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**Testimony in Support of SB 535**  
**Submitted to the Kansas Senate Federal and State Affairs Committee**  
**By Joshua Ney, Partner**  
**Monday, March 18, 2024**

Chairman Thompson and Members of the Committee:

My firm represents Hydeman Company Inc. (“Hydeman”) in a recent and unexpected regulatory dispute with the Kansas Racing and Gaming Commission (“KRGC”).

SB 535 should not be necessary. But because KRGC’s novel, targeted interpretation and enforcement of an isolated regulation against Hydeman has created regulatory uncertainty and distorted market competition, legislative clarification is necessary.

In the fall of 2023, staff for KRGC had discussions with Hydeman and Hydeman’s gaming facility clients (Boot Hill, Hollywood Casino, Kansas Crossing) indicating that based on a newly applied agency interpretation of K.A.R. 112-102-2, money sorters and cash recyclers supplied and serviced by Hydeman could no longer be supplied to Kansas casinos because the manufacturers of that equipment were not separately certified by the state. Specifically, because G&D and Glory, manufacturers of money sorters and cash recyclers purchased by Hydeman and supplied to Kansas gaming facilities, are not separately certified as companies, the only company certified for supplying similar products in Kansas is Cummins, Hydeman’s chief competitor. Unlike G&D and Glory, however, Cummins contracts directly with Kansas gaming facilities for the sale and service of their own manufactured products, a distinction discussed below.

Since October 2023, Hydeman Company has sought to achieve middle ground with KRGC to let the company continue to operate in the same manner it has for over a decade while we pursue more standardized and consistently applied regulation. On February 17, 2024, after months of informal discussions with KRGC and Hydeman’s gaming facility clients in Kansas, I sent correspondence on behalf of Hydeman to KRGC Executive Director Don Brownlee laying out our legal analysis that K.S.A. 74-8751 and K.A.R. 112-102-1 simply do not provide authority for KRGC to regulate manufacturers of products if those manufacturers do not contract with the state or otherwise directly provide to or service products in Kansas gaming facilities. That letter is attached as **Exhibit 1** to this testimony.

Hydeman’s chief competitor in this market space has chosen to be a “single-source” manufacturer, provider, and servicer of similar cash counters and recyclers to those Hydeman installs, sells, and services in Kansas casinos. They contract with the state, install their cash counting and recycling products in gaming facilities, and service those products with boots on the

ground. Hydeman holds a gaming license to provide similar machines that are manufactured by G&D and Glory respectively. But G&D and Glory never set foot in Kansas casinos to install or service their products—the reliability and functionality of these products are and have been Hydeman’s responsibility, which is why Hydeman must be certified under K.S.A. 74-8751 and K.A.R. 112-102-01 & -02.

What is frustrating is that SB 535 should not be necessary, because the bill simply articulates the law as we believe it already exists (as explained in the legal analysis in my February 17, 2024 letter to KRGC Executive Director Don Brownlee). Simply put, most manufacturers of products (e.g. Microsoft, Dell, G&D, Glory) do not contract with the state to supply or service machines that are used to count and dispense money in a casino. Because Hydeman “contracts with the state” and “provides goods and services” to gaming facilities, that is why under K.S.A. 74-8751 and K.A.R. 112-102-1 Hydeman needs the certification (which they have), and G&D and Glory do not (which they don’t).

In his March 11, 2024 response (attached as **Exhibit 2**), Director Brownlee articulates a novel interpretation of K.A.R. 112-102-2 that requires certification of manufacturers when the machines that are “connected” to gaming systems. This doesn’t square with K.S.A. 74-8751, which enables KRGC to create a certification system for persons “who propose to contract with a lottery gaming facility manager . . . or the state for the provision of goods or services.” It also doesn’t square with K.A.R. 112-102-1, which requires certification for persons that “provide any equipment or services to a gaming facility or manager.” KRGC is relying on definitions in K.A.R. 112-102-2 which define the persons under the regulatory jurisdiction of 112-102-1 and K.S.A. 74-8751 generally. Director Brownlee’s only reference to the statute enabling regulatory authority is that K.S.A. 74-8751 and K.S.A. 74-8772 “authorize the Kansas Racing and Gaming Commission (KRGC) to make regulations it deems necessary to carry out our mission to protect the integrity of gaming in Kansas.” In KRGC’s mind, the enabling statutes are a “blank check” of regulation—regardless of more specific statutes laying out the extent of KRGC’s regulatory authority to require companies to become certified with the state. His letter makes no mention of the specific statutory and regulatory terms in K.S.A. 74-8751 and K.S.A. 74-8772 that only allow the KRGC to require certification of persons who “propose to contract with the state” or “provide any equipment or services to a gaming facility or manager.”

Under the enabling statute, KRGC regulations can only apply to contractors--Hydeman is such a person that contracts with casinos for the provision of goods (machines) and services (servicing of machines). The manufacturers of Hydeman’s goods do not contract or provide.

What is more, I’ve pointed out that the machines Hydeman provides and services do not “interact” with the central computer or effect calculation of revenues, and thus even under KRGC’s new standards, should not be required to be certified. The machines function as blind drops that create an independent report that is compared and reconciled to the interactive slot accounting revenue system. They duplicate the function of a person sitting there and hand counting, just like in a bank. But the requirement to engage in this analysis lacks legal basis since the enabling statute only regulates contractors and the standards articulated by KRGC do not exist in law.

Hydeman Company seeks a consistently applied, clear legal standard that has a basis in existing statutes. If KRGC proposes to require a multinational company like G&D to engage in the extensive certification process for manufacturers of cash counters and recyclers based on the standard that a machine is “connected” to a gaming platform, it must require Microsoft, Dell, Lenox, Adobe, and any other manufacturer of a product used in the gaming platform systems to become certified as well.

As it is, KRGC is engaging in targeted interpretation and enforcement of one Kansas company (Hydeman) to effectively create a monopoly in the state for its chief competitor, an out-of-state company. Administrative overreach and targeted enforcement destroys Kansas businesses.

This is a simple fix, and one that should have been resolved in informal discussions with KRGC. Because KRGC has insisted in enforcing its extralegal interpretation with respect to one company, SB 535 is necessary to clearly define what the law in Kansas is. SB 535 will create a level playing field that exists in countless other contexts in gaming facilities equipment and service contracts in the state, and the bill will restore the status quo upon which Hydeman has built its Kansas-based business over the past decade.

Thank you for your consideration.



Joshua A. Ney  
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February 17, 2024

**VIA E-MAIL**

Don Brownlee, Executive Director  
Kansas Racing & Gaming Commission  
don.brownlee@ks.gov

***RE: Hydeman Company regulatory matter***

Director Brownlee:

Our firm represents Hydeman Company, Inc, a supplier and servicer of financial equipment and certified as a gaming device supplier in Kansas that has faced a recent regulatory issue with Kansas Racing & Gaming Commission ("KRGK"). As you may know, in the fall of 2023, staff for KRGK had discussions with Hydeman and Hydeman's gaming facility clients (Boot Hill, Hollywood Casino, Kansas Crossing) indicating that based on a newly applied agency interpretation of KAR 112-102-2, money sorters and cash recyclers supplied and serviced by Hydeman could no longer be supplied to Kansas casinos because the *manufacturers* of that equipment were not separately certified by the state. Specifically, because G&D and Glory, manufacturers of money sorters and cash recyclers purchased by Hydeman and supplied to Kansas gaming facilities, are not *separately* certified, the only company certified for supplying similar products in Kansas is Cummins, Hydeman's chief competitor. Unlike G&D and Glory, however, Cummins contracts directly with Kansas gaming facilities for the sale and service of their products, a distinction discussed below.

This abrupt change in regulatory interpretation of KAR 112-102-2 has created an existential threat to the ability of Hydeman to continue to operate in the state. Hydeman is facing very real threats of contract cancellations, employee layoffs, and immediate and significant decline in revenues as a result of a seemingly overnight change in regulatory interpretation by the KRGK. This letter seeks accelerated discussions, short of litigation, to find a reasonable solution to these long-term regulatory issues, including regulatory or statutory clarification if necessary.

However, given the gravity of the situation for Hydeman, this letter proposes short- and medium-term solutions, including a stay on enforcement while the regulation or enforcement policy is clarified, to allow Hydeman to continue to operate as a gaming supplier as it has for over a decade in Kansas. Our requests include: 1) allow Hydeman to supply previously purchased G&D and Glory products in gaming facilities in Kansas in the coming months; 2) allow Hydeman to continue to supply and service G&D and

Glory products while the agency provides guidance on the application of regulations to companies (like G&D, Glory, or other manufacturers) that are not on contract with the state; and 3) clarify the application of K.S.A. 74-8751, K.A.R. 112-102-1 and -02, to manufacturers of products who neither “contract with the state” nor “provide any equipment or services to a gaming facility or manager.”

***Past regulatory application regarding Hydeman supply and servicing***

Hydeman has sold G&D and Glory money sorters to Kansas gaming facilities as a certified supplier for over a decade, and has maintained its state gaming certification since 2010. Based on previous interactions with KRGC, Hydeman’s understanding of the agency’s interpretation of relevant regulations over the past decades is that Hydeman must be certified as a supplier because Hydeman directly proposes to contract with, contracts with, sells, and services equipment in the casinos. It was because of Hydeman’s direct presence in gaming facilities they are certified, not because of the nature of the equipment they purchase, install, and service.

As an instructive example, sometime around late January of 2015, Hydeman was scheduled to install a Glory cash recycler at Hollywood Casino in Kansas City, Kansas. At that time Hydeman COO Josh Hydeman was working with Kevin Roth, the Cashier and Player Service Manager at Hollywood Casino, regarding the installation. At some point, Roth notified Josh Hydeman that the installation would need to be rescheduled due to some questions from KRGC. After several weeks of delay, Kevin asked Josh Hydeman directly if Hydeman staff would be the only individuals on premise for installation and service of the equipment. Josh Hydeman confirmed that Hydeman staff would be the only staff on premises, and that Glory would not be present to install or service the equipment supplied by Hydeman. A few days later Roth confirmed that the installation had been approved by KRGC.

Josh Hydeman later inquired of Roth what had happened, and Roth stated that Rick Skinner (then General Manager of Hollywood Casino) had appealed directly to KRGC and received approval to move forward with the installation. The justification of the approval by KRGC was based on the fact that Hydeman Company would be the only company installing and maintaining the equipment, and the manufacturers of the equipment would not be required to be separately certified. The equipment was eventually installed in May of 2015.

Since 2015, Hydeman Company has continued to make strategic business decisions and significant investments based on this previously “settled” application of relevant regulations, including the purchase of \$60,000 worth of G&D equipment in the weeks prior to the agency’s new application and interpretation of K.A.R. 112-102-1 and -2. However, that equipment purchase in the fall of 2023 is still sitting in Hydeman’s warehouse as a result of the informal “cease and desist” directives received from KRGC staff in December 2023.

### ***Statutory and regulatory language***

The statutory authorization for the regulations in K.A.R. 112-102-1 *et seq.* is K.S.A. 74-8751. KRGC's application of K.A.R. 112-102-2's definition of "gaming supplier" to manufacturers who make products but do not contract to supply or provide products to gaming facilities is not consistent with K.S.A. 74-8751 which requires certifications for companies that contract with the state. That statute reads in relevant part:

The Kansas racing and gaming commission, through rules and regulations, shall establish: . . .

(2) a certification requirement, and enforcement procedure, for those persons, including electronic gaming machine manufacturers, technology providers and computer system providers, who propose to contract with a lottery gaming facility manager, a racetrack gaming facility manager or the state for the provision of goods or services related to a lottery gaming facility or racetrack gaming facility, including management services. . . .

(emphasis added). Moreover, K.A.R. 112-102-1 provides:

No person identified in K.A.R. 112-102-2 as a gaming or non-gaming supplier may provide any equipment or services to a gaming facility or manager unless the person is certified by the commission with a current gaming supplier certificate, non-gaming supplier certificate, or temporary supplier permit.

(emphasis added). Current regulations require a company that manufactures or supplies equipment that "has the capacity to affect the calculation, storage, collection, or control of revenues from a gaming facility" to be certified as a gaming supplier only if the company directly provides equipment to a gaming facility. See K.A.R. 112-102-1 (requiring persons providing equipment to a gaming facility to be certified).

K.S.A. 74-8751 authorizes the KRGC to develop rules and regulations establishing a certification requirement for "machine manufacturers . . . who propose to contract with the state." In Hydeman's case, Hydeman holds a supplier certification and contracts with the state, and purchases money sorters and cash recyclers for installation and servicing in state gaming facilities. G&D and Glory, the manufacturers of this equipment, do not contract with the state and never set foot on the premises of a gaming facility. Hydeman holds the certification with the state because it both contracts with the state and provides and services equipment to gaming facilities. Similar to a certified computer supplier providing computers with operating systems running revenue calculation programs to state gaming facilities, those companies that contract with the state to provide such equipment are certified, Dell and Microsoft are not.

When Hydeman purchases money sorters from G&D, G&D does not know whether they will be placed in a bank, in a grocery store, or a casino. Similar to a Dell

computer or Microsoft operating system that is used in the revenue calculations of a bank, a grocery store, or a casino, G&D money sorter products are not specific to the gaming industry. Again, the KRGC does not require Dell or Microsoft to be separately licensed for computer equipment to be sold to gaming facilities, even though KRGC's application of KRGC's newly applied interpretation of K.A.R. 112-102-2 would implicate Dell or Microsoft products installed in Kansas gaming facilities.

Moreover, the potentially ubiquitous application of KRGC's sudden change in interpretation of K.A.R. 112-102-2 could implicate all sorts of supplier-manufacturer relationships, including the following certified supplier, non-certified manufacturer situations:

**Everi Payments, Inc** – sells “Ticket In Ticket Out” kiosks but the kiosk manufacturer (Nevatronix) is not licensed;

**Bottling Group, LLC** supplies Pepsi, but PepsiCo and Frito Lay are not licensed;

**Ark Valley Distributing, Inc** – supplies Budweiser but Budweiser and AB InBev are not licensed;

Similarly, Hydeman Company purchases, installs, and services G&D and Glory products. Hydeman is a certified supplier that contracts with the state to supply and service G&D and Glory products, but G&D and Glory are not licensed by the state.

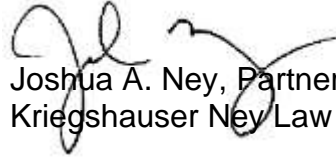
### ***Moving Forward***

Hydeman hopes to avoid litigation challenging the agency's novel application of K.A.R. 112-102-2 and other relevant statutes and regulations, and welcomes the opportunity to discuss a common-sense solution that allows Hydeman to continue to operate in Kansas. I have discussed this matter with Senator Mike Thompson (Hydeman Company's home senator) in the event there is a need for legislative clarification this session to the broadly written and inconsistently applied regulations. To this end, I have also raised this issue with Will Lawrence, Chief of Staff for the Office of the Governor, given the role the Governor may have in signing any clarifications into law, and I have copied Will on this letter.

Hydeman would very much like to resolve this issue in a way that allows his company (founded in 1948) to continue to operate in the same way it has for more than a decade. Overnight shift in regulatory interpretation has threatened the existence of a 70-year Kansas-grown business with almost no prior notice. Hydeman is currently on the verge of losing contracts with gaming facilities and laying off employees, and the agency's action is creating a *de facto* monopoly in the state for the provision of these products by Hydeman's chief competitor.

I welcome timely discussion regarding these issues, and please let me know if I can provide any additional clarification in the meantime.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Ney", is positioned above the typed name.

Joshua A. Ney, Partner  
Kriegshauser Ney Law Group

CC: Will Lawrence, Chief of Staff, Office of the Governor  
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Don Brownlee, Executive Director

Laura Kelly, Governor

March 6, 2024

*Via Email*

Mr. Joshua A. Ney  
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15050 W. 138<sup>th</sup> St.  
Unit 4493  
Olathe, KS 66063  
RE: Hydeman Company regulatory matter

Dear Mr. Ney:

The recent regulatory issue that has been brought to our attention appears to have started with Kansas Crossing Casino attempting to purchase gaming-related equipment that has not been licensed for use in Kansas lottery gaming facilities (casinos.) Your involvement comes as a representative of Hydeman Company, a third-party distributor of gaming equipment that proffered the sale of the equipment. The issue centers around money counting and sorting equipment manufactured by Glory USA or Giesecke and Devrient (G&D.)

Both Glory USA and G&D manufacture equipment that meets the definition of a gaming supplier under K.A.R. 112-102-2. Both companies were informed of the licensing requirements in Kansas as far back as 2008. Both companies declined to pursue the licensure requirement that would have permitted use of their equipment in Kansas casinos.

Kansas law under K.S.A. 74-8751 and K.S.A. 74-8772 authorize the Kansas Racing and Gaming Commission (KRGC) to make regulations it deems necessary to carry out our mission to protect the integrity of gaming in Kansas. Your correspondence of February 17, 2024, referred to a “newly applied agency interpretation of K.A.R. 112-102-2” and an “abrupt change in regulatory interpretation.” I first need to point out that the interpretation of K.A.R. 112-102-2 by KRGC staff is not “newly applied” nor an “abrupt change” of our application of gaming regulations. It has always been our interpretation that a gaming supplier includes companies that manufacture equipment for casinos that affect calculation, collection, or revenues of the facility.

The assertion provided to you that KRGC has changed our interpretation of the regulations is inaccurate. We have documentation from 2013 informing Douglas Hydeman that G&D equipment could not be sold in Kansas unless it was licensed. Mr. Hydeman candidly told our agent that he did not want the company licensed because he was afraid they would sell their equipment directly without going through Hydeman Company.

I hope you find the preceding history beneficial, but I will move on to the resolution going forward. It has been our position that stand alone counting equipment that is not connected to the accounting/computer system of the casino would not be required to be licensed. With that in mind, our staff researched the use of equipment manufactured by G&D and Glory at each of the casinos, and we have the following assessment:

Two Glory cash recycling machines at Hollywood Casino connected to the Kambi sports wagering platform are in violation of our regulations. We were not aware these machines were “connected” to a sports wagering platform until we started researching your claims.

Two Glory recyclers currently located behind the main cage at Hollywood casino are not in violation, because they are not connected to a gaming system.

The Glory recycler currently being used at Kansas Star casino is not in violation because it is not connected to their gaming system.

The Glory recycler at Boot Hill Casino is not in violation because it is not connected to the gaming system.

The G&D sorters at Boot Hill Casino are in violation of our regulations because they are connected to the casino gaming system. We have allowed the continued use of that specific equipment since one of our employees authorized the delivery of the equipment without sufficiently researching the manufacturer.

I hope this explanation will assist Hydeman Company’s understanding of the licensing requirements of the G&D and Glory products they want to distribute to Kansas casinos. In trying to simplify the requirements, I reiterate that if the product is stand-alone money counting equipment, we do not require the manufacturer to be licensed. However, if the equipment is in any way connected to the accounting/computer system of the casino, KRGC does require the manufacturer to be licensed.

As I understand the proposed sale of equipment to Kansas Crossing Casino, the intended use would include connection to the casino accounting system, thereby requiring the equipment manufacturer to be licensed.

If in the future Hydeman Company has any questions about the licensing requirements of specific equipment, they are always welcome to contact our Director of Licensing, D.J. Lopez, for an explanation.

Sincerely,



Don Brownlee  
Executive Director

cc: D.J. Lopez