

CAUSE NO. DC-14-14838

DAWN NETTLES,
Plaintiff,

V.

GTECH CORPORATION
AND THE TEXAS LOTTERY COMMISSION,
Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

160TH JUDICIAL DISTRICT

**DAWN NETTLES' RESPONSE TO GTECH'S
FIRST AMENDED PLEA TO THE JURISDICTION**

Plaintiff, Dawn Nettles, asks the Court to overrule GTECH Corporation's ["GTECH's"] First Amended Plea to the Jurisdiction. A memorandum in support of this response is attached hereto.

Respectfully submitted,

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**PLAINTIFF’S MEMORANDUM IN SUPPORT OF HER RESPONSE
TO GTECH’S FIRST AMENDED PLEA TO THE JURISDICTION**

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I. Summary of Arguments

GTECH, a private contractor, argues that it is immune from suit under the doctrine of “derivative immunity”. For the reasons set forth below, Ms. Nettles asks the court to overrule GTECH’s plea to the jurisdiction.

A. GTECH was an independent contractor, not an employee of the TLC.

In both its Lottery Operations Contract and its Instant Ticket Manufacturing Contract with the TLC, GTECH agreed that it would act as an “independent contractor” and not as an “employee” or “agent” of the TLC.

B. GTECH exercised “independent discretion” so it is not entitled to “derivative immunity”.

The Texas Supreme Court has made it clear that "private parties exercising independent discretion are not entitled to sovereign immunity." *Brown & Gay Eng'g, Inc. v. Olivares*, 461 S.W.3d 117, 124 (Tex. 2015). Ms. Nettles’ allegations make it clear that GTECH exercised independent discretion when it formulated the misleading and deceptive language used in the instructions for the Fun 5’s scratch-off tickets. Therefore, GTECH is not immune from suit under the doctrine of “derivative immunity”.

C. The fact that GTECH’s work was subject to approval by the TLC does not give GTECH immunity from suit.

In the *Brown & Gay* opinion, *supra*, the private contractor’s work was subject to approval by the Toll Road Authority. The Supreme Court made it clear that the private

contractor was not entitled to sovereign immunity merely because the contractor's work was subject to approval by the government agency. Similarly, in this case, the fact that GTECH's working papers were subject to approval by the TLC does not extend sovereign immunity to GTECH.

II. The Applicable Legal Burden

A plea to the jurisdiction is a dilatory plea used to defeat a cause of action without regard to whether the claims asserted have merit. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). The plea challenges the trial court's subject matter jurisdiction. *Id.*; see *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999).

The plaintiff has the initial burden to plead facts affirmatively showing that the trial court has jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993); *Univ. of N. Tex. v. Harvey*, 124 S.W.3d 216, 220 (Tex. App.--Fort Worth 2003, *pet. denied*). Courts are to construe the pleadings liberally in favor of the pleader, look to the pleader's intent, and accept as true the factual allegations in the pleadings. See *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004). If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court's jurisdiction, but do not affirmatively demonstrate incurable defects in jurisdiction, the plaintiff should be afforded the opportunity to amend its pleadings. *Id.* at 226-27.

Where the plea to the jurisdiction challenges the existence of jurisdictional facts, courts consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised, even when the evidence implicates the merits of the cause of action.

Id. at 227; *Blue*, 34 S.W.3d at 555; see *City of Waco v. Kirwan*, 298 S.W.3d 618, 622 (Tex. 2009).

A review of a plea to the jurisdiction challenging the existence of jurisdictional facts mirrors that of a traditional motion for summary judgment. *Miranda*, 133 S.W.3d at 228. The defendant is required to meet the summary judgment standard of proof for its assertion that the trial court lacks jurisdiction. *Id.* Once the defendant meets its burden, the plaintiff is then required to show that there is a disputed material fact regarding the jurisdictional issue. *Id.* If the evidence creates a fact question regarding jurisdiction, the trial court must deny the plea to the jurisdiction and leave its resolution to the fact finder. *Id.* at 227-28. But, if the evidence is undisputed or fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea to the jurisdiction as a matter of law. *Id.* at 228. In considering this evidence, courts "take as true all evidence favorable to the non-movant" and "indulge every reasonable inference and resolve any doubts in the non-movant's favor." *Id.*

III. The Applicable Substantive Law

Contractors and agents acting within the scope of their "employment" for the government generally have derivative sovereign immunity. *Butters v. Vance Int'l, Inc.*, 225 F.3d 462, 466 (4th Cir. 2000); see *Yearsley v. W. A. Ross Constr. Co.*, 309 U.S. 18, 20-21, 60 S. Ct. 413, 84 L. Ed. 554 (1940) (noting that "there is no liability on the part of the contractor for executing [the] will [of Congress]").

However, the Texas Supreme Court has held that a government contractor "is not entitled to sovereign immunity protection unless it can demonstrate its actions were actions of the [governmental entity], executed subject to the control of the [governmental entity]." *K.D.F.*

v. Rex, 878 S.W.2d 589, 597 (Tex. 1994). In other words, "private parties exercising independent discretion are not entitled to sovereign immunity." *Brown & Gay Eng'g, Inc. v. Olivares*, 461 S.W.3d 117, 124 (Tex. 2015) (citing *K.D.F.*, 878 S.W.2d at 597).

The Texas Supreme Court, in *Brown & Gay*, recently considered the scope of derivative immunity for government contractors. *See id.* There, the plaintiff claimed that Brown & Gay, a government contractor, negligently designed and constructed a roadway, thereby causing a fatal accident. *Id.* at 121. Brown & Gay argued that it was entitled to derivative immunity as an "employee" of the Fort Bend County Toll Road Authority (the "Authority"), the governmental entity that issued the contract. *Id.* at 120 (citing *Tex. Adjutant General's Office v. Ngakoue*, 408 S.W.3d 350, 356 (Tex. 2013) (explaining that a suit against a government official acting in an official capacity is "merely another way of pleading an action against the entity of which the official is an agent")). The trial court agreed with Brown & Gay and dismissed the case, but the Fourteenth Court of Appeals reversed, holding that Brown & Gay was not entitled to immunity because it was an independent contractor, rather than an employee, of the Authority. *Id.* The Texas Supreme Court affirmed the court of appeals' decision. *Id.*

The Supreme Court first reviewed federal case law establishing that derivative immunity is extended to private contractors "only in limited circumstances". The Court noted that, in each of the cases examined by the Court, "the complained-of conduct for which the contractor was immune was effectively attributed to the government. That is, the alleged cause of the injury was not the independent action of the contractor, but the action taken by the government through the contractor." *Id.* at 125. In *Brown & Gay*, on the other hand, the plaintiffs did not complain of harm caused by Brown & Gay's "implementing the Authority's specifications or

following any specific government directions or orders," nor did they complain about the decision to build the roadway at issue or "the mere fact of its existence." *Id.* Instead, the plaintiffs argued that Brown & Gay was "independently negligent in designing the signs and traffic layouts" for the roadway. *Id.* Thus, the Texas Supreme Court rejected Brown & Gay's "contention that it is entitled to share in the Authority's sovereign immunity solely because the Authority was statutorily authorized to engage Brown & Gay's services and would have been immune had it performed those services itself." *Id.* at 127.

The *Brown & Gay* Court also noted that the policy rationales underlying the doctrine of sovereign immunity would not be advanced by affording immunity to private contractors. The Court explained that sovereign immunity is "designed to guard against the 'unforeseen expenditures' associated with the government's defending lawsuits and paying judgments 'that could hamper government functions' by diverting funds from their allocated purposes," but "[i]mmunizing a private contractor in no way furthers this rationale." *Brown & Gay Eng'g, Inc. v. Olivares*, 461 S.W.3d 117, 123 (Tex. 2015). The Court explained:

[e]ven if holding a private party liable for its own improvident actions in performing a government contract indirectly leads to higher overall costs to government entities in engaging private contractors, those costs will be reflected in the negotiated contract price. This allows the government to plan spending on the project with reasonable accuracy.

Id.

IV. Argument

A. *GTECH was an independent contractor, not an employee of the TLC.*

In the *Brown & Gay* case, the appellate court found that the private contractor was not entitled to “derivative immunity” because it was an “independent contractor”, not an “employee” or “agent” of the governmental entity.

Similarly, in this case GTECH’s contracts with the TLC expressly provide that GTECH is to act as an “independent contractor” and not as an “employee” or “agent” of the TLC.

On December 10, 2014, GTECH and the TLC executed a “Contract for Lottery Operations and Services” (“Operations Contract”).¹ The Operations Contract gives GTECH the exclusive right to operate the Texas Lottery through the year 2020.² The Operations Contract is a matter of public record and can be accessed on the TLC’s website.³

Paragraph 3.8 of GTECH’s Operations Contract describes the relationship of the parties as follows:

GTECH and the Texas Lottery agree and understand that GTECH shall render the goods, services and requirements under this Contract as an independent contractor, and nothing contained in the Contract will be construed to create or imply a joint venture, partnership, employer/employee relationship, principal-agent relationship or any other relationship between the parties.⁴

¹ Plaintiff’s Third Amended Petition at ¶ 12.

² *Id.*

³<http://txlottery.org/export/sites/lottery/Documents/procurement/RFP2011/Lottery%20Operations%20and%20Services%20Contract.pdf>

⁴ Plaintiff’s Third Amended Petition at ¶ 14.

The TLC also gave three private companies the responsibility for developing and manufacturing instant scratch-off tickets.⁵ One of those companies, GTECH Printing Corporation, entered into a “Contract for Instant Ticket Manufacturing and Services” (“Instant Ticket Contract”) with the TLC in August of 2012.⁶ The Instant Ticket Contract is a matter of public record and can be accessed at the Texas Lottery Commission’s website.⁷ Subsequent to entering into the Instant Ticket Contract, GTECH Printing Corporation was merged into GTECH Corporation which is now the successor in interest to the rights and obligations of GTECH Printing Corporation under the Instant Ticket Contract.⁸

At page 2 of the Instant Ticket Contract, GTECH and the TLC agreed that GTECH would provide its services under the contract “as an independent contractor and not as an employee or agent of the TLC....”⁹

In summary, GTECH is not an employee or agent of the TLC. It is an independent contractor. Therefore, it is not entitled to assert “derivative immunity” as an “employee” or “agent” of the TLC.

B. Because GTECH exercised “independent discretion”, it is not entitled to “derivative immunity”.

The Supreme Court has made it clear that "private parties exercising independent discretion are not entitled to sovereign immunity." *Brown & Gay Eng'g, Inc. v. Olivares*, 461 S.W.3d 117, 124 (Tex. 2015). The allegations in Ms. Nettles’ Third Amended Petition as well as

⁵ The three private companies are GTECH Printing Corporation, Scientific Games International, Inc., and Pollard Banknote Ltd. See Plaintiff’s Third Amended Petition at ¶ 19.

⁶ Plaintiff’s Third Amended Petition at ¶ 19.

⁷http://www.txlottery.org/export/sites/lottery/Documents/procurement/instant_contract/GPC_Executed_Contract.pdf.

⁸ Plaintiff’s Third Amended Petition at ¶ 19.

⁹ Plaintiff’s Third Amended Petition at ¶ 23.

the jurisdictional evidence make it clear that GTECH exercised “independent discretion” when it formulated the language printed on the Fun 5’s tickets.

In March of 2013, GTECH made a presentation to the TLC and provided examples of GTECH scratch-off games available for sale to the TLC.¹⁰ One of those games was known as the “Fun 5’s” game. GTECH had previously operated the Fun 5’s game in Nebraska, Indiana, Kansas, and Western Australia with much financial success.¹¹

The TLC selected GTECH’s Fun 5’s game as one of the scratch-off games it intended to purchase from GTECH for use during fiscal year 2014.¹²

It was GTECH’s responsibility to prepare the first draft of the working papers for the Fun 5’s game.¹³ GTECH’s customer service representative, Penny Whyte, prepared the initial draft of the working papers for the Fun 5’s game.¹⁴ The TLC had no involvement in putting together the initial draft working papers.¹⁵ The initial draft working papers were sent to the TLC only after GTECH had done an internal review of the artwork, instructions, and parameters for the game.¹⁶

On April 16, 2014, GTECH sent the draft “working papers” for approval by the TLC.¹⁷ The draft working papers closely mirrored the game parameters, artwork, and instructions used by GTECH for its Fun 5’s game in Nebraska.¹⁸ The game instructions found in GTECH’s initial draft

¹⁰ Plaintiff’s Third Amended Petition at ¶ 24.

¹¹ Plaintiff’s Third Amended Petition at ¶ 24; Lapinski Deposition, Exhibit 1 at pp. 54-56.

¹² Plaintiff’s Third Amended Petition at ¶ 25.

¹³ Plaintiff’s Third Amended Petition at ¶ 26; Lapinski Deposition, Exhibit 1 at p. 47.

¹⁴ Plaintiff’s Third Amended Petition at ¶ 26; Whyte Deposition, Exhibit 2 at pp. 24-25.

¹⁵ Plaintiff’s Third Amended Petition at ¶ 26; Bowersock Deposition, Exhibit 3 at p. 32.

¹⁶ Plaintiff’s Third Amended Petition at ¶ 26; Whyte Deposition, Exhibit 2 at pp. 24-25.

¹⁷ Plaintiff’s Third Amended Petition at ¶ 26.

¹⁸ Plaintiff’s Third Amended Petition at ¶ 26; Lapinski Deposition, Exhibit 1 at p. 57.

working papers were identical to those chosen by GTECH when it first submitted the artwork for the Fun 5's game to the TLC except GTECH changed the word "get" to "reveal".¹⁹

GTECH's draft working papers proposed a Fun 5's game ticket consisting of five games. For Game 5, GTECH proposed a tic-tac-toe style of game with the following printed instructions²⁰:




According to the testimony of Gary Grief, Executive Director of the TLC, the TLC relies on GTECH for the language that goes on the tickets because GTECH has the experience in the industry and GTECH runs games in states other than Texas.²¹ Mr. Grief expected GTECH to exercise reasonable care to propose language for the Fun 5's tickets that was not misleading.²²


¹⁹ Plaintiff's Third Amended Petition at ¶ 26; Bowersock Deposition, Exhibit 3 at pp. 41-43.


²⁰ Plaintiff's Third Amended Petition at ¶ 26. See Lapinski Deposition, Exhibit 1 at p. 57.

²¹ Plaintiff's Third Amended Petition at ¶ 28; Grief Deposition, Exhibit 4 at p. 16.

²² Plaintiff's Third Amended Petition at ¶ 28. Grief Deposition, Exhibit 4 at p. 19.

On April 30, 2014, the TLC requested that GTECH change the “Dollar Bill” symbol to a “5” symbol and change the “5” symbol to a Money Bag “” symbol.²³

On May 12, 2014, the TLC requested that GTECH change the parameters of Game 5 to provide that the winning Money Bag “” symbol in the 5X Box would be printed on both winning tickets and non-winning tickets. The stated reason for the requested change was a fear that the 5X Box would be an easy target for “micro-scratching” since only the 5X box would need to be scratched to tell if a ticket was a “winning” ticket.²⁴

GTECH changed the game’s parameters and programmed its computers so that a significant percentage of the tickets that had not won the tic-tac-toe game would nonetheless reveal a Money Bag “” symbol in the 5X Box.²⁵

It is not unusual for the TLC to ask GTECH to make a change in a game’s parameters. However, if a change in the parameters is requested, it is GTECH’s duty to review the instructions to ensure there is no need for a change in the instructions to make them clear and unambiguous.²⁶

According to the testimony of GTECH’s client services representative, Penny Whyte, if the TLC requests that a change be made to the working papers, GTECH’s client service representative will look at the requested change and will decide from there whether to make the requested change. It was the responsibility of employees of GTECH’s printing division to check the parameters of the game in the working papers, to compare the language on the

²³ Plaintiff’s Third Amended Petition at ¶ 34. See Lapinski Deposition, Exhibit 1 at p. 58.

²⁴ Plaintiff’s Third Amended Petition at ¶ 35. See Lapinski Deposition, Exhibit 1 at pp. 59-60.

²⁵ Plaintiff’s Third Amended Petition at ¶ 37. See Lapinski Deposition, Exhibit 1 at p. 62.

²⁶ Plaintiff’s Third Amended Petition at ¶ 42; Whyte Deposition, Exhibit 2 at pp. 52-53.

tickets to make sure it was not misleading or deceptive, and to make sure the final executed working papers were free of errors.²⁷ It is GTECH's expectation that when it sends proposed working papers to the lottery, the instructions for the game will be clear and not misleading.²⁸

It was the responsibility of GTECH's client services representative and its software department to conduct a comprehensive review of the game's instructions to make sure that the change in parameters requested by the TLC did not require a change in the language of the game's instructions.²⁹ GTECH's customer service representative and its software department had the knowledge and expertise necessary to ensure that the language was clear, unambiguous, and not misleading.³⁰

According to the testimony of the TLC's Products and Drawings Manager, Robert Tirloni, it should be the goal of the folks at GTECH to review the working papers and to make sure the instructions are clear.³¹

The TLC's Instant Product Coordinator, Dale Bowersock, testified that it is important for instructions on scratch-off games to be clear and not misleading.³² It is part of GTECH's job to point out concerns about the game to the TLC.³³ The TLC expects GTECH to have the responsibility to make sure the instructions in their games are not misleading.³⁴ The TLC

²⁷ Plaintiff's Third Amended Petition at ¶ 29; Lapinski Deposition, Exhibit 1 at pp. 85-86.

²⁸ Plaintiff's Third Amended Petition at ¶ 29; Thurston Deposition, Exhibit 5 at p. 52.

²⁹ Plaintiff's Third Amended Petition at ¶ 40; Thurston Deposition, Exhibit 5 at p. 92.

³⁰ Plaintiff's Third Amended Petition at ¶ 40; Gaddy Deposition, Exhibit 6 at pp. 83-84.

³¹ Plaintiff's Third Amended Petition at ¶ 30; Tirloni Deposition, Exhibit 7 at p. 12.



³² Plaintiff's Third Amended Petition at ¶ 31; Bowersock Deposition, Exhibit 3 at p.78.

³³ *Id.*

³⁴ Plaintiff's Third Amended Petition at ¶ 31; Bowersock Deposition, Exhibit 3 at p.76.

expects GTECH to propose wording that is clear and does not misrepresent the chances to win a game.³⁵

The TLC expected GTECH to exercise reasonable care to make sure that the instructions on the Fun 5's game were clear and unambiguous.³⁶ The TLC does not expect GTECH to deliver games that are misleading.³⁷

Because the Money Bag “” symbol would be appearing on both winning and non-winning tickets, it was incumbent upon GTECH's client service representative and its software department to change the wording of the instructions to make it clear to consumers that they would win 5 times the amount in the PRIZE Box only if the ticket revealed **both** a Money Bag “” symbol in the 5X Box **and also** revealed three five symbols in any one row, column, or diagonal in the tic-tac-toe game.³⁸

GTECH's client service representatives, Laura Thurston and Penelope Whyte, both reviewed the language of the instructions after the change in parameters was requested by the TLC.³⁹ Both of the GTECH employees made the decision that GTECH would not change the wording of the instructions to make them less misleading or deceptive.⁴⁰

Although the TLC was required to sign off on the final working papers, the TLC was relying on GTECH and its expertise in having worked on scratch-off games for many years.⁴¹ Moreover, GTECH's client services representative, Laura Thurston, admits that it would have

³⁵ Plaintiff's Third Amended Petition at ¶ 31; Bowersock Deposition, Exhibit 3 at pp. 79-80.

³⁶ Plaintiff's Third Amended Petition at ¶ 39; Tirloni Deposition, Exhibit 7 at pp. 9-10.

³⁷ Plaintiff's Third Amended Petition at ¶ 39; Tirloni Deposition, Exhibit 7 at pp. 10-11.

³⁸ Plaintiff's Third Amended Petition at ¶ 38; Gaddy Deposition, Exhibit 6 at pp. 83-84.


³⁹ Plaintiff's Third Amended Petition at ¶ 41; Thurston Deposition, Exhibit 5 at pp. 127-128; Whyte Deposition, Exhibit 2 at pp. 39-40 & 46.

⁴⁰ *Id.*

⁴¹ Plaintiff's Third Amended Petition at ¶ 42; Whyte Deposition, Exhibit 2 at pp. 52-53.

been reasonable for the TLC to have relied upon GTECH to notify the TLC if a change in the instructions was needed.⁴²

GTECH had a contractual duty to ensure that the final executed working papers it submitted to the TLC were complete and free of any errors.⁴³ In the final executed working papers GTECH presented to the TLC, GTECH decided to use substantially the same language it had proposed in the original draft working papers.⁴⁴ The wording GTECH proposed for the final executed working papers stated 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.⁴⁵

The wording selected by GTECH was misleading and deceptive given the change in the games parameters.⁴⁶

In summary, it is undisputed that once the TLC requested a change in the game’s parameters, it was the responsibility of GTECH’s customer service representatives and its software department to examine the wording of the game’s instructions to ensure that the requested change in parameters did not make the existing instructions misleading and deceptive.⁴⁷ In the exercise of reasonable care, GTECH’s personnel should have notified the

⁴² Plaintiff’s Third Amended Petition at ¶ 42; Whyte Deposition, Exhibit 2 at p. 54.

⁴³ Plaintiff’s Third Amended Petition at ¶ 43; Lapinski Deposition, Exhibit 1 at p. 83.

⁴⁴ Plaintiff’s Third Amended Petition at ¶ 43.

⁴⁵ *Id.*

⁴⁶ Plaintiff’s Third Amended Petition at ¶ 44.

⁴⁷ Plaintiff’s Third Amended Petition at ¶ 44; Lapinski Deposition, Exhibit 1 at pp. 85-86; and, Thurston Deposition, Exhibit 5 at p. 44.

TLC if a requested change in the parameters of the game would cause problems with the game.⁴⁸

Both of GTECH's customer service representatives testified that they did examine the existing wording of the instructions and that it was they who decided to keep the old wording despite the change in the game's parameters.⁴⁹

It is likewise undisputed that the TLC was relying upon GTECH to use its experience and expertise to choose wording that would not be misleading and deceptive. This faulty exercise of "independent discretion" on the part of GTECH is the reason misleading and deceptive language was printed on the Fun 5's tickets. Because GTECH exercised "independent discretion", it is not entitled to immunity.

C. The fact that GTECH's working papers were subject to approval by the TLC does not give GTECH immunity from suit.

In the *Brown & Gay* opinion, *supra*, the Fort Bend Toll Road Authority delegated the responsibility for designing road signs and traffic layouts to Brown & Gay, "subject to approval by the Authority's Board of Directors". 461 S.W.3d at 119.

The Supreme Court made it clear that even though the contractor's work was subject to approval by the governmental agency, the private contractor was not entitled to sovereign immunity. *Id.* at 129.

⁴⁸ Plaintiff's Third Amended Petition at ¶ 44; Lapinski Deposition, Exhibit 1 at pp. 120-121.

⁴⁹ Plaintiff's Third Amended Petition at ¶ 41; Thurston Deposition, Exhibit 5 at pp. 127-128; Whyte Deposition, Exhibit 2 at pp. 39-40 & 46.

In their concurring opinion in *Brown & Gay*, Justice Hecht joined by Justices Willett and Guzman, agreed that the private contractor was not entitled to sovereign immunity and noted as follows:

The Fort Bend County Road Authority tasked Brown & Gay with selecting and designing road signs and supervised the firm's work. But the Authority did not tell Brown & Gay *how* to do the work. The discretion Brown & Gay retained separated it from the Authority and thus from the Authority's immunity.

Id. at 130-131.

Similarly, in this case, the TLC delegated the responsibility for preparing the working papers for the Fun 5's game to GTECH, subject to approval of the final executed working papers by the TLC. Plaintiff's allegations and the deposition testimony in this case make it clear that the TLC was relying upon GTECH to use its experience and its expertise to choose wording for the instructions that was clear and not misleading or deceptive. GTECH's two customer service representatives admitted that they exercised their discretion to review the wording after the TLC requested a change in the game's parameters. The two GTECH employees decided not to change the wording to make the instructions less confusing or misleading. This exercise of discretion separates GTECH from the TLC and from the TLC's sovereign immunity.

V. Conclusion

GTECH was a private independent contractor and not an employee or agent of the TLC. Furthermore, GTECH exercised "independent discretion" in choosing language for the instructions it printed on the Fun 5's tickets. Although the TLC approved the final executed working papers, the TLC was relying upon GTECH's experience and expertise to choose

language that was not misleading or deceptive. Under the clear mandate of the *Brown & Gay* opinion, *supra*, GTECH is not entitled to derivative immunity.

VI. Prayer

For these reasons, Ms. Nettles asks the Court to overrule GTECH's Plea to the Jurisdiction.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was served in accordance with the Texas Rules of Civil Procedure, on this the 27th day of November, 2015, to the following counsel of record:

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CAUSE NO. D-1-GN-14-005114

JAMES STEELE, et al.,) IN THE DISTRICT COURT OF
 Plaintiff,)
)
 VS.) TRAVIS COUNTY, TEXAS
)
)
 GTECH CORPORATION,)
 Defendant.) 201ST JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF
 JOSEPH LAPINSKI
 JULY 16, 2015

ORAL AND VIDEOTAPED DEPOSITION OF JOSEPH LAPINSKI,
 produced as a witness at the instance of the Plaintiffs,
 and duly sworn, was taken in the above-styled and numbered
 cause on the 16th day of July, 2015, from 10:07 a.m. to
 2:12 p.m., before AMBER KIRTON, CSR in and for the State
 of Texas, reported by machine shorthand, at the offices of
 Dubois, Bryant & Campbell, L.L.P., 303 Colorado Street,
 Suite 2300, Austin, Texas, pursuant to the Texas Rules of
 Civil Procedure.



1 THE VIDEOGRAPHER: Here begins the
2 deposition of Joseph Lapinski. Today's date is July 16th,
3 2015. The time is 10:07. Will the court reporter please
4 swear in the witness.

5 JOSEPH LAPINSKI,
6 having been duly sworn, testified as follows:

7 EXAMINATION

8 BY MR. LAGARDE:

9 Q. Would you state your name for the ladies and
10 gentlemen of the jury, please?

11 A. Joseph Lapinski.

12 Q. Mr. Lapinski, thank you for being here today.
13 Can you tell us what your job title is and who you work
14 for?

15 A. I'm an account development manager for IGT.

16 Q. And is IGT the assumed name or business name of a
17 company called GTECH Corporation?

18 A. That's correct.

19 Q. And is GTECH Corporation the operator of the
20 Texas Lottery?

21 A. Yes.

22 Q. Are you the person most knowledgeable at GTECH
23 about the lottery operations in Texas?

24 A. Yes.

25 Q. Okay. Since you do have knowledge of lottery

1 parameters are designed in the working papers and
2 quantified. Also includes price structures so all of the
3 prizes that are to be awarded in that game are all defined
4 in the working papers as well.

5 Q. Now, if your company has chosen to sell an
6 instant game to the Lottery Commission it's your company's
7 responsibility to come with up the -- the first draft of
8 the working papers, correct?

9 A. Yes.

10 Q. And you present those working papers to the
11 Lottery Commission and they suggest or they tell you if
12 they want you to make changes to those working papers?

13 A. That's correct.

14 Q. They might request that you change the artwork,
15 correct?

16 A. That's correct. True, yes.

17 Q. They might request that you change the symbols
18 you use in your game?

19 A. Yes.

20 Q. They might request that you change the parameters
21 of the game, in other words, what symbols it takes to win
22 a prize and which symbols are winning symbols, correct?

23 A. Yes.

24 Q. And then your company makes those changes to the
25 parameters, correct?

1 Commission by GTECH for instant product games back in
2 March of 2013?

3 (Exhibit No. 13 marked)

4 A. Yes, they do.

5 Q. (BY MR. LAGARDE) And I take it, then, what was
6 produced to us was not the entire proposal made to the
7 Texas Lottery Commission but it has the cover sheet and
8 the Fun 5's that was proposed?

9 A. That's correct.

10 Q. And the Fun 5 proposal made to the Texas Lottery
11 Commission was for a Fun 5 games it looks like -- based on
12 the ticket it looks like one that you-all had used in
13 Nebraska, correct? I've got some glasses here if you want
14 to borrow them.

15 A. If I could. I know where it's -- I know -- give
16 you a definitive answer.

17 Q. I'm going to -- I'm going to loan you Mary's
18 there.

19 A. Thank you. Yes, Nebraska Lottery.

20 Q. All right. Fair enough. And -- and I take it,
21 then, when you made this proposal in March of 2013 the
22 Lottery Commission said, yeah, we like that Fun 5's game,
23 we'll use it in 2014?

24 A. You know, I don't -- I don't know their response.
25 The way -- I doubt that was it, though. The way it works

1 is we present games on an annual basis as do all the
2 printers. What the Lottery likes to do is they establish
3 a game plan where they determine the number of each game
4 at each price point, what dates generally those games will
5 be introduced and then they invite the printers to come
6 in, make recommendations on what those games should be and
7 then the Lottery makes a determination of which games
8 they'll select. So this was part of that process where we
9 came in once a year and presented an entire portfolio of
10 games and then they chose from that. So at that time they
11 would have been looking at their fiscal year '14 which
12 ultimately Fun 5's wasn't released in. So, you know, I
13 don't know what their decision was at that time about the
14 game but clearly they -- they liked the concept because it
15 ultimately became part of their plan.

16 Q. All right. Now, your company GTECH had operated
17 a Fun 5's game in other states before you proposed it to
18 Texas, correct?

19 A. That's correct.

20 Q. And looking back at Exhibit 2 from our prior
21 deposition we have an e-mail from Ms. Matson that has
22 attached to it some tickets from other states of your Fun
23 5's games and I just want to go through those with you.
24 Your company had operated the Fun 5's game in -- in the
25 Hoosier Lottery which is in Indiana, correct?

1 A. That's correct.

2 Q. And then on the next page it operated the game
3 in -- I'm going to have to borrow those glasses now.
4 Operated the game in Nebraska, correct?

5 A. Yes.

6 Q. And then it operated the game in Kansas?

7 A. Yes.

8 Q. And then it operated the game in something called
9 Lotterywest. Is that in Australia?

10 A. It's Australia or New Zealand. But yeah, it's
11 that area of the globe.

12 Q. All right. And in -- just for us I looked it up
13 and it was a dot AU so I'm taking that as Australia.

14 A. Australia, yes, sir.

15 Q. All right. Now, according to Ms. Matson, when
16 you-all operated this Fun 5's games in Indiana, Nebraska,
17 Kansas and Australia, you didn't have any consumer
18 complaints in those games, correct?

19 A. Yes. That -- that was the information that she
20 supplied to myself and the Lottery.

21 Q. And in these games that you operated in other
22 states were fairly similar to one another, were they not?
23 Some minor made changes in artwork?

24 A. Yes.

25 Q. Some minor changes in symbols but for the most

1 part it's the same game?

2 A. Yes.

3 Q. And that is the game proposed to the Texas
4 Lottery Commission, one that you had experience with, one
5 that you've never had consumer complaints on, right?

6 A. That's correct.

7 Q. All right. And it's my understanding that when
8 you-all presented working papers to the Lottery
9 Commission, the working papers were based on a game that
10 you-all had run in these other four jurisdictions?

11 A. That's correct.

12 Q. And these other jurisdictions had a tic-tac-toe
13 style game. It looks like it was Game 3 on these other
14 cards, correct?

15 A. Yes.

16 Q. And in that tic-tac-toe game used in these other
17 jurisdictions -- I'm going to look specifically at the
18 Nebraska one since that's the one that was on the sheet
19 you-all provided. It says in Game 3 reveal three dollar
20 bill symbols in any one row, column or diagonal line, win
21 the prize shown. Get a 5 symbol in the 5X box and win
22 five times that prize, correct?

23 A. Yes.

24 Q. All right. Now, it's my understanding that when
25 you-all presented the working papers to the Texas Lottery

1 Commission that was basically the game you were presenting
2 to the Lottery Commission, right?

3 A. Yes.

4 Q. And the Lottery Commission when it looked at the
5 working papers asked for some changes to be made, right?

6 A. Yes.

7 Q. One of the changes they wanted is they wanted
8 instead of a dollar bill they wanted the dollar bill
9 symbol to be a 5 symbol, right?

10 A. That's correct.

11 Q. And instead of the winning symbol in the 5X box
12 being a 5 symbol they asked that the 5 symbol be changed
13 to a money bag symbol.

14 A. Yes.

15 Q. All right. And at some point in time the Lottery
16 Commission said to GTECH, you know, on this game you're
17 proposing to us, if you have a money bag symbol in the 5X
18 box that's a winning ticket 100 percent of the time and we
19 don't want it to be a winning ticket 100 percent of the
20 time, correct?

21 A. Can you just repeat that one more time?

22 Q. Yes, sir.

23 A. I just want to be clear.

24 Q. Yes, sir. Did the Lottery Commission at some
25 point in time say the working papers you presented to us

1 show that the winning symbol, which is now a money bag
2 symbol in the 5X box, as you're proposing the game that
3 winning symbol is a winner 100 percent of the time,
4 correct?

5 A. No, that's not correct. I think that that isn't
6 a winning symbol. It's a multiplier symbol.

7 Q. Well, let's call it -- let's just call it the
8 symbol necessary for the 5X box to be active, okay. You
9 say it's a multiplier symbol. It doesn't say that here,
10 does it, sir?

11 A. I think the original parameter of the game --

12 Q. Yes, sir.

13 A. -- that was proposed was that the money bag or
14 the multiplier symbol would only appear on tickets that
15 were winning tickets.

16 Q. Okay. Fair enough. That's a better way to put
17 it.

18 A. Yes.

19 Q. And -- and the Lottery Commission asked you if
20 the game could be changed so that the winning symbol, the
21 multiplier symbol as you call it, could appear on tickets
22 that were non-winning tickets, correct?

23 A. That's correct.

24 Q. What is your understanding of the reason the
25 Lottery Commission wanted the game changed so that the

1 winning symbol would appear on non-winning tickets?

2 A. Well, again, it's the multiplier symbol.

3 Q. Sure.

4 A. So the reason they -- the reason they asked for
5 that was they wanted to prevent microscratching. So in
6 other words, they were trying to make the game more
7 secure. That was their intent and that by eliminating the
8 risk of microscratch, which is when individuals will,
9 through tiny pin pricks, try to determine if the ticket is
10 a winner or not by pricking the latex in a way that
11 wouldn't normally be detectable to players and they were
12 looking to make -- to avoid a pattern where they might
13 identify that the same symbols appear on only winning
14 tickets.

15 Q. So as you understood it, the Lottery Commission
16 didn't want someone in a convenience store or a retailer
17 to use a pin to scratch the ticket and see a money bag
18 symbol and think that's 100 percent guaranteed winner,
19 correct?

20 A. I would think their intent was not to allow
21 anyone, not just people in convenience stores.

22 Q. Right.

23 A. That's -- what they were looking to do is -- is
24 apply another level of security and integrity to the game.

25 Q. And your company made that change in the

1 A. Correct.

2 Q. And -- and as you said, it's a give and take.
3 The Lottery Commission looks at your working papers and
4 they say we'd like a change to be made. You-all make a
5 change to the working papers, send it to the Lottery
6 Commission and they say, okay, we approve it, correct?

7 A. That's correct.

8 MR. BROUGHTON: Objection; form.

9 Q. (BY MR. LAGARDE) Now, the wording of the
10 Nebraska ticket as -- as originally suggested to the
11 Lottery Commission was designed for a game in which 100
12 percent of the people who got a 5X symbol, a winning 5X
13 symbol or as you call it a multiplier symbol, 100 percent
14 of those people won five times that prize, correct?

15 A. Five times --

16 Q. That prize, the prize in the prize box.

17 A. Correct.

18 Q. And so if we look at the language used by your
19 company in the Nebraska ticket, there is nothing
20 misleading or deceptive or potentially confusing about
21 that language, correct?

22 A. No. There is nothing there that's confusing or
23 misleading.

24 Q. All right. So if I read -- if I'm in Nebraska, I
25 get this ticket and I, say, get a 5 symbol in the 5X box

1 for 100 percent of the customers, right?

2 MR. BROUGHTON: Objection; form.

3 A. You say parameters changed. I'm saying the
4 parameters weren't established until the working papers
5 were signed. So at that point in time the parameters
6 didn't continue to -- it didn't change. Whatever we
7 agreed and it was approved by the Lottery, that's how the
8 game was produced.

9 Q. (BY MR. LAGARDE) Well, the parameters and the
10 final working papers were not the parameters that you-all
11 suggested to the Commission, correct?

12 A. Correct.

13 Q. There was a change?

14 A. I guess what I would say is the parameters didn't
15 change once the working papers were signed and executed.

16 Q. Right.

17 A. But was there some change from what was
18 originally proposed, yes.

19 Q. Yes, sir. And -- and your -- your company
20 undertook the contractual obligation to provide executed
21 working papers that were free of errors, correct?

22 A. Correct.

23 Q. And -- and your opinion is there were no errors
24 in the final executed working papers?

25 A. Correct.

1 A. No, it isn't.

2 Q. (BY MR. LAGARDE) In your discussion with the
3 Texas Lottery Commission did you discuss with Mr. Anger or
4 Mr. Grief, or anyone else for that matter, how that ticket
5 might be better worded?

6 A. No.

7 Q. Did you discuss the Texas Lottery Commission's
8 request or their desire that the wording be changed before
9 there would ever be a reprint of this ticket?

10 A. Restate that.

11 Q. Yes, sir. Were there any discussions between you
12 and the Texas Lottery Commission about whether that
13 wording should be changed if there was ever a reprint of
14 this ticket?

15 A. Not that I recall, no. No.

16 Q. You mentioned that you are contractually
17 obligated to provide working papers that are error free.
18 Whose responsibility is it at your company to compare the
19 parameters of the game and the working papers and the
20 language printed on the tickets to make sure that the
21 language is accurate and not misleading or deceptive?

22 A. There is a number of checks and reviews that go
23 into that with our printing company. I can't tell you who
24 specifically would have that role. I believe the -- the
25 individuals you're speaking to next week would be able to

1 better address that question.

2 Q. Mr. Gaddy and Ms. White?

3 A. Yes.

4 Q. Okay. Fair enough. At any rate, it's not anyone
5 in your organization in Texas that has that
6 responsibility?

7 A. No.

8 Q. In other words, when it comes to taking the
9 working papers, making the adjustments requested by the
10 Lottery Commission, reviewing the executed final working
11 papers and saying, okay, as a company we can say this is
12 error free, that was not your job with the Texas folks,
13 correct? It's your printing division --

14 A. Right.

15 Q. -- that has that --

16 A. Yes.

17 Q. -- responsibility?

18 A. Yes.

19 Q. Okay. Did you ever learn from Mr. Anger or Mr.
20 Grief or anyone else at the TLC how many consumer
21 complaints they were getting?

22 A. No.

23 Q. Were you ever asked advice about ticket sales,
24 how they were doing, the Fun 5's?

25 A. I wouldn't characterize it as advice but they

1 You come up with the symbols. You come up with the
2 parameters for the game. You -- you operate the game in
3 various jurisdictions to see if it's successful. You
4 tweak it. You change it to make it better and then you
5 sell it to the Texas Lottery. And you provide them with
6 working papers and they say, all right, we like these
7 parameters and these -- this artwork but we want to make a
8 change to it. That happens, doesn't it?

9 A. Yes.

10 Q. And if the Lottery Commission says we want to
11 make a change to the parameters, if that change that
12 they're requesting could cause problems with your game,
13 would you expect your folks in the printing division to
14 say, wait a minute, the requested change is going to cause
15 problems, here's what they are?

16 MR. BROUGHTON: Objection; form.

17 A. If our -- if our folks saw a change come through
18 from the Lottery anticipated or believed that it was -- it
19 would harm the game or the Lottery, I would expect that
20 they would either say something to the Lottery or bring it
21 to someone's attention, yes.

22 Q. (BY MR. LAGARDE) And in exercising reasonable
23 care they should do that, shouldn't they?

24 A. Yeah. Well, good customer service.

25 Q. Exactly. Exactly. In other words, it's not up

1 to the Lottery solely to spot problems. Your company has
2 some obligation to do that as well, right?

3 MR. BROUGHTON: Objection; form.

4 A. I don't think we -- we have an obligation but I
5 would expect just out of, you know, professionalism people
6 would attempt to -- if they identified something, attempt
7 to let someone know so that, you know, the Lottery -- we
8 can discuss or address it with the Lottery.

9 Q. (BY MR. LAGARDE) Well, you've already testified,
10 haven't you, sir, and you saw in the request for proposal
11 that you have a contractual obligation to provide
12 executable working papers that are error free, correct?

13 A. That's correct.

14 Q. All right. The -- the official rules of the game
15 that get published in the Texas Register, who comes up
16 with the draft or the first draft of those?

17 MR. BROUGHTON: Objection; form.

18 A. I don't -- I don't know. I would assume it's the
19 Lottery. That's not something we're involved in.

20 Q. (BY MR. LAGARDE) All right. Is it your
21 presumption that those official rules come out of the
22 parameters that are provided in the working papers?

23 MR. BROUGHTON: Objection; form.

24 A. I don't know how the Lottery develops those rules
25 so I couldn't tell you.

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CAUSE NO. D-1-GN-14-005114

JAMES STEELE, et al.,) IN THE DISTRICT COURT OF
)
 Plaintiffs,)
)
 vs.) TRAVIS COUNTY, TEXAS
)
 GTECH CORPORATION,)
)
 Defendant.) 201st JUDICIAL DISTRICT

VIDEOTAPED DEPOSITION OF: PENELOPE WHYTE
Volume 1 of 1, Pages 1 through 98

Tuesday, July 21, 2015
2:55 p.m. - 5:07 p.m.

206 Easton Drive
Lakeland, Florida 33803

Stenographically Reported By:
EVELYN M. ANDREWS, RPR, RMR
Registered Professional Reporter



US LEGAL SUPPORT
713.653.7100

1 A. Okay.

2 Q. If you are asked a question that you don't
3 understand or you don't fully understand what we're
4 getting at, would you please make us stop and repeat or
5 rephrase ourselves or question before you try to answer
6 it?

7 A. I will.

8 Q. Very good.

9 Ms. Whyte, could you give us a little
10 background, your education and your work background?

11 A. I have a Grade 12 education and I have worked
12 with GTECH for the last 14 years.

13 Q. And before GTECH with whom did you work?

14 A. I worked for Canadian Bank Note in Canada.

15 Q. And what did you do for Canadian Bank Note?

16 A. Same things, customer service representative.

17 Q. And what kind of business was Canadian Bank
18 Note in?

19 A. Lottery printing company as well.

20 Q. Okay. And before Canadian Bank Note who were
21 you with?

22 A. That's about it.

23 Q. Okay. So, 12th grade education, you went to
24 work for Canadian Bank Note doing customer service
25 representative work --

1 A. After our internal review, after we review it.

2 Q. Okay. Tell us about that internal review,
3 who's involved and what process do you go through?

4 A. It starts off with the CSR building the working
5 papers, which would be me. There are certain
6 requirements that we send out to our software department,
7 provides parameters for the Texas Lottery games. The
8 artwork has already been approved by the lottery, so the
9 artwork's done. We build the working papers. We send it
10 out for internal review. And that, the artwork and
11 parameters and all the information gets checked.

12 Q. Okay. And in terms of the internal review
13 you're talking about, you, as the CSR for Texas, would be
14 one of the individuals involved?

15 A. Correct.

16 Q. Who else would be involved?

17 A. Software department, graphics department,
18 materials department.

19 Q. Anybody else?

20 A. Nobody I can think of right --

21 Q. Would the account executive be involved in the
22 internal review?

23 A. Sometimes.

24 Q. Okay. Now, with regard to the Fun 5's game,
25 did you prepare the initial working papers that were sent

1 to the Texas Lottery?

2 A. I did.

3 Q. And I think we have those as a prior exhibit.
4 Let me just find that Exhibit Number for you. Yeah, it
5 looks like Exhibit 26 in front of you. All right. Is
6 that the initial draft of working papers for the Fun 5's
7 game that you sent to the Texas Lottery?

8 A. Yes.

9 Q. And at the time you sent this to the Texas
10 Lottery on April the 16th of 2014 an internal review had
11 already been done by your company?

12 A. Correct.

13 Q. And you'd gone over the artwork?

14 A. Yes.

15 Q. And you'd gone over the instructions?

16 A. Yes.

17 Q. And you'd gone over the parameters?

18 A. Yes.

19 Q. And you were satisfied that -- that the
20 instructions proposed in Exhibit 26 were accurate and
21 fairly represented the chances of winning a prize on this
22 game?

23 A. That's correct.

24 Q. All right. And you'd also had it reviewed by
25 the software department?

1 Q. Okay. Do you think whoever designed the
2 instructions on this artwork, that it was important for
3 them to understand how the game was played?

4 A. Yes.

5 Q. Because you want the instructions to be fair
6 and accurate and not to be misleading or deceptive,
7 correct?

8 A. Correct.

9 Q. And, but you don't sit here today and recall
10 whether you appreciated that the money bag symbol would
11 only appear on winning symbols -- or on winning tickets?
12 You don't remember whether you knew that or not?

13 A. I don't remember.

14 Q. Okay. Now, when you got back, did you
15 understand or appreciate whether the changes made by
16 Laura Thurston at the request of the Texas Lottery,
17 whether those changes meant that the money bag symbol
18 would appear on both winning and non-winning tickets?

19 A. I looked at the changes from the lottery, and
20 the change from the lottery was so that the money bag
21 would appear on non-winning tickets.

22 Q. And did you go back to the original
23 instructions that you were familiar with to see
24 whether those needed to be changed, or because the
25 papers had already been executed did you not bother

1 doing that?

2 A. I looked at the instructions and note -- and
3 saw that they didn't need to be changed.

4 Q. Did you consult with anyone before you made
5 that decision?

6 A. No.

7 Q. Okay. Has GTECH or its corporate predecessor
8 ever given you any guidelines into the types of
9 individuals who buy lottery tickets, their, let's say
10 their educational level?

11 A. No.

12 Q. Do you have anyone in-house that assists you
13 with reviewing instructions to make sure they're accurate
14 and that they're not misleading or not ambiguous?

15 A. That's part of my job, or the CSR's job to do
16 that. It's also part of our internal reviews.

17 Q. You appreciate, or do you agree, that it was
18 important for lottery players in Texas to understand that
19 in order to win the 5X prize in the Game 5 that they had
20 to have both a money bag symbol in the 5X box but they
21 also must have previously won the tic-tac-toe game in
22 order to qualify?

23 A. Correct.

24 Q. That, that should have been made very clear
25 then, correct?

1 A. I believe I would be like an average person on
2 the street.

3 Q. Who'd never seen this game before? You don't
4 have that advantage, do you, ma'am?

5 A. Advantage for what?

6 Q. To give us an opinion as to what the average
7 person in the street would think?

8 A. I don't know what the average person --

9 Q. Fair enough. Fair enough. Now, after you
10 returned and you read the changes made by Laura Thurston,
11 and you read the executed working papers, you made the
12 decision, there's no need to change the instructions in
13 Game 5, correct?

14 A. That's correct.

15 Q. They're clear to me, I don't think we need to
16 change them, correct?

17 A. Correct.

18 Q. All right. When did you next hear about the
19 Fun 5's game?

20 A. Hear about what --

21 Q. Yeah, what was your next involvement in
22 Fun 5's?

23 A. My next involvement would be probably when they
24 got printed.

25 Q. Okay. And what did -- what did that consist

1 MS. LaGARDE: Like a po'boy.

2 MR. LaGARDE: Poor. Poor.

3 MR. BROUGHTON: What was that? She's from
4 Canada, so she --

5 BY MR. LaGARDE:

6 Q. Ey. If I said poor, ey, you'd have known what
7 I was talking about?

8 A. Now you're speaking my language.

9 Q. And I think there was an objection interjected.
10 Did you say that you were never informed that
11 someone at the lottery commission had referred to that
12 wording as poor wording?

13 MR. BROUGHTON: Objection; form.

14 A. I was not aware of that.

15 Q. Okay. Do you believe in suggesting the
16 instructions or in reviewing the instructions for a game
17 like Fun 5's that GTECH owes a duty to the Texas Lottery
18 Commission to point out to them if one of their requested
19 parameters changes will cause a problem with the
20 instruction language?

21 MR. BROUGHTON: Objection; form.

22 A. Can you repeat the question?

23 Q. Sure, absolutely. I'll try to make it cleaner.
24 It's not unusual for a company, or I'm sorry, a
25 lottery commission, like the Texas Lottery Commission, to

1 ask you for a change in parameters, correct?

2 A. Correct.

3 Q. And I know you weren't involved in this,

4 Ms. Thurston was, but do you think it's -- that

5 Ms. Thurston had a duty to review the instructions, to

6 make sure that there was no need for a change in those

7 instructions, to assure that they were clear and

8 unambiguous?

9 MR. BROUGHTON: Objection; form.

10 A. That's correct. That's part of our job --

11 Q. Right.

12 A. -- as a CSR.

13 Q. And although the Texas Lottery Commission has

14 to sign off on the final working papers, they're relying

15 on you and your expertise in having worked on these games

16 for many years --

17 MR. BROUGHTON: Objection; form.

18 Q. -- correct?

19 A. Correct.

20 Q. And certainly, if a change in the parameters

21 requested by the lottery commission was going to make the

22 existing instructions misleading or deceptive, your

23 company should have said to the lottery commission, hold

24 on, we may need to change these instructions, correct?

25 A. As part of a CSR job that's -- we take our job

1 seriously, and we would let them know if there should be
2 a change.

3 Q. And would it be reasonable for the Texas
4 Lottery Commission to rely upon your company to notify
5 them if a change in the instructions was needed?

6 MR. BROUGHTON: Objection; form.

7 A. Correct.

8 Q. It would be reasonable, wouldn't it?

9 A. Yes.

10 Q. You guys are the experts, right?

11 MR. BROUGHTON: Objection to form.

12 A. They're the experts, too.

13 Q. But that's why they hire you?

14 MR. BROUGHTON: Objection; form.

15 BY MR. LaGARDE:

16 Q. You've run this game in four or five other
17 jurisdictions before theirs, correct?

18 A. I'm not aware of where we ran it before.
19 They're not my accounts.

20 Q. But you're aware now that your company had run
21 this game in several other jurisdictions before Texas?

22 A. Right. But I'm not aware of the instructions
23 on those games.

24 Q. Okay. So you don't know what the instructions
25 on those games said, you only know what was on the

CAUSE NO. D-1-GN-14-005114

JAMES STEELE, et al.,) IN THE DISTRICT COURT
))
 Plaintiffs,))
))
 vs.) TRAVIS COUNTY, TEXAS
))
 GTECH CORPORATION,))
))
 Defendant.) 201ST JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

DALE BOWERSOCK

JULY 30, 2015

ORAL AND VIDEOTAPED DEPOSITION OF DALE BOWERSOCK,
 produced as a witness at the instance of the PLAINTIFFS
 and duly sworn, was taken in the above-styled and
 numbered cause on the 30th day of July, 2015, from
 9:32 a.m. to 3:24 p.m. before TEENA L. HARMON-DAVIS, a
 Certified Shorthand Reporter in and for the State of
 Texas, reported by machine shorthand at the Office of the
 Attorney General, 300 West 15th Street, 11th Floor,
 Austin, Texas, pursuant to the Texas Rules of Civil
 Procedure and/or the provisions stated on the record or
 attached hereto.



U.S. LEGAL SUPPORT - AUSTIN, TEXAS
 (800) 734-4995

1 answer them, okay, sir?

2 A. Okay.

3 Q. If I ask a question that doesn't make sense,
4 and that often happens, will you agree to make me repeat
5 or rephrase my question before you try to answer it?

6 A. Yes.

7 Q. Very good. If you need to take a break for
8 whatever reason, just let us know; we'll take a break,
9 okay, sir?

10 A. Okay.

11 Q. Very good. Mr. Bowersock, can you tell us what
12 you do for a living, sir?

13 A. I'm the instant product coordinator for the
14 Texas Lottery.

15 Q. That's a mouthful. What's an instant --

16 A. It is.

17 Q. -- product coordinator do for the Texas Lottery
18 Commission?

19 A. In lay -- in basic terms, I route the working
20 papers and work with creating of the price structures and
21 the game plan for the Texas Lottery.

22 Q. Okay. Very good. And when we talk about
23 instant product coordinator, instant products, are these
24 scratch off tickets?

25 A. Scratch off tickets.

1 do you have any involvement in that process on the GTECH
2 end?

3 A. I don't have involvement in creating the -- in
4 creating the working papers, creating the initial working
5 papers.

6 Q. Typically how -- how long a period is there
7 between the time that you send GTECH the PDF photograph
8 of the game you selected and the time it provides you
9 with the initial working papers?

10 A. It can be months if not up to a year. We do it
11 far in advance.

12 (Exhibit No. 94 marked)

13 Q. Let me show you what we've marked as Exhibit
14 No. 94 and ask if you can identify that document for us,
15 please.

16 MR. LAGARDE: And just for the record I'll
17 state that it's GTECH 925 through 926.

18 MR. MINDELL: Can I ask if this redaction
19 was made by GTECH?

20 MR. LAGARDE: It was made by GTECH.

21 A. This would have been artwork change requests.

22 Q. All right. And is this -- the first one an
23 e-mail from you to Mr. Gaddy and Ms. Penny Whyte
24 requesting artwork changes?

25 A. Correct.

1 should have been the first set of working papers
2 received.

3 Q. Okay. And looking at what's marked as page
4 GTECH 20 --

5 A. Uh-huh.

6 Q. -- we see that the tic-tac-toe game that had
7 been Game 3 in the Nebraska ticket on Exhibit 13 has now
8 been moved to the position of Game 5, correct?

9 A. Correct.

10 Q. How does the language in -- in Game 5's
11 instructions differ or compare to the language on the
12 instructions on Exhibit 13, that is, the first set of
13 instructions provided to you by the folks at GTECH?

14 MR. MINDELL: Objection, form.

15 A. It's hard to read that. Do you want me to read
16 the instructions or --

17 Q. Is it the same or are there changes made?

18 A. There -- there are changes made.

19 Q. Would the changes made to the instructions on
20 this tic-tac-toe game, would those have been requested by
21 you or just changes made by GTECH?

22 MR. MINDELL: Objection, form.

23 MR. BROUGHTON: Objection, form.

24 A. I'm not positive.

25 Q. What are the principal differences, if any?

1 MR. MINDELL: Objection, form.

2 A. The -- the symbol -- reveal the three dollar
3 bill symbols is listed primarily at the beginning of the
4 first sentence in the work -- draft working papers. In
5 the Exhibit 13 you're matching -- it states to match
6 three -- I think it says -- wait, I'm -- complete a row,
7 column, or diagonal line with -- I think that's a dollar
8 bill symbol. It's just reworded a little bit different.
9 I believe the -- the word "get" is changed to "reveal" in
10 the second sentence, and the rest of the second sentence
11 is the same.

12 Q. Is -- is there any preference at the Texas
13 Lottery Commission for the word get -- reveal versus get?

14 MR. MINDELL: Objection, form.

15 A. Yes. The -- we use reveal so that the action
16 of scratching and uncovering the ticket is more obvious
17 to the players. Get -- I could get patterns on the
18 overprint, but as long as we say reveal you have to
19 actually uncover the patterns.

20 Q. So it's more of an active word. You're telling
21 the player, you have to reveal this in order to win.

22 A. Yes.

23 Q. So whether you requested that they change the
24 word to get -- from get to reveal or they just knew that
25 was the Texas Lottery Commission's preference, they --

1 they made that change on the Nebraska ticket when they
2 sent you the artwork for the draft working papers?

3 A. That's correct.

4 MR. BROUGHTON: Objection, form.

5 Q. (By Mr. LaGarde) Other than changing get to
6 reveal, is it basically the same set of instructions that
7 they had on their Nebraska ticket that was on Exhibit 13?

8 MR. MINDELL: Objection, form.

9 A. Yes.

10 Q. Okay. Fair enough. Turning to page 35,
11 GTECH-35, of Exhibit 26.

12 A. Okay.

13 Q. Looking at -- there's a -- a lot of the page
14 has been redacted by GTECH, but looking at numbers 32,
15 33, 34, 35, and 36, are those what are called parameters?

16 A. Those are game parameters, uh-huh.

17 Q. Could you tell the jury what game parameters
18 are?

19 A. They're programming parameters used by the
20 programmers to make sure a game plays in a certain
21 fashion.

22 Q. So is this a signal to the computer folks when
23 you set up the computer program for this game, here's how
24 it's supposed to play?

25 A. Exactly.

1 MR. MINDELL: Objection, form.

2 A. None of the reviewers came back with any
3 comments with concerns.

4 Q. But all of the reviewers had his comment
5 available to them, correct?

6 MR. MINDELL: Objection, form.

7 A. Correct.

8 Q. If there is a requested change in the
9 parameters of the game, that is, if the Lottery
10 Commission says to GTECH, we'd like to change the
11 parameters of the game, would you expect GTECH to make
12 sure that that change in parameters did not also make it
13 necessary to change the wording of the instructions to
14 make them less misleading or not misreading?

15 MR. MINDELL: Objection, form.

16 MR. BROUGHTON: Objection, form.

17 Q. (By Mr. LaGarde) Let me restate the question.

18 You've told us that everyone in the review
19 process at the Lottery Commission have the responsibility
20 to check the instructions to make sure they're not
21 misleading, correct?

22 A. Correct.

23 Q. Do you expect that GTECH has a responsibility
24 to make sure that the instructions in one of their games
25 is not misleading?

1 A. If they saw concerns with the game they would
2 report it to us.

3 Q. You would expect them to do that?

4 A. Yes.

5 Q. That's part of their job?

6 MR. BROUGHTON: Objection, form.

7 A. I think it's the -- that's a part of everybody
8 who touches those papers.

9 Q. You would agree -- or is it -- is it
10 appropriate to have instructions in a -- in a lottery
11 scratch off game that are misleading?

12 MR. MINDELL: Objection, form.

13 MR. BROUGHTON: Objection, form.

14 A. No.

15 Q. Is it -- are the instructions on your scratch
16 off games important?

17 A. Yes.

18 Q. Do you expect the -- the consumers, the
19 players, to rely on those instructions?

20 MR. MINDELL: Objection, form.

21 A. Yes.

22 Q. Should those instructions be clear and not
23 misleading?

24 MR. MINDELL: Objection, form.

25 A. Yes. And -- and we do provide game procedures

1 which are posted as well to further clarify the game in
2 case there's questions or concerns.

3 MR. LAGARDE: I'll object to the
4 responsiveness of the answer after yes.

5 Q. (By Mr. LaGarde) Should the instructions ever
6 be confusing or misleading?

7 A. No.

8 Q. Should the instructions ever misrepresent what
9 symbols are needed to win a prize?

10 A. No.

11 Q. Who, if anyone, did the Lottery Commission
12 expect would propose wording for the Fun 5's ticket that
13 would be clear and not misleading?

14 MR. BROUGHTON: Objection, form.

15 A. The entire review team. Initial -- initial
16 instructions, play instructions, come from the vendor,
17 and then through a collaborative effort, you know, we
18 tweak it.

19 Q. In terms of proposing the instructions, coming
20 up with the wording initially, who do you expect to do
21 that?

22 A. The initial wording is from the vendor.

23 Q. The vendor in this case is GTECH?

24 A. Correct.

25 Q. And you expect them to propose language that is

1 not misleading or misrepresents the chances to win a
2 game, correct?

3 MR. MINDELL: Objection, form.

4 A. Correct.

5 Q. Does -- do you expect GTECH to provide final
6 working papers that are free of errors?

7 A. We -- we expect that of --

8 MR. BROUGHTON: Objection, form.

9 A. -- all vendors.

10 Q. And -- and if there is an error in the working
11 papers that are submitted to you by GTECH, do you expect
12 GTECH to stand behind that?

13 MR. MINDELL: Objection, form.

14 MR. BROUGHTON: Objection, form.

15 A. To that extent I'm -- I would turn to our
16 contracts department.

17 Q. Okay.

18 A. You know, that sounds like a contracts issue to
19 me.

20 Q. Sure. We'll get to that --

21 A. I -- I make -- I make the papers -- I mean, I
22 route the papers.

23 Q. Contract department's saying, don't point at
24 us.

25 A. I know. I know.

Transcript of the Testimony of
Gary Grief

Date:

September 25, 2015

Case:

JAMES STEELE et al VS. GTECH

Kim Tindall and Associates, LLC.

Phone: (210) 697-3400

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CAUSE NO. D-1-GN-14-005114

JAMES STEELE, et al.,) IN THE DISTRICT COURT
Plaintiffs,)

VS.) TRAVIS COUNTY, TEXAS

GTECH CORPORATION,)
Defendant) 201st JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

GARY GRIEF

SEPTEMBER 25, 2015

ORAL AND VIDEOTAPED DEPOSITION OF GARY GRIEF,
produced as a witness at the instance of the Plaintiffs,
and duly sworn, was taken in the above-styled and
numbered cause on the 25th day of September, 2015, from
9:39 a.m. to 11:35 a.m., before Christi Sanford, CSR in
and for the State of Texas, Registered Professional
Reporter and Certified Realtime Reporter, reported by
machine shorthand, at the offices of the Attorney
General, 300 West 15th Street, 7th Floor, Austin, Texas,
pursuant to the Texas Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

1 printers have an obligation -- a part of the obligation
2 to review that. It's not solely their responsibility.
3 It also falls on the Texas Lottery as well.

4 Q. (BY MR. LAGARDE) Right. So you mentioned it
5 was a collaborative effort. As I understand it, GTECH
6 will propose language and your Lottery Commission has to
7 approve that language?

8 A. I think that's a fair way to sum that up.

9 Q. All right. And in terms of reviewing that
10 language and making sure that it's clear and not
11 misleading, the Lottery Commission has an obligation to
12 do that, correct?

13 A. That's correct.

14 Q. Do you think GTECH also has that obligation?

15 MR. BROUGHTON: Objection, form.

16 A. GTECH, Scientific Games, Pollard all have an
17 important role to play. They've got the experience in
18 the industry. They're the private companies that do
19 this. You'll find that a lot of games that are run in
20 Texas are also run in other states as well. And we do
21 rely on them, at least as a starting point, when we're
22 looking at language that goes on tickets.

23 Q. (BY MR. LAGARDE) All right. So if GTECH were
24 to point the finger of blame at the Lottery Commission
25 and say it's all the Lottery Commission's fault if this

1 A. We -- we all like to be perfect. We like to
2 hope that our vendors provide perfect language. That's
3 not always the case. They make mistakes, we make
4 mistakes, and we try to find those through this
5 collaborative process.

6 Q. (BY MR. LAGARDE) And that's my question. Did
7 you expect them to exercise reasonable care to provide
8 you, to propose language to you that was not misleading?

9 MR. BROUGHTON: Objection, form.

10 MR. MINDELL: Objection, form.

11 A. Yes.

12 Q. (BY MR. LAGARDE) Very good, sir. Now, I
13 understand that the Fun 5's tickets, after you signed
14 off on that final set of working papers, began to be
15 sold in the state on September the 2nd. Is that your
16 recollection as well?

17 A. You probably know better than I do, Richard.
18 I'll take your word for it on that.

19 Q. And I -- I say that only because we took the
20 deposition yesterday of Mr. Dan Morales. And do you
21 know Mr. Morales?

22 A. I know of Dan, yes. Works for IGT, correct?

23 Q. Yes, sir.

24 A. Right.

25 Q. Or GTECH.

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CAUSE NO. D-1-GN-14-005114

JAMES STEELE, et al.,) IN THE DISTRICT COURT OF
)
 Plaintiffs,)
)
 vs.) TRAVIS COUNTY, TEXAS
)
 GTECH CORPORATION,)
)
 Defendant.) 201st JUDICIAL DISTRICT

VIDEOTAPED DEPOSITION OF: LAURA THURSTON
Volume 1 of 1, Pages 1 through 147

Tuesday, July 21, 2015
9:40 a.m. - 2:47 p.m.
206 Easton Drive
Lakeland, Florida 33803

Stenographically Reported By:
EVELYN M. ANDREWS, RPR, RMR
Registered Professional Reporter



US LEGAL SUPPORT
713.653.7100

1 A. I don't know.

2 Q. All right. I've seen in the past some
3 references to you being an employee of GTECH S.p.A.,
4 which is the Italian company, some references to GTECH
5 Corporation, some references to GTECH Printing
6 Corporation. Do you know the actual name of the company
7 you work for?

8 A. The best I can say is IGT. I'm -- I'm
9 guessing. There have been some, I think merger is the
10 best word to describe it, but as to the details, I can't
11 speak to that.

12 Q. Okay, fair enough. We'll get to the bottom of
13 that and figure it out sooner or later.

14 A. Okay.

15 Q. Would you tell us a little bit about your
16 educational background and your work background?

17 A. Yes. I graduated with my Bachelor's degree in
18 English from Wright State University in Dayton, Ohio.

19 My work background, I'm a client services
20 representative for IGT.

21 Q. And did you go to work for -- you mentioned
22 IGT, but all of the paperwork is in the name of GTECH.
23 So just for purposes of this deposition, let's -- if I
24 refer to GTECH I'm talking about the assumed name IGT,
25 okay?

1 the way the game plays, who gets involved in that?
2 What's the process of changing parameters at the request
3 of a lottery authority?

4 A. That is deferred to our software team as
5 they're the experts in parameters and game play and
6 ensuring that parameters adhere to the prize structure.

7 Q. Now, when a change in parameters is requested,
8 you said it goes to the software team for them to check
9 to make sure the parameters meet the prize structure as
10 changed, correct?

11 A. Uh-huh, yes.

12 Q. Is there anyone responsible for reviewing that
13 change in parameters to determine whether there's a
14 needed change in the instructions?

15 A. Both the software team and the client services
16 representative would look at this as well as the lottery
17 when they got the updated set of working papers.

18 Q. All right. So, if a change in the parameters
19 might make the wording of the instructions inaccurate or
20 misleading, the persons responsible for catching that
21 would be the software team, the CSR assigned to that
22 account, and then the lottery itself?

23 MR. BROUGHTON: Objection; form.

24 BY MR. LaGARDE:

25 Q. Is that your understanding?

1 on the art, things like that.

2 Q. With all due respect, Ms. Thurston, I didn't
3 ask you yet what the lottery's responsibility is. I'm
4 asking what your company's responsibility is.

5 Is it your belief and understanding that your
6 company, if it's doing its job properly, will send out
7 instructions to the lottery in the draft working papers
8 that are clear and accurate; yes or no?

9 MR. BROUGHTON: Objection; form.

10 A. I can't speak to the entire company, but as a
11 client services representative I can say that the art on
12 the game is clear and accurate to players based on the
13 selected game play and prize structure.

14 Q. Maybe I'm confused. Is that a yes or a no?

15 A. I suppose -- well, as a CSR I can say, yes, we
16 review accurate and correct information --

17 Q. Right.

18 A. -- and send it.

19 Q. Right. So what you send out to the lottery you
20 expect to be accurate and not to misrepresent the game,
21 correct?

22 MR. BROUGHTON: Objection; form.

23 A. Correct, it's clear.

24 Q. Okay. And you mentioned art. You review the
25 art. Do you consider the wording of the instructions to

1 unambiguous despite the change in parameters?

2 MR. BROUGHTON: Objection to form.

3 A. We don't have a role dedicated specifically to
4 reading play instructions, but when changes are requested
5 by the lottery and they are verified with our teams, we
6 are reviewing the game comprehensively.

7 Q. Okay. When you say comprehensively, does that
8 mean the CSR reviews it?

9 A. It could. It depends on the change that takes
10 place.

11 Q. When you say it's reviewed comprehensively, is
12 it the software department and the -- which other
13 department, graphics department?

14 A. It would be any department that a change is
15 affected by. But when I say comprehensively I mean each
16 aspect of the game is reviewed.

17 Q. Have you ever heard the phrase, the buck stops
18 here?

19 A. Yes.

20 Q. And at GTECH where does the buck stop when it
21 comes to making sure that the instructions are clear and
22 unambiguous?

23 MR. BROUGHTON: Objection to form.

24 A. I would have to say it's not GTECH. It's the
25 lottery. The CSR and our internal teams review the

1 MR. BROUGHTON: Objection; form.

2 A. Based on my review, from what I had heard --
3 well, not heard, but what I had reviewed for this change
4 in the game, I didn't feel it necessary to ask Derek
5 about his internal processes.

6 Q. All right. You considered changing the
7 language and decided it didn't need to be changed,
8 correct?

9 A. I did not consider changing the language.

10 Q. All right. So, that was never a consideration
11 on your part?

12 A. No.

13 Q. Is that correct?

14 A. That's correct.

15 Q. All right. And I guess, just to make the
16 question more clear, did you do an examination of the
17 instructions after this change was made to determine if
18 the language was fine as is, or did you not do that
19 examination?

20 A. I did the examination.

21 Q. And you felt that the language that had
22 previously been used on these tickets was just fine to be
23 used with this change in the parameters?

24 A. You say "these tickets," do you mean the first
25 couple versions of working papers?

1 Q. Yes.

2 A. Yes, I reviewed it and felt that it was
3 clear.

4 Q. All right. Did you run it by anybody?

5 A. I had this examined by software.

6 Q. Okay. So Derek Batchelor?

7 A. That's correct.

8 Q. All right.

9 A. Internally that's who reviewed.

10 Q. Anybody else?

11 A. The lottery.

12 Q. All right. So you sent the changes to the
13 lottery, you assumed they change -- they examined that as
14 well?

15 A. Again, I'm not -- I'm not the CSR, so I can't
16 speak to every process; but, yes, the lottery is the
17 ultimate authority on what is going to be printed and
18 manufactured at GTECH.

19 Q. I understand they have to approve it before it
20 gets printed, correct?

21 A. Approve the working papers?

22 Q. Yes.

23 A. Correct.

24 Q. But in terms of making the suggestion to them,
25 the suggestion to the lottery on the working papers is

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CAUSE NO. D-1-GN-14-005114

JAMES STEELE, et al.,) IN THE DISTRICT COURT OF
)
 Plaintiffs,)
)
 vs.) TRAVIS COUNTY, TEXAS
)
 GTECH CORPORATION,)
)
 Defendant.) 201st JUDICIAL DISTRICT

VIDEOTAPED DEPOSITION OF: WALTER GADDY
 Volume 1 of 1, Pages 1 through 104

Wednesday, July 22, 2015
 9:38 a.m. - 12:02 p.m.
 206 Easton Drive
 Lakeland, Florida 33803

Stenographically Reported By:
 EVELYN M. ANDREWS, RPR, RMR
 Registered Professional Reporter



US LEGAL SUPPORT
 713.653.7100

1 Q. And you heard our conversation at the beginning
2 about how you're testifying under oath so it's important
3 for you to understand the questions before you attempt to
4 answer them, correct?

5 A. Correct.

6 Q. And if I ask a question that you don't
7 understand, do you agree that you'll make me repeat or
8 rephrase it before you try to answer it?

9 A. I will.

10 Q. If you need to take a break for any reason
11 whatsoever, just let us know, we're happy to take a
12 break.

13 A. Very good.

14 Q. Very good. Mr. Gaddy, tell us what you do for
15 a living.

16 A. I work for IGT, formerly known as GTECH.

17 Q. And what do you do for GTECH?

18 A. I'm the regional sales director.

19 Q. And when we say regional sales director, what
20 does that mean in practical terms?

21 A. I work with various lotteries as the liaison
22 between GTECH and the lottery in developing games and
23 selling them. It's a sales position.

24 Q. Okay. Now, I looked at -- you mentioned IGT.
25 That's the trade name for GTECH Corporation, correct?

1 information. I didn't have any direct involvement at all
2 in the game at that point, yeah.

3 Q. Let me show you Exhibit 28. It's an e-mail
4 from Fran Edwards at the Texas Lottery dated April 30.
5 And Ms. Edwards is forwarding to you and to Penelope
6 Whyte comments they had on the Game 1592, the Fun 5's
7 game. Do you remember receiving that?

8 A. I do, yeah.

9 Q. And did you do anything with that information
10 you received?

11 A. No.

12 Q. Let me show you what was previously marked as
13 Exhibit 29. It's an e-mail from Jessica Burrola at the
14 Texas Lottery to you and to Penelope Whyte in which
15 Ms. Burrola indicates that they're concerned about
16 micro-scratching and they would prefer to have the money
17 bag symbol appear on non-winning tickets as well as
18 winning tickets. Do you remember receiving that e-mail?

19 A. These were a part of the documents that were
20 produced, so I've become more familiar with it recently;
21 but, yeah, it looks right.

22 Q. Okay.

23 A. Yeah.

24 Q. When you received that e-mail from the Texas
25 Lottery saying that they wanted the money bag symbol, the

1 symbol that I think has been referred to as the
2 multiplier symbol by, by you and several other witnesses,
3 did you go back and look at the language of the
4 instructions to see if the instructions might need to be
5 changed to make them more clear or less ambiguous?

6 A. I can't recall if I did that or not.

7 Q. Whose job would it have been to do that?

8 A. The customer service rep working with the
9 software department.

10 Q. All right. And would you expect the customer
11 service rep to have the knowledge and expertise necessary
12 to assure herself that the language is clear and
13 unambiguous and not misleading?

14 A. Yes, I would.

15 Q. Would you expect your software department to
16 have that same knowledge and expertise?

17 A. I would.

18 Q. And is there somebody at your company or an
19 outside vendor that they can turn to if they have
20 questions about the meaning of language and whether the
21 language used could be misunderstood?

22 MR. BROUGHTON: Objection; form.

23 A. I'm not sure I understand your question.

24 Q. Sure. If somebody has a question, if someone
25 says, hey, I may be an English major but I, you know, I

CAUSE NO. D-1-GN-14-005114

JAMES STEELE, et al.,) IN THE DISTRICT COURT
))
 Plaintiffs,))
))
 vs.) TRAVIS COUNTY, TEXAS
))
 GTECH CORPORATION,))
))
 Defendant.) 201ST JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

ROBERT TIRLONI

JULY 30, 2015

ORAL AND VIDEOTAPED DEPOSITION OF ROBERT TIRLONI,
 produced as a witness at the instance of the PLAINTIFFS
 and duly sworn, was taken in the above-styled and
 numbered cause on the 30th day of July, 2015, from
 3:40 p.m. to 5:15 p.m. before TEENA L. HARMON-DAVIS,
 a Certified Shorthand Reporter in and for the State of
 Texas, reported by machine shorthand at the Office of
 the Attorney General, 300 West 15th Street, 11th Floor,
 Austin, Texas, pursuant to the Texas Rules of Civil
 Procedure and/or the provisions stated on the record or
 attached hereto.



U.S. LEGAL SUPPORT - AUSTIN, TEXAS
 (800) 734-4995

1 THE VIDEOGRAPHER: This is the videotaped
2 oral deposition of Robert Tirloni. Today's date,
3 July 30, 2015; the approximate time, 3:41 p.m. We're
4 recording and on the record.

5 ROBERT TIRLONI,
6 having been first duly sworn, testified as follows:

7 EXAMINATION

8 BY MR. LAGARDE:

9 Q. State your name for the ladies and gentlemen of
10 the jury, please.

11 A. Robert Tirloni.

12 Q. Mr. Tirloni, by whom are you employed?

13 A. The Texas Lottery Commission.

14 Q. And what is your position at that commission?

15 A. My title is products and drawings manager.

16 Q. And what does a products and drawings manager
17 do for the Lottery Commission?

18 A. The -- on the products side I'm responsible for
19 all new product development. On the draw game side and
20 the scratch off side, the marketing of those products,
21 working with the GTECH sales team. I also oversee
22 retailer development function on the products side. I
23 have a marketing -- a lot of marketing functions. On the
24 drawings side, I oversee the entire drawings program.

25 Q. And drawings program, is that the online game,

1 Q. In -- who is it that proposes the instructions
2 that are printed on the tickets?

3 A. The draft set of working papers that we
4 received from the vendor -- the artwork would have come
5 in with play instructions, color, so on and so forth.
6 That originates with -- with the -- the vendor that's
7 going to produce the game.

8 Q. And for Fun 5's the vendor was GTECH?

9 A. Was GTECH, yes.

10 Q. And when GTECH proposes the instructions that
11 are going to be part of the artwork of the game do you
12 expect GTECH to exercise reasonable care to make sure
13 that the instructions are clear and unambiguous?

14 MR. MINDELL: Objection, form.

15 MR. BROUGHTON: Objection, form.

16 MR. MINDELL: We'll be objecting
17 sometimes.

18 THE WITNESS: That's fine.

19 MR. MINDELL: Unless I instruct you not to
20 answer you should --

21 THE WITNESS: That's fine.

22 MR. MINDELL: -- go ahead and answer.

23 A. Could you repeat your question?

24 Q. Of course. Do you expect GTECH, if they
25 propose a game to you, that they will use reasonable care

1 to make sure that the instructions are clear and
2 unambiguous?

3 A. Yes.

4 MR. BROUGHTON: Form.

5 Q. (By Mr. LaGarde) Given the objection -- with
6 regard to the instructions on a game proposed by GTECH,
7 what do you expect them to do?

8 A. We expect -- I mean, we expect them to deliver
9 a game that is clear and that makes sense.

10 Q. If instructions are misleading or misrepresent
11 what symbols are needed to win a prize, what do you
12 expect, if anything, of GTECH?

13 MR. MINDELL: Objection, form.

14 MR. BROUGHTON: Form.

15 A. Well, we go through a complete review process,
16 so if anybody on the review team feels that anything is
17 unclear or should be changed, that's part of that process
18 that I talked about a minute ago. Those comments would
19 be sent back to GTECH and they'd be asked to change that.

20 Q. And my specific question is, what do you expect
21 GTECH to do with regard to the language of the game that
22 might be misleading?

23 MR. BROUGHTON: Form.

24 Q. (By Mr. LaGarde) If anything.

25 A. Yeah, I -- I wouldn't expect them to deliver

1 games that are misleading.

2 Q. Is GTECH under contractual obligation to
3 provide you with a final set of working papers that are
4 error-free?

5 MR. BROUGHTON: Objection, form.

6 A. That is our expectation, yes.

7 Q. If GTECH, hypothetically, provides you with
8 working papers that contain instructions that are
9 misleading or misrepresent what symbols are needed to win
10 a prize, would you consider that to be an error-free set
11 of working papers?

12 MR. MINDELL: Objection, form.

13 MR. BROUGHTON: Objection, form.

14 A. I guess it depends on how you would interpret
15 those play instructions, so I don't know that I can say
16 that that would be a set of working papers that has
17 errors or not.

18 Q. And when you say it depends on how you
19 interpret it, the real interpretation that's important is
20 how the players will interpret the instructions, correct?

21 MR. MINDELL: Objection, form.

22 A. That's correct.

23 Q. You're not designing tickets for people at
24 GTECH to understand, correct?

25 A. That's correct.

1 Q. And you're not designing tickets for people at
2 the TLC who deal with instant games every day to
3 understand, correct?

4 A. The people at the TLC that review those working
5 papers should be reading them to make sure that they are
6 clear.

7 Q. Do you think that the same obligation is
8 incumbent upon the folks at GTECH?

9 MR. BROUGHTON: Objection, form.

10 A. That should be their goal, yes.

11 Q. And -- and I guess the point I was getting at
12 is both -- do you believe that both the TLC and GTECH
13 should be designing a game so that the common man and
14 woman on the street who buy lottery tickets would
15 understand what the tickets mean?

16 MR. MINDELL: Objection, form.

17 MR. BROUGHTON: Objection, form.

18 A. Yes.

19 Q. Instructions on instant games should be clear
20 and unambiguous, right?

21 A. They should be clear, yes.

22 Q. Instructions should not confuse the consumer or
23 the player, correct?

24 A. Our goal is for them to be very clear, yes.

25 Q. And -- and if instructions are confusing or