

## Procedural Order No. 10

### ANNEX II.A

Claimant Randall Taylor Response

to

Mexico's Request for Production of Documents

B-Mex and Others v. The United Mexican States

ICSID CASE No. ARB(AF)/16/3

#### Introduction

This request for production of documents (RFD) is submitted pursuant to Section 15 and Annex A of Procedural Order No. 1 dated 4 April 2017, Procedural Order No. 8 and its Annex A dated 2 October 2019 and the amended Procedural Timetable for the Merits Phase (Annex A to Procedural Order No. 8) dated 10 November 2020.

This RFD is divided into six sections, each dealing with a specific issue. Many of the sections include a general justification for the documents covered therein which should be read together with the justification offered for each specific request for documents or category of documents.

This RFD seeks documents in possession of the Claimants or any third parties, such as lawyers, representatives, accountants, or notaries, who may be in possession of the requested documents due to their current or previous professional business relationship with the Claimants.

Finally, nothing in this request for production of documents shall be interpreted as an admission of any kind on the part of the Respondent.

The Respondent hereby declares that, to the best of its knowledge, it is not in the possession, custody, or control of any of the requested documents.

To avoid unnecessary repetition, requests with the same justification have been grouped together.

#### Definitions

All the definitions in the Counter-Memorial are hereby adopted in this request for documents. In addition, in this request for production of documents:

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|---------------------------|--|
| <b>Document(s)</b>        | Means a writing, communication, picture, drawing, program, or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means.                  |
| <b>Internal documents</b> | Means any Document prepared by the Claimants' and/or the Mexican Enterprises <u>and/or any person or entity employed by or acting on behalf of the Claimants or the Mexican Enterprises.</u> |

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**Record(s) of communications:**

Means any Document recording a communication between two or more identified or identifiable parties, including but not limited to letters, email, memoranda. The term includes communications between the identified parties and/or any person or entity acting on behalf of the named parties.

**Mexican Enterprises or Mexican companies**

Means any of the five Juegos Companies and E-Games

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**Document requests**

**A. Claimants’ decision to invest in Mexico**

No	Description of the Requested Documents or Category of Documents	Relevance and Materiality of the Requested Documents or Category of Documents	Response / Objections (if any)	Reply to Response / Objections (if any)	Tribunal’s Decision
1.	<p>Legal opinions and advice obtained by the Claimants on the legality of operating under the Monterrey Resolution and the documentation provided by Messrs. Young and Rojas Cardona referred to in paragraphs 32 and 33 of the Memorial.</p>	<p><b>At paragraph 32 of the Memorial</b> the Claimants state that Mr. Burr consulted lawyers to ensure that operations under Monterrey’s Resolution were legal. <b>At paragraph 33 of the Memorial</b>, they further claim that: “Mr. Burr then retained two Mexican law firms to <u>undertake extensive due diligence regarding all the documentation provided by Messrs. Young and Rojas Cardona on JEV Monterrey and to specifically assess whether JEV Monterrey was operating legally in Mexico</u>”.</p> <p>Mexico has argued that the Monterrey Resolution was not a permit but rather an <i>oficio</i> stating that the gaming equipment used in JVE Monterrey’s facilities did not fall within the purview of the LFJS or the Regulations because the games <i>did not involve an element of chance or betting</i>. Mexico has also argued that at the time</p>	<p>I have no documents responsive to the request.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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		<p>when the Claimants invested in Mexico, the new gaming regulations were in force and required a gaming permit to operate a casino. Yet the Claimants allege that they legally operated “casinos” under the so-called Monterrey Resolution without a permit.</p> <p>The legal advice on the operations under the Monterrey Resolution is thus relevant to the issue of whether the Claimants’ investment was legally established in Mexico; whether they operated their casinos legally under the Monterrey Resolution from 2005 to 2008 and whether the Claimants took unnecessary risks at the time of the investment and during the period they operated under the Monterrey Resolution. It is material to the outcome of this case as it could potentially give grounds to dismiss the entire claim or reduce the damages on account of contributory fault.</p> <p>The Claimants have relied on the requested legal advice to suggest that they conducted proper due diligence and that their casinos were operating legally under the Monterrey Resolution. By relying on that advice in support of their arguments they have waived any privilege associated with legal opinions or advice obtained in the context of that due diligence.</p>			
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		The Respondent believes the documents exist and are in possession, custody, or control of the Claimants as they are referred to in the Memorial and Mr. Burr's Third Witness Statement.			
2.	<p>1. Documents, such as invoices identifying the make and model of the gaming equipment used in the Claimants' casinos while operating under the Monterrey Resolution</p> <p>2. Operation manuals of said equipment.</p>	<p>The "considerations" section in the Monterrey Resolution (Exhibit C-94) states that in a letter dated 8 September 2004 JVE Monterrey requested SEGOB to issue a criterion stating that its activities do not fall within the purview of the gaming law and regulations because the gaming machines involved in their operations are games of skill and dexterity that do not involve either chance or betting.</p> <p>The requested documents are relevant to the issue of whether the gaming equipment used in the Claimants' casinos fell within this description and therefore, whether the casinos could legally operate under the Monterrey Resolution. The legality of the Claimants' operation is material to the outcome of the case.</p> <p>The Respondent believes the documents exist and are within the Claimants' possession because they would have been kept in the ordinary course of business.</p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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**B. E-Mex and E-Games relationship**

No	Description of the Requested Documents or Category of Documents	Relevance and Materiality of the Requested Documents or Category of Documents	Response / Objections (if any)	Reply to Response / Objections (if any)	Tribunal's Decision
3.	<ol style="list-style-type: none"> <li>1. The Prescience LLC report(s) and advice (including attachments and annexes).</li> <li>2. Records of communications between Prescience and any of the Claimants with respect to Messrs. Rojas Cardona and/or E-Mex.</li> <li>3. Records of communications between the Claimants discussing the Prescience report.</li> </ol>	<p>Mr. Burr testifies in his Third Witness Statement that he hired Prescience, LLC (global private intelligence company) to conduct an in-depth investigation of Mr. Rojas and his businesses. Mr. Burr also refers to the conclusions of the Prescience investigation: “Prescience advises us to separate from Rojas in a business-like manner”. <b>(Exhibit CWS-50, paragraph 38)</b>.</p> <p>Mexico has argued that the Claimants contributed to their loss by undertaking unreasonable risks, including associating with Mr. Rojas despite the advice received from Prescience and their knowledge of Mr. Roja’s involvement in illegal activities. The requested documents are relevant to the issue of contributory fault and material to the outcome of the case because of the potential impact on quantum.</p> <p>The Respondent believes the documents exist and are in possession, custody, or control of the Claimants because they are explicitly referred to by the Claimants and Mr. Gordon Burr.</p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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4.	Documents evidencing Mr. Rojas' involvement in illicit activities.	<p><b>At paragraph 87</b> of the Memorial, Claimants mention that “they had learned about Mr. Rojas Cardona’s involvement in certain illicit activities [...].”</p> <p>Mexico has argued that the Claimants contributed to their loss by undertaking unreasonable risks, including associating with Mr. Rojas despite knowing of his involvement in illicit activities. The requested documents are relevant to the issue of contributory fault and material to the outcome of the case because of the potential impact on quantum.</p> <p>The Respondent believes the documents exist and are in possession, custody, or control of the Claimants because they are explicitly referred to by the Claimants and Mr. Gordon Burr.</p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.
5.	<p>1. Records of communications between E-Games or any of the Claimants and BlueCrest/Advent regarding:</p> <ul style="list-style-type: none"> <li>• The “transaction” whereby BlueCrest would acquire E-Mex and/or its permit, and;</li> <li>• Any arrangement involving E-Games and or any of the Claimants regarding the operation</li> </ul>	<p><b>At paragraph 80</b> of the Memorial the Claimants state that “In early 2008, while Claimants were finalizing their deal to obtain a permit from Eventos Festivos, BlueCrest Capital (“BlueCrest”), a British-American hedge fund, and Advent International (“Advent”), an American private equity firm with a major presence in Latin America, approached Mr. Burr about the possibility of a potential transaction to grow the Claimants’ business exponentially”. At paragraph 83 the Claimants further state that “[...] Given the potential to grow the business through this transaction, Claimants decided to abandon negotiations for the Eventos Festivos permit and to focus on the transaction with BlueCrest and Advent”.</p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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	<p>of the casinos once the acquisition of E-Mex and/or its permit took place.</p> <p>This request is limited to communications exchanged between October 2007 and April 2008.</p> <p>2. Any agreement, draft agreement, MOU, letter of intent between BluCrest/Advent and E-Games or any of the Claimants related to the “transaction” referred to at paragraph 80 of the Memorial.</p> <p>3. The BlueCrest/Advent proposal to any of the Claimants or any of the Mexican Enterprises, in early 2008, referred at paragraphs 36 and 37 of Mr. Burr’s Third Witness Statement. This request includes final or draft proposals.</p>	<p>Mr. Burr mentions at <b>paragraph 36</b> of his Third Witness Statement (<b>CWS-50</b>): “In early 2008, BlueCrest Capital (“BlueCrest”), a British-American hedge fund, and Advent International (“Advent”), an American private equity firm with a major presence in Latin America, proposed the possibility of a potential transaction to grow our business exponentially.” And at <b>paragraph 37</b>: “BlueCrest and Advent’s proposal to us was that, following their acquisition of EMex’s permit, we would merge our Casinos with the assets BlueCrest was acquiring and build a prominent casino enterprise throughout Latin America utilizing our management team, which would be headed by Erin and me. In fact, BlueCrest and Advent agreed that they would only proceed with the transaction if the Claimants, with Erin and me at the helm, were responsible for developing and operating the casinos under the E-Mex permit”.</p> <p>The requested documents are relevant to the case, in particular, to the issue of contributory fault. The Claimants, by their own admission, decided to walk away from the agreed-upon acquisition of Eventos Festivos in order to pursue a potential deal with E-Mex (owned by Mr. Rojas) and BlueCrest. The deal also implied associating with Mr. Rojas who, according to the Claimants, was involved in illegal activities (Memorial, ¶ 87) and had pushed his old partner, Mr. Young, out of the business. Mexico has argued that this decision to forego an agreed upon transaction with Eventos Festivos to pursue a potential transaction with BlueCrest/Advent that involved associating with</p>			
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		<p>someone with a questionable background was an unnecessary risk that ultimately contributed to their loss. Moreover, according to the Claimants’ account of the facts E-Mex owed a considerable amount of money to BlueCrest/Advent which, if unpaid, could potentially put E-Mex into bankruptcy and put its gaming permit in risk of being revoked. Due to the potential reduction of quantum for contributory fault the Respondent maintains that the documents are relevant to the case and material to its outcome.</p> <p>The requested documents are also relevant to the issue of credibility of the Claimants’ witnesses. Mr. Burr describes the potential deal with BlueCrest/Advent as the rationale for entering into an agreement with E-Mex, yet it has provided no documentary support whatsoever for the alleged understanding/agreement with BlueCrest/Advent and very few details.</p> <p>The Respondent believes the documents exist and are in possession, custody, or control of the Claimants because they would have been prepared and kept in the ordinary course of business in preparation of the Stock Purchase Agreement between E-Games and Eventos Festivos.</p>			
6.	1. Records of communications between E-Games or any of the Claimants or the Mexican Enterprises and Eventos Festivos, informing the	The Claimants allege that they decided to walk away from the transaction with Eventos Festivos and their one-million non-refundable deposit because the E-Mex transaction offered a series of advantages (See <b>Memorial, paragraph 80</b> ).	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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	<p>later that the acquisition will not take place.</p> <p>2. Internal documents and records of communications discussing the advantages of the transaction with BlueCrest/Advent over the transaction with Eventos Festivos.</p> <p>3. Documents discussing Claimants' decision to enter into the agreement with E-Mex and BlueCrest/Advent</p>	<p>In Section X.D.2. of the Counter-Memorial, the Respondent questions the Claimants' decision to forego the agreed transaction with Eventos Festivos to pursue a potential deal with Advent/BlueCrest and E-Mex. The Respondent argues that by doing so, the Claimants assumed an unnecessary risk of continuing a business relationship with Mr. Rojas despite the warnings of Prescience and their knowledge of Mr. Rojas's illegal activities.</p> <p>The requested documents are relevant to the issue of contributory fault which could have an impact in quantum. They are, therefore, relevant to the case and material to its outcome.</p> <p>The Respondent believes the documents exist and are in possession, custody, or control of the Claimants because they would have been prepared and kept in the ordinary course of business. It is reasonable to assume that the requested documents exist because E-Games would have had to notify Eventos Festivos of its decision and provide reasons for doing so.</p>			
7.	<p>Documents regarding the due diligence conducted in 2008, by Mr. Julio Gutierrez and his law firm with respect to the consolidation of the operations of B-Mex Companies and E-Mex, including the corporate and legal documentation, the</p>	<p>Mr. Gutierrez testifies in his Fourth Witness Statement that: "Recuerdo que el fondo BlueCrest y el fondo Advent International ("<b>Advent</b>") propusieron a E-Mex y al <u>Grupo B-Mex adquirir y consolidar las operaciones de los establecimientos de ambas sociedades</u>, y también propusieron al Sr. Burr tomar la dirección y administración del conglomerado de empresas que resultaría de la adquisición. Mi <u>firma de abogados asesoró al Sr. Burr en la elaboración de una carta de intención y en la revisión de las propuestas de</u></p>	<p>I have no documents responsive to the request.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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	<p>letter of intent, and the agreement proposals.</p>	<p><u>contratos</u> para efectuar la transacción, así como en la organización de documentación corporativa y legal para que los fondos de inversión pudieran realizar un <u>due diligence</u> sobre las Compañías Juegos.” (<b>Exhibit CWS-52, paragraph 15</b>).</p> <p>The requested documents are relevant to the case and material to its outcome. The requested documents are necessary for the Respondent’s defense on contributory fault: Claimants’ decided to continue doing business with the Rojas Cardona Brothers instead of acquiring a company which would have allowed them to immediately own their own permit to operate their 5 casino facilities and, additionally, open at least two more casinos (in Cabo and Cancun). Additionally, the requested documents are needed because they contain contemporaneous evidence to corroborate/contest several allegations of fact made by the Claimants.</p> <p>The Respondent believes the documents exist and are in possession, custody, or control of the Claimants because they are referred to explicitly by Claimants’ witness and lawyer, Mr. Gutierrez.</p>			
<p>8.</p>	<p>Pleadings submitted by the parties in the CAM arbitration proceedings between E-Mex and E-Games</p>	<p>Mr. Julio Gutiérrez testifies that E-Mex took a series of actions to hold E-Games hostage or force an indemnification for its separation from the E-Mex permit (See Exhibit <b>CWS-52</b>, Fourth Witness Statement of Mr. Gutierrez, section VI. “Las acciones de E-Mex para mantener a E-Games como rehén o formar una indemnización por su separación del permiso de E-Mex). Mr. Gutierrez further states that E-Mex initiated a commercial arbitration against E-</p>	<p>I have no documents responsive to the request.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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		<p>Games under the Operating Agreement and, in parallel through an amendment to its claim in the Amparo 1668/2011, E-Mex nullified the Oficio 2009-BIS (CWS-52, paragraphs 43-46).</p> <p>The Respondent has alleged in its Counter-Memorial that Amparo 1668 which resulted in the revocation of E-Games permit was a consequence of the dispute between E-Mex and E-Games. Moreover, the settlement agreement of that arbitration filed as Exhibit C-22, refers to E-Mex undertaking to “present a written document that states the excess compliance of the amparo [1668] by the authority...” (Item 7(b) at p. 8)</p> <p>The requested documents are relevant to the case and material to the outcome of the case because they will provide insight into the dispute that they synthesize the business dispute between E-Games and E-Mex. The documents correlate to measures claimed in this arbitration such as the Amparo 1668/2011.</p> <p>The Respondent believes the documents exist and are in possession, custody, or control of the Claimants because the arbitration proceeding is referred to explicitly by Claimants’ in the Memorial and by his witness and lawyer, Mr. Gutierrez and they would have been kept in the normal course of business.</p>			
9.	Documents showing E-Games compliance with the CAM arbitration award dated 19 December 2012, including but not limited to:	Mr. Gutierrez refers in <b>paragraph 45</b> of his Fourth Witness Statement to the CAM arbitration award ( <b>CWS-25</b> ). He mentions that the payment was “sustancialmente menor a las pretensiones de E-Mex” and that E-Mex requested the execution of the award,	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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	<ol style="list-style-type: none"> <li>1. the payment of \$23,097,353.10 Mexican pesos for royalties;</li> <li>2. the payment of \$1,566,371.88 Mexican pesos, for default interest; and</li> <li>3. the payment of the updated amounts for royalties and interest on the date of payment.</li> </ol>	<p>and Mr. Gutierrez’s law-firm initiated annulment proceedings on behalf of B-Mex.</p> <p>The requested documents are relevant to the case and material to the outcome of the case. The requested documents contain crucial information in relation to E-Games and E-Mex dispute regarding the measures claimed at this arbitration proceedings. The requested documents will show that all the alleged measures in this arbitration proceedings are in fact consequences of a private dispute between the Claimants and their business partners.</p> <p>The Respondent believes the documents exist and are in possession, custody, or control of the Claimants because they would have been kept in the normal course of business.</p>			
10.	<p>Documents showing E-Games and E-Mex’s compliance with the Settlement Agreement including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. Partial suspension condition (Exhibit C-22, p. 4 and 27)</li> <li>2. E-Games’ payment to E-Mex the amount of \$ 175 million Mexican pesos (Exhibit C-22, p. 4 and 27).</li> </ol>	<p>According to the Settlement Agreement dated 11 October 2013 between E-Mex and E-Games (<b>Exhibit C-22</b>) with respect to the CAM arbitration award, the parties agreed to inform SEGOB that they had reached an agreement in relation to the “Permit DGAJSISCEVF/P-0612005 with alphanumeric code DGAJSISCEVF/P-0612005-BIS”. E-Games and E-Mex agreed to inform the SEGOB they had reached an agreement in relation to the permit but that the settlement agreement should not be submitted to SEGOB.</p> <p>The requested documents are relevant to the case and material to its outcome. The requested documents contain crucial information in relation to E-Games and E-Mex dispute regarding the measures claimed at this</p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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	3. Termination of all disputes (Exhibit C-22, p. 8-9 and 31-32).  4. SEGOB Communication (Exhibit C-22, p. 9 and 32).	arbitration proceedings. The requested documents will show that all the alleged measures in this arbitration proceedings are in fact consequences of a private dispute between the Claimants and their business partners.  The Respondent believes the documents exist and are in possession, custody, or control of the Claimants because they would have been kept in the normal course of business.			
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**C. Additional Projects**

**General justification:**

The Respondent has challenged the Tribunal’s jurisdiction to consider any claim made by the Claimants relating to the prospective casinos in Cabo and Cancun, as well as the online casino. These three yet-to-be casinos were in very early stages of planning and the Claimants have offered no evidence of the existence of a protected investment in relation to these projects. As mentioned in Section III.A. (Objection to Jurisdiction) of the Respondent’s Counter-Memorial, the Claimants have failed to prove the existence of an investment in a casino in Cabo, Cancun, and an online casino under Article 1139 of the NAFTA.

In their Memorial on Merits, the Claimants contend, *inter alia*:

- Their efforts to open a casino in Cabo commenced at some time in 2007.<sup>1</sup>
- Mr. and Ms. Burr performed market research, prepared financial models, drafted agreements, and met with prospective investors and partners to advance the expansion plans.<sup>2</sup>
- Mr. and Ms. Burr made considerable progress and investment in the development of the two hotel-casino ventures in Cabo and Cancun, and they dedicated significant time and effort preparing subscription agreements, performing due diligence, and negotiating with business partners.<sup>3</sup>

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<sup>1</sup> Memorial, ¶ 68.

<sup>2</sup> Memorial, ¶ 63.,

<sup>3</sup> Memorial, ¶ 64.

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- The Claimants invested an additional US\$ 250,000 into the Cancun Project and US\$ 600,000 into the Cabo Project.<sup>4</sup>
- Specifically, with respect to the Cancun project, Colorado Cancun, LLC invested US\$ 250,000 towards an option to purchase a gaming license from BMex II under our permit.<sup>174</sup> B-Cabo, LLC invested US\$ 600,000 through loans to Medano Beach, S. de R.L. de C.V.,<sup>175</sup> who used the majority of these funds to purchase property for the Cabo Project.<sup>5</sup>
- When Mexico unlawfully closed the Casinos on April 24, 2014, Claimants were about to launch an online gaming business.<sup>6</sup>
- The Claimants request damages equivalent to (in million dollars) \$ 77.9 for the Cabo Project; \$ 42.4 for the Cancun Project; and \$ 36 for the Online Gaming Project.<sup>7</sup>

To prove these allegations, the Claimants rely on the witness statements of Mr. Gordon Burr, Ms. Erin Burr, and Mr. José Ramón Moreno. However, these statements are not accompanied by supporting documentation to corroborate all their claims.

The requested documents are relevant to the case and material to its outcome as they provide crucial information on the issue of whether any investment was made in relation to the prospective projects, their status as of the expropriation date, how they were affected by the closure of the existing casinos and the Claimants' expectations in relation to the value of these projects. As mentioned in the Counter-Memorial, the Claimants' claim on damages assumes that these projects were fully developed and operational casinos. The Respondent intends to demonstrate that these projects were at a very early stage, no covered investment was made under Article 1139 of the NAFTA, and that their valuation is highly speculative.

No	Description of the Requested Documents or Category of Documents	Relevance and Materiality of the Requested Documents or Category of Documents	Response / Objections (if any)	Reply to Response / Objections (if any)	Tribunal's Decision
	<b>Cabo</b>				

<sup>4</sup> Memorial, ¶ 65.

<sup>5</sup> Memorial, ¶ 65.

<sup>6</sup> Memorial, ¶ 72.

<sup>7</sup> Memorial, ¶ 793.

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<p>11.</p>	<p>The “proposed project” discussed at paragraph 68 of the Memorial, including the supporting documents mentioned therein, such as:</p> <ol style="list-style-type: none"> <li>1. draft agreements, MOUs, letters of intent;</li> <li>2. documents identifying the property where the project was going to be developed.</li> <li>3. projections;</li> <li>4. financing agreements or draft agreements;</li> <li>5. tax and legal research;</li> <li>6. floor plan layouts;</li> <li>7. cost estimates;</li> <li>8. plans for opening an exclusive poker room with very high buy in.</li> </ol>	<p>At paragraph <b>68 of the Memorial</b> the Claimants refer to a “proposed project” with Discovery to build a casino in Cabo and various studies and research conducted in support thereof:</p> <p><i>[...] Under this proposed project, <u>Discovery would own 90% of the project, and E-Games would own 10%. Discovery and Claimants identified the property, created projections, lined up financing, researched various tax and legal issues, and created floor layouts. Claimants estimated that the development cost for the project would be between USD \$8-12 million, depending upon the type and size of the location. The proposals for the deal with Discovery included the possibility of opening an exclusive private poker room in the facility with a very high buy in. Mr. Burr was working on ways to facilitate this type of exclusive poker room.</u></i><sup>8</sup></p>	<p>I have no documents responsive to the request.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>
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<sup>8</sup> Memorial, ¶ 68.



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		<p><b>At paragraph 73</b> of Mr. Burr Third Witness Statement (<b>Exhibit CWS-50</b>): “Together with Discovery, we identified the property, created projections, lined up financing, researched various tax and legal issues, and created floor layouts. We estimated that the development cost for the project would be between <u>US \$ 8-12 million</u>, depending upon the type and size of the location.”</p> <p>It is also referred to at <b>paragraph 71</b> of Ms. Burr’s Third Witness Statement (<b>Exhibit CWS-51</b>):</p> <p><i>71. Gordon and I worked closely with Mr. Arenson to develop the project, specifically building the <u>business plans and projections and determining the various responsibilities under our partnership</u>. Under the proposed project, <u>Discovery would be in charge of the financing, and our group would be responsible for operating the casino facility, with Discovery owning 90% interest in the project and our group owning the rest</u>. Pursuant to the <u>Nondisclosure and Noncircumvention Agreement,</u></i></p>		
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		<p><i>Discovery and our group further advanced the project by <u>identifying the ideal location for the casino facility, creating floor plans, researching potential legal and tax issues, and having financiers ready. The total development cost was estimated to be between US \$ 8-12 million. It was an extremely interesting and exciting project, especially when it came to the plans to cater to Discovery's residents in El Dorado, and I enjoyed working with Mr. Arenson and his team.</u></i></p> <p>Relying exclusively in the witness statements of Mr. Gordon Burr and Ms Erin Burr, Claimants appear to suggest that this project was in an advance stage and did not move forward due to interference and inaction by the Respondent. Respondent believes that the project never passed the stage of informal discussions and seeks the requested documents to either corroborate the alleged facts alleged by the Claimants or challenge the credibility of their witnesses. For these reasons, the Respondent believes the documents are</p>			
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		<p>relevant to the case and material to its outcome.</p> <p>The Respondent believes the documents exist and are in the possession of the Claimants since they are referred to in both the third witness statement of Mr. Burr as well as in the third witness statement of Ms. Erin Burr.</p>			
	<p>Records of communications between the Claimants or any of the Mexican Enterprises and Discovery discussing the decision not to move forward with the project.</p>	<p>According to the Claimants, the project did not move forward with Discovery “because of the aggressive measures taken by Mexico against Claimants and Mexico’s inaction in approving Claimants’ own permit, and because they wanted to secure their own independent permit from SEGOB given the uncertainties related to E-Mex’s permit under which they had been operating” (paragraph 68 of the Memorial).</p> <p>Respondent explained in its Counter-Memorial that the Claimants did not request its permit until several years after the initial contact with Discovery in 2007 –i.e., E-Games requested its permit in February 2011. For that reason Respondent believes that the project did not move forward for different reasons. The requested documents are relevant to the issue of the credibility of the Claimants’ main witnesses and are</p>	<p>I have no documents responsive to the request.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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		<p>therefore relevant to the case and material to its outcome.</p> <p>The Respondent believes the documents exist and are in the possession of the Claimants since they would have been prepared and kept in the regular course of business.</p>			
12.	<p>Documents referred to by Mr. Burr at <b>paragraph 67 of his Third Witness Statement</b> regarding the Cabo Project, with Messrs. Ferdosi, Erickson and/or Medano Beach, including:</p> <ol style="list-style-type: none"> <li>1. market research;</li> <li>2. financial models/projections;</li> <li>3. negotiating documents including proposals and counterproposals;</li> <li>4. draft agreements;</li> <li>5. local permit applications.</li> </ol>	<p><b>At paragraph 67</b> of Mr. Burr’s Third Witness Statement (<b>Exhibit CWS-50</b>), he mentions that: “Erin and I performed <u>market research, prepared financial models, drafted agreements, and met with prospective investors and partners</u>. I was actively involved in all aspects of these projects, including <u>selecting potential sites, managing efforts to obtain local government approvals, and conducting negotiations with partners, landowners, and new investors.</u>”</p> <p><b>At paragraph 75</b> of his Third Witness Statement, Mr. Burr further claims that negotiations with Messrs. Ferdosi and Erickson “were in advanced stages when our Casinos were closed”.</p> <p>Mr. Burr did not submit much evidence in support of his allegations. Respondent believes the Cabo Project was not as advanced as the Claimants suggest in the Memorial and that it did not proceed for</p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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		<p>reasons other than the closure of the existing Casinos.</p> <p>The requested documents are relevant to the issue of whether the Claimants have a covered investment related to the Cabo Project, the credibility of the Claimants' main witnesses and also to the issue of quantum, in particular, whether the Claimants' original expectations are consistent with their claim for damages related to the Cabo Project. For these reasons, the Respondent maintains that they are relevant to the claim and material to its outcome.</p> <p>The Respondent believes the requested documents exist and are in possession, custody, or control of the Claimants because they are mentioned in Mr. Burr's Third Witness Statement and they would have been kept in the regular course of business.</p>			
13.	Documents recording the alleged investments in the Cabo Project referred to in <b>paragraph 69</b> of Mr. Burr's Third Witness Statement. ( <b>Exhibit CWS-50</b> ), including but not limited to:	<b>At paragraph 69</b> of Mr. Burr's Third Witness Statement ( <b>Exhibit CWS-50</b> ), he states that: " <u>In addition to the initial US\$ 2.5 million B-Mex II paid to secure the initial right to open two new locations and the significant time and effort put into the pursuit of the resort projects, we invested a substantial sum of money into the Cabo and Cancun projects. These</u>	I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to "present objections to requests on grounds other than privilege or confidentiality." I have no such objections.	No reply is necessary.	No decision required.

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	<ol style="list-style-type: none"> <li>1. Documents such as wire transfers and accounting records recording the transfer of the US\$ 600,000 in loans to Medano Beach, S. de R.L. de C.V.</li> <li>2. Documents such as wire transfers and accounting recording the transfer of US\$500,000 to purchase interests in a Mexican Company that owned the land were the hotel and casino were to be constructed (referred to in <b>paragraph 75</b>)</li> <li>3. Documents such as wire transfers and accounting records recording the initial US \$2.5 million that B-Mex II paid to secure the right to open new locations.</li> <li>4. Documents such as wire transfers and accounting records recording the capital expenditures for the purchase of the permits and down payments on property.</li> <li>5. Documents such as wire transfers and accounting</li> </ol>	<p>investments are comprised <u>of loans</u> not fully repaid, <u>option payments</u> and <u>related investments</u>, <u>capital expenditures</u> for the purchase of permits and down payments on property. [...] <u>B-Cabo, LLC invested US\$ 600,000 through loans to Medano Beach, S. de R.L. de C.V.</u>,<sup>45</sup> who eventually used the majority of these funds to purchase property for the Cabo hotel and casino project.”</p> <p>The requested documents are relevant to the issue of whether the Claimants have a covered investment in relation to the Cabo Project, the amount invested and the credibility of the Claimants’ main witnesses. Mexico also intends to use the information to submit an alternative valuation of the damages related to this project based on the amount invested, if appropriate. For these reasons, the Respondent maintains that the documents are relevant to the case and material to its outcome.</p> <p>The Respondent believes such documents exist and are in possession, custody, or control of the Claimants because the alleged investments are mentioned in Mr. Burr’s Third Witness Statement. The records (including</p>			
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	<p>records recording the payment(s) of option.</p> <p>6. B-Mex II ledger showing payment of the above alleged investments and partial repayment of the loans</p> <p>7. Records of communications to the debtors requiring payment of the outstanding amount of the loans.</p>	<p>accounting records) should have been kept in the regular course of business.</p>			
<p>14.</p>	<p>Documents, such as construction schedules, timelines, plans, records of communications, discussing expected commencement and completion dates for the construction of the Hotel and Casino.</p>	<p>Ms. Burr mentions in <b>paragraph 80</b> of her Third Witness Statement that they <u>“planned that the construction of the Cabo project would begin in the first half of 2014, with an expected opening date in mid-2016.”</u> Ms. Burr further mentions that the project did not come to fruition because of Mexico’s unlawful actions (<b>Exhibit CWS-51, ¶ 80</b>).</p> <p>The Respondent intends to prove that there were no concrete plans to begin the construction of the Casino in Cabo during the first half of 2014 or an expectation that the Casino would open in mid-2016. These dates are also relevant to the issue of quantum, as they are used by the Claimants’ expert to determine when the Claimants would</p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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		<p>begin to generate cash flows from the Cabo Casino. Finally, Mexico intends to use these documents to corroborate the facts alleged by Ms. Burr or challenge her credibility.</p> <p>The Respondent believes the documents exist and are in possession, custody, or control of the Claimants because Ms. Burr refers to these dates in her Third Witness Statement and by the Claimants in the Memorial.</p>			
15.	<p>Records of communications between any of the Claimants and Mr. Ferdosi, Mr, Erickson or any other person or entity related to the Cabo Project, concerning the cancellation of the project or Claimants’ decision to withdraw from it.</p>	<p><b>At paragraph 75</b> of his Third Witness Statement, Mr. Burr further claims that negotiations with Messrs. Ferdosi and Erickson “were in advanced stages when our Casinos were closed” implying that the negotiations stopped and did not move forward due to the closure of the existing casinos.</p> <p>The Respondent has argued that the closure of the existing casinos was irrelevant to this project because by then, the Claimants were operating without a permit. The Respondent believes that the project did not move forward for reasons other than the closure of the casino and intends to prove that point with the requested documents.</p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>



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	<b>Cancun Project</b>				
16.	<ol style="list-style-type: none"> <li>1. Records of communications between any of the Claimants <u>and the Marcos family</u> concerning the Cancun Project.</li> <li>2. Draft agreements / MOU / letters of intent between the Claimants and the Marcos family.</li> </ol>	<p>At <b>paragraph 84</b> of his Third Witness Statement (CWS-50), Mr. Burr states:</p> <p><i>We worked on and discussed various alternatives in Cancun with prominent developers who were eager to work with us. <u>In April 2013, we had solidified a business plan for a casino in Cancun and were trying to find the right partner. We were approached by the Marcos family, a very wealthy family and large landowner in Mexico. The Marcos family owns various 5 star resorts across Mexico and Latin America. Specifically, the Marcos family wanted us to build out a Casino in a new 5 star hotel that they planned to build in Cancun, which would have given the Cancun Casino an immediate customer flow once the hotel opened. For purposes of this project, the Marcos family would have raised all necessary funds. In the business plan, we estimated that net profits would</u></i></p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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		<p><i>be US\$ 19 million annually after 5 years of operations.<sup>53</sup> We selected a location for the Cancun project that would have been just off the beach and in the midst of the prime hotel zone in Cancun.<sup>54</sup> This hotel and Casino would have been spectacular.</i></p> <p>Claimants have advanced a \$42.4 million dollar claim related to the Cancun Project, yet they have offered little evidence in support thereof. Mexico intends to use the documents to corroborate the facts alleged by the Claimants or challenge the credibility of the Claimants' witnesses. The documents are also relevant to the issue of quantum (e.g., the intended profit split between the Claimants and the Marcos family) and Claimants' expectations in relation to this project. For these reasons, the Respondent maintains that the documents are relevant to the case and material to its outcome.</p> <p>The Respondent believes such documents exist and are in possession, custody, or control of the Claimants because they are mentioned in Mr. Burr's Third Witness Statement.</p>			
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<p>17.</p>	<p>Documents referred to at paragraph 78 of Ms. Burr’s Third Witness Statement related to the Cancun Project, including:</p> <ol style="list-style-type: none"> <li>1. Market research documents;</li> <li>2. business plans;</li> <li>3. financial projections;</li> <li>4. pitches and/or presentations;</li> <li>5. documents provided to potential investors and partners.</li> </ol>	<p><b>In paragraph 78</b> of Ms. Burr Third Witness Statement (Exhibit CWS-51), it is mentioned that: <u>“I helped Gordon in performing market research, developing business plans, preparing financial projections, and pitching to potential investors and partners.</u> Given our track record of successful operations of the five Casinos, <u>a sizable number of real estate developers had shown a keen interest in our Cancun project”</u></p> <p>The requested documents are relevant to the case and material to its outcome. The requested documents are relevant to determine whether the Claimants made an investment under Article 1139 of the NAFTA. The requested documents will refute the Claimants’ allegations that it was because of Mexico’s measures that the project did not move forward. Additionally, the requested documents are needed because they contain contemporaneous evidence to corroborate/contest several allegations of fact made by the Claimants and to evaluate and corroborate the claim for damages.</p> <p>The Respondent is not in possession, custody, or control of the requested documents.</p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>
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		The Respondent considers such documents exist and are in possession, custody, or control of the Claimants because they are mentioned in the Claimants' Memorial and in referred by Ms. Burr in her Third Witness Statement.			
18.	Documents, such as wire transfers or accounting records recording the alleged investment mentioned at paragraph 80 of Ms. Burr's Third Witness Statement	<p><b>At paragraph 80</b> of Ms. Burr Third Witness Statement (<b>Exhibit CWS-51</b>), it is mentioned that: "As with the Cabo project, <u>we had made significant progress and investment in the development of the Cancun project</u>, but unfortunately the project was put on hold as Mexico intensified its attack on our gaming permit in 2013".</p> <p>The Respondent has challenged the existence of a covered investment in relation to the Cancun Project. Ms. Burr claims that "we had made significant... <u>investment</u>" but has not provided any proof thereof. The requested documents are material to the issue of whether the Claimants have a protected investment in Cancun and to the issue of quantum, as the Respondent has offered sunk costs as an alternative to estimate damages from the alleged investment. For these reasons, Respondent maintains that the documents are relevant to the case and material to its outcome.</p>	I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to "present objections to requests on grounds other than privilege or confidentiality." I have no such objections.	No reply is necessary.	No decision required.

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		The Respondent believes that the requested documents exist and are in the possession, custody, or control of the Claimants because Ms. Burr specifically refers to this investment and records of such an investment would have been kept in the ordinary course of business.			
19.	Documents, such as construction schedules, timelines, plans, or records of communications, discussing expected commencement and completion dates for the construction of the Hotel and Casino.	<p><b>In paragraph 80</b> of Ms. Burr Third Witness Statement (Exhibit CWS-51), it is mentioned that: “We planned that the construction of the Cabo project would begin in the first half of 2014, with an expected opening date in mid-2016. <u>The Cancun project would have begun construction likely at the beginning of 2015 and opened in early 2017.</u>”</p> <p>The requested documents will demonstrate that there were no concrete plans to begin the construction of the Casino in Cancun at the beginning of 2015 or open the casino in early 2017. This issue is relevant to the issue of quantum as the Claimants’ damages expert uses these dates to determine the cash flows of the Cancun casino. For the same reason, the documents are material to the outcome of the case.</p>	I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.	No reply is necessary.	No decision required.

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		The Respondent considers such documents exist and are in possession, custody, or control of the Claimants because they are mentioned in Mr. Burr’s Third Witness Statement and the Memorial.			
20.	<p>2013 Cancun’s solidified business plan mentioned in <b>paragraph 84</b> of Mr. Burr Third Witness Statement, including any of the following components of a typical business plan:</p> <ol style="list-style-type: none"> <li>1. market analysis;</li> <li>2. legal structure;</li> <li>3. specific location;</li> <li>4. Timeline for construction and milestones;</li> <li>5. operations plan;</li> <li>6. description of services offered;</li> <li>7. sales and marketing (pricing and sales information);</li> <li>8. management team;</li> <li>9. financing plan (initial investment, Capex, Opex,</li> </ol>	<p><b>In paragraph 84</b> of Mr. Burr Third Witness Statement (Exhibit CWS-50) it is mentioned that: “[...] In April 2013, we had <u>solidified a business plan</u> for a casino in Cancun and were trying to find the right partner. [...]”.</p> <p>The Claimants have not submitted into evidence this “solidified business plan”. Instead it has provided an excel spreadsheet with back-of-the-envelope calculations and no supporting documentation. As noted in the Counter-Memorial (¶ 520 and fn 606) a business plan is a complex document that typically includes the various items specified in the request (e.g., a market analysis).</p> <p>The Respondent intends to use the requested documents to demonstrate that the project was in its very early stages at best and therefore cannot be valued through a DCF. The documents are also relevant to wither corroborate the facts as</p>	I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.	No reply is necessary.	No decision required.

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	<p>insurance costs, local permit costs, salaries);</p> <p>10. projections (projected income statements and balance sheets for the first years);</p> <p>11. Supporting documents (of all above)</p>	<p>alleged by the Claimants or challenge the credibility of their witnesses.</p> <p>The Respondent believes that the document exists because it is specifically referred to in Mr. Burr’s Third Witness Statement and would have been kept in the regular course of business.</p>			
<p>21.</p>	<p>Accounting records and wire transfers, recording the specific amounts invested in the Cancun Project including but not limited to the US\$ 250,000 towards an option to purchase a gaming license referred to in <b>paragraph 69</b> of Mr. Burr’s Third Witness Statement (<b>Exhibit CWS-50</b>).</p>	<p><b>In paragraph 69</b> of Mr. Burr Third Witness Statement (Exhibit CWS-50), he mentions that: <u>“In addition to the initial US\$ 2.5 million B-Mex II paid to secure the initial right to open two new locations and the significant time and effort put into the pursuit of the resort projects, we invested a substantial sum of money into the Cabo and Cancun projects.</u> These investments are comprised <u>of loans</u> not fully repaid, option payments and related investments, capital expenditures for the purchase of permits and down payments on property. Specifically, <u>with respect to the Cancun project, Colorado Cancun, LLC invested US\$ 250,000 towards an option to purchase a gaming license from B-Mex II under our permit [...].”</u></p> <p>The requested documents are relevant to the issue of whether the Claimants have a protected investment related to the</p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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		<p>Cancun Project and to the issue of quantum, as the Respondent has offered sunk costs as an alternative to the Claimants' damages estimate in case the Tribunal determines that an investment exists and the Respondent is liable.</p> <p>The Respondent believes such documents exist and are in possession, custody, or control of the Claimants because the investments are mentioned in Mr. Burr's Third Witness Statements and records of such investments would have been kept in the regular course of business.</p>			
	<p>Market research on average spend on similar facilities located in the Caribbean and other comparable markets referred to at paragraph 86 of Mr. Burr's Third Witness Statement.</p>	<p><b>At paragraph 86</b> of his Third Witness Statement, Mr. Burr states: "We estimated that our customers for the Cancun Casino would on average spend a minimum of US \$200 per player each visit. This estimate was based on our research of similar facilities located in the Caribbean and other comparable markets, which we were able to obtain from machine manufacturers, global casino operators and tourism bureaus." This passage is also cited in paragraph 67 of the Memorial.</p> <p>The requested documents are relevant to the issue of the credibility of the witness. Mr. Burr offers statements like this in his</p>	<p>I have no documents responsive to the request.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>



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		<p>witness statement without offering any proof of what he says. Mexico is entitled to the evidence he relied on to either corroborate the facts as alleged by the witness or question his credibility. The documents are also relevant to the issue of quantum and Claimants’ expectations in relation to this project. For these reasons, the Respondent maintains that the documents are material to the outcome of the case.</p> <p>The Respondent believes that the documents exist because Mr. Burr specifically refers to this research in his witness statement and that research would have been kept in the regular course of business.</p>			
	<p>Records of communications between any of the Claimants and the Marcos family concerning the Cancun Project including but not limited to its cancellation or Claimants’ decision to withdraw from it.</p>	<p><b>At paragraph 71</b> of the Memorial the Claimants claim that the Cancun Project “was in very advanced stages of planning and negotiation when Mexico unlawfully shuttered the Casinos [...] If the Casinos had not been shut down, Claimants would have developed an extremely successful business in Cabo and Cancun.”</p> <p>The Respondent intends to challenge the contention that the project was “in very advanced stages of planning and negotiation” and was put on hold due to</p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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		<p>the shuttering of the Claimants’ Casinos in 2014. This is relevant to the issue of whether the project can be valued through a DCF as the Claimants’ experts do and also goes to the issue of credibility of the Claimants’ witnesses. For these reasons the requested documents are relevant to the case and material to its outcome.</p> <p>The Respondent believes that the documents exist because, if the allegations of fact in Mr. and Ms Burr’s witness statements were true, they would have had to inform the Marcos family that the project could not move forward and withdraw from any agreement made with the Marcos family. These records would have been kept in the regular course of business.</p>			
	<b>Online Casino</b>				
22.	<p>1. Final draft of lease agreement with owner of facility hosting Claimants servers.</p> <p>2. Records of communications between Bally and Claimants</p>	<p><b>At paragraph 72 of the Memorial</b>, the Claimants allege that “[w]hen Mexico unlawfully closed the Casinos on April 24, 2014, Claimants were about to launch an online gaming business” and that “[t]hese efforts were thwarted when the Mexican government closed Claimants’ Casinos” in April 2014.</p>	<p>I have no documents responsive to the request.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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	<p>regarding the contract for the online gaming platform</p>	<p>The Claimants further allege <b>at paragraph 74 of the Memorial</b> that “All that Claimants had left to do to have online gaming up and running was to install servers on Bally’s platform”.</p> <p>Mr. Burr further claims that “[he] expected that our online business would have been ready to kick off in July 2014.” (CWS-50, ¶ 91)</p> <p>The Claimants, however, have not submitted any evidence of an investment or final agreements with any of their services providers such as Bally.</p> <p>The requested documents are relevant to the issue of whether the Claimants had a protected investment related to the online casino and whether this project was approximately two months away from opening.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody, or control of the Claimants because contend that the only thing left to do before launching the Online Gaming business was “to install the servers on Bally’s platform”.</p>			
23.	1. Final draft of agreement with Bally incorporating the handwritten annotations	<p><b>At paragraph 28</b> of Mr. Moreno’s Second Witness Statement (CWS-53) claims that Bally’s proposal was</p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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	<p>that Mr. Quijano alleges were already accepted by Bally</p> <p>2. Documents showing Bally's acceptance of Mr. Moreno's modifications.</p> <p>3. Records of communications between Bally and Claimants concerning the contract for the online gaming platform and modification thereto.</p>	<p>modified to incorporate his handwritten annotations. <b>At paragraph 32</b> he further states that the contrary between Bally and E-Games was ready to be signed. However, he did not submit the final version of the proposal incorporating his handwritten annotation nor provided any evidence that Bally accepted those modifications.</p> <p>The requested documents will either corroborate the facts as alleged by Mr. Moreno Quijano or used to challenge the credibility of the witness. They are also relevant to quantum, as the Claimants' expert use some of the inputs from the Bally agreement (as modified by Mr. Moreno) as an input in his damages model. For these reasons, the Respondent maintains that the documents are relevant to the case and material to its outcome.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody, or control of the Claimants because they allege that the contract was ready to be signed and the online casino would open just two months after the existing Casinos were closed. Furthermore, these documents would have been kept in the ordinary course of business.</p>		
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<p>24.</p>	<p>Documents, such as invoices, receipts, wire transfers and accounting records registering the investments listed in the table located at page 6 of Exhibit C-338 (reproduced below).</p> <table border="1" data-bbox="304 535 693 860"> <thead> <tr> <th colspan="3">Inversion inicial</th> </tr> </thead> <tbody> <tr> <td colspan="2">Licencias</td> <td align="right">1,535,000</td> </tr> <tr> <td></td> <td>EG</td> <td align="right">1,500,000</td> </tr> <tr> <td></td> <td>Cash box</td> <td align="right">35,000</td> </tr> <tr> <td colspan="2">Infraestructura</td> <td align="right">395,000</td> </tr> <tr> <td></td> <td>Adecuaciones</td> <td align="right">45,000</td> </tr> <tr> <td></td> <td>IT Site</td> <td align="right">350,000</td> </tr> <tr> <td></td> <td>Racks y accesorios</td> <td align="right">20,000</td> </tr> <tr> <td colspan="2">Mercadotecnia</td> <td align="right">550,000</td> </tr> <tr> <td></td> <td>Produccion de Video</td> <td align="right">50,000</td> </tr> <tr> <td></td> <td>Lanzamiento</td> <td align="right">500,000</td> </tr> <tr> <td colspan="2"><b>Total</b></td> <td align="right"><b>2,480,000</b></td> </tr> </tbody> </table>	Inversion inicial			Licencias		1,535,000		EG	1,500,000		Cash box	35,000	Infraestructura		395,000		Adecuaciones	45,000		IT Site	350,000		Racks y accesorios	20,000	Mercadotecnia		550,000		Produccion de Video	50,000		Lanzamiento	500,000	<b>Total</b>		<b>2,480,000</b>	<p>The Claimants have submitted their “Online Gaming Proposal” as Exhibit C-338. However, as noted at ¶ 538 of the <b>Counter-Memorial</b>, Claimants have not provided any proof that it had made any of the “initial investments” needed for this project the expected to “kick off” approximately two months following the closure of the Claimants’ existing casinos.</p> <p>The requested documents are relevant to the issue of whether the Claimants have a protected investment related to the online casino that would justify the \$36 million-dollar claim associated therewith. They are also relevant to the issue of the credibility of the Claimants’ witnesses. Furthermore, they are relevant to the issue of quantum, as the Respondent has proposed sunk costs as an alternative for calculating damages in relation to this project. For these reasons, the Respondent maintain that the documents are relevant to the case and material to its outcome.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody, or control of the Claimants because they would have</p>	<p>I have no documents responsive to the request.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>
Inversion inicial																																									
Licencias		1,535,000																																							
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	Lanzamiento	500,000																																							
<b>Total</b>		<b>2,480,000</b>																																							

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		obtained and kept in the ordinary course of business.			
25.	<p>1. Records of communications between PokerStars/Rational Group and Claimants regarding a potential agreement to use Claimants online gaming platform to offer a “Texas hold’em” online.</p> <p>2. Copy of final agreement with PokerStars/Rational Group.</p>	<p>Mr. Moreno Quijano refers to Exhibit C-339 in support of his statement that “PokerStars iba a utilizar la plataforma <i>online</i> de las Demandantes para instalar un servicio a través del cual PokerStars ofrecería el juego de <i>Texas hold’em</i> en línea para toda la República Mexicana”. According to Mr. Moreno the Claimants were one or two weeks away from executing such important agreement with PokerStars when Mexico closed the Casinos (<b>Exhibit CWS-53, paragraph 33</b>):</p> <p><i>33. En adición a todo lo anterior, las Demandantes también estaban a punto de firmar un importante contrato con PokerStars (a través del Grupo Rational, empresa afiliada a la empresa propietaria y operadora de PokerStars [...]. PokerStars iba a utilizar la plataforma online de las Demandantes para instalar un servicio a través del cual PokerStars ofrecería el juego de Texas hold’em en línea para toda la República Mexicana. [...]. Las Demandantes estaban a una escasa semana o dos de firmar</i></p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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		<p><i>este importante contrato con PokerStars cuando México clausuró los Casinos.</i></p> <p>Respondent has noted that the Claimants has not produced any evidence that they were about to sign a contract with Poker Stars/Rational Group and that the Claimants' contention is based exclusively in witness statements. The Requested Documents are relevant to the issue of the facts alleged by the witnesses and their credibility. The documents will be used to either corroborate or challenge the Claimants' contention that they were about to sign an agreement with PokerStars and that, but for the closures, their Casino Online would have begun operations in July 2014. The documents are also relevant to the issue of damages, since the Claimants rely in their witnesses to advance a claim for the expropriation of the online casino.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody, or control of the Claimants because they would have been prepared and kept in the ordinary course of business given the importance attributed to the Online Gaming Project. Furthermore, Mr. Moreno Quijano</p>			
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		explicitly mentions the agreement with PokerStars in his witness statement.			
26.	<p>1. The final lease agreement for the facility in which the servers were going to be installed.</p> <p>2. Records of communications between the Claimants and the lessor regarding the execution of the lease and deposit.</p>	<p>At paragraph 32 of Mr. Moreno Quijano’s Second Witness Statement (<b>Exhibit CWS-53</b>) he states that the lease for the space in which the servers were to be installed was ready to be signed (“<u>El contrato para el alquiler del espacio para instalar los servidores ya estaba listo para ser firmado</u>”).</p> <p>The requested documents are relevant to either corroborate or challenge the Claimants’ contention that they were ready to sign a lease agreement and that, but for the closures, their Casino Online would have begun operations in July 2014. They are also relevant to the issue of damages and the Claimants’ DCF as the rent paid for the server hosting facility would be part of the costs that determine the cash flows on which the damages claim is based. For these reasons the Respondent maintains that the documents are relevant to the case and material to its outcome.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody, or control of the Claimants because they would have been</p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.



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		prepared and kept in the ordinary course of business.			
27.	<p>The cost studies referred to in Mr. Moreno’s Second Witness statement regarding:</p> <ol style="list-style-type: none"> <li>1. installation of the servers</li> <li>2. leasing an office and data room in which to install the servers</li> <li>3. installing security and surveillance equipment to monitor the servers from anyway</li> </ol>	<p>Mr. Moreno Quijano mentions at <b>paragraph 30</b> of his Second Witness Statement (<b>Exhibit CWS-53</b>) that “las Demandantes habían realizado también <u>estudios de cuánto costaría instalar los servidores, así como cuál sería el gasto correspondiente al alquiler de una oficina o sala de datos</u> en la que instalar los servidores. También habían averiguado cuál sería el costo de <u>instalación de un equipo básico de cámaras de seguridad</u> que permitiera a las Demandantes monitorear los servidores desde cualquier lugar, ya que las Demandantes no estaban presentes físicamente en Querétaro.”</p> <p>The requested documents will be used to either corroborate or challenge the Claimants’ contention that they would have begun operations in July 2014. They are also relevant to the issue of damages and the Claimants’ DCF as the installation costs for the servers and surveillance equipment would have been part of the initial investment needed to commence operations. Finally, the documents are relevant to the issue of quantum, as the Respondent has</p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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		<p>proposed sunk costs as an alternative for quantifying the damages related to the online casino. For these reasons the Respondent maintains that the documents are relevant to the case and material to its outcome.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody, or control of the Claimants because Mr. Moreno explicitly refers to the requested documents.</p>			

**D. Petolof**

No	Description of the Requested Documents or Category of Documents	Relevance and Materiality of the Requested Documents or Category of Documents	Response / Objections (if any)	Reply to Response / Objections (if any)	Tribunal's Decision
28.	Internal documents containing legal analysis or discussion of the Petolof precedent, predating the decision to move their operations under E-Mex's permit (i.e., before 2 April 2008).	In his Third Witness Statement, Mr. Burr states that in April 2008, the Claimants moved the operation of their casinos under E-Mex's permit and, at the same time, they began their efforts to obtain an independent permit based on the Petolof precedent (Exhibit CWS-50, paragraph 41). More importantly, Mr. Burr affirms that "[w]e would not have agreed to move under the E-Mex permit <u>if it</u>	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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		<p>were not for the <u>Petolof precedent</u>, which we understood allowed us to completely separate from E-Mex. As a result, we walked away from the Eventos Festivos permit and forfeited our deposit.” (Exhibit CWS-50, paragraph 41).</p> <p>Ms. Burr testifies that: (Exhibit CWS-51, paragraph 49-50)</p> <p><i>49. As previously mentioned, when we were moving under E-Mex’s permit, our legal team explained to us that there was legal precedent we could use to separate our operations from E-Mex even if BlueCrest and Advent failed to acquire E-Mex’s permit and our operations remained under it. Specifically, in 2008, SEGOB recognized the independent operator status of Petolof, S.A. de C.V. (“Petolof”) based on the theory of acquired rights—that is, a casino operator, without being a permit holder itself, can acquire certain rights in connection with its prior, lawful casino operation under a third-party’s permit, including the right to continue operating its casinos even after the original permit holder’s permit has been revoked.</i></p> <p><i>50. As previously mentioned, this was always the backup plan we had as we were moving under E-Mex’s permit because we did not want to leave</i></p>			
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		<p><i>anything subject to chance. We believed that our situation was analogous to Petolof's because our Casino operations had always been lawful and SEGOB-approved and we knew there was the possibility that BlueCrest could force E-Mex into bankruptcy if negotiations failed.</i></p> <p>The Respondent's position is that the Petolof precedent could not have been the reason behind the Claimants' decision to move to E-Mex's permit because the Petolof decision was issued some months after that decision was made (Counter-Memorial, ¶¶ 103-106). The requested documents are relevant to the issue of the credibility of the Claimants' witnesses and therefore, material to the outcome of the case.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody, or control of the Claimants because they would have been prepared and kept in the ordinary course of business. Furthermore, Mr. Burr explicitly refers to legal advice given in relation to the decision of moving their operations under E-Mex's permit.</p>			
29.	Internal documents containing legal analysis or discussion of the Petolof precedent, that was	In the Memorial, the Claimants argued that "E-Games relied on a resolution that SEGOB issued to Petolof, S.A. de C.V., on October 28, 2008, where it applied the same legal principle of 'acquired rights' to grant Petolof the status of	I have no documents responsive to the request	No reply is necessary.	No decision required.

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	<p>considered prior to requesting the 27 May 2009 Resolution.</p>	<p>independent operator” (Memorial, ¶ 118). Furthermore, Claimants stated that their “legal team assured Mr. and Ms. Burr that there was legal precedent that they could rely on to separate their operations from E-Mex in case that the proposed deal did not materialize” (Memorial, ¶ 118). These statements suggest that Claimant’s undertook an assessment of the Petolof precedent.</p> <p>The Respondent’s position is that the case of Petolof had crucial differences with that of E-Games’, and Claimants should have identified those differences and the risks of seeking the application of that case to E-Games. In the alternative, if they did identify those differences and nonetheless relied on the Petolof case to seek the 27 May 2009 Resolution, they assumed a high risk. (Counter-Memorial, ¶¶ 141-142). The requested documents are relevant to show that Claimants identified or should have identified the crucial differences between Petolof and E-Games’ situations, and therefore, material to the outcome of the case.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody, or control of the Claimants because they would have been prepared and kept in the ordinary course of business. Furthermore, Claimants referred to legal advice given in relation to the Petolof precedent on which they relied.</p>			
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**E. Mr. Taylor’s Affidavit**

**General justification:**

At paragraphs 859 to 864 of the Counter-Memorial the Respondent argued that Exhibit R-075, Mr. Taylor’s Affidavit, represents circumstantial evidence to be considered by the Tribunal with respect the “clean hands” doctrine and the potential illegality of the Claimants’ investments. The Respondent submits that if any of the assertions made by Mr. Taylor were true, then the “clean hands” doctrine is applicable to this case. Consequently, the Claimants may not have standing to submit their claims to arbitration. In the alternative, in case the Tribunal finds the Respondent has breached its NAFTA obligations, the amount of damages should be reduced significantly because of the allegations contained in Mr. Taylor’s Affidavit. Specifically, this Tribunal is entitled to consider whether the Claimants’ were operating the casinos contrary to domestic law and/or regulations, and if so, whether the Casinos would likely have had their licenses revoked for that reason.

The Respondent is in no position to address the veracity of Mr. Taylor’s assertions without fulsome disclosure from all the Claimants. For this reason, the Respondent believes the documents are relevant to the case and material to its outcome.

The Respondent is not in possession, custody, or control of any of the requested documents.

No	Description of the Requested Documents or Category of Documents	Relevance and Materiality of the Requested Documents or Category of Documents	Response / Objections (if any)	Reply to Response / Objections (if any)	Tribunal’s Decision
30.	Records of Communication and/or Internal Documents, including tape recordings of conversations and transcripts of conversations, that address:  1. Embezzlement by administrators of the Mexican Enterprises;	See general justification.  All of these allegations, which are expressly set out in pages 5-15 of 53 of Mr. Taylor’s Affidavit, are relevant to the application of the “clean hands” doctrine and to the Casinos’ adherence to domestic law.	I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.	No reply is necessary.	No decision required.

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	<ol style="list-style-type: none"> <li>2. Payments made to family members of the administrators of the Mexican Enterprises without those family members performing work;</li> <li>3. The improper removal of money from casino vaults;</li> <li>4. The failure to properly report and/or account for money in books, records or other accounting documents;</li> <li>5. The payment of money to people or projects without proper accounting controls;</li> <li>6. The failure of the Mexican Enterprises to pay taxes on all revenue;</li> <li>7. Payments (referred to “payola” in the affidavit) made as a bribe to any public official. Without limiting the generality, this should include all offers to give or delivery of a loan, reward, advantage,</li> </ol>	<p>In addition to the allegations, themselves, the investigation into the allegations (if any) by the Claimants and the findings of any investigations are also relevant.</p> <p>It is also relevant to this Tribunal’s determination whether any of the Claimants’ voluntarily self-reported impropriety to any authorities in Mexico.</p> <p>The Respondent considers that such documents exist and are in possession, custody, or control of the Claimants because all of these allegations were brought to the attention of the Mexican Enterprises and the individual Claimants who held management positions. This is confirmed in Mr. Taylor’s Affidavit. Given the seriousness of these allegations as set out in Mr. Taylor’s affidavit, such documents would have been prepared and kept in the ordinary course of business.</p>			
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	<p>payment or benefit of any kind to a public official or to any person for the benefit of a public official;</p> <p>8. The improper removal of books, records or other accounting documents from the casino vault, or more generally, the casino; and</p> <p>9. The co-mingling of personal money and company money by Gordan Burr, other Claimants or persons operating within the Mexican Enterprise.</p>				
31.	<p>Copy of the letter from Mr. Dan Rudden to Neil Ayervais concerning allegations of embezzlement and misuse of funds, and any responses or internal communications relating thereto.</p>	<p>See general justification.</p> <p>Mr. Taylor’s Affidavit contains a “Partial List of Problems the Managers Refused to Reveal to You” which include “allegations of embezzlement made by the managers against themselves” and “allegations of misuse of funds and putting family members on the payroll even though no work performed</p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>



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		<p>made by the managers themselves”, respectively.</p> <p>The allegations allegedly made in Mr. Rudden’s correspondence, as described in Mr. Taylor’s Affidavit, are relevant to the application of the “clean hands” doctrine and to the Casinos’ adherence to domestic law.</p> <p>Mr. Rudden was not a client of Neil Ayervais, and as such, the original letter and all related communications are not subject to any solicitor client privilege.</p> <p>The Respondent considers that such documents exist and are in possession, custody, or control of the Claimants because the original letter is referenced in Mr. Taylor’s Affidavit, and a response and/or related internal communications would have been prepared and kept in the ordinary course of business.</p>			
32.	Internal documents and records of communications related to the presentation that	<p>See general justification.</p> <p>Mr. Taylor’s affidavit states that John Conley attended a meeting</p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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<p>John Conley was requested to attend in México</p>	<p>in Mexico where he learned, <i>inter alia</i>:</p> <ul style="list-style-type: none"><li>a) how Gordon Burr and others were removing money from the vaults (pages 5-9 of 53)</li><li>b) how cash was taken “straight out of the vault” (pages 5-8 of 53)</li><li>c) how millions of dollars were not properly reported on the books (page 5 of 53)</li><li>d) How cash was used in paying millions of dollars to Pepe Rojas without proper controls (pages 5, 9-14 of 53)</li><li>e) How cash was used to pay for construction projects without proper accounting controls (pages 5, 10-14); and</li><li>f) how accounting records were improperly removed from the vault (pages 5, 9-11)</li></ul> <p>This Information is relevant to the application of the “clean hands” doctrine and to the Casinos’ adherence to domestic law.</p>	<p>objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>		
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		<p>The Respondent considers that such documents exist and are in possession, custody, or control of the Claimants because the meeting is referenced in Mr. Taylor’s Affidavit, and internal documents and/or records of communications relating to that meeting would have been prepared and kept in the ordinary course of business.</p>			
<p>33.</p>	<p>All books, records, ledger, chits, or other accounting records for each casino and for all of the Mexican Enterprises. If the Casinos maintained more than one set of such documents, then provide all sets.</p>	<p>See general justification.          Mr. Taylor’s Affidavit also contains a transcript of a recorded conversation between Messrs. Taylor, Rudden and Conley held on August 9, 2016. The following statements are made in that conversation:</p> <ol style="list-style-type: none"> <li>1. Mr. Conley states that “they were just taking straight cash out of the vault” and suggests that not all the “table game money” was being put in. At another point, Mr. Conley observes “Yeah. Well Arturo claims he [i.e., Mr. Burr] borrowed</li> </ol>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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		<p>200,000 from the vault, too” (pages 7-9 of 53)</p> <p>2. “And because, in theory, it was going out to all this other payola wherever it was going. And, you know, Gordon’s comment was ‘you guys don’t want to know where it’s going’” (pages 13-14 of 53)</p> <p>All of these documents are relevant to the application of the “clean hands” doctrine and to the Casinos’ adherence to domestic law.</p> <p>The Respondent considers that such documents exist and are in possession, custody, or control of the Claimants because they are referenced in Mr. Taylor’s Affidavit, and such documents also would have been prepared and kept in the ordinary course of business.</p>			
34.	All documents relating to payroll, including a list of all employees who were paid by the Mexican Enterprises.	See general justification. Mr. Taylor’s Affidavit states that “Please note that when the company was formed, John and	I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present	No reply is necessary.	No decision required.

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		<p>I set aside stock for employees. John was in charge of the original management team. He issued employee stock to Conley Equipment Company employees. This stock was half mine. These people included Matt Roberts (John's stepson) Gabo, Antonio (who at the time was an employee of the Conley battery company) and Alfredo (who was working for both Conley and The Casinos). With the exception of Alfredo, the other three never worked a day for the companies until the battery company was sold and Antonio went to work in Puebla.” (page 15 of 53).</p> <p>All of these documents are relevant to the application of the “clean hands” doctrine and to the Casinos’ adherence to domestic law.</p> <p>The Respondent considers that such documents exist and are in possession, custody, or control of the Claimants because they are referenced in Mr. Taylor’s Affidavit, and such documents also would have been prepared</p>	<p>objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>		
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		and kept in the ordinary course of business.			
35.	<p>The following Records of Communication and/or Internal Documents:</p> <ol style="list-style-type: none"> <li>1. Minutes of the Special Meeting of Managers dated on or about January 14, 2016;</li> <li>2. All documents provided to managers as directed by the Minutes of the January 14, 2016 meeting;</li> <li>3. All internal or external investigations, including draft findings and final report, undertaken pursuant to the January 14, 2016</li> </ol>	<p>See general justification.</p> <p>Mr. Taylor’s affidavit claims that allegations of malfeasance and breach of fiduciary duty were addressed in this meeting and the managers would determine the most effective means to investigate and resolve them. As well, the minutes allegedly state that “all relevant documents should be provided to all managers from all sources”.</p> <p>All of these documents are relevant to the application of the “clean hands” doctrine and to the Casinos’ adherence to domestic law.</p> <p>The Respondent considers that such documents exist and are in possession, custody, or control of the Claimants because they are referenced in Mr. Taylor’s Affidavit, and such documents also would have been prepared and kept in the ordinary course of business.</p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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36.	<p>Records of Communication and/or Internal Documents, including tape recordings of conversations and transcripts of conversations, that address:</p> <ol style="list-style-type: none"> <li>1. Managers John Conley and Dan Rudden working with former employees and/or Benjamin Chow in a conspiracy against the interests of B-MEX Members;</li> <li>2. That gaming machines and other equipment were stolen from the casinos after closure;</li> <li>3. Mr. Conley and/or former employees and/or other persons working under his direction stole gaming machines and other equipment from the Casinos after closure;</li> <li>4. Mr. Conley and former employees were working to open casinos that rival</li> </ol>	<p>See general justification.</p> <p>All of these allegations are set out in pages 15-22 of 53 of Mr. Taylor’s Affidavit.</p> <p>All of these documents are relevant to the application of the “clean hands” doctrine and to the Casinos’ adherence to domestic law.</p> <p>The Respondent considers that such documents exist and are in possession, custody, or control of the Claimants because they are referenced in Mr. Taylor’s Affidavit, and such documents also would have been prepared and kept in the ordinary course of business.</p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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	<p>Plaintiff's casino assets; and</p> <p>5. John Conley had his stepson and others on the B-MEX payroll at the beginning of the company and paid them \$1,100,000 while they performed no work.</p>				
<p>37.</p>	<p>The Letter dated March 7, 2016 wherein Stephen Kapnik (legal counsel) wrote on behalf of Gordan Burr, Erin Burr and other claimants' persons wrote to the Board and/or managers of the Mexican Enterprises, alleging a breach of fiduciary duty, as well as Records of Communication and/or Internal Documents, prepared as a result of that correspondence.</p>	<p>See general justification.</p> <p>All of these documents are relevant to the application of the "clean hands" doctrine and to the Casinos' adherence to domestic law.</p> <p>The letter is not subject to any solicitor-client privilege because it was delivered to other claimants or representatives of the Mexican Enterprises. Upon issuance of the letter to other claimants and/or the Mexican Enterprises, that correspondence, and any response or internal documents, became subject to production in this arbitration.</p> <p>The Respondent considers that such documents exist and are in</p>	<p>I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to "present objections to requests on grounds other than privilege or confidentiality." I have no such objections.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>



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		possession, custody, or control of the Claimants because they are referenced in Mr. Taylor’s Affidavit, and such documents also would have been prepared and kept in the ordinary course of business.			
38.	<ol style="list-style-type: none"> <li>1. All emails to and from Gordon Burr and the Board of Directors or Managers of the Mexican Enterprises;</li> <li>2. An email dated 7-29-16 from Gordon Burr to Board of Managers of B-MEX, B-MEX II and/or Las Palmas.</li> </ol>	<p>See general justification.</p> <p>Mr. Taylor’s Affidavit at page 26 of 53 that Mr. Burr’s email of 7-29-16 confirms that John Conley paid “employees” who never worked at the casinos.</p> <p>All emails to and from Gordon Burr to managers of the Mexican enterprises are relevant to the application of the “clean hands” doctrine and to the Casinos’ adherence to domestic law.</p> <p>The email referenced in Mr. Taylor’s Affidavit may be attached to that Affidavit (at page 31 of 53). If the email attached to Mr. Taylor’s email is complete, then it is not necessary to reproduce that email.</p>	I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.	No reply is necessary.	No decision required.

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		The Respondent considers that such documents exist and are in possession, custody, or control of the Claimants because they are referenced in Mr. Taylor’s Affidavit, and such documents also would have been prepared and kept in the ordinary course of business.			
39.	Records of Communication and/or Internal Documents sent by Gordon Burr, or by any other Claimant, or sent on behalf of a Mexican Enterprise to the FBI.).	<p>See general justification.</p> <p>Mr. Taylor’s Affidavit at page 31 of 53 includes an email written by Gordon Burr dated 7-29-2016. In that email, Mr. Burr states that “I did everything possible to stop Pepe Rojas and others from stealing our companies including going immediately to the FBI and keeping them informed of everything that was happening.”</p> <p>What Gordon Burr, or others, advised the FBI is relevant to the application of the “clean hands” doctrine and to the Casinos’ adherence to domestic law. As well, if the Casino’s were in fact being “stolen” by an individual or individuals not representing the Respondent, then this is also</p>	I possess documents responsive to this request. Per Procedural Order #9, we have been ordered to “present objections to requests on grounds other than privilege or confidentiality.” I have no such objections.	No reply is necessary.	No decision required.

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		<p>relevant to the Respondent’s defence on the merits.</p> <p>The Respondent considers that such documents exist and are in possession, custody, or control of the Claimants because they are referenced in an email written by Mr. Burr.</p>			
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**F. Miscellaneous**

No	Description of the Requested Documents or Category of Documents	Relevance and Materiality of the Requested Documents or Category of Documents	Response / Objections (if any)	Reply to Response / Objections (if any)	Tribunal’s / Decision
40.	The contract between BlackCube and Claimants, including but not limited to the Engagement Letter.	<p>In <b>paragraph 218 of the Memorial</b>, the Claimants indicate that they hired BlackCube to “investigate Mexico’s seemingly inexplicable behavior towards them, particularly the motives behind the Mexican revocation of E-Games’ permit”.</p> <p>Mr. Avi Yanus testifies that Black Cube was retained by counsel for the Claimants and instructed to investigate “<u>the underlying motives behind Mexico’s revocation of E-Games’ permit</u>” (<b>Exhibit CWS-57, paragraph 26</b>).</p> <p>The Claimants rely on Mr. Yanus’ testimony to support their claim that: a) SEGOB revoked E-Games permit for political reasons; b) SEGOB</p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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		<p>wanted to benefit the ruling PRI Party and the PRI-allied Grupo Caliente; c) SEGOB improperly influenced the Supreme Court; d) SEGOB intervened in the attempts of PlayCity to purchase the Claimants’ Casinos; e) during Ms. Gonzalez Salas tenure there was a widespread of corruption within SEGOB; and e) there was a preferential treatment towards Televisa’s company, PlayCity (CWS-57, paragraphs 32-37).</p> <p>The Respondent stated at <b>paragraph 434 of its Counter-Memorial</b> that Mr. Yanus provides testimony regarding conversations of which he was not a party and was not present.</p> <p>The requested documents are relevant to the case and relevant to the outcome of the case because they will reveal the scope of work and instructions provided by the Respondent to BlackCube. Furthermore, such documents will show whether BlackCube was hired on a contingency fee and has economic interests in this proceeding.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody, or control of the Claimants because they would have been prepared and kept in the ordinary course of business.</p>			
41.	Complete and unedited .mp3 files (or original format) attached to Mr. Avi Yanus	The Claimants have relied on these recordings to support of their allegations that: a) E-Games obtained its permit legally (Memorial, section IV.V.2); b) E-Games’ permit was revoked for	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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<p>Witness Statement (Exhibit CWS-57).</p>	<p>political reasons (Memorial, section IV.V.3); c) SEGOB interfered with the Supreme Court proceedings (Memorial, section IV.V.4); d) SEGOB blocked Claimants' efforts to sell the Casinos (Memorial, section IV.V.5), and; e) the Mexican government has a consistent pattern of corruption and favoritism towards local gaming companies (Memorial, section IV.V.6).</p> <p>However, the Claimants have not provided the complete unedited recordings. In particular, the Respondent has noticed that the following mp3 files are edited or incomplete:</p> <ul style="list-style-type: none"><li>- "OAM 07.25.2018 (2).mp3"</li><li>- "OAM 07.25.2018 (4).mp3"</li><li>- "KR 12.14.2018 (1).mp3"</li></ul> <p>The .mp3 files are relevant to the case and material to its outcome, given the importance that the Claimants' attach to them in their Memorial. The mp3 are necessary to verify allegations of fact in the Yanus report.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody, or control of the Claimants and/or BlackCube because they are referred by the Claimants and their witness, Mr. Avi Yanus. Moreover, the Claimants state at <b>paragraph 222 of the Memorial</b> that "Black Cube records the conversation from start to finish, without any breaks" and that it "uses multiple recording devices to ensure it captures all the</p>			
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		<p>statements during the meeting”. This is also mentioned in Mr. Yanus witness statement at <b>paragraph 10 (CWS-57)</b>. Furthermore, Mr. Yanus testifies <b>at paragraph 11</b> that: “Black Cube preserves each of the audio recordings in its entirety and does not alter the original recordings in any way” and that “Black Cube, however, maintains the originals of the recordings without any alterations in its files.”</p>			
<p>42.</p>	<ol style="list-style-type: none"> <li>1. Any and all additional recordings (unedited) obtained by BlackCube for the purposes of this arbitration that were not included as evidence in this proceeding or mentioned in Mr. Yanus’ report.</li> <li>2. BlackCube’s transcripts of the interviews referred to in the first item of this request.</li> <li>3. Reports elaborated by BlackCube in relation to its agents’ findings.</li> </ol>	<p>Mr. Yanus testifies in <b>paragraph 27</b> of his Witness Statement (<b>CWS-57</b>) that during the investigation, “Black Cube contacted several sources who are familiar with the circumstances surrounding Claimants’ operation in Mexico as well as Mexico’s closure of Claimants’ casinos”. However, he does not identify the full list of people he or his agents interviewed.</p> <p>The requested documents will be used to verify whether BlackCube has cherry picked recordings that favour the Claimants’ case while leaving out other interviews or recordings that go against their interests. The Respondent also maintains that it should be afforded the opportunity to test Mr. Yanus’ evidence with all the recordings gathered by BlackCube. For these reasons the Respondent maintains that the documents are relevant to the case and material to its outcome</p> <p>The Respondent believes the requested documents exist and are in possession, custody, or control of the Claimants because Mr. Yanus testifies <b>at</b></p>	<p>I have no documents responsive to the request.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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		<b>paragraph 11 (CWS-57)</b> that: “Black Cube preserves each of the audio recordings in its entirety and does not alter the original recordings in any way” and that “Black Cube, however, maintains the originals of the recordings without any alterations in its files.”			
43.	<p>Internal documents and records of communications between Claimants and BlackCube containing an analysis, opinion or discussion regarding:</p> <ul style="list-style-type: none"> <li>• The people that BlackCube interviewed for the purpose of this arbitration;</li> <li>• The “targets” that BlackCube was supposed to investigate;</li> <li>• The final report prepared by BlackCube</li> </ul>	<p>The Claimants have repeatedly stated that the revocation of their permit was politically motivated and that, in order to investigate the foregoing, they retained the services of Black Cube. Mr. Yanus’ report states that he conducted an investigation into the potential political reasons for the cancellation, both from political institutions and competitors (¶ 26). However, Mr. Yanus’ report as well as the Memorial only reference selective parts of the recordings obtained from Messrs. Obdulio Avila and Kevin Rosenberg. As noted by the Respondent in its counter memorial (¶ 467) the recordings contain information that contradicts the position taken by the Claimants. It is important for the Respondent and this Tribunal to know how Black Cube determined who to investigate and what the objectives were when the decision to record Messrs Avila and Rosenberg was made, as well as whether there were other persons, institutions or competitors that were investigated. Black Cube could have conducted a more ample investigation and omit evidence that was contrary to the Claimants objectives in this proceeding. The requested documents are also</p>	<p>I have no documents responsive to the request.</p>	<p>No reply is necessary.</p>	<p>No decision required.</p>

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		<p>relevant and material to corroborate that SEGOB's decisions were not politically motivated.</p> <p>The Respondent believes that the documents exist and are within the Claimants' possession because Black Cube would have had to somehow make the decision as to whom they should investigate and set the objectives of their investigation. It is reasonable to assume that such information would be recorded in documents prepared during the course of Black Cube's investigations and would have been kept in the regular course of business,</p>			
44.	<p>Financial statements and ledgers of the following companies:</p> <ul style="list-style-type: none"> <li>- B-Mex</li> <li>- B-Mex II</li> <li>- Oaxaca Investments</li> <li>- B-Cabo LLC</li> </ul>	<p>The Claimants have argued that several investments, such as loans, were made by the B-Mex companies in relation to the projects of Cabo, Cancun and online casino (<b>Memorial, paragraphs 64-65, 72</b>). There is also discussion of capital investments and the purchase of gaming licenses for these operations.</p> <p>Mexico has argued that there is no evidence regarding any of these alleged investments (<b>Counter-Memorial, paragraph 481</b>). The requested documents will be used to corroborate or disprove the existence of these alleged investments. Since the existence of an investment is a sine qua non condition for bringing a claim under Chapter Eleven in relation to these potential casinos, the requested documents are relevant to the case and material to its outcome.</p> <p>The Respondent believes the requested documents exist and are in possession, custody, or control of the</p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.



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		Claimants because they would have been prepared and kept in the regular course of business.			
45.	Internal documents containing an analysis of any kind or discussion of the District Court’s decision of 10 March 2014 and/or E-Games’ decision to request permits for each the Claimants’ Casinos in April 2014.	<p>The Claimants argue that SEGOB illegally closed the Casinos, because “the alleged main reason for the closure, that is, the lack of a permit for the operation of the establishments, was still sub judice in the Amparo 1668/2011 proceeding at the time that SEGOB closed Claimant’s Casinos” (<b>Memorial, paragraph 380</b>).</p> <p>The Respondent noted, however, that the Claimants’ argument is inconsistent with their own behavior because on 4 April 2014, 2014 E-Games requested new permits for its casinos. The new permit requests were submitted shortly after the District Court confirmed (on 10 March 2014) that SEGOB had complied with the Amparo judgement.</p> <p>The Respondent’s position is that t E-Games’ actions confirm that as of 10 March 2014, the Claimants knew or should have known, that its gaming permit was revoked and SEGOB was not precluded from closing the Casinos. Claimants knew they had no valid permit and decided to keep their casinos open despite the express prohibition in the LFJS (<b>Counter-Memorial, paragraphs 325-327</b>).</p> <p>The requested documents are relevant to the issue of whether the Claimants were knowingly operating their casinos without a permit and whether SEGOB’s actions were justified. For these reasons prove the Respondent maintains that the requested</p>	I have no documents responsive to the request.	No reply is necessary.	No decision required.

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		<p>documents are relevant to the case and material to its outcome.</p> <p>The Respondent believes the requested documents exist and are in possession, custody, or control of the Claimants because they would have been prepared and kept in the regular course of business.</p>			
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