse](#) in downtown Jacksonville. The project could cost as much as \$27.9 million.

**THE ART OF LEADERSHIP: BECOME A MORE EFFECTIVE LEADER IN 3 STEPS**

Follow these [three valuable steps](#) to becoming a more effective leader.

**IS THE REAL-ESTATE REBOUND FOR REAL?**

For the first time in years, the [real-estate sector is providing strength](#) in an otherwise weak economy following S&P's report that home prices in its 20-city index have risen 2.6 percent since bottoming out in January.

**HOMEBUILDER STOCKS SURGE WITH NEW SALES 50% BELOW AVERAGE**

Shares for U.S. homebuilders are appreciating at a record rate in 2012, reflecting [confidence in the housing rebound](#) from its prolonged slump, despite new home sales still approximately 50 percent below their 40-year average.

**J&C Firm News**

\*Law clerk Austin Calhoun has been approved as a Florida Certified



General Contractor (Inactive) by the Department of Business and Professional Regulation. The requirements to receive the CGC license are very tough and very thoroughly scrutinized by the DBPR and the CILB. Congratulations!!!

\*Charlie and his wife, Ashley, hosted approximately 30 young professionals in a discussion led by the Jacksonville Public Education Fund (JPEF) at their home last week. The facilitator-led discussions addressed the state of the public education system in Duval County. The goal of JPEF and these community discussions are to engage the community to create a vision for public education and put those ideas into action. For more information on the movement, visit the JPEF site [here](#).

\*J&C hosted a successful fundraising reception for Duval County Clerk of the Circuit Court candidate Ronnie Fussell on August 6. Our guests enjoyed food and drink, while learning a little bit more about our friend, Ronnie, and his campaign in our local elections.

\*Charlie and Chris have both lectured to Northeast Florida Builder's Association (NEFBA) members during a two-day CLE course on the topic of Asset Protection and Identifying Sources of Liability for Contractors.

\*Charlie Jimerson embarks on the Leadership Jacksonville retreat this weekend. We look forward to learning more about his experiences with this exciting program and sharing them with you.

\*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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**Jimerson & Cobb, P.A.**  
*Client focused. Results driven.*

Riverside Center, 701 Riverside Park Place, Suite 302, Jacksonville, FL 32204  
Telephone (904) 389-0050 | Facsimile (904) 212-1269  
[www.jimersoncobb.com](http://www.jimersoncobb.com)

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Jimerson & Cobb, P.A. | 701 Riverside Park Place | Suite 302 | Jacksonville | FL | 32204