

# Missouri Lawyers WEEKLY

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## Jury finds for casino operator in software dispute



John M. Edgar

**BY DAVID BAUGHER**  
Special to Missouri Lawyers Media

A Kansas gaming establishment will collect a substantial payout thanks to a federal jury that ruled in its favor in a dispute over the functionality of a software system.

Jurors found that Bally Gaming owes more than \$1.4 million to BHC Development and BHCMC, operators of the Boot Hill Casino in Dodge City after the establishment's owners said the hardware and software Bally installed did not work properly. The plaintiff's petition alleged breach of contract, negligent misrepresentation and fraud.

A jury dismissed the defendant's counterclaim for the remaining unpaid balance for the system's purchase.

John M. Edgar of the Edgar Law Firm said the components at issue included slot management software and a consumer marketing system.

"The systems did not work," he said. "They were forced ul-

timately to convert to another system in order to get one that worked and do what it was supposed to do."

Edgar said that the slot management system was supposed to interact with a system the state of Kansas runs.

"They were to check on one another and arrive at the same balance every day," he said. "The system would never reconcile itself with the state system."

He said the marketing side of the operation also had problems, including a failure to award and track bonus points issued to patrons.

"Our argument was simple and straightforward," he said. "The systems did not work as presented."

Edgar said the casino's request for proposals was lengthy; according to the plaintiff's complaint, it contained 644 requirements. The petition said the defendant responded that its system could, by itself or with

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*John M. Edgar, plaintiff's attorney*

third-party help, accommodate all but one of those.

Edgar said emails and testimony backed up his client's case.

"All of the things Bally's employees wrote and said during the attempts to make the system work were consistent with our contention that it was not working and would not perform the functions that they said it would perform," he said.

Edgar said the state of Kansas is the casino's official owner, and his clients operate it under a contract.

He said the defense contended that some problems are inevitable with any software.

"I think they argued that we

wanted a perfect system and they never represented that the system would be perfect," he said.

Because it was federal court, Edgar was unable to speak with any jurors.

"We got most of what we wanted," he said. "I think the jury reduced our request by a bit."

William M. Modrcin and Ashley E. Ballweg of Johnston, Ballweg & Modrcin represented the defendants. The firm referred requests for comment to a number for Bally's general counsel. Messages left at that number were not returned by press time.

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### \$1,423,542 Verdict

**BREACH OF CONTRACT**

- Venue: U.S. District Court for the District of Kansas
- Case number/date: 2:12-cv-02393/March 11, 2014
- Judge: James P. O'Hara
- Defendant's experts: Patrick Crawford, Reno, Nev. (casino industry)
- Last pretrial demand: \$1,400,000 and dismissal of counterclaim
- Last pretrial offer: \$125,000 and dismissal of counterclaim
- Caption: BHC Development LC and BHCMLLC v. Bally Gaming Inc.
- Plaintiff's attorneys: John M. Edgar and Matthew J. Limoli, Edgar Law Firm, Kansas City
- Defendant's attorneys: William M. Modrcin and Ashley E. Ballweg, Johnston, Ballweg & Modrcin, Overland Park, Kan.