

CAUSE NO. _____

<p>DAWN NETTLES <i>Petitioner</i></p> <p>V.</p> <p>THE TEXAS LOTTERY COMMISSION and GTECH CORPORATION, Respondents</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE DISTRICT COURT OF</p> <p>TRAVIS COUNTY, TEXAS</p> <p>_____ JUDICIAL DISTRICT</p>
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VERIFIED PETITION TO TAKE DEPOSITIONS BEFORE SUIT

Petitioner, Dawn Nettles (“Nettles”), asks the Court for permission to take two depositions by oral examination to obtain testimony to investigate a potential claim, as allowed by Texas Rule of Civil Procedure 202.1(b).

Petitioner seeks the depositions of a corporate representative of the Texas Lottery Commission (“TLC”), and GTECH Corporation (“GTECH”) to investigate a potential claim or suit.

I. INTRODUCTION

1. Petitioner is Dawn Nettles, a resident of Garland, Dallas County, Texas.
2. The following entities are sought to be deposed:
 - a. Texas Lottery Commission
 - b. GTECH Corporation

3. The Texas Lottery Commission is an agency created by the Texas legislature with its principal office in Austin, Travis County, Texas.

4. GTECH Corporation is a Delaware corporation that is authorized to do business in Texas and maintains a principal office in Austin, Travis County, Texas.

II. BACKGROUND

5. Petitioner seeks to take the deposition of representatives of the Texas Lottery Commission and GTECH Corporation to investigate a potential claim by Petitioner.

6. This Petition is filed in Austin, Travis County, Texas where the Texas Lottery Commission and GTECH Corporation maintain their principal offices in Texas.

7. The voters of Texas approved an amendment to the Texas Constitution in November 1991 authorizing lottery sales in Texas. The Texas legislature created the Texas Lottery Commission to manage the operation of the Texas Lottery.

8. In December of 2010, the Texas Lottery Commission awarded a nine-year contract to GTECH Corporation to operate the Texas Lottery. In Paragraph 3.71 of the GTECH contract, the Lottery Commission set a high standard of conduct for GTECH. Specifically, the contract provides, in relevant part, as follows:

“The Texas Lottery is an extremely sensitive enterprise because its success depends on maintaining the public trust by protecting and ensuring the security of Lottery Products. The Texas Lottery incorporates the highest standards of security and integrity in the management and sale of entertaining lottery products, and lottery vendors are held to the same standards. Therefore, it is essential that operation of the Texas Lottery, and the operation of other enterprises which would be linked to it in the public mind, **avoid not only impropriety, but also the appearance of impropriety**. Because of this, GTECH shall:

- (a) **Offer goods and services only of the highest quality and standards.**
- (b) **Use its best efforts to prevent the industry from becoming embroiled in unfavorable publicity.**

....

(d) Avoid activities, operations, and practices that could be interpreted as improper and cause embarrassment to the Texas Lottery and/or to the industry.”

(Emphasis added).

9. In paragraph 3.17 of its contract, the Texas Lottery Commission retained the right to terminate its contract if “GTECH engages in any conduct that results in a negative public impression including, but not limited to, creating even an appearance of impropriety with respect to the Texas Lottery, Texas Lottery games, GTECH, or the State of Texas.”

10. Beginning in September of 2014, GTECH, as operator of the Texas Lottery, began selling to Texas citizens an instant scratch-off game, Game #1592, known as “Fun 5’s”

11. The Fun 5’s scratch-off card contains five games as is illustrated below:

\$5

TEXAS LOTTERY

Over 200,000 \$50 Winners!

FUN 5's

GAME 1

Reveal two "5" symbols, win the PRIZE. Reveal three "5" symbols, win 5 times the PRIZE.

Reveal three matching prize amounts, win that amount. Reveal two matching prize amounts and a "5" symbol, win 5 times that amount.

GAME 2



GAME 3 Reveal a "5" symbol, win the PRIZE for that symbol.

PRIZE PRIZE PRIZE PRIZE PRIZE

Over \$50,000,000 in Prizes!

GAME 4 Reveal three "5" symbols in any one ROW across, win PRIZE for that ROW. Reveal two "5" symbols and a Star "★" symbol in any one ROW across, win 5 times the PRIZE for that ROW.

ROW 1	\$	\$	\$	PRIZE
ROW 2	\$	\$	\$	PRIZE
ROW 3	\$	\$	\$	PRIZE
ROW 4	\$	\$	\$	PRIZE
ROW 5	\$	\$	\$	PRIZE

WIN UP TO \$100,000!

★


5X BOX PRIZE

GAME 5 Reveal three "5" symbols in any one row, column or diagonal, win PRIZE in PRIZE box. Reveal a Money Bag "5" symbol in the 5X BOX, win 5 times that PRIZE.

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12. The instructions for Games 1, 2, 4, and 5 contain two sentences that describe two different ways to win money in each of the games. The instructions for Game 3 are contained in one sentence that describes the one way to win money in that game. In a predetermined pattern, all game instruction sentences consistently begin with the word “Reveal”, and 4 out of the 5 games contain two sentences that provide the instruction for a second way to win the game.

13. The instructions for Game 5 state as follows:

Reveal three “5” symbols in any one row, column or diagonal, win PRIZE in PRIZE box. Reveal a Money Bag “” symbol in the 5X BOX, win 5 times that PRIZE.

14. Petitioner purchased a number of Fun 5’s tickets. Some of the tickets purchased by Petitioner are winning tickets based on common sentence construction and the plain meaning of the instructions printed in the second sentence of Game 5. Specifically, some of Petitioner’s tickets revealed a Money Bag symbol which should have entitled Petitioner to win 5 times the PRIZE. However, when Petitioner attempted to cash the winning tickets at a Texas Lottery instant ticket validation computer terminal, she received a notification that each of her winning tickets was “not a winner”.

15. Petitioner is also the publisher of the website www.lottoreport.com. She received several hundred phone calls and emails from angry Texas consumers who also believed they had won five times the PRIZE in Game 5 because their tickets revealed a Money Bag symbol. Many callers expressed the feeling that they were being cheated by the Texas Lottery when their tickets were deemed “not a winner” by the Texas Lottery. A great deal of negative publicity appeared both in broadcast news and in newspapers around the state of Texas and nationally.

16. In addition to the above, Petitioner purchased a number of Fun 5’s tickets that revealed three “5” symbols in one row, column, or diagonal in Game 5. However, none of those

tickets also revealed a Money Bag symbol. This violates the official Rules for the Fun 5's game that are published in the Texas Register and which provide, in relevant part, as follows:

“As dictated by the prize structure, the “MONEY BAG” Play Symbol **will appear** in the 5X Box when the player has won by getting three (3) “5” Play Symbols in a single row, column, or diagonal.” (Emphasis added).

17. A number of tickets purchased by Petitioner contain three “5” symbols in single row, column, or diagonal but the Money Bag symbol does not appear on those winning tickets. In other words, the tickets sold by the Texas Lottery do not comply with the official Rules of Game 5 that are published in the Texas Register.

III. REQUEST TO DEPOSE

18. Petitioner asks the Court to issue an order authorizing her to examine a representative of the Texas Lottery Commission and GTECH Corporation by oral deposition.

19. Petitioner expects to elicit the following testimony from the witnesses:

- a. The identity of the person or persons who developed, drafted and approved the instructions for Game 5 of the Fun 5's game;
- b. What the Lottery Commission and GTECH Corporation contend was meant by the language of the instructions for Game 5;
- c. Whether alternative language was considered for the instructions for Game 5 and, if so, what was the alternative language;
- d. Whether any attempts were made to determine whether reasonable minds might differ as to the meaning of the instructions for Game 5;

- e. Whether there were any internal discussions or external discussions between the Lottery Commission and GTECH Corporation concerning the potential for confusion over the instructions by players of the Fun 5's game.
- f. The identity of the person or persons who programmed the Texas Lottery computers to deem a ticket with a Money Bag symbol to be "not a winner";
- g. The identity of the person or person who printed tickets with three "5" symbols in single row, column, or diagonal but without a Money Bag symbol;
- h. How the Lottery Commission and GTECH Corporation interpret the meaning of the Programmed Game Parameters Section 2.2 U. as published in the Texas Register.
- i. Whether the Texas Lottery Commission has received complaints regarding the Fun 5's Game and, if so, what is the nature of the complaints and the approximate number of consumers who have expressed those complaints;
- j. Whether members of the Texas legislature have communicated with the Texas Lottery Commission regarding complaints they have received by their constituents regarding the Fun 5's Game and, if so, what is the nature of the complaints and the approximate number of legislators who have communicated those complaints;
- k. What communications have taken place between GTECH and the Texas Lottery Commission regarding the meaning of the language in Game 5;
- l. Whether the Lottery Commission has considered, is considering or has, in fact, withdrawn the Fun 5's Game from the marketplace;

m. Whether the Lottery Commission has considered, is considering, or has, in fact, closed the Fun 5's Game.

20. The likely benefit of allowing the petitioner to take the requested depositions to investigate a potential claim outweighs the burden or expense of the procedure. By way of example, the Texas Lottery Commission executed contracts in 2012 with Scientific Games International, Inc., Pollard Bank Note and GTECH Printing for instant ticket manufacturing and services. Petitioner could sue those three companies, GTECH Corporation, and the Lottery Commission to learn the identity of the persons or entities responsible for drafting the language in question, interpreting the language, creating tickets that do not match the official game rules, and creating the computer programs that rejected winning tickets as losers. Someone has created the "appearance of impropriety", produced an instant game ticket that is not of the "highest quality", caused the Texas Lottery to be "embroiled in unfavorable publicity" and conducted operations that "cause embarrassment to the Texas Lottery", all in contravention of the high standard of conduct required by Paragraph 3.71 of the GTECH contract. Whether the persons responsible for these breaches of the high standards of conduct are employees of GTECH, the Texas Lottery Commission, one of the three subcontractors responsible for printing and servicing the tickets, or some combination of all five is unknown to Petitioner.

21. Instead of suing five defendants, Petitioner proposes to take the two requested depositions to determine which party or parties are responsible. In addition, undersigned counsel for Petitioner represent several hundred Texas consumers who are similarly situated to Petitioner and who also need answers to the questions raised by Petitioner. The benefit of allowing Petitioner and her counsel to proceed with the two requested depositions far outweighs the burden or expense of the procedure.

IV. HEARING

22. Rule 202.3(a) requires that the Court hold a hearing on this petition after it is properly served on the relevant entities.

V. PRAYER

23. For the reasons stated herein, Petitioner, Dawn Nettles, asks the Court to set this petition for hearing and, after the hearing, to order the depositions of the Texas Lottery Commission, and GTECH Corporation.

VERIFICATION

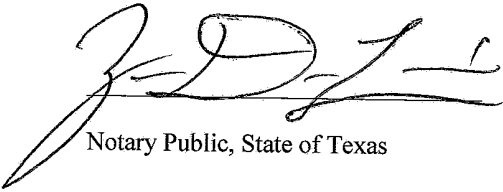
STATE OF TEXAS §
DALLAS COUNTY §

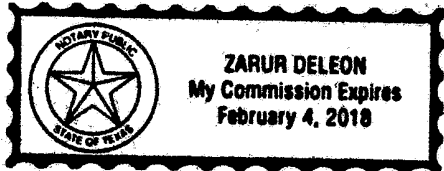
Before me, the undersigned notary, on this day personally appeared Dawn Nettles, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

“My name is Dawn Nettles. I am capable of making this verification. I have read the above Verified Petition to Take Depositions before Suit. The facts stated in it are within my personal knowledge and are true and correct.”

Dawn Nettles
Dawn Nettles

Subscribed and sworn to before me on the 15 day of October, 2014.


Notary Public, State of Texas



Respectfully submitted,

LAGARDE LAW FIRM, P.C.



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CO-COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that on the 16th day of October, 2014, I served a copy of this Verified Petition to Take Depositions Before Suit on the respondents listed below by certified U.S. Mail, return receipt requested, as follows:

- a. **Certified Mail RRR**
Texas Lottery Commission
c/o Gary Grief, Executive Director
611 E. 6th Street
Austin, TX 78701

- b. **Certified Mail RRR**
GTECH Corporation
c/o Corporation Service Company, Registered Agent
211 E. 7th Street, Suite 620
Austin, TX 78701



RICHARD L. LAGARDE