

# TEXAS LAWYER

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## LITIGATOR of the WEEK

### Non-Profit Gets a Post-Trial Surprise From Jury Forewoman

Robert Kruckemeyer represents The Greater Houston Football Coaches Association, a non-profit, which won a favorable final judgment on May 7 after defending against a breach-of-contract suit and pursuing a counterclaim.

The outcome pleased Kruckemeyer, a Houston solo, who had to overcome testimony from one of the non-profit's former executives who testified for and sided with the plaintiffs. But what tickled Kruckemeyer even more: Denise Nestel, the jury forewoman and a litigation partner in Houston's Porter Hedges, called him after her panel issued a favorable (but not high-dollar because the damages had not been high) verdict and asked if she could to make a \$1,000 contribution to GHFCA.

"That's the first time that ever happened," says Kruckemeyer, about the post-trial munificence of the forewoman and litigator.

Nestel says she liked the non-profit's approach and that Kruckemeyer impressed her with his ability to "steal the thunder" of the plaintiffs' use of the former GHFCA executive testimony by "identifying and neutralizing" the evidence but, at the same time, "without defaming" the plaintiffs' witness. Nestel says she believes Kruckemeyer also helped craft a strategically useful jury charge for his client. The charge, Nestel says, clarified a case that could have seemed "convoluted" to a jury.

In a Sept. 21, 2011, filed petition in the 151st District Court, the plaintiffs, Terry Burdick, a videographer, and his companies, stated among other allegations that the non-profit,



**Robert Kruckemeyer**

after working with him for nearly a decade to create events where high school athletes could meet, develop and display skills for prospective future coaches, had tried to cut him out of the revenue stream from those ventures. In the petition against GHFCA, the clients alleged breach of contract, among other things, and sought damages and attorney's fees.

Robert Collier, a partner in Houston's Collier Hudson, who represents Burdick, did not return a call for this story.

GHFCA denied the allegations and in an amended counterclaim filed March 29, 2011, alleged that Burdick had made false representations about money and asserted breach of contract claims.

The jury issued a verdict on March 28, 2012, after three weeks of trial and less than one full day of deliberations. The panel decided in response to 33 questions posed in a 43-page charge that GHFCA and Burdick had not entered into a contract nearly 10 years earlier, and Burdick committed fraud against GHFCA for which the non-profit should receive \$7,000 in damages. The jury did not award the non-profit exemplary damages that it had sought.

On April 5, the plaintiffs filed a motion asking the judge to disregard the jury's finding of fraud, saying there was no evidence to support that finding.

In the May 7 final judgment, 151st District Judge Michael Engelhart ordered Burdick to pay GHFCA the \$7,000. Add to that: Nestel's extra \$1,000 contribution.

— MIRIAM ROZEN