

# DAILY REPORT

A SMART READ FOR SMART READERS



## INHOUSE

**Ann C. Moceyunas** shares the ethical lessons she brings to her role as GC of Surgical Information Systems. **Story, page 7.**

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### Newsreel

#### Appeals Court Takes on NSA Spy Case

Three federal appeals court judges struggled Tuesday over whether the National Security Agency's phone data surveillance program is an intelligence-gathering tool that makes the nation safer or an intrusive threat that endangers privacy.

The judges—all appointed by Republican presidents—expressed uncertainty about where to draw the line between legal surveillance and violations of constitutional rights in the age of terrorism.

Since 2006, the FBI has obtained orders from the secret Foreign Intelligence Surveillance Court directing phone companies to produce telephone "metadata"—outgoing phone numbers dialed and numbers from incoming calls—to the government.

The NSA consolidates the records into a searchable database in the hunt for terror suspects.

During the hour-and-a-half hearing, Judge David Sentelle questioned whether it is an invasion of privacy if the NSA simply collects the data, stopping short of using it.

Is it not an invasion "with mere collection?" asked Sentelle.

It is not, replied Justice Department lawyer H. Thomas Byron.

Arguing against the NSA program, activist attorney Larry Klayman disputed Byron, telling Judge Janice Rogers Brown that "collection is enough" to justify pursuing the lawsuit against the government.

It is Klayman's legal burden to show that he has been harmed by the program—an issue that threatens to derail his lawsuit and which clearly frustrated him during the court proceeding. The issue comes down to Klayman having to prove that his phone company was a participant in the NSA surveillance. Klayman is a Verizon Wireless customer, but the government has acknowledged only that a separate Verizon company turned over records to the government.

—The Associated Press

**6 HANDS OFF THE HOLY LAND**  
U.S. Solicitor General warns U.S. Supreme Court not to weigh in on whether Jerusalem is Israel.

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**1B OPINIONS**  
Read summaries of recent opinions from Georgia's high court and Court of Appeals.



Speaking at a panel at an African arbitration conference, Edward Fashole-Luke, left, of Botswana and Elkem Nutlafa Kuenyehia of Ghana promoted their countries as ripe for business.

## Africa: The Next Frontier for Business Arbitration

MEREDITH HOBBS | mhobbs@alm.com

AT A CONFERENCE Monday on African arbitration, participants from Africa said that several countries on the continent are developing the legal infrastructure and local capa-

bilities for commercial arbitrations, and they encouraged U.S. investment in their countries.

The conference, held at the Buckhead Marriott, attracted about 100 people from seven sub-Saharan African countries—Botswana, Ghana, See **AFRICA**, page 4

## Jury Gives \$550K to Ex-Partner, Returns \$105K to Law Firm

GREG LAND | gland@alm.com

MORE LITIGATION is expected in a dispute over an Atlanta law firm's billing and bonuses and a partner's sudden exit from a Texas office. In September, a Fulton

County jury said Helms & Greene should pay the Texas lawyer more than \$550,000 in bonuses he claimed as the managing partner of the firm's Dallas office before leaving with the bulk of the office's lawyers in tow. The jury also said the lawyer, Kirk Willis, is entitled to attorney fees. Willis' lawyer, Douglas Kertscher, said he has filed an initial request seeking \$216,000.

The jury also awarded Helms & Greene more than \$105,000 for counterclaims it filed against Willis, and a lawyer for the firm said it was considering an appeal.

"Kirk was gratified that See **BREACH**, page 5



Doug Kertscher said the jury awarded his client, Dallas attorney Kirk Willis, "everything we asked for."

### ON THE MOVE

## Jones Day Recruits Williams from Womble Carlyle

MEREDITH HOBBS | mhobbs@alm.com

JONES DAY has landed former federal prosecutor Jack Williams from Womble Carlyle Sandridge & Rice. Williams joined Jones Day as a partner in the business and tort litigation practice.

"Having known and worked with Jack for many years going back to our federal prosecutor days, I'm thrilled that he has chosen to join the firm," said Richard Deane Jr., the partner-in-charge of Jones Day's Atlanta office, in an announcement.

Williams was an assistant U.S. attorney for the Northern District of Georgia from 1995 to 2000, where he prosecuted business crime. Deane was U.S. attorney for the Northern District from 1998

See **MOVE**, page 2



Jack Williams is a partner in Jones Day's business and tort litigation practice.





Mark Zamora, Dena Deyagi and Roger W. Orlando

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Volume 125 Number 218

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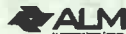


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**AFRICA**, from page 1

Nigeria, Cameroon, Kenya, South Africa and Rwanda—as well as Europe, China and India. It was organized by the Atlanta International Arbitration Society (AIAS) as part of its continuing push to put Atlanta on the map as an arbitral venue, or seat.

As African economies heat up, they are attracting more foreign investment—which means more potential contract disputes and arbitrations. In Ghana, foreign direct investment has tripled in the last 10 years, international firms have opened offices and local firms have “scaled up,” said Elikem Nutifafa Kuenyehia of Oxford & Beaufort in Accra.

“When you talk about Africa and business, the ‘corruption’ word always comes up,” Kuenyehia said, but he downplayed concerns, saying that the courts operate properly in his country.

The perception of corruption can be worse than the reality, said Edward Fashole-Luke II from Luke & Associates in Botswana.

Botswana was listed as the least corrupt country in Africa in Transparency International's most recent Corruption Perceptions Index. Noting that Botswana has a credit rating on par with Japan, Fashole-Luke questioned why his country has not attracted more foreign investment.

Fashole-Luke cited a World Bank report that seven of the 10 fastest-growing economies in the world are in Africa, often stimulated by government infrastructure projects for transportation, electricity and agricultural development.

“There are phenomenal returns to be made,” he said. “The Chinese are in Africa in a very big way,” he said, but U.S. investment has lagged. “The time has now come for our friends and partners in the United States to come do business in Africa.”

“America has always been quite liked and admired in Africa, but America has ignored Africa, perhaps more than they should have,” said Phillip Alikor, an arbitrator with Tanfield Chambers in London who is from Kenya. “It is our preference to deal with people we know and like,” he said.

He added that some high-profile Chinese road and stadium projects have run over budget, missed deadlines and in some instances been of questionable construction quality.

African disputes historically have been arbitrated in London and Paris, reflecting the continent's colonial history, but new options for seats, both in Africa and elsewhere, are proliferating.

Government contracts are starting to specify local arbitral seats, as countries develop arbitration capabilities, Alikor said. There already are some well-established regional venues, he added, such as Mauritius, which in 2011 opened the Mauritius International Court of Arbitration in partnership with the London Court of International Arbitration.

An African government or state-owned company contracting with a U.S. company will not locate an arbitration in the U.S. because it's not neutral ground, said one attendee, James Lalumiere, the president of Project Development International in Dunedin, Fla. He has done infrastructure and public services deals with public entities in Africa.

Instead, African entities in anglophone

countries generally choose London for arbitrations because it's neutral and there is history and familiarity, Lalumiere said. If his company is funding a deal, he said, it has more leverage in choosing the seat. “If it's my money, I'm going to be more assertive—and they're going to be more receptive,” he said.

Lalumiere recently worked on a deal to supply 125 firetrucks to Ghana. The Ghanaian officials wanted to locate any potential arbitration in Ghana, but he persuaded them to compromise on the London Court of International Arbitration with UNCITRAL rules (model rules that are widely used internationally).



Phillip Alikor of Tanfield Chambers says Americans lag the Chinese for presence in Africa.



ATIAS President Glenn Hendrix said Atlantans could host Chinese-African arbitrations.

“If I've got to compromise, I trust London, too,” he said.

On the other hand, Atlanta potentially could be a seat for a Chinese company in a dispute with an African entity, said Glenn Hendrix of Arnall Golden Gregory, who is ATIAS's president.

African arbitration business is one of many options that AIAS is exploring, said Whit Engle, an independent arbitrator and AIAS board member who helped organize the conference. Asia also presents possibilities. Engle said Korean is the third-most commonly spoken language in Georgia after English and Spanish, noting the plethora of Korean car and car-parts makers in the Southeast.

AIAS hopes to attract commercial arbitrations from all over the world, he said. “We want to make Atlanta the best place to resolve disputes, regardless of where they originated.”