

## Kent Rutter in Law360: Texas Supreme Court Mulls Lottery Contractor's Immunity

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PRACTICES Appellate

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*Law360* wrote about a Texas Supreme Court case involving Gtech Corp., a government contractor that is seeking immunity from fraud lawsuits over Texas Lottery scratch-off tickets.

Here is an excerpt:

[Extending immunity] to a government contractor to shield it from two \$500 million fraud lawsuits would defeat the true purpose of immunity, which is to shield taxpayers from footing the bill for government mistakes, the Texas Supreme Court was told in oral arguments Tuesday.

In back-to-back arguments, the Texas Supreme Court was asked Tuesday to resolve a split among lower appellate courts about whether government immunity can apply to shield Gtech Corp. — the U.S. subsidiary of an Italian gaming company that has an exclusive contract to operate the Texas Lottery through 2020 — from lawsuits over allegedly misleading lottery scratch-off games.

The Fifth Court of Appeals in Dallas determined Gtech is entitled to derivative immunity and doesn't have to face the lawsuit brought by lead plaintiff Dawn Nettles, and the Third Court of Appeals in Austin held the opposite and allowed the other lead plaintiff James Steele to proceed with his suit.

Gtech has argued it is entitled to protection from liability because it only “followed, rather than second-guessing,” the commission’s directions about the form of the lottery ticket.

[Kent Rutter](#) of Haynes Boone, who represents Gtech, told the court the issue is whether the contractor “exercised discretion” over what led to these fraud claims, and told the court that’s not the case here.

“If Gtech exercised discretion then ... I think there would be no derivative immunity,” he said. “Here we have a statute that is very clear ... that the Lottery Commission has exclusive authority over the form of lottery tickets,” he said. “The legislature has said the design of the ticket, the form of the ticket, is within the exclusive control of the commission and the plaintiffs are asking the judicial system to say ‘nevertheless we’re going to say Gtech had some authority over that ticket.’”

To read the full article, click [here](#). (Subscription required)