

No. 31540

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

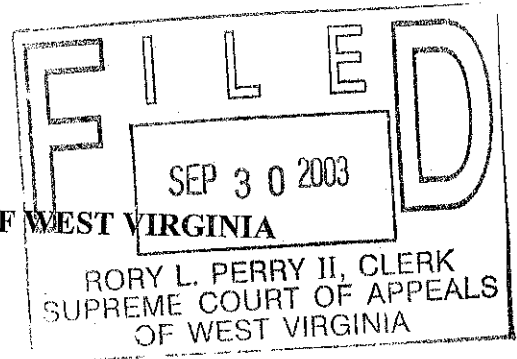
STATE OF WEST VIRGINIA, *ex rel.*
ITS CITIES OF CHARLESTON AND HUNTINGTON
AND ITS COUNTIES OF OHIO AND KANAWHA,

Petitioners,

v.

WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY,
a public corporation,

Respondent.



No. 31541

STATE OF WEST VIRGINIA, *ex rel.*
REV. JIM LEWIS and JOHN COONEY,

Petitioners,

v.

WEST VIRGINIA ECONOMIC DEVELOPMENT GRANT COMMITTEE,
WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY,
CITY OF CHARLESTON, KANAWHA COUNTY COMMISSION,
CITY OF HUNTINGTON, and OHIO COUNTY COMMISSION,

Respondents.

No. 31564

GREENBRIER COUNTY COALITION
AGAINST GAMBLING EXPANSION,
and CABELL COUNTY COALITION
AGAINST GAMBLING EXPANSION,
unincorporated associations,

Petitioners,

v.

**WEST VIRGINIA LOTTERY COMMISSION,
and ITS DIRECTOR, JOHN MUSGRAVE,**

Respondents.

SUBMISSION OF REBUTTAL EVIDENCE BY RESPONDENTS
THE WEST VIRGINIA LOTTERY COMMISSION AND JOHN C. MUSGRAVE


Pursuant to this Court's order of September 23, 2003, Respondents, the West Virginia Lottery Commission and John C. Musgrave, respectfully submit rebuttal evidence in these consolidated cases.

Respondents herewith submit as their Exhibit 3 the affidavit of Marion Alvin Rose, with exhibits annexed.

Respectfully submitted,

THE WEST VIRGINIA LOTTERY COMMISSION, and
JOHN C. MUSGRAVE,

By counsel,


THOMAS R. GOODWIN (WV Bar # 1435)
Special Assistant Attorney General
JOHNNY M. KNISELY II (WV Bar # 4968)
GOODWIN & GOODWIN LLP
300 Summers Street, Suite 1500
P.O. Box 2107
Charleston, WV 25328-2107
(304) 346-7000

AFFIDAVIT OF MARION ALVIN ROSE

Alvin Rose, Deputy Director of the State Lottery Office for Video Lottery Security, first being duly sworn, states as follows:

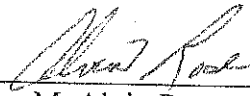
1. I am over the age of twenty-one years and am competent to testify as to all matters related to this affidavit.
2. I am the Deputy Director of the State Lottery Office for Video Lottery Security. I have served in this and related capacities for more than six years.
3. My staff and I have reviewed the affidavit of Franklin D. Young filed on September 26, 2003 with this Court by the Greenbrier County Coalition Against Gambling Expansion and others. The affidavit alleges as facts certain aspects of the operation of limited video lottery games at four licensed locations in Jackson County and at Tri State Racetrack and Gaming Center.
4. Upon receipt and review of the affidavit of Frank Young, I supplied the affidavit to field supervisor Bruce Adkins who in turn relayed the statements to Lottery Program Specialist Michele Carter by telephone and instructed her to visit each of the four Jackson County locations.
5. At each of the four Jackson County locations, Ms. Carter reviewed the affidavit to see if the items were in order.
6. As Mr. Young said in his Statement 3-A, the odds are not posted. This is because the Limited Video Lottery Act requires only that either the odds or the house percentage must be posted.
7. House percentages are posted at all four Jackson County locations. See Mr. Young's Statement 3-B. As is stated in Director John Musgrave's earlier affidavit, they are posted. Some are posted near the cashier station and some are posted near the machines.
8. Mr. Young's Statement 3-C is fairly descriptive, for the most part, regarding reviewing the rules of play on the "Help Screens" and "glass" areas of the video lottery terminals at the four Jackson County locations.
9. I am unaware of any law or regulation that requires a limited video lottery retailer to post any notice that a player's skill or knowledge of probabilities could not benefit the player in playing the machine as alleged in Mr. Young's Statement 3-D. The only reference to these terms in the statute is within the definition of "video lottery game" found in W.Va. Code 29-22B-332(5).

EXHIBIT

3

10. The 1-800 Gambler signs are the vehicle chosen by the Legislature to empower a player with compulsive gambling problems to access counseling and treatment services. See Mr. Young's Statement 3-E.
11. Mr. Young said in Statement 3-F that at two of the locations there were no separate and enclosed areas for the limited video lottery terminals. This is not at odds with the Limited Video Lottery Act when a licensee has a private club liquor license and restricts access to the premises to persons 21 and older. This was the situation at Neighborhood Diner, Sportsman Bar and Mulberry's Bar.
12. Michele Carter found no signs saying the gambling age was eighteen years of age (Young Affidavit, Statement 3-G) at any of the four Jackson County locations. Under the Racetrack Video Lottery Act, however, the minimum gaming age for playing video lottery terminals, as it is for making pari-mutuel wagers under the State Racing Act, is eighteen years.
13. The Limited Video Lottery Act makes the compulsive gambling warnings and notices the responsibility of each limited video lottery retailer. Nevertheless, the Lottery Commission has taken the extra step of printing both messages and providing them to limited video lottery retailers. Both the 1-800-Gambler stickers and the yellow dangling signs saying playing this machine may be dangerous... were in place at the four Jackson County locations. Each of the signs has been distributed statewide and security personnel under my supervision are directed to ensure that they are installed and visible at each retailer location.
14. While at each of the four Jackson County locations selected by Mr. Young in his affidavit, Ms. Carter completed a standard West Virginia Lottery compliance review checklist form. These four checklist forms are attached to this affidavit as Exhibits A, B, C and D.

Further the affiant sayeth naught.

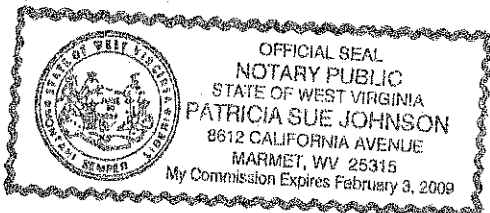


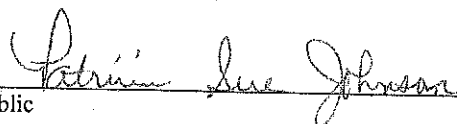
 M. Alvin Rose

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO WIT:

The foregoing was sworn to and acknowledged before me by John C. Musgrave this thirtieth day of September, 2003.

My commission expires: 02/03/2009





 Notary Public



LIMITED VIDEO LOTTERY COMPLIANCE INSPECTION

BCA

Rose Affidavit
EXHIBIT A

Neighborhood Diner

18A-210-008104

LR002402

LOCATION NAME

/ABCA LICENSE NUMBER

/LVL LICENSE NUMBER

9.29.03

DATE

Mary Cole

Jackson

PERSON CONTACTED AT LOCATION

/LOCATION'S COUNTY

	YES	NO
1. Limited video lottery license posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Logic Box seal numbers correct and secure	<u>N/A</u>	<input type="checkbox"/>
3. Lottery control numbers correct and secure	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Terminals properly placed and secured	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Terminals clean with good appearance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Terminals visibly damaged	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Persons under the age of 21 playing terminals	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Persons under 21 present in immediate area of the machines	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Persons visibly intoxicated playing terminals	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Are games visible by persons under 21	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Personnel appear to be signing logbooks	<u>N/A</u>	<input type="checkbox"/>
12. "Caution" Gambling sign posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. 1-800- Stickers affixed to each machine	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. Are the odds or house percentages posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Security cameras working & positioned properly	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is retailer displaying LVL advertisement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Games visible from outside the establishment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18. Name of CCTV recorder	<u>Kalatel</u>	

Comments:

Michelle Carter

WVL Security



LIMITED VIDEO LOTTERY COMPLIANCE INSPECTION

ENTERED SEP 16 2003

BLA

Neighborhood Diner + Lounge / 18-A-212-008104 / U002402
LOCATION NAME / ABCA LICENSE NUMBER / LVL LICENSE NUMBER

9.10.03
DATE
Mary Cole / Jackson
PERSON CONTACTED AT LOCATION / LOCATION'S COUNTY

	YES	NO
1. Limited video lottery license posted	✓	
2. Logic Box seal numbers correct and secure	N/A	
3. Lottery control numbers correct and secure	✓	
4. Terminals properly placed and secured	✓	
5. Terminals clean with good appearance	✓	
6. Terminals visibly damaged		✓
7. Persons under the age of 21 playing terminals		✓
8. Persons under 21 present in immediate area of the machines		✓
9. Persons visibly intoxicated playing terminals		✓
10. Are games visible by persons under 21		✓
11. Personnel appear to be signing logbooks	N/A	⊗
12. "Caution" Gambling sign posted	✓	
13. 1-800- Stickers affixed to each machine	✓	
14. Are the odds or house percentages posted	✓	
15. Security cameras working & positioned properly	✓	
16. Is retailer displaying LVL advertisement		✓
17. Games visible from outside the establishment		✓
18. Name of CCTV recorder	Kalatel	

Comments:

Michelle Carter
WVL Security

Neighborhood Diner & Lounge

I, Mary Cole, a limited video lottery retailer, have received one or more laminated sheets containing the "House Percentages" for my video lottery games. I understand that it is my legal duty to post these sheets in my licensed establishment.

Mary Cole
(signature) vs

7/10/03
(date)

LR002402
(license #)



LIMITED VIDEO LOTTERY COMPLIANCE INSPECTION

Ben

Rose Affidavit
EXHIBIT B

Sportsman / 18-A-212-016181 / LRO01202
LOCATION NAME / ABCA LICENSE NUMBER / LVL LICENSE NUMBER

9.29.03 / Donna Romeo / JACKSON
DATE / PERSON CONTACTED AT LOCATION / LOCATION'S COUNTY

	YES	NO
1. Limited video lottery license posted	✓	
2. Logic Box seal numbers correct and secure	N/A	
3. Lottery control numbers correct and secure	✓	
4. Terminals properly placed and secured	✓	
5. Terminals clean with good appearance	✓	
6. Terminals visibly damaged		✓
7. Persons under the age of 21 playing terminals		✓
8. Persons under 21 present in immediate area of the machines		✓
9. Persons visibly intoxicated playing terminals		✓
10. Are games visible by persons under 21		✓
11. Personnel appear to be signing logbooks	N/A	
12. "Caution" Gambling sign posted	✓	
13. 1-800- Stickers affixed to each machine	✓	
14. Are the odds or house percentages posted	✓	
15. Security cameras working & positioned properly	✓	
16. Is retailer displaying LVL advertisement		✓
17. Games visible from outside the establishment		✓
18. Name of CCTV recorder	Kalatel	

Comments:

Michelle Carter
WVL Security



LIMITED VIDEO LOTTERY COMPLIANCE INSPECTION

ENTERED SEP 11 2003

SPORTSMAN

18-A-22-000181

LR001202

LOCATION NAME

ABCA LICENSE NUMBER

LVL LICENSE NUMBER

9.2.03

DATE

PERSON CONTACTED AT LOCATION

JACKSON

LOCATION'S COUNTY

	YES	NO
1. Limited video lottery license posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Logic Box seal numbers correct and secure	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Lottery control numbers correct and secure	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Terminals properly placed and secured	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Terminals clean with good appearance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Terminals visibly damaged	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Persons under the age of 21 playing terminals	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Persons under 21 present in immediate area of the machines	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Persons visibly intoxicated playing terminals	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Are games visible by persons under 21	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Personnel appear to be signing logbooks	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. "Caution" Gambling sign posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. 1-800- Stickers affixed to each machine	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. Are the odds or house percentages posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Security cameras working & positioned properly	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is retailer displaying LVL advertisement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Games visible from outside the establishment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18. Name of CCTV recorder	KALATEO	

Comments:

Michelle Green
WVL Security

I, Donna ^{Sportsman}, a limited video lottery retailer, have received one or more laminated sheets containing the "House Percentages" for my video lottery games. I understand that it is my legal duty to post these sheets in my licensed establishment.

Donna Romeo
(signature)

7-11-03
(date)

LR 0012 02
(license #)

BCA

LIMITED VIDEO LOTTERY COMPLIANCE INSPECTION



Rose Affidavit
EXHIBIT C

Murberrys / 18-A-212-004484 / LR001061
LOCATION NAME / ABCA LICENSE NUMBER / LVL LICENSE NUMBER

9.29.03
DATE

Squeak Gentry / Jackson
PERSON CONTACTED AT LOCATION / LOCATION'S COUNTY

	YES	NO
1. Limited video lottery license posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Logic Box seal numbers correct and secure	<u>N/A</u>	<input type="checkbox"/>
3. Lottery control numbers correct and secure	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Terminals properly placed and secured	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Terminals clean with good appearance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Terminals visibly damaged	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Persons under the age of 21 playing terminals	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Persons under 21 present in immediate area of the machines	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Persons visibly intoxicated playing terminals	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Are games visible by persons under 21	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Personnel appear to be signing logbooks	<u>N/A</u>	<input type="checkbox"/>
12. "Caution" Gambling sign posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. 1-800- Stickers affixed to each machine	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. Are the odds or house percentages posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Security cameras working & positioned properly	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is retailer displaying LVL advertisement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Games visible from outside the establishment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18. Name of CCTV recorder	<u>Kalatel</u>	

Comments:

Michele Carter
WVL Security



LIMITED VIDEO LOTTERY COMPLIANCE INSPECTION

ENTERED

Mulberry

18A212-004774/2003

2001001

LOCATION NAME

ABCA LICENSE NUMBER

LVL LICENSE NUMBER

DATE

9.2.03

Jackson

PERSON CONTACTED AT LOCATION

LOCATION'S COUNTY

	YES	NO
1. Limited video lottery license posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Logic Box seal numbers correct and secure	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Lottery control numbers correct and secure	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Terminals properly placed and secured	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Terminals clean with good appearance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Terminals visibly damaged	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Persons under the age of 21 playing terminals	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Persons under 21 present in immediate area of the machines	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Persons visibly intoxicated playing terminals	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Are games visible by persons under 21	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Personnel appear to be signing logbooks	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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14. Are the odds or house percentages posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Security cameras working & positioned properly	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is retailer displaying LVL advertisement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Games visible from outside the establishment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18. Name of CCTV recorder	<u>Kalatal</u>	

Comments:

Michele Carter

WVL Security

mailing

Collie J Gentry

I, _____, a limited video lottery retailer, have received one or more laminated sheets containing the "House Percentages" for my video lottery games. I understand that it is my legal duty to post these sheets in my licensed establishment.

Collie J Gentry
(signature)

7-16-03
(date)

1061
(license #)



LIMITED VIDEO LOTTERY COMPLIANCE INSPECTION

BCA

Rose Affidavit
EXHIBIT D

Gabbys / 18.A.212.003249 / LR001069
LOCATION NAME / ABCA LICENSE NUMBER / LVL LICENSE NUMBER

9.29.03
DATE
Renee Long / Jackson
PERSON CONTACTED AT LOCATION / LOCATION'S COUNTY

	YES	NO
1. Limited video lottery license posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Logic Box seal numbers correct and secure	<u>N/A</u>	<input type="checkbox"/>
3. Lottery control numbers correct and secure	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Terminals properly placed and secured	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Terminals clean with good appearance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Terminals visibly damaged	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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8. Persons under 21 present in immediate area of the machines	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Persons visibly intoxicated playing terminals	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Are games visible by persons under 21	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Personnel appear to be signing logbooks	<u>N/A</u>	<input type="checkbox"/>
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14. Are the odds or house percentages posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Security cameras working & positioned properly	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is retailer displaying LVL advertisement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Games visible from outside the establishment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18. Name of CCTV recorder	<u>Kalatel</u>	

Comments:

Michele Carter

WVL Security



LIMITED VIDEO LOTTERY COMPLIANCE INSPECTION

ENTERED 07 03 2003

LOCATION NAME: Bobby's / ABCA LICENSE NUMBER: 18-A-212-003249 / LVL LICENSE NUMBER: LR001069

DATE: 9.12.03
PERSON CONTACTED AT LOCATION: Robin Walker / LOCATION'S COUNTY: Jackson

	YES	NO
1. Limited video lottery license posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Logic Box seal numbers correct and secure	<u>N/A</u>	<input type="checkbox"/>
3. Lottery control numbers correct and secure	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Terminals properly placed and secured	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Terminals clean with good appearance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Terminals visibly damaged	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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11. Personnel appear to be signing logbooks	<u>N/A</u>	<input type="checkbox"/>
12. "Caution" Gambling sign posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. 1-800- Stickers affixed to each machine	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. Are the odds or house percentages posted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Security cameras working & positioned properly	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is retailer displaying LVL advertisement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Games visible from outside the establishment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18. Name of CCTV recorder	<u>Kalato</u>	

Comments:

Michelle Carter

All Limited Video Lottery Retailers
Re: RECEIPT
Page 2
July 1, 2003

I, GABBY'S, a limited video lottery retailer, have received one or more laminated sheets containing the "House Percentages" for my video lottery games. I understand that it is my legal duty to post these sheets in my licensed establishment.

Bridgette H. Carpenter
(signature)

9.29.03
(date)

LR001069
(license #)

CERTIFICATE OF SERVICE

I, Johnny M. Knisely II, one of counsel for the Respondents West Virginia Lottery Commission and John C. Musgrave, certify that service of the foregoing "Submission of Rebuttal Evidence by Respondents The West Virginia Lottery Commission and John C. Musgrave" was made this 30th day of September, 2003, by placing true and correct copies thereof in the United States Mail, addressed as follows:

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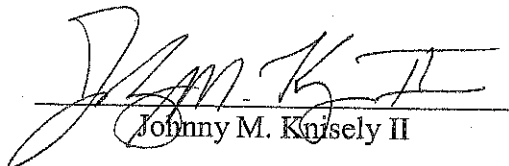
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