

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

JAMES STEELE, et al., <i>Plaintiffs</i>	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
GTECH CORPORATION, <i>Defendant</i>	§	201 <sup>ST</sup> JUDICIAL DISTRICT
	§	

**GTECH'S TRADITIONAL MOTION FOR SUMMARY JUDGMENT**

GTECH Corporation (“GTECH”) files this Traditional Motion for Summary Judgment pursuant to TEX.R.CIV.P. 166, and respectfully shows:

**SUMMARY**

**THE TEXAS LOTTERY STATUTE AND “RULES” OF GAME 1592 PRECLUDE ALL CLAIMS**

By statute, the Texas Lottery Commission (“the **Commission**”) has sole discretion to implement and interpret all rules applicable to “scratch-off” tickets pursuant to the strict regulatory scheme enacted by the Texas Legislature.

The Commission’s rules – including “Rules” specifically applicable to Game 1592 (marketed as “**Fun 5’s**”) – preclude these claims against GTECH. The Commission has already considered, rejected and issued its determination regarding Plaintiffs’/Intervenors’ proffered interpretations of the Fun 5’s tickets stating:

<p>The “Money Bag” symbol is not an automatic win feature. Unless you reveal three 5’s in any one row, column or diagonal in game 5, the validation system will not recognize the ticket as a winning ticket for Game 5 and no prize can be paid.</p>
---

Plaintiffs/Intervenors now seek to circumvent the Legislature’s statutory scheme. Plaintiffs/Intervenors did not like the ruling from the Commission yet they did not challenge the Commission’s determination administratively and did not seek judicial review.

Importantly, review of an agency’s interpretation of matters in its purview is strictly “limited to determining whether the administrative interpretation ‘is plainly erroneous or inconsistent with the regulation.’” *See Public Utility Com’n v. Gulf States Utilities Co.*, 809 S.W.2d 201, 208 (Tex. 1991); *SWEPI LP v. Railroad Com’n of Texas*, 314 S.W.3d 253, 260 (Tex. App.—Austin 2010, pet. denied). Texas law on this issue is clear and well-established.

The Commission’s interpretation of its own Fun 5’s game was not “plainly erroneous.” Rather, Plaintiffs’/Intervenors’ subjective interpretation is *foreclosed* as a matter of law by the “Rules” that were drafted and adopted by the Commission and published in the Texas Register. These “Rules” are binding on Plaintiffs/Intervenors as a matter of Texas law. Consistent with these authorities, this Court should grant summary judgment and dismiss all of Plaintiffs’/Intervenors’ claims against GTECH.

## I

### BACKGROUND

#### A. THE COMMISSION’S AUTHORITY

1. Prior to the enactment of the State Lottery Act in 1993, all lottery games – including “scratch-off” games – were illegal in Texas. The State Lottery Act created a narrow exception so that certain lottery games could be made available to the public subject to the “strict control and close supervision” of a new agency: the Commission.<sup>1</sup>

2. Pursuant to the State Lottery Act, the Commission and its Executive Director “have broad authority and shall exercise strict control and close supervision over all lottery games [...]” TEX. GOV’T CODE § 466.014(a). Critically, under Texas law the Executive

---

<sup>1</sup> See TEX. CONST. art. 3, § 47(a) (“The Legislature shall pass laws prohibiting lotteries [...] in this State other than those authorized by [...] this section” including, as relevant here, state-operated lotteries); TEX. PEN. CODE § 47.02 (criminalizing gambling) and § 47.09(a)(2) (exempting participation in state lottery authorized by State Lottery Act, TEX. GOV’T CODE ch. 466).

Director of the Commission “shall prescribe the form of tickets.” TEX. GOV’T CODE § 466.015(a). By legislative design, the Commission “owns” and has ultimate authority and discretion over the entire lottery space in Texas.

**B. GAME 1592 (MARKETED UNDER THE NAME FUN 5’S)**

3. In August 2012, the Commission – as owner of the Texas Lottery – and GTECH entered into a services contract.<sup>2</sup> Per the contract, GTECH proposes potential scratch-off games to the Commission, makes changes to these games as directed by the Commission, and later prints tickets and programs computers in accordance with the Commission’s instructions.<sup>3</sup>

4. In March 2013, GTECH proposed a prototype of what became the Fun 5’s “scratch-off” ticket to the Commission.<sup>4</sup> The prototype was based on a “scratch-off” ticket design that had been previously used in Nebraska without consumer complaints.<sup>5</sup>

5. Over the next several months, the Commission reviewed and modified the prototype and the “draft working papers” for what would become the Fun 5’s game.<sup>6</sup> The Commission directed that GTECH make a number of changes to the proposed game, including changes to “Game 5” at the bottom of the Fun 5’s ticket<sup>7</sup> – which is the only portion of the Fun 5’s ticket that Plaintiffs/Intervenors have alleged is misleading or deceptive.<sup>8</sup> GTECH followed the Commission’s directions.<sup>9</sup>

---

<sup>2</sup> Exhibit A - Affidavit of Walter Gaddy, ¶ 8.

<sup>3</sup> Id. at ¶¶ 17, 18, 35..

<sup>4</sup> Id. at ¶ 19

<sup>5</sup> Id. at ¶ 20

<sup>6</sup> Id. at ¶¶ 22-33.

<sup>7</sup> Id. at ¶ 29

<sup>8</sup> There are 5 different games on the face of the ticket.

<sup>9</sup> Id. at ¶ 35]

6. In June 2014, the Commission published the official rules and procedures for Game 1592 (“Fun 5’s”) in the Texas Register (the “**Rules**”). *See* 39 Tex. Reg. 4799 (2014).<sup>10</sup> GTECH had no input or authority with respect to the “Rules”. GTECH did not draft those “Rules,” comment on those “Rules,” or even see them in advance.<sup>11</sup>

7. Approximately three months after publishing the “Rules” to the public through the Texas Register, the Commission began selling Fun 5’s tickets through its network of retailers.<sup>12</sup> GTECH’s name does not appear on any tickets and GTECH did not sell any tickets or communicate with prospective purchasers of any tickets.<sup>13</sup>

### **C. THE DISPUTE**

8. Approximately two weeks after the Commission began selling Fun 5’s tickets, news media began reporting that Plaintiff Geraldine Steele claimed to be confused by “Game 5” on the Fun 5’s tickets. Subsequently, many others bought Fun 5’s tickets and complained that they were misleading and sued.

9. The crux of all complaints of deception is that text printed in “Game 5” of the Fun 5’s tickets (reproduced below) was purportedly misleading.

---

<sup>10</sup> See Exhibit B at pp. 4799-4804.

<sup>11</sup> Affidavit of Walter Gaddy, ¶ 12.

<sup>12</sup> *Id.* at ¶ 13.

<sup>13</sup> *Id.* at ¶¶ 9, 39



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.

10. The referenced 5X BOX is known as a “multiplier” box.

11. According to Plaintiffs/Intervenors the text above suggested to them that there were two separate and independent ways to win in “Game 5”: *either* by revealing three “5” symbols in any one row, column, or diagonal; *or* separately by revealing a money bag symbol in the multiplier “5X BOX.” Plaintiffs/Intervenors complain that the language printed on the tickets “misled Plaintiffs into believing that 100% of Fun 5’s tickets with a Money Bag “5” symbol in Game 5 would be winning tickets.”<sup>14</sup> They seek to recover from GTECH the prize money they purportedly believed they had won once they scratched off the ticket. For many reasons, they cannot recover.

#### D. THE RULES OF THE GAME

12. Plaintiffs/Intervenors attempt to focus the Court’s attention on a single sentence printed on Fun 5’s tickets that they claim misled them into thinking they had won a prize.


**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.**

<sup>14</sup> Pls’ 3<sup>rd</sup> Am. Pet. ¶ 78.

That sentence must be interpreted only in the context of the “Rules” of the game. Those “Rules” categorically foreclose Plaintiffs’/Intervenors’ interpretations as previously determined by the Commission.

13. By statute, when Plaintiffs/Intervenors purchased a Fun 5’s ticket they “agreed to abide by and be bound by the commission’s rules, including the rules applicable to the particular game involved.” TEX. GOV’T CODE § 466.252(a); *See Stewart v. Texas Lottery Com’n*, 975 S.W.2d 732, 735-36 (Tex. App.—Corpus Christi 1998) (lottery players are presumed to know the laws related to the lottery).

14. The “Rules” for Game 1592 make it clear that there were not – as Plaintiffs/Intervenors contend – two separate and independent ways to win in “Game 5” of Game 1592. In other words, the Commission’s official and binding “Rules” leave no doubt that a player’s eligibility to win “5 times that PRIZE” was conditional on having won “that prize” by revealing three “5” symbols in any one, row, column, or diagonal. This concept is referred to as a “multiplier” game and is common in scratch-off games.

15. The interpretation argued by Plaintiffs/Intervenors of the sentence: “Reveal a Money Bag “” symbol in the 5X BOX win 5 times that PRIZE” must be rejected for at least five separate and independently dispositive reasons:



2.2 Programmed Game Parameters.  
GENERAL:  
A. Players can win **up to thirteen (13) times** on a Ticket in accordance with the approved prize structure.

*First*, pursuant to Section 2.2(A) of the “Rules,” “[p]layers can win **up to thirteen (13) times** on a Ticket [...]”<sup>15</sup> A review of the “Rules” reveals that twelve of the thirteen ways (or times) that players can possibly win relate to the other 4 games which also appear on the Fun 5’s ticket, about which there is no dispute. It follows by basic arithmetic that players can win only **one** way or time on “Game 5”. This means that there cannot be two separate and independent ways to win in “Game 5” as Plaintiffs/Intervenors assert. If Plaintiffs’/Intervenors’ interpretations were correct, then there would be fourteen ways to win which is not allowed by the Rules.

U. **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 line.**  
V. Winning combinations will have only **one occurrence** of three (3) "5" Play Symbols in any row, column, or diagonal.

*Second*, pursuant to Section 2.2(U) of the published “Rules,” “**as dictated by the prize structure, the money bag 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 line.**”<sup>16</sup>

<sup>15</sup> Emphasis added.

<sup>16</sup> Emphasis added.

Plaintiffs/Intervenors argue that a player could “win” a prize that is *not* dictated by the Prize Structure despite *not* “getting three (3) “5” Play Symbols in a single row, column, or diagonal line. That is simply not allowed by the Commission’s “Rules”.

*Third*, pursuant to Section 2.2(V) of the “Rules”, “winning combinations will have only **one occurrence** of three (3) “5” Play Symbols in any row, column or diagonal.” To win a player *must* reveal three “5” play symbols in one row, column, or diagonal. Plaintiffs/Intervenors seek to redefine the “Rule’s” “winning combinations” by adding those in which there were zero occurrence of three “5” play symbols in any row, column or diagonal. In other words, contrary to what the “Rules” state, Plaintiffs/Intervenors claim they did not have to win at tic-tac-toe to activate the multiplier.

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,944,000	8.33
\$10	1,080,000	15.00
\$15	648,000	25.00
\$25	380,025	42.63
\$50	216,000	75.00
\$75	17,550	923.08
\$100	10,800	1,500.00
\$500	810	20,000.00
\$1,000	135	120,000.00
\$100,000	16	1,012,500.00

*Fourth*, the “Rule’s” Prize Structure– listing prize amounts and approximate numbers of winners for each prize – defines all possible prizes that players can win. Plaintiffs/Intervenors are attempting to claim prizes that are not listed in the “Rule’s” Prize Structure. In other words, under the “Rules”, the prizes claimed by the Plaintiffs/Intervenors don’t exist.

*Fifth*, the Commission has previously considered the interpretation offered by Plaintiffs/Intervenors and rejected that interpretation as wrong as discussed below.



## E. THE COMMISSION'S DETERMINATION

16. By statute, the administrative regulations, and the specific game “Rules” for Fun 5’s, anyone who plays a lottery game in Texas must abide by and be bound by the Commission’s rules. In the event of any dispute, they must abide by and be bound by determinations of the Executive Director of the Commission.<sup>17</sup> Because lottery games were traditionally illegal in Texas, and remain so except as authorized by the Commission, players’ remedies are limited.

17. Neither the State Lottery Act, nor any rule or regulation adopted by the Commission, allows players who believe they were misled into thinking they won a “scratch-off” ticket prize to go outside of the Commission’s rules and sue based on their personal interpretation of their ticket.<sup>18</sup> To the contrary, in purchasing their “scratch-off” tickets, Plaintiffs/Intervenors agreed “to comply with, and abide by, the[] Game Procedures, [...] the State Lottery Act, the applicable rules adopted by the Texas Lottery [...], and all final decisions of the Executive Director.” Rules at § 6.

18. The Commission has issued its final decision explaining why Plaintiffs’/Intervenors’ interpretation of the Fun 5’s tickets is wrong:<sup>19</sup>

---

<sup>17</sup> See TEX. GOV’T CODE § 466.252(a) (player agrees to abide by and be bound by Commission’s rules, including rules applicable to particular game involved and acknowledges that determination of whether player is winner is subject to Commission’s rules, procedures, and validation tests); TEX. ADMIN. CODE § 401.302(i) (any dispute concerning whether a ticket is a winning ticket is to be resolved by Executive Director); TEX. ADMIN. CODE § 401.302(k) (in purchasing an instant game ticket a player agrees to comply with Texas law, rules, procedures, and final decisions of the Commission and all procedures and instructions established by the Executive Director for the game); Rules at § 6.0 (in purchasing a Fun 5’s ticket a player agrees to comply with Game Procedures for Instant Game No. 1592 [*i.e.* the Rules], the State Lottery Act, rules adopted by Texas Lottery pursuant to State Lottery Act, and all final decisions of the Executive Director).

<sup>18</sup> Lottery players do not have a common law right to sue on their tickets based on alleged fraud or any other theory because lottery tickets are unenforceable gambling contracts under common law. When the Legislature authorized a narrow exception to the state’s gambling prohibition, it specifically and expressly limited players’ rights and remedies to those established by the TLC.

<sup>19</sup> Exhibit C (Steele-50472.3-00001).



If you review the play instructions for Game 5, the first sentence explains how to win the prize in the PRIZE box. "Reveal three "5" symbols in any one row, column, or diagonal, win PRIZE in PRIZE box." In the second sentence, it explains how to multiply "that PRIZE" which you won from the first sentence. "Reveal a Money Bag symbol in the 5X BOX, win 5 times that PRIZE." The "Money Bag" symbol is a multiplier and is only applicable if a prize is won on Game 5 in accordance with the instructions in the first sentence.

The "Money Bag" symbol is not an automatic win feature. Unless you reveal three 5's in any one row, column or diagonal in game 5, the validation system will not recognize the ticket as a winning ticket for Game 5 and no prize can be paid.

19. By purchasing a Fun 5's ticket, all Plaintiffs/Intervenors agreed to be bound by and abide by the Commission's decisions. The Commission previously issued a final decision that Plaintiffs'/Intervenors' interpretation is wrong. No Plaintiff/Intervenor challenged the Commission's determination through an administrative proceeding and no Plaintiff/Intervenor sought judicial review of the Commission's ruling.

## II

### ARGUMENT

20. Traditional summary judgment is proper when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166; *Haase v. Glazner*, 62 S.W.3d 795, 797 (Tex. 2001). GTECH is entitled to summary judgment because Plaintiffs'/Intervenors' claims are based on a personal and subjective interpretation of a "scratch-off" ticket that is foreclosed by law, including the Commission's determination that Plaintiffs'/Intervenors' interpretation is incorrect.

**A. THE COMMISSION’S DETERMINATION IS BINDING**

21. As a matter of law, Plaintiffs and Intervenors – like all purchasers of “scratch-off” tickets – “agree[d] to abide by and be bound by the commission’s rules, including the rules applicable to the particular game involved.” TEX. GOV’T CODE § 466.252(a). The Commission’s rules, including the “Rules” for Fun 5’s, specifically provide that “in purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, [...] all final decisions of the Executive Director.” Rules at § 6. (An “Instant Game Ticket is another name for a scratch-off ticket.)

22. The Commission has issued its final decision:

“the ‘Money Bag’ symbol is a multiplier and is only applicable if a prize is won on Game 5 in accordance with the instructions in the first sentence [...] [t]he ‘Money Bag’ symbol is not an automatic win feature. Unless you reveal three 5’s in any one row, column, or diagonal in [G]ame 5, the validation system will not recognize the ticket as a winning ticket for Game 5 and no prize can be paid.”

In other words, Plaintiffs/Intervenors are simply *wrong* that there are two separate and independent ways to win in “Game 5” on a Fun 5’s ticket. Their claims are based on their misinterpretation of the language on the ticket. Plaintiffs’/Intervenors’ interpretation ignores the Commission’s Rules and ignores the Commission’s stated interpretation in its prior final decision.

23. Even if Plaintiffs/Intervenors had not agreed to be bound by the Commission’s determinations by purchasing Fun 5’s tickets, the Commission’s determination of the operation of its own game is entitled to great deference under Texas law.

24. In exempting state-run lotteries from Texas laws prohibiting and criminalizing participation in and operation of lotteries, the Legislature delegated exclusive authority to the

Commission to “prescribe the form of tickets” and determine which tickets are winning tickets. TEX. GOV’T CODE § 466.015(a) and § 466.252(a).

25. By statute, anyone who plays a lottery game is bound by the Commission’s rules and acknowledges that their eligibility to receive a prize is subject to the Commission’s rules, procedures, and validation tests. *Id.* No other right or cause of action was created for gamblers with respect to any tickets sold by the Commission pursuant to the statutory mandate. The Legislature intended that the Commission have the first and final word on lottery games authorized by the State Lottery Act.

26. Because the text printed on “scratch-off” tickets relates to the “form of tickets” and/or are material to determine whether tickets are winning tickets, the Commission has exclusive authority from the Legislature to interpret it to ensure consistency with its rules and regulations and to ensure uniformity in the operation of the Texas Lottery.

27. It is black-letter law that judicial review of an agency’s interpretation of matters within its purview is strictly “limited to determining whether the administrative interpretation ‘is plainly erroneous or inconsistent with the regulation.’” *See Public Utility Com’n v. Gulf States Utilities Co.*, 809 S.W.2d 201, 208 (Tex. 1991); *SWEPI LP v. Railroad Com’n of Texas*, 314 S.W.3d 253, 260 (Tex. App.—Austin 2010, pet. denied).


28. It is undisputed that the Commission has ruled that, contrary to Plaintiffs’/Intervenors’ personal and subjective interpretation of their tickets, players must reveal three “5” symbols in any row, column, or diagonal to be eligible to multiply any prize won by revealing a money bag symbol in the multiplier “5X BOX.”<sup>20</sup> The Commission’s interpretation

---



<sup>20</sup> The text printed on Fun 5’s is materially identical to the Rule published by the Commission in the June 20, 2014 edition of the Texas Register. See Rules at § 2 (“GAME 5: If a player reveals three “5” Play Symbols in any one row, column or diagonal, the player wins the PRIZE in the PRIZE box. If a player reveals a “MONEY BAG” Play Symbol in the 5X BOX, the player wins 5 times that PRIZE.”).

is not “plainly erroneous” and is perfectly consistent with – indeed required by – the “Rules” applicable to the Fun 5’s tickets upon which Plaintiffs/Intervenors sue.

First, the Rules unambiguously provide at Section 2.2(A) that “[p]layers can win **up to thirteen (13) times** on a Ticket.”<sup>21</sup> As demonstrated below, 12 of the 13 times that players can win on a Fun 5’s ticket relate to the other 4 games on the ticket, about which there is no dispute. That leaves only one way to win on “Game 5”. Yet, under Plaintiffs’/Intervenors’ interpretation players could win two separate times on “Game 5”. Plaintiffs’/Intervenors’ suggested interpretation is *inconsistent* with the express wording of the “Rules” that govern the Fun 5’s tickets and has already been overruled by the Commission.

Game	Fun 5s Ticket Language	Number of Times Player Can Win	Total
1		1	1

<sup>21</sup> Emphasis added.

Game	Fun 5s Ticket Language	Number of Times Player Can Win	Total
2	 <p>Reveal three matching prize amounts, win that amount. Reveal two matching prize amounts and a "5" symbol, win 5 times that amount.</p> <p>GAME 2</p>	1	2
3	 <p>GAME 3 Reveal a "5" symbol, win the PRIZE for that symbol.</p> <p>PRIZE PRIZE PRIZE PRIZE PRIZE</p> <p>Over \$50,000,000 in Prizes!</p>	5	7

Game	Fun 5s Ticket Language	Number of Times Player Can Win	Total
------	------------------------	--------------------------------	-------

4

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



5

12

5



1

13

*Second*, the Rules provide at Section 2.2(U) that “**as dictated by the prize structure**” the money bag symbol will appear “**when the player has won** by getting three (3) “5” Play Symbols in a single row, column or diagonal line.” In other words, the money bag symbol functions as a multiplier in a subset of winning tickets. There is no rule and no hint in the “Rules” that the money bag symbol could even be operative in tickets where the player has *not* won the tic-tac-toe by getting three (3) “5” Play Symbols in a single row, column, or diagonal line” or that it could be operative in a way other than as “dictated by the prize structure.” Plaintiffs’/Intervenors’ interpretation would effectuate a wholesale rewriting of the Commission’s “Rules” by creating new and additional win scenarios that were never contemplated or allowed by the Rules.

*Third*, the “Rules” unambiguously provide at Section 2.2(V) that “winning combinations will have only **one occurrence** of three (3) “5” Play Symbols in any row, column or diagonal.”<sup>22</sup> This eliminates combinations with more than one occurrence of three “5” play symbols in any row, column, or diagonal and it also rules out combinations with no occurrences of three “5” play symbols in any row, column, or diagonal. That is, the Commission’s “Rules” are clear that winning tickets will have exactly one occurrence of three “5” play symbols in any row, column, or diagonal. This means that tickets with zero occurrences of three “5” play symbols in any row, column, or diagonal – such as Plaintiffs’/Intervenors’ tickets – cannot possibly be winning tickets. All of the tickets upon which Plaintiffs/Intervenors sue have zero occurrences of the tic-tac-toe. The result of Plaintiffs’/Intervenors’ suggested interpretation would require a redrafting by this Court of the Commission’s binding “Rules”.

---

<sup>22</sup> Emphasis added.



*Fourth*, the Prize Structure for the game – itemizing the prize amounts and approximate numbers of winners for each prize – defines all possible prizes that players can win. Pursuant to the Commission’s Prize Structure, the only possible prize amounts are: \$5, \$10, \$15, \$25, \$50, \$75, \$100, \$500, \$1,000, and \$100,000. No other prize amounts are possible under the Commission’s “Rules”.

Despite the specified and defined Prize Structure, Plaintiffs/Intervenors are claiming – under their personal interpretations – they believed they won prizes that are *not* even listed in the Prize Structure issued by the Commission. Indeed, an analysis of the Prize Structure reveals that the only possible prize amounts with tickets eligible for the multiplier in “Game 5” are \$5, \$10, \$15, and \$100.

Prize	Multiplier (x 5)	Multiplier In Prize Structure?
\$5	\$25	Yes
\$10	\$50	Yes
\$15	\$75	Yes
\$25	\$125	No
\$50	\$250	No
\$75	\$375	No
\$100	\$500	Yes
\$500	\$2,500	No
\$1,000	\$5,000	No
\$100,000	\$500,000	No

29. Under Texas statute, by purchasing a “scratch-off” ticket Plaintiffs and Intervenors “agree[d] to abide by and be bound by the commission’s rules, including the rules applicable to the particular game involved.” TEX. GOV’T CODE § 466.252(a). Plaintiffs’ and Intervenors’ interpretation of “Game 5” of Game 1592 is contrary to the Commission’s rules, including specifically the “Rules” applicable to Game 1592. The Commission’s interpretation and final decision of the text in Game 1592 is therefore not “plainly erroneous”. The

Commission’s interpretation is not only consistent with its rules and regulations, but is required by them.

**B. ALL CLAIMS FAIL EVEN IF COMMISSION OWED NO DEFERENCE**

30. When interpreting a writing, Texas courts “examine and consider *the entire writing* in an effort to harmonize and give effect to *all the provisions* so that none will be rendered meaningless.” *Seagull Energy E&P, Inc. v. Eland Energy*, 207 S.W.3d 342, 345 (Tex. 2006) (emphasis in original).

31. The “entire writing” in this case consisted of not just the text printed on the Fun 5’s tickets, but also the rules and regulations – and specifically the “Rules” for Fun 5’s – that were adopted by the Commission and were binding on Plaintiffs/Intervenors as a matter of Texas statute.<sup>23</sup> Plaintiffs’/Intervenors’ suggested interpretation would render portions of the Rules without effect, would require rewriting of other portions, and is inconsistent with the whole of the “Rules” applicable to the Fun 5’s tickets. Therefore, even if the Commission’s interpretation of its own ticket was entitled to no deference, Plaintiffs/Intervenors could not prevail.

**PRAYER**

For the foregoing reasons, this Court should dismiss all of Plaintiffs’/Intervenors’ claims against GTECH by granting it summary judgment and for such other and further relief to which it is justly entitled.

---

<sup>23</sup> TEX. GOV’T CODE § 466.252(a).

Respectfully submitted,

REED SMITH LLP

/s/ Kenneth E. Broughton

Kenneth E. Broughton

State Bar No. 03087250

Michael H. Bernick

State Bar No. 24078227

Arturo Muñoz

State Bar No. 24088103

811 Main Street, Suite 1700

Houston, Texas 77002-6110

Telephone: 713.469.3819

Telecopier: 713.469.3899

[kbroughton@reedsmith.com](mailto:kbroughton@reedsmith.com)

[mbernick@reedsmith.com](mailto:mbernick@reedsmith.com)

[amunoz@reedsmith.com](mailto:amunoz@reedsmith.com)

ATTORNEYS FOR DEFENDANT  
GTECH CORPORATION

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served by electronic transmission on this the 21<sup>st</sup> day of July, 2016, to the following counsel of record:

W. Mark Lanier  
Christopher L. Gadoury  
THE LANIER LAW FIRM, P.C.  
6810 Cypress Creek Parkway  
Houston, TX 77069  
[WML@lanierlawfirm.com](mailto:WML@lanierlawfirm.com)  
[chris.gadoury@lanierlawfirm.com](mailto:chris.gadoury@lanierlawfirm.com)

Richard L. LaGarde  
Mary Ellis LaGarde  
LAGARDE LAW FIRM, P.C.  
3000 Wesleyan, Suite 380  
Houston, Texas 77027  
[richard@lagardelaw.com](mailto:richard@lagardelaw.com)  
[mary@lagardelaw.com](mailto:mary@lagardelaw.com)

Manfred Sternberg  
MANFRED STERNBERG &  
ASSOCIATES, P.C.  
4550 Post Oak Place Dr., Suite 119  
Houston, Texas 77027  
[manfred@msternberg.com](mailto:manfred@msternberg.com)

Leroy B. Scott  
SCOTT ESQ  
3131 McKinney Ave, Ste. 600  
Dallas, TX 75204  
[lscott@scottesq.com](mailto:lscott@scottesq.com)

Clinton E. Wells, Jr.  
MCDOWELL WELLS, L.L.P.  
603 Avondale  
Houston, Texas 77006  
[cew@houstontrialattorneys.com](mailto:cew@houstontrialattorneys.com)

Andrew G. Khoury  
KHOURY LAW FIRM  
2002 Judson Road, Suite 204  
Longview, Texas 75606-1151  
[andy@khourylawfirm.com](mailto:andy@khourylawfirm.com)

James D. Hurst  
JAMES D. HURST, P.C.  
1202 Sam Houston Avenue  
Huntsville, Texas 77340  
[jdhurst@sbcglobal.net](mailto:jdhurst@sbcglobal.net)

Daniel H. Byrne  
Lessie G. Fitzpatrick  
FRITZ, BYRNE, HEAD & FITZPATRICK, PLLC  
221 West 6th Street, Suite 960  
Austin, Texas 78701  
[dbyrne@fbhh.com](mailto:dbyrne@fbhh.com)  
[lfitzpatrick@fbhh.com](mailto:lfitzpatrick@fbhh.com)

Leonard E. Cox  
ATTORNEY AT LAW  
P.O. Box 1127  
Seabrook, Texas 77586  
[LawyerCox@LawyerCox.com](mailto:LawyerCox@LawyerCox.com)

Wes Dauphinot  
DAUPHINOT LAW FIRM  
900 West Abram  
Arlington, Texas 76013  
[wes@dauphinotlawfirm.com](mailto:wes@dauphinotlawfirm.com)

William M. Pratt  
LAW OFFICE OF WILLIAM PRATT  
3265 Lackland Road  
Fort Worth, Texas 76010  
[lawofficeoffice@yahoo.com](mailto:lawofficeoffice@yahoo.com)

Jerry B. Register  
JERRY B. REGISTER, P.C.  
1202 Sam Houston Avenue  
P.O. Box 1402  
Huntsville, Texas 77342  
[jbreg@sbcglobal.net](mailto:jbreg@sbcglobal.net)

William S. Webb  
KRAFT & ASSOCIATES, P.C.  
2777 Stemmons Freeway, Suite 1300  
Dallas, Texas 75207  
[swebb@kraftlaw.com](mailto:swebb@kraftlaw.com)

John H. Read, II  
ATTORNEY AT LAW  
1230 N. Riverfront Blvd.  
Dallas, Texas 75207-4013  
[john@readlawoffices.com](mailto:john@readlawoffices.com)

Paul T. Morin  
PAUL T. MORIN, P.C.  
503 W. 14<sup>th</sup> Street  
Austin, Texas 78701  
[PMorin@austin.rr.com](mailto:PMorin@austin.rr.com)

Christopher S. Hamilton  
Andrea L. Fitzgerald  
STANDLY AND HAMILTON, LLP  
325 N. St. Paul Street, Suite 3300  
Dallas, Texas 75201  
[chamilton@standlyhamilton.com](mailto:chamilton@standlyhamilton.com)

Eugene W. Brees  
WHITEHURST, HARKNESS, BREES, CHENG,  
ALSAFFAR & HIGGINBOTHAM, PLLC  
7500 Rialto Blvd., Bldg. Two  
Suite 250  
Austin, Texas 78735  
[cbrees@nationaltriallaw.com](mailto:cbrees@nationaltriallaw.com)

Richard Warren Mithoff  
Warner V. Hocker  
MITHOFF LAW  
Penthouse, One Allen Center  
500 Dallas, Suite 3450  
Houston, Texas 77002  
[rmithoff@mithofflaw.com](mailto:rmithoff@mithofflaw.com)  
[whocker@mithofflaw.com](mailto:whocker@mithofflaw.com)

Blake C. Erskine  
ERSKINE & MCMAHON, L.L.P.  
P.O. Box 3485  
Longview, Texas 75606  
[blakee@erskine-mcmahon.com](mailto:blakee@erskine-mcmahon.com)

Raymond L. Thomas  
Olegario Garcia  
Ricardo Pumarejo Jr.  
KITTLEMAN THOMAS, PLLC  
4900-B N. 10<sup>th</sup> Street  
McAllen, Texas 78504  
[rthomas@ktattorneys.com](mailto:rthomas@ktattorneys.com)  
[ogarcia@ktattorneys.com](mailto:ogarcia@ktattorneys.com)  
[rpumarejo@ktattorneys.com](mailto:rpumarejo@ktattorneys.com)

Henderson L. Buford, III  
ATTORNEY AT LAW  
8240 N. Mopac Expressway, Suite 130  
Austin, Texas 78759  
[hlb@bufordlaw.com](mailto:hlb@bufordlaw.com)

/s/ Kenneth E. Broughton  
Kenneth E. Broughton