

DAILY REPORT

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

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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 the jury found for him right down to the penny of everything we asked for," said Kertscher, a partner with Hill, Kertscher & Wharton.

Helms & Greene partner Victoria Helms defended the firm at trial, and her partner Steven Greene recently entered an appearance in the case. Greene said that it was too early to



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

say whether the firm would appeal the jury's verdict.

Helms & Greene had filed counterclaims including breach of contract against Willis.

"Obviously we're disappointed," said Greene, asserting that Willis "ran his own clandestine office out of our firm."

Greene added that his side believes Willis had breached his contract,

"but obviously the jury doesn't agree with us."

Greene noted that his firm has appealed some of Fulton County Superior Judge Kelly Lee Ellerbe's pretrial rulings and said he hoped the appellate court might offer some relief.

"Judge Ellerbe's a great judge, but we're interested in seeing what the Court of Appeals has to say ... about the duty of loyalty as it applies to a

lawyer and what the appropriate remedies are,” Greene said.

According to Kertscher and court filings, Helms & Greene recruited Willis in 2009 to manage the firm’s new Dallas office.

Willis was a “seasoned lawyer,” according to defense filings, and Kertscher described him as “brilliant trial lawyer” who in two and half years expanded the Dallas shop to include 24 attorneys. It was by far the firm’s biggest office, he said. The firm currently has lawyers in Atlanta—billing more than \$300,000 a month for a practice that largely consisted of insurance defense cases.

Willis was on salary, but he was also supposed to collect 20 percent of any attorney fees for work he originated that was performed in other offices, and to a percentage of the Dallas office’s profits, Kertscher said.

“But there was a big problem,” said Kertscher. He said the Helms & Greene home office, which was to handle all billings and receivables, was unable to handle that task.

“They couldn’t get the billing codes right, and that’s very important in insurance defense work,” Kertscher said.

Over time, he said, receivables rose to more than \$2 million, of which a substantial portion was owed to Willis.

Some of Willis’ biggest clients were threatening to stop sending business to the firm due to the record-keeping problems, Kertscher said, and Willis grew frustrated and “decided to make preparations to leave in a responsible way to protect the clients,” scouting out new office space and lining up equipment to leave.

According to the law firm’s portion of the pretrial order, Willis began breaching his duties to the firm “at least as early as 2011,” and “secretly engaged in another business” and solicited employees of the firm’s Dallas office to leave the firm with him and directed them to assist him in starting

up a new firm—while they were all still employed by Helms & Greene.”

On Aug. 1, 2012, Willis sent an email and fax to the firm’s headquarters stating that he was resigning effective immediately.

“The next day,” the defense account said, “he moved out of the firm’s Dallas office and began moving the firm’s files out of the office. Shortly thereafter, he directed the attorneys in the Dallas office to leave the office, and begin working in a temporary space of [Willis’] competing law firm.”

Kertscher confirmed that Willis had started his own firm, Kirk Willis LLC, while employed at Helms & Greene.



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—Douglas Kertscher,
plaintiff’s attorney

“Kirk is African-American, and he’d set up a minority-owned firm to try to attract business from Texas government entities,” said Kertscher. “The proposals listed the lawyers at Helms & Greene as who he’d be working with.”

The firm Willis set up, The Willis Law Group, currently has 32 attorneys, according its website.

When Willis left, Kertscher said, Helms & Green still owed him his bonuses on some \$2 million in receivables.

“Helms & Greene immediately took the position that they owe him zero,” said Kertscher.

On Aug. 30, 2012, Kertscher filed a breach of contract suit in Fulton County Superior Court. Helms &

Greene filed counterclaims including conversion, breach of contract, breach of fiduciary duty, tortious interference with business relationship and violations of the Uniform Deceptive Trade Practices Act and the Fair Business Practices Act.

In June 2014, Ellerbe dismissed several of the law firm’s counterclaims but left alive some of those alleging breach of fiduciary duty and breach of contract.

During a four-day trial, during which Kertscher was assisted by firm associate Julie Burke, he said key evidence involved conflicting figures by the parties.

“There was a mathematical difference early in the trial, and it appeared the jury was trying to figure it out,” said Kertscher. Using a large notepad to perform the calculations, Kertscher said he was able to show that the firm had double-counted the payments it had made to Willis.

“That’s when the clouds parted and the jury understood,” he said. “It was very memorable to me as a trial lawyer: You could hear an audible gasp from the jury. It’s very rare to have one of those ‘Perry Mason’ moments.”

During closing arguments, Kertscher said, the law firm asked the jury to award Helms & Greene \$380,000 and to award Willis nothing.

After four and half hours, the jury returned a verdict granting Willis \$551,183, and awarding Helms & Greene \$105,750 on its counterclaim, for a total award of \$445,433.

The case is *Willis v. Helms & Greene*, No. 2012CV220798. ☞