

Procedural Order No. 10

ANNEX II.B

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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| Document(s) | 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. |
| Internal documents | 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> |
| 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 <u>and/or any person or entity acting on behalf of the named parties.</u> |
| Mexican Enterprises or Mexican companies | Means any of the five Juegos Companies and E-Games |

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General Comments and Reservation of Rights

Pursuant to the Tribunal’s Procedural Order No. 9, dated February 7, 2021 (the “PO No. 9”), the 37 Claimants represented by Quinn Emanuel Urquhart & Sullivan, LLP (hereinafter referred to as “Claimants”) have limited their objections to Respondent’s requests to “grounds other than privilege or confidentiality (e.g., overly broad, lack of relevance or materiality; unreasonably burdensome; etc.).”¹ Claimants, however, observe that many of Respondent’s requests explicitly solicit documents—if they were to exist—that would not be subject to disclosure as they are protected under attorney-client privilege, work product doctrine, confidentiality obligations, and/or other applicable legal impediments. Claimants thus explicitly reserve their right to raise the claim of privilege and/or confidentiality in response to any and all of Mexico’s requests as may be necessary following the Tribunal’s decision on the contested requests.

Claimants also remind the Respondent that the Naucalpan Casino was burned down in May 2017 while it was under Respondent’s custody; and that said Casino served as the headquarters for all of the Mexican Enterprises and all physical records and documents for the Mexican Enterprises were kept there. Respondent was made well aware of this fact from Claimants’ submissions during the jurisdictional phase of the present arbitration. Notwithstanding, Respondent still seeks to obtain from Claimants many documents that would have likely been destroyed by the fire that burned down the Naucalpan Casino in May 2017. Claimants cannot and are under no obligation to produce the requested documents that were lost or destroyed in that fire (Article 9.2(d) of the IBA Rules on the Taking of Evidence in International Arbitration (2010) (“IBA Rules”). And Claimants hereby reserve the right to object to the production of the requested documents, provided that Mexico’s requests, if any, are granted by the Tribunal, pursuant to the IBA Rules, Article 9.2(d).

Respondent’s Reply to Claimants’ “General Comments and Reservation of Rights”

In the “General Comments and Reservation of Rights” response by the 37 Claimants, those claimants reiterate that the Naucalpan Casino was burned down in May 2017 while it was under Respondent’s custody; and that said Casino served as the headquarters for all of the Mexican Enterprises and all physical records and documents for the Mexican Enterprises were kept there. It would appear that the 37 Claimants are taking the position that even if the individual Claimants are personally in possession of those documents, there is no obligation to produce them because the Mexican enterprises are no longer in possession of those documents.

Based upon documents identified by Mr. Taylor, it is clear that some of the individual claimants are in possession of documents that may have been destroyed or lost in the fire. Article 9.2(d) of the IBA Rules on the Taking of Evidence, as cited by the 37 Claimants, would only apply if all of the Claimants had lost the requested documents. If any of the Claimants are in possession of the requested documents, then Article 9.2(d) does not apply.

Moreover, the Tribunal’s instructions in PO No.9 were clear in that all objections, other than those based on confidentiality and privilege were to be submitted on 12 February 2021. The Tribunal did not carve out from its order any potential objection based on Article 9.2(d) of the IBA Rules –i.e., loss or destruction of the document(s) that has been shown with reasonable likelihood to have occurred. Therefore, the Claimants cannot reserve the right to object to the production of documents under Article 9.2(d) at a later time.

Finally, the Respondent highlights the fact that the 37 Claimants make no claim that the requested documents do not exist.

¹ PO No. 9. ¶ 9.

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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 |
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| 1. | 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>At paragraph 32 of the Memorial the Claimants state that Mr. Burr consulted lawyers to ensure that operations under Monterrey's Resolution were legal. At paragraph 33 of the Memorial, 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</u> and to specifically assess whether JEV Monterrey was operating legally in Mexico".</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 when the Claimants invested in Mexico, the new gaming regulations were in force and required a gaming permit</p> | <p>Pursuant to the Tribunal's PO No. 9, Claimants do not raise an objection to this request on grounds of privilege and/or confidentiality but reserve their right to do so in accordance with Section 2 of the PO No. 9.</p> <p>Claimants object to this request for the following reasons: <i>First</i>, Mexico fails to establish how the requested documents are relevant to the case and material to its outcome ((IBA Rules, 9.2(a)). In the present arbitration, there is no dispute concerning the nature of the Monterrey Resolution. While Mexico selectively quotes from Claimants' Memorial on the Merits ("Memorial"), Claimants clearly indicated in the relevant paragraphs that the Monterrey Resolution is a "gaming authorization", and not a permit, that allowed the installation and operation in Mexico of gaming machines requiring skill (i.e., "skilled slots"); and that "these machines did not require a permit from SEGOB to operate legally", as they fall "outside the scope of the Mexican gambling</p> | <p>The Claimant's objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, the Respondent established the relevance and materiality of the requested documents. The Respondent concurs with the Claimants that the Monterrey Resolution was not a permit for JEV Monterrey to operate casinos, but an authorization for the installation and operation of specific gaming machines requiring skills. Nothing more. That does not mean, however, that the Claimants operated legally under the Monterrey Resolution from 2005 to 2008.</p> <p>Furthermore, according to the Monterrey Resolution, SEGOB conducted an on-site verification of the machines located at the JEV Monterrey gaming facility. But that does not mean that the machines in the Claimant's Casinos were of the same type of machines that SEGOB verified.</p> <p>Thus, the Claimants misconstrued the Respondent's position when they argued that the requested documents are irrelevant "since the Parties are not in dispute concerning the ... legality of</p> | Request granted, subject to the Tribunal's resolution of any legal impediment objection as per PO9, ¶¶ 9(d) to (f). |

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| | <p>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> <p>The Respondent believes the documents exist and are in possession, custody, or control of the Claimants as they are referred to in</p> | <p>laws, which at the time prohibited other types of gambling.” (Memorial, ¶ 18.). Mexico does not dispute this fact, nor does it question the legality of operating under the Monterrey Resolution, because Mexico itself acknowledges 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>.” As such, the documents requested are irrelevant to the outcome of the present arbitration since the Parties are not in dispute concerning the nature of the Monterrey Resolution or the legality of operation of “skilled slots” under the Monterrey Resolution.</p> <p>Mexico’s further justification for seeking the requested documents is that they are relevant to the issue of whether Claimants legally established their investments in Mexico and whether they operated their gaming facilities legally under the Monterrey Resolution from 2005 to 2008. However, as Claimants noted in their Memorial and as Mr. Gutiérrez, who oversaw the formation of the B-Mex Companies and the Juegos Companies testified, SEGOB itself had conducted on-site verifications of the gaming machines installed at JEV Monterrey’s and later Claimants’ gaming facilities and certified</p> | <p>operation of “skilled slots” under the Monterrey Resolution.” The Respondent is questioning the legality of the operation of the Claimants’ casinos under the Monterrey Resolution. This is clear from the content of this request.</p> <p>The Claimants also object to the request because “SEGOB itself had conducted on-site verifications of the gaming machines installed at JEV Monterrey’s and <u>later Claimants’ gaming facilities and certified that they were skilled slots and therefore not subject to its jurisdiction</u>.” This statement is incorrect and is an attempt to obfuscate the facts. According to the Monterrey Resolution, SEGOB conducted an on-site verification to the JEV Monterrey gaming facility to inspect the machines on that premises, which occurred on 24 October 2004 (C-94, page 3). Also, according to evidence in the record, SEGOB conducted an on-site verification to the Naucalpan Casino on 8 December 2005 (Exhibit C-346). The rest of the Casinos started operations between 2006 and 2007, but there is no evidence that the Claimants complied with the Monterrey Resolution.</p> <p>It should also be noted that the Claimants’ objection now refers to their casinos as “gaming facilities.” It seems to be an attempt of the Claimants to minimize differences between the type of business that JEV Monterrey was running and the casinos that the Claimants intended to establish since the beginning. However, in the Memorial, the Claimants made a clear distinction between the “gaming facility” operated by the JEV Monterrey</p> | |
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| | | <p>the Memorial and Mr. Burr's Third Witness Statement.</p> | <p>that they were skilled slots and therefore not subject to its jurisdiction. (Memorial, ¶18; Julio Gutiérrez Statement, CWS-52, ¶¶ 8, 10). In fact, Mexico produced no evidence to substantiate its speculation concerning the legal operation of Claimants' gaming facilities under the Monterrey Resolution. Respondent cannot use the document production phase as a fishing expedition to attempt to prove unsubstantiated claims that it has failed to adequately raise, nor it can require Claimants to trawl through documents, which are in any event irrelevant to the case, based on unfounded speculation.</p> <p>Moreover, Mexico fails to articulate how the requested documents concerning <i>JEV Monterrey's</i> operations under the Monterrey Resolution relate to the operation of <i>Claimants'</i> gaming facilities under the Monterrey Resolution from 2005 to 2008, as the requested documents, including "the documentation provided by Messrs. Young and Rojas Cardona", would obviously not contain any information regarding Claimants' gaming facilities which had yet to come into existence at the time that such documentation was created and/or provided to Claimants. As such, Mexico's stated justification for this request does not align with the documents requested and therefore does not comply with IBA Rules, Art. 3.3(b).</p> | <p>(Memorial, ¶18) and the Claimants' "casinos" operated according to Monterrey's Resolution (Memorial, e.g., ¶¶ 23 - 26). It is clear from the context portrayed in the Memorial that the Claimants intended to invest in the type of gaming facilities that require a permit from SEGOB casinos (Memorial, ¶¶ 22, 23), not the operation of the kind of machines covered by the Monterrey Resolution. Therefore, the Memorial suggests that the Claimants could have sought to use the Monterrey Resolution as a vehicle to operate a casino of the type that would require a permit granted by SEGOB under the law.</p> <p>The documents concerning the JEV Monterrey's operations under the Monterrey Resolution, and the documents that Messrs. Young and Mr. Rojas Cardona provided to the Claimants are relevant because they could show the strategy for the Claimants to operate the casinos without a permit from SEGOB. Also, the documents could provide elements to prove the Claimants were aware of the limitations and risks involved in the operation of a gaming facility beyond the specific scope of the Monterrey Resolution. The requested documents, together with the next request, are also relevant to the issue of whether the operation of the Claimants' casinos in the period 2005-2008 they established their investment and initiated operations was legal or not.</p> <p><i>Second</i>, the request is not unreasonably burdensome. Despite the witness statements that the Claimants provided</p> |
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| | | <p><i>Second</i>, Mexico’s request is unreasonably burdensome because it is duplicative and unnecessary (IBA Rules, Art. 9.2(c)). Along with the Memorial, Claimants have already submitted several witness statements testifying to Claimants’ undertaking of proper due diligence efforts and the legal advice sought and obtained by the Claimants in this context, including the witness statement of Julio Gutiérrez, Mexican counsel whom Claimants consulted regarding the legality of the Monterrey Resolution and JEV Monterrey’s operations thereunder (Gordon Burr Statement, CWS-50, ¶¶ 7–8; Julio Gutiérrez Statement, CWS-52, ¶¶ 7-8). As such, Mexico is already well-aware of the legal advice the Claimants obtained on these issues, including its substance and reasoning, making production of the documents requested by Mexico duplicative, unnecessary and, therefore, unduly burdensome (IBA Rules, Art. 9(2)(c)). To the extent that Mexico wants to dispute the legality of operating under the Monterrey Resolution—which it does not, Mexico may consult the relevant witness statements and the Memorial.</p> <p><i>Third</i>, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)), as the requested documents are from at least 15 years ago and Respondent offered no</p> | <p>described the efforts to obtained legal advice, there is no evidence of the content and nature of that legal advice and the limitations or risks of operating a casino that requires a permit from SEGOB through the Monterrey Resolution. As mentioned above, since the beginning, the Claimants had the intention to invest in casinos that would require a permit from SEGOB. However, they decided to start operating its casinos under the Monterrey Resolution that, as acknowledged by the Claimants, is not a permit to operate casinos of the type they intended. Did the Claimants started a mere “gaming facility” to operate the limited type of machines covered by the Monterrey Resolution when they originally sought to operate a casino that requires a permit from SEGOB? Or did they use the Monterrey Resolution as a way to operate casinos that require a permit? The legality of the establishment of an investment is of paramount importance to this arbitration. Thus, the Respondent must have the opportunity to review the requested documents.</p> <p><i>Third</i>, the Respondent believes that the requested documents exist and that the request is not unreasonably burdensome. The Claimants have been preparing for this arbitration since at least January 2013, when the Claimant’s former counsel, White&Case, contacted the Respondent to discuss the matters involved in this arbitration (Memorial, ¶ 206). It is reasonable to assume that at least since 2013, the Claimants and their counsel gathered and reviewed all the relevant</p> | |
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| | | | <p>reason to support its belief that Claimants would still be in possession of the requested documents despite the significant lapse of time. Contrary to Mexico’s suggestion, Claimants did not refer to or rely on any specific document in their Memorial or Gordon Burr’s Third Witness Statement, but indicated the facts that they sought and obtained the legal advice and opinion from Mexican law firms, including Julio Gutiérrez’s firm concerning the Monterrey Resolution and JEV Monterrey’s operations, and that such legal advice and opinions were in part based on the documentation provided by Messrs. Young and Rojas Cardona. Hence, Respondent’s references to the Memorial and Gordon Burr’s Third Witness Statement lend no support to its unsubstantiated claim that it “believes the documents and are in possession, custody, or control of the Claimants.” In addition, given the archaic nature of the requested documents, search for the documents potentially responsive documents will impose an unreasonable burden on Claimants (IBA Rules, Art. 9(2)(c)).</p> | <p>documents, including the requested documents, to prepare their claims. Therefore, the location of the requested documents should not be difficult to ascertain. Claimants and their counsel should be able to produce them if they exist, as they relate to the establishment of the investment.</p> <p>Finally, the Respondent refers to and incorporates the Respondents’ Response to the Claimants’ General Objections by reference as is fully set forth herein.</p> | |
| 2. | <p>1. Documents, such as invoices identifying the make and model of the gaming equipment used in the Claimants’</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</p> | <p>Claimants object to this request for the following reasons:</p> <p><i>First</i>, Mexico fails to establish how the requested documents are relevant to the case and material to its outcome (IBA Rules, Art. 9.2(a)). Mexico’s stated justification for this request is that the requested documents are</p> | <p>The Claimant’s objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, the Respondent established the relevance and the materiality of the requested documents. In the Respondent’s reply to the Claimant’s objections to</p> | <p>Request denied: relevance and materiality not established.</p> |

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| | <p>casinos while operating under the Monterrey Resolution</p> <p>2. Operation manuals of said equipment.</p> | <p>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> | <p>relevant in determining whether the gaming machines used in Claimants' gaming facilities were in fact skilled slots and therefore could be legally operated under the Monterrey Resolution.</p> <p>However, as indicated in Claimants' objection to Respondent's Request 1 above, Respondent did not produce any evidence to cast doubt over the legal operation of Claimants' gaming facilities and/or its machines under the Monterrey Resolution. Respondent cannot use the document production phase as a fishing expedition to prove unsubstantiated claims that it has failed to adequately raise, nor it can require Claimants to trawl through documents, which are in any event irrelevant to the case, based on unfounded speculation.</p> <p>Moreover, as also indicated in Claimants' objection to Respondent's Request 1 above, SEGOB would have (and did) conduct on-site verifications of the gaming machines to be operated at Claimants' gaming facilities to approve and certify that they were skilled slots and therefore within the purview of the Monterrey Resolution and not subject to SEGOB's jurisdiction. Therefore, Respondent would already be in possession of the documents and information to ascertain what types of gaming machines were in fact used in Claimants' gaming facilities as well as the legality of the Claimants' operation under the Monterrey Resolution, since such documents and information would be kept in the ordinary course of business as part of Respondent's inherent government functions and operations.</p> | <p>request 1 above, the Respondent explained the importance of this request to the issue of whether the operation of the Claimants' casinos in the period 2005-2008 was legal or not. This is not a minor aspect of the dispute. If the Claimants operated their casinos outside the scope of the Monterrey Resolution their investment could be tainted with illegality.</p> <p>The Claimants insist that SEGOB conducted on-site verifications to the Claimants' Casinos. However, as explained in reply to objections to request 1, the Memorial only referred to the Naucalpan Casino's verification in December 2005. For the first time, the Claimants argue that SEGOB verified all the Casinos but have provided no evidence to support this assertion. This is another reason for obtaining access to the requested documents to confirm whether the casinos operated legally under the Monterrey Resolution.</p> <p><i>Second</i>, the request is not duplicative or unnecessary. The request refers to documents about all of the Claimant's Casinos. The Claimants have not argued, until now, that SEGOB inspected all the Casinos while operating under the Monterrey Resolution. The Claimants are attempting to evade this request and that should not be allowed.</p> <p><i>Third</i>, the Respondent believes that the requested documents exist and that the request is not unreasonably burdensome. The Claimants have been preparing for this arbitration since at least January 2013, when the Claimant's former counsel, White&Case, contacted the Respondent to</p> | |
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| | | | <p><i>Second</i>, given that Respondent's request is duplicative and unnecessary and that Respondent could obtain the information that it seeks to obtain via this request by requesting it from a relevant government agency, subdivision or instrumentality of Respondent (e.g., via SEGOB), Respondent's request is also unreasonably burdensome (IBA Rules, Art. 9.2(c)).</p> <p><i>Third</i>, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)), as the requested documents are at least from more than 15 years ago and Respondent offered no reason to support its belief that Claimants would still be in possession of the requested documents despite the significant lapse of time.</p> <p>For the reasons explained in Claimants' General Comments and Reservation of Right, Claimants hereby reserve the right to object to the production of the requested documents pursuant to the IBA Rules, Article 9.2(d).</p> | <p>discuss the matters involved in this arbitration (Memorial, ¶ 206). It is reasonable to assume that at least since 2013, the Claimants and their counsel gathered and reviewed all the relevant documents, including the requested documents, to prepare their claims. Therefore, the requested documents' location should not be unreasonably burdensome to ascertain. The Claimants and their counsel should be able to produce them, as they relate to the establishment of the investment.</p> <p>Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein.</p> | |
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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 |
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| 3. | <p>1. The Prescience LLC report(s) and advice (including attachments and annexes).</p> <p>2. Records of communications between Prescience and any of the Claimants with respect to Messrs. Rojas Cardona and/or E-Mex.</p> <p>3. Records of communications between the Claimants discussing the Prescience report.</p> | <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”. (Exhibit CWS-50, paragraph 38).</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> | <p>Claimants object to this request for the following reasons:</p> <p><i>First</i>, Respondent’s request is far from “narrow and specific” (IBA Rules, Art. 3.3(a)(ii)), as it lacks any temporal limitation and requests documents and communications spanning more than twelve years. Particularly with respect to items (2) and (3), Respondent is seeking communications from a vast number of custodians, including all of the Claimants and Prescience LLC, who is not a Claimant, on two broad categories, for an unspecified period of time that at least extends from 2007/2008 because, as indicated in the testimony of Gordon Burr, Prescience first conducted an investigation of Mr. Rojas while Claimants were still operating under the Monterrey Resolution. Therefore, the request is overbroad and complying with it would be unreasonably burdensome for Claimants (IBA Rules, Art. 9.2(c)).</p> <p><i>Second</i>, Respondent fails to establish how the requested documents are relevant to the case and material to its outcome (IBA Rules, Art. 9.2(a)). Mexico’s stated justification for seeking the requested documents is purportedly that they are “relevant to the issue of contributory fault. . . [and] quantum.” However, Mr. Rojas’ involvement in illicit activities is unrelated to the issues of Mexico’s treatment of the Claimants or quantification of damages, since neither Mexico nor Claimants claim that the alleged measures, including Mexico’s cancellation of E-Games’ independent</p> | <p>The Claimant’s objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, the request does not provide a temporal limitation because Mr. Burr did not provide any document or details about the date the contract was signed, or the contract term. (Exhibit CWS-50, paragraph 38). However, based on the context that Mr. Burr provided in his statement, it could be assumed that the relevant documents could have been produced between 2007 and 2008. Mr. Burr hired Prescience LLC, so he should be able to identify the requested documents.</p> <p>The Claimants contend that the “Respondent is seeking communications from a vast number of custodians”. The Respondent is not seeking to obtain documents from Prescience but only from the Claimants. The fact that there are 37 Claimants to this proceeding should not be an excuse to claim unreasonable burden. The Respondent cannot be more precise because it ignores who retained and or dealt with Prescience. The Claimants, however, possess that information and can narrow the number of “custodians”. Moreover, as explained below, the Claimants have been preparing for this case since at least 2013. The requested documents are related to the Claimant’s argument about due diligence to invest. Hence it is assumed that due to the relevance of the claimants’ argument, they and their counsel identified the requested</p> | <p>Request granted with respect to the period from 1 July 2006 to 1 July 2009; Remainder of request is denied: overly broad.</p> |
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| | | <p>gaming permit and the closure of the casinos, as well as the loss suffered by Claimants due to Mexico's alleged measures, were consequences of Mr. Rojas' involvement in illicit activities. As such, Mexico's stated justification for this request does not align with the documents requested and therefore does not comply with the IBA Rules, Art. 3.3(b). The requested documents, including Prescience "report(s) and advice" concerning Mr. Rojas and records of communications concerning Mr. Rojas and/or the Prescience report, are clearly not relevant and material to the outcome of the case, because they have no implication on the Tribunal's determination of the lawfulness of Mexico's alleged measures under the NAFTA or the amount of damages that Claimants are entitled to.</p> <p><i>Third</i>, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)), because the requested documents are at least from more than 12 years ago and Respondent offered no reason to support its belief that Claimants would still be in possession of the requested documents despite the significant lapse of time.</p> <p>For the reasons explained in Claimants' General Comments and Reservation of Right, Claimants hereby reserve the right to object to the production of the requested documents pursuant to the IBA Rules, Article 9.2(d).</p> | <p>documents during the preparation of the claim.</p> <p><i>Second</i>, the Claimants mischaracterizes the Respondent's justification about the relevance and materiality of the requested documents. The Respondent's position is that the Claimants contributed to their loss by undertaking unreasonable risks, as described in paragraph 946 of the Counter-Memorial. Despite Prescience's findings, the Claimants entered into a partnership with Mr. Rojas Cardona. The requested documents are relevant to show that the Claimant's business decisions were imprudent and contributed significantly to the damage suffered.</p> <p><i>Third</i>, the Respondent believes that the requested documents exist and that the request is not unreasonably burdensome.</p> <p>The Claimants cannot seriously contest that the requested documents exist. The Prescience report is specifically identified in the Memorial and Mr. Burr's witness statement. Moreover, the Claimants have been preparing for this arbitration since at least January 2013, when the Claimant's former counsel, White&Case, contacted the Respondent to discuss the matters involved in this arbitration (Memorial, ¶ 206). It is reasonable to assume that at least since 2013, the Claimants and their counsel gathered and reviewed all the relevant documents, including the requested documents, to prepare their claims. Therefore, the location of the requested documents should not be difficult to ascertain. The Claimants and their counsel should be able to produce them, as they relate to their argument</p> | |
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| | | | | <p>about how diligent the Claimants acted when dealing with Mr. Rojas.</p> <p>Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein.</p> | |
| 4. | <p>Documents evidencing Mr. Rojas' involvement in illicit activities.</p> | <p>At paragraph 87 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> | <p>Claimants object to this request for the following reasons:</p> <p><i>First</i>, Mexico's request is excessively broad and lacks the specificity required by the IBA Rules (IBA Rules, Art. 3.3(a)(ii)). Respondent's request also lacks any temporal limitation.</p> <p><i>Second</i>, the requested documents are not relevant or material to the case and its outcome (IBA Rules, Art. 9.2(a)). Mexico's stated justification for seeking the requested documents is purportedly that they are "relevant to the issue of contributory fault . . . [and] quantum." However, who Mr. Rojas was and his involvement in illicit activities are unrelated to the issues of Claimants' purported contributory fault or quantification of damages, since neither Mexico nor Claimants claim that the alleged measures, including Mexico's cancellation of E-Games' independent gaming permit and the closure of the casinos, as well as the loss suffered by Claimants due to Mexico's alleged measures, were consequences of Mr. Rojas' involvement in illicit activities. As such, Mexico's stated justification for this request does not align with the documents requested and therefore does</p> | <p>The Claimant's objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, the request does not provide a temporal limitation because the Claimants' assertion that they "had learned about Mr. Rojas Cardona's involvement in certain illicit activities" provides no reference about dates. Based on the context of paragraph 87 in the Memorial, it could be assumed that it could have happened after 1 November 2008. It could also refer to the information that Mr. Burr obtained from Prescience, based on Ms. Burr's witness statement: "...we had some reservations about working with E-Mex... run by Pepe Rojas Cardona... who we learned through Gordon's due diligence was a potentially dangerous individual with a criminal background" (CWS-51, ¶ 44).</p> <p><i>Second</i>, the requested documents are relevant and material to the case and its outcome. The Claimants mischaracterizes the Respondent's justification. The Respondent's position is that the Claimants contributed to their loss by undertaking unreasonable risks, as described in paragraph 946 of the Counter-Memorial. Despite the information obtained about Mr. Rojas' illegal</p> | <p>Request granted with respect to the period 1 July 2008 to 1 July 2010; Remainder of request is denied: overly broad.</p> |

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| | | <p>not comply with IBA Rules, Art. 3.3(b). The documents requested, i.e., “[d]ocuments evidencing Mr. Rojas’ involvement in illicit activities”, are clearly not relevant and material to the outcome of the case, because they have no implication on the Tribunal’s determination of the lawfulness of Mexico’s alleged measures under the NAFTA or the amount of damages to which Claimants are entitled.</p> <p><i>Third</i>, Mexico’s request is unreasonably burdensome because it is duplicative and unnecessary (IBA Rules, Art. 9.2(c)). Respondent can access documents and information regarding Mr. Rojas’ involvement in illicit activities through other means, including online search and via several organs and instrumentalities of the State, since Mr. Rojas’ involvement in illicit activities, which has been widely described by various news media, is public information and relevant law enforcement authorities in Mexico and elsewhere have previously conducted investigations into Mr. Rojas.</p> <p><i>Fourth</i>, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)), because the requested documents are at least from more than 12 years ago and Respondent offered no reason to support its belief that Claimants would still be in possession of the requested documents despite the significant lapse of time.</p> <p>For the reasons explained in Claimants’ General Comments and Reservation of Right, Claimants hereby reserve the right</p> | <p>activities, the Claimants entered into a partnership with him. The requested documents are relevant to show that the Claimant’s business decisions contributed significantly to the damage suffered.</p> <p><i>Third</i>, the Claimants’ Memorial states that the Claimants learned of Mr. Rojas’ involvement in illicit activities before their decision to move their operations under E-Mex’s permit. The fact that Respondent could obtain information from other sources is irrelevant to the request because what matters is what the Claimants knew at the time. The requested documents will show what the Claimants knew about Mr. Rojas’s activities and opinions and advice about the risks of doing business with Mr. Rojas Cardona. Therefore, the requested records should provide specific information necessary for the Respondent to review, and thus the request is not duplicative or unnecessary.</p> <p><i>Fourth</i>, the Respondent believes that the requested documents exist. The Claimants have been preparing for this arbitration since at least January 2013, when the Claimant’s former counsel, White&Case, contacted the Respondent to discuss the matters involved in this arbitration (Memorial, ¶ 206). It is reasonable to assume that at least since 2013, the Claimants and their counsel gathered and reviewed all the relevant documents, including the requested documents, to prepare their claims. Therefore, the location of the requested documents should not be difficult to ascertain. The Claimants and their counsel should be able</p> | |
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| | | | to object to the production of the requested documents pursuant to the IBA Rules, Article 9.2(d). | to produce them, as they relate to their argument about how diligent the Claimants acted when dealing with Mr. Rojas. Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein. | |
| 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"> • The "transaction" whereby BlueCrest would acquire E-Mex and/or its permit, and; • Any arrangement involving E-Games and or any of the Claimants regarding the operation of the casinos once the acquisition of E-Mex and/or its permit took place. | <p>At paragraph 80 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> <p>Mr. Burr mentions at paragraph 36 of his Third Witness Statement (CWS-50): "In early 2008, BlueCrest Capital ("BlueCrest"), a British-American hedge fund, and</p> | <p>Claimants object to this request for the following reasons:</p> <p><i>First</i>, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)), because the requested documents are from at least 12 years ago and Respondent offered no reason to support its belief that Claimants would still be in possession of the requested documents despite the significant lapse of time. Mexico's stated basis to presume the existence of the requested documents in possession, custody, or control of Claimants is that "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." However, Respondent's request seeks documents concerning <i>BlueCrest/Advent</i>, and not Eventos Festivos.</p> <p><i>Second</i>, Respondent's request is overbroad and complying with it would be unreasonably burdensome for Claimants (IBA Rules 9.2(c)). Item 1 of this request seeks communications from a vast number of custodians, including</p> | <p>The Claimant's objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, the Respondent believes that the requested documents exist. Based on the facts described in the Memorial, it is reasonable to assume that communications between E-Games/Claimants and BlueCrest /Advent about the proposed transaction exist.</p> <p>Also, the Claimants have been preparing for this arbitration since at least January 2013, when the Claimant's former counsel, White&Case, contacted the Respondent to discuss the matters involved in this arbitration (Memorial, ¶ 206). It is reasonable to assume that at least since 2013, the Claimants and their counsel gathered and reviewed all the relevant documents, including the requested documents, to prepare their claims. Therefore, the requested documents' location should not be unreasonably burdensome, and the Claimants and their counsel should be able to produce them. For greater certainty, the Respondent believes the documents exist and are in possession, custody, or control of the Claimants because they would have</p> | <ol style="list-style-type: none"> 1. Request granted. 2. Request granted with respect to final versions of documents; Request denied with respect to drafts: relevance and materiality not established. 3. Request granted with respect to final versions of documents; Request denied with respect to drafts: relevance and materiality not established. |

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| <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 BlueCrest/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>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 paragraph 37: “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</p> | <p>BlueCrest and Advent, who are not parties to this arbitration. It would be unreasonably burdensome (IBA Rules, Art. 9.2(c)) for Claimants to produce these documents because the aforementioned entities are not readily accessible to Claimants as a result of them not being a party to these proceedings. Moreover, the potential transaction involving Claimants, BlueCrest, and Advent was extensively discussed in the witness statements of Gordon Burr, Erin Burr, and Julio Gutiérrez (<i>see, e.g., CWS-50, ¶¶ 35-37; CWS-51, ¶¶ 40-45; CWS-52, ¶¶ 16-17</i>), making the production of the requested documents unnecessary and unreasonably burdensome for Claimants.</p> <p><i>Third</i>, Respondent’s request seeks document not relevant or material to the outcome of this arbitration (IBA Rules, Art. 9.2(a)). Mexico’s stated justification for seeking the requested documents is purportedly that they are relevant to the issue of “contributory fault”. However, Mr. Rojas’ “questionable background” and E-Mex’s debts owed to BlueCrest—which Respondent cites to as grounds for justification of its request—did not cause the revocation of <i>E-Games</i>’ independent permit and Mexico itself does not dispute this fact. As such, the requested documents, if they would exist, are not relevant to the issue of contributory fault and therefore the outcome of the present arbitration.</p> <p>Mexico’s further stated justification is that the requested documents are relevant to the issue of the “credibility of the</p> | <p>been prepared and kept as part of the negotiations between BlueCrest/Advent and the Claimants.</p> <p><i>Second</i>, the request is not unreasonably burdensome. The Claimants contend that item 1 “seeks communications from a vast number of custodians”. The Respondent is not seeking to obtain documents from BlueCrest and Advent, but only from the Claimants. If by “vast number of custodians” the Claimants are referring to the 37 individual Claimants in this proceeding, this should not be ground to claim unreasonable burden. Moreover, as explained above, the Claimants have been preparing for this case since at least 2013. The requested documents are related to the Claimant’s explanation about how the negotiations with BlueCrest and Advent. Hence it is assumed that due to the relevance of the claimants’ argument, they and their counsel identified the requested documents during the preparation of the claim. The Claimant’s objection looks as if they would be required to search the requested documents for the first time. This justification is not credible.</p> <p><i>Third</i>, the request is relevant and material to the outcome of this arbitration. The Claimants mischaracterizes the Respondent’s justification on relevance and materiality. As explained in the request, the Respondent’s position is that the Claimants contributed to their loss by undertaking unreasonable risks. They decided not to continue the agreed-upon acquisition of Eventos Festivos in order to pursue a potential deal with E-Mex (owned by Mr. Rojas) and BlueCrest.</p> | |
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| | <p>that this decision to forego an agreed upon transaction with Eventos Festivos to pursue a potential transaction with BlueCrest/Advent that involved associating with 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</p> | <p>Claimants' witnesses". However, Mexico does not produce any evidence to discredit the credibility of Gordon Burr, Erin Burr, and Julio Gutiérrez, who testify to the nature and backgrounds of the potential transaction with BlueCrest/Advent, and they thus have not established any relevancy or materiality for the requested documents. Therefore, Respondent's stated justification is purely speculative and the relevance and materiality of the requested documents to the outcome of this arbitration is highly questionable (IBA Rules, Art. 9.2(a)). Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> | <p>However, the Claimants have been less than forthcoming with respect to the details of the proposed business arrangement with BlueCrest that led them to withdraw from the acquisition of Eventos Festivos and associate with Mr. Rojas despite warnings from Prescience and their knowledge of Mr. Rojas involvement in illicit activities. The Claimants also have referred to the substantial debt owned by Mr. Rojas/E-Mex, to BlueCrest, and the potential lost of E-Mex's permit if it was put into bankruptcy for failure to repay that debt.</p> <p>The requested documents are also relevant to the issue of the credibility of the Claimants' witnesses. For instance, Mr. Burr and the Claimants allege that they made investments in some projects in Los Cabos and Cancún, or the assertion that Mr. Burr hired Prescience to investigate Mr. Rojas Cardona. None of these statements are based on evidence.</p> <p>Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein.</p> | |
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| | | 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. | | | |
| 6. | <p>1. Records of communications between E-Games or any of the Claimants or the Mexican Enterprises and Eventos Festivos, informing the 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</p> | <p>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 Memorial, paragraph 80).</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</p> | <p>Claimants object to this request for the following reasons:</p> <p><i>First</i>, Mexico's request is unreasonably burdensome because it is duplicative and unnecessary (IBA Rules, Art. 9.2(c)). The information that Mexico seeks to obtain via this request—that is, Claimants' notification to Eventos Festivos concerning its decision not to purchase Eventos Festivos and Claimants' rationale to pursue the transaction with BlueCrest/Advent rather than with Eventos Festivos—is already fully explained in the Memorial and relevant portion of the witness statements of Gordon Burr, Erin Burr, and Julio Gutiérrez. Given the duplicative and unnecessary nature of the requested documents, Respondent's request is unreasonably burdensome.</p> <p><i>Second</i>, Respondent fails to establish in any specific manner how the documents requested will show that Claimants contributed to their loss, since, Mexico claims in this case that "Mr. Rojas' involvement in illegal activities" was not in any way related to Mexico's revocation of E-Games' independent gaming permit. As such, Mexico's assertion that Claimants assumed unnecessary risks by "continuing a business relationship with Mr. Rojas . . .</p> | <p>The Claimant's objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, the request is not duplicative, nor is it unnecessary. The Memorial provides a general description of the negotiations with Eventos Festivos and BlueCrest/Advent, but no document supports it. Hence, the request is not duplicative. The requested documents will confirm the Respondent's argument about the Claimants' unnecessary risks of continuing a business relationship with Mr. Rojas. They will show that the Claimants discussed the risks and expressed concerns about pursuing a deal with E-Mex, instead of continuing the negotiation with Eventos Festivos. For these reasons, the requested documents are not unnecessary. On the contrary, the documents are relevant for the Respondent's defense, and it should have the opportunity to review them.</p> <p><i>Second</i>, the requested documents are relevant and material to the case and its outcome. The Claimants mischaracterizes the Respondent's justification about the relevance and materiality of the requested documents. The Respondent's position is that the Claimants contributed to their loss by undertaking unreasonable risks, as described in paragraphs 945 to 949 of the</p> | Requests granted. |

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| | agreement with E-Mex and BlueCrest/Advent | 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>despite their knowledge of Mr. Rojas' illegal activities" is purely speculative and clearly contradicted by their own allegations in this proceeding. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. The requested documents are therefore not relevant or material to the defenses raised by Mexico in this arbitration (IBA Rules, Art. 9.2(a)).</p> <p><i>Third</i>, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)), because the requested documents are from at least 12 years ago and Respondent offered no reason to support its belief that Claimants would still be in possession of the requested documents despite the significant lapse of time.</p> <p>For the reasons explained in Claimants' General Comments and Reservation of Right, Claimants hereby reserve the right to object to the production of the requested documents pursuant to the IBA Rules, Article 9.2(d).</p> | <p>Counter-Memorial. Instead of concluding the transaction with Eventos Festivos, and thereby acquiring their own permit, the Claimants chose to walk away from their deposit and become an operator of E-Mex; a company owned by Mr. Rojas Cardona, who was involved in illegal activities.</p> <p><i>Third</i>, the Respondent believes that the requested documents exist. The Claimants have been preparing for this arbitration since at least January 2013, when the Claimant's former counsel, White&Case, contacted the Respondent to discuss the matters involved in this arbitration (Memorial, ¶ 206). It is reasonable to assume that at least since 2013, the Claimants and their counsel gathered and reviewed all the relevant documents, including the requested documents, to prepare their claims. Therefore, the location of the requested documents should not be difficult to ascertain. The Claimants and their counsel should be able to produce them.</p> <p>Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein.</p> | |
| 7. | Documents regarding the due diligence conducted in 2008, by Mr. Julio Gutierrez and his law firm with respect to the consolidation of the operations | Mr. Gutierrez testifies in his Fourth Witness Statement that: "Recuerdo que el fondo BlueCrest y el fondo Advent International (" Advent ") propusieron a E-Mex y al <u>Grupo B-Mex adquirir y consolidar las operaciones de los establecimientos</u> de ambas sociedades, y también | <p>Pursuant to the Tribunal's PO No. 9, Claimants do not raise an objection to this request on grounds of privilege and/or confidentiality but reserve their right to do so in accordance with Section 2 of the PO No. 9.</p> <p>Claimants object to this request for the following reasons:</p> | <p>The Respondent limits its request to the letter of intent prepared by Mr. Gutierrez.</p> <p>The requested document is relevant and material to the case and its outcome, and the Claimants mischaracterizes the Respondent's justification. The Respondent's position is that the Claimants contributed to their loss by undertaking unreasonable risks, as</p> | Request granted with respect to the letter of intent prepared by Mr. Gutierrez. |

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| <p>of B-Mex Companies and E-Mex, including the corporate and legal documentation, the letter of intent, and the agreement proposals.</p> | <p>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 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.” (Exhibit CWS-52, paragraph 15).</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><i>First</i>, Claimants object to this request because it is based on a false factual premise. As indicated in the quoted portion of Julio Gutierrez’s witness statement, due diligence was conducted by BlueCrest and Advent and not “Mr. Julio Gutierrez and his law firm”. As such, Respondent has failed to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)).</p> <p><i>Second</i>, Respondent fails to establish in any specific manner how the documents requested will show that Claimants contributed to the unlawful shuttering of their Casinos, since, as Mexico does not dispute, Mr. Rojas or his involvement in illicit activities was not in any way related to Mexico’s revocation of E-Games’ independent gaming permit or any other measures complained hereof by Claimants. As such, Mexico’s assertion that the “requested documents are necessary for Respondent’s defense on contributory fault” is purely speculative and clearly contradicted by the evidence in the record. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. The requested documents are therefore not relevant or material to the outcome of this arbitration (IBA Rules, Art. 9.2(a)).</p> <p><i>Third</i>, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)),</p> | <p>described in paragraphs 945 to 949 of the Counter-Memorial. Instead of concluding the transaction with Eventos Festivos, and thereby acquiring their own permit, the Claimants chose to walk away from their deposit and become an operator of E-Mex; a company owned by Mr. Rojas Cardona, who was involved in illegal activities.</p> <p><i>Third</i>, the Respondent believes that the requested document exists. The Claimants have been preparing for this arbitration since at least January 2013, when the Claimant’s former counsel, White&Case, contacted the Respondent to discuss the matters involved in this arbitration (Memorial, ¶ 206). It is reasonable to assume that at least since 2013, the Claimants and their counsel gathered and reviewed all the relevant documents, including the requested document, to prepare their claims.</p> <p>Finally, the Respondent refers to and incorporates the Respondents’ Response to the Claimants’ General Objections by reference as is fully set forth herein.</p> | |
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| | | 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. | because the requested documents are from at least 12 years ago and Respondent offered no reason to support its belief that Claimants or Mr. Julio Gutierrez would still be in possession of the requested documents despite the significant lapse of time. | | |
| 8. | Pleadings submitted by the parties in the CAM arbitration proceedings between E-Mex and E-Games | <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 CWS-52, 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-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</p> | <p>Pursuant to the Tribunal's PO No. 9, Claimants do not raise an objection to this request on grounds of privilege and/or confidentiality but reserve their right to do so in accordance with Section 2 of the PO No. 9.</p> <p>Claimants object to this request because Mexico fails to establish how the requested documents are relevant to the case and material to its outcome (IBA Rules, Art. 9.2(a)). In the present arbitration, there is no dispute between the parties that the <i>Amparo</i> 1668/2011 which resulted in the revocation of E-Games' independent permit was initiated by E-Mex. Nevertheless, Claimants argue that the <i>Amparo</i> 1668/2011 proceeding was plagued with innumerable judicial irregularities, serious due process violations, and improper interference from the executive branch of Mexico. Mexico denies such allegations. The documents requested (i.e., pleadings submitted in a private arbitration between E-Mex and E-Games) would have no bearing on the issues disputed by the parties in the present proceeding, such as whether the <i>Amparo</i> 1668/2011 proceeding was conducted in accordance with due process and whether Mexico revoked E-</p> | <p>The Claimant's objections are without merit and should be dismissed for the following reasons:</p> <p>The Claimants mischaracterizes the Respondent's justification about the relevance and materiality of the requested documents. The Respondent's position is that the revocation of the permit was the consequence of a private dispute between the Claimants and their business partners, particularly with E-Mex (who filed Amparo 1668/2011). The conflict between E-Games and E-Mex became more complex over time. According to Mr. Gutierrez, E-Mex initiated a commercial arbitration against E-Games under the Operating Agreement and, in parallel through an amendment to its claim in the Amparo 1668/2011, E-Mex sought the revocation of the <i>Oficio 2009-BIS</i> (CWS-52, paragraphs 45-46). In an attempt to settle all disputes between E-Mex and E-Games, including Amparo 1668/2011, they reached an agreement that apparently was not executed.</p> <p>The requested documents are relevant to the case and material to the outcome of the case because (i) they will provide insight into the dispute because they synthesize the business dispute between E-Games and E-Mex, and (ii) they relate to measures</p> | Request denied: relevance and materiality not established. |

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| | | <p>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> | <p>Games’ permit for political reasons and not for legal reasons. As such, the requested documents are unnecessary for establishing Mexico’s defenses or Claimants’ claims and therefore irrelevant to the case and its outcome.</p> <p>Furthermore, Mexico’s stated justification for seeking the requested documents is purportedly that “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 Amparo 1668/2011.” However, Respondent fails to establish in any specific manner how “the insight into . . . the business dispute between E-Games and E-Mex” will show that there was no judicial irregularity or political interference in the Amparo 1668/2011 proceeding; or that Mexico’s revocation of E-Games’ permit was made in accordance with relevant domestic laws and regulations and the protection provided under the NAFTA and international law. Mexico’s attempt to provide an overbroad and speculative justification to justify the request that is evidently nothing but a fishing expedition should not be allowed in this proceeding.</p> | <p>claimed in this arbitration such as the Amparo 1668/2011.</p> <p>Finally, the Respondent refers to and incorporates the Respondents’ Response to the Claimants’ General Objections by reference as is fully set forth herein.</p> | |
| 9. | Documents showing E-Games compliance with the CAM arbitration award dated 19 December 2012, | <p>Mr. Gutierrez refers in paragraph 45 of his Fourth Witness Statement to the CAM arbitration award (CWS-25). He mentions that the payment was “sustancialmente menor a las pretensiones de E-Mex” and that E-Mex requested the execution of</p> | <p>Claimants object to this request on the following grounds:</p> <p><i>First</i>, Mexico fails to establish how the requested documents are relevant to the case and material to its outcome (IBA Rules, Art. 9.2(a)). In the present arbitration, there is no dispute between the parties that the <i>Amparo</i> 1668/2011</p> | <p>The Claimant’s objections are without merit and should be dismissed for the following reasons:</p> <p>The Claimants mischaracterizes the Respondent’s justification about the relevance and materiality of the requested documents. The Respondent’s position is that the alleged measures in this arbitration</p> | <p>Request denied: relevance and materiality not established.</p> |

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| <p>including but not limited to:</p> <ol style="list-style-type: none"> the payment of \$23,097,353.10 Mexican pesos for royalties; the payment of \$1,566,371.88 Mexican pesos, for default interest; and the payment of the updated amounts for royalties and interest on the date of payment. | <p>the award, 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> | <p>which resulted in the revocation of E-Games' independent permit was initiated by E-Mex. Nevertheless, Claimants argue that the <i>Amparo</i> 1668/2011 proceeding was plagued with innumerable judicial irregularities, serious due process violations, and improper interference from the executive branch of Mexico. Mexico denies such allegations. The documents requested (i.e., "documents showing E-Games compliance with the CAM arbitration award") would have no bearing on the issues disputed by the parties in the present proceeding, such as whether the <i>Amparo</i> 1668/2011 proceeding was conducted in accordance with due process and whether Mexico revoked E-Games' permit for political reasons and not for legal reasons. As such, the requested documents are unnecessary for establishing Mexico's defenses or Claimants' claims and therefore irrelevant to the case and its outcome.</p> <p>Furthermore, Mexico's stated justification for seeking the requested documents is purportedly that "[t]he 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." However, Respondent fails to establish in any specific manner how the information related to E-Games' compliance with the CAM arbitration award and, in particular,</p> | <p>proceedings are consequence of a private dispute between the Claimants and their business partners, particularly with E-Mex. The conflict between E-Games and E-Mex became more complex over time, when the Claimants decided to associated with E-Mex, despite all the disadvantages identified. The requested documents contain relevant information about the dispute and compliance with the settlement agreement which included the withdrawal of the <i>Amparo</i> 1668/2011. The documents will provide insights about E-Games' compliance with the arbitration award. If E-Games did not fulfill its payment obligations, this would be a relevant element for the Respondent's position.</p> <p>The Respondent's justification of this request complies with IBA Rules, Art. 3.3(b). The arbitration between E-Games and E-Mex is relevant to the Respondent because it would support its position that the Claimants' business decisions contributed to the dispute with E-Mex, which ultimately resulted in legal proceedings, such as <i>Amparo</i> 1668/2011.</p> <p>Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein.</p> | |
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| | | <p>E-Games’ payment of royalties and interests as awarded in the CAM arbitration award 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.” Indeed, Respondent cannot establish such justification because Mexico didn’t revoke E-Games’ permit by reason of the “private dispute” between E-Games and E-Mex or because of E-Games’ compliance with the CAM arbitration award or the lack thereof. Mexico’s attempt to provide an overbroad and speculative justification to justify the request that is evidently nothing but a fishing expedition should not be allowed in this proceeding.</p> <p><i>Second</i>, Mexico’s stated justification of this request do not align with the documents requested and therefore does not comply with IBA Rules, Art. 3.3(b). As explained above, information related to E-Games’ payments of royalties and interests as awarded in the CAM arbitration award is not relevant in determining the legality of the alleged measures under the NAFTA.</p> <p><i>Third</i>, Claimants have already submitted documents and testimony showing that Claimants sought to annul the CAM arbitration award and that E-Games and E-Mex ultimately settled all their disputes through an agreement produced as Exhibit C-22, including the dispute concerning royalty payments. As such, the information solicited by Mexico is unnecessary and duplicative and</p> | | |
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| | | | complying with it would be unreasonably burdensome for Claimants (IBA Rules, Art. 9.2(c)). | | |
| 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"> 1. Partial suspension condition (Exhibit C-22, p. 4 and 27) 2. E-Games' payment to E-Mex the amount of \$ 175 million Mexican pesos (Exhibit C-22, p. 4 and 27). 3. Termination of all disputes (Exhibit C-22, p. 8-9 and 31-32). 4. SEGOB Communica | <p>According to the Settlement Agreement dated 11 October 2013 between E-Mex and E-Games (Exhibit C-22) 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 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</p> | <p>Pursuant to the Tribunal's PO No. 9, Claimants do not raise an objection to this request on grounds of privilege and/or confidentiality but reserve their right to do so in accordance with Section 2 of the PO No. 9.</p> <p>Claimants object to this request on the following grounds:</p> <p><i>First</i>, Mexico fails to establish how the requested documents are relevant to the case and material to its outcome (IBA Rules, Art. 9.2(a)). In the present arbitration, there is no dispute between the parties that the <i>Amparo</i> 1668/2011 which resulted in the revocation of E-Games' independent permit was initiated by E-Mex. Nevertheless, Claimants argue that the <i>Amparo</i> 1668/2011 proceeding was plagued with innumerable judicial irregularities, serious due process violations, and improper interference from the executive branch of Mexico. Mexico denies such allegations. The documents requested (i.e., "[d]ocuments showing E-Games and E-Mex's compliance with the Settlement Agreement") would have no bearing on the disputed issues in the present proceeding, such as whether the <i>Amparo</i> 1668/2011 proceeding was conducted in accordance with due process and whether Mexico revoked E-Games' permit for political reasons and not for legal reasons. As such, the requested documents are unnecessary for</p> | <p>The Claimant's objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, the Respondent established the relevance and materiality of the request. The Claimants submitted in exhibit C-22 a Settlement Agreement, signed on 11 October 2013, between E-Games and E-Mex. Through the agreement, both companies settled all previous contracts and agreements. It also provided for the termination of all disputes between E-Games and E-Mex, including Amparo 1668/2011. That date is relevant because by then SEGOB had revoked the E-Games permit in compliance with Amparo judgment 1668/2011, but the District Court Judge had not yet ruled on the judgement enforcement and SEGOB had not closed the Casinos. The agreement also provided that E-Games should pay E-Mex \$175 million Mexican pesos.</p> <p>The Memorial, however, does not explain whether the parties to that agreement fulfilled their obligations. The Respondent believes, therefore, that the requested documents contain crucial information about the measures claimed at this arbitration, such as Amparo 1668/2011.</p> <p><i>Second</i>, the request complies with IBA Rules, Art. 3.3(b). The context in which the Settlement Agreement was agreed is relevant. By 11 October 2013, SEGOB</p> | <p>Request denied: relevance and materiality not established.</p> |

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| | <p>tion (Exhibit C-22, p. 9 and 32).</p> | <p>possession, custody, or control of the Claimants because they would have been kept in the normal course of business.</p> | <p>establishing Mexico's defenses or Claimants' claims and therefore irrelevant to the case and its outcome.</p> <p>Furthermore, Mexico's stated justification for seeking the requested documents is purportedly that "[t]he 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." However, Respondent fails to establish in any specific manner how the information related to E-Games' and E-Mex's compliance with the Settlement Agreement 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." Indeed, Respondent cannot establish such justification because Mexico didn't revoke E-Games' permit by reason of the "private dispute" between E-Games and E-Mex or because of E-Games' and E-Mex's compliance with the Settlement Agreement or the lack thereof. Mexico's attempt to provide an overbroad and speculative justification to justify the request that is evidently nothing but a fishing expedition should not be allowed in this proceeding.</p> <p><i>Second</i>, Mexico's stated justification of this request do not align with the documents requested and therefore does</p> | <p>had revoked E-Games' permit in compliance with Amparo judgement 1668/2011. However, the District Court Judge had not yet ruled on the judgement enforcement, and SEGOB had not closed the Casinos. Given that the Claimants complain extensively about the Amparo proceeding 1668/2011, the requested documents would provide crucial information regarding that Amparo proceeding.</p> <p><i>Third</i>, the Claimants argued that the request is unreasonably burdensome because the Respondent could obtain only one of the four categories of documents described in the request through SEGOB. However, it refers to <i>documents showing E-Games and E-Mex's compliance with the Settlement Agreement</i>, which would cover documents prepared in connection to the SEGOB communication, such as records between E-Games and E-Mex clarifying the scope of the communication. It should be noted that, regarding the rest of the request, the Claimants do not object to it on the basis of IBA Rules, Art. 9.2(c).</p> <p>Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein.</p> | |
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| | | | <p>not comply with IBA Rules, Art. 3.3(b). As shown by the very fact that notwithstanding the Settlement Agreement, Mexico still revoked E-Games' permit, the documents requested would <i>not</i> contain "crucial information . . . regarding the measures claimed at this arbitration proceedings."</p> <p><i>Third</i>, Respondent's request is unreasonably burdensome (IBA Rules, Art. 9.2(c)), because Respondent could obtain the information that it seeks to obtain via this request through other means (e.g., via SEGOB). For instance, Respondent seeks to obtain "SEGOB communication". In any event that such communication were to exist, Mexico should already have them in its possession, custody, or control, as SEGOB is an instrumentality of Respondent.</p> | | |
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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 2007.²
- Mr. and Ms. Burr performed market research, prepared financial models, drafted agreements, and met with prospective investors and partners to advance the expansion plans.³

² Memorial, ¶ 68.

³ Memorial, ¶ 63.,

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- 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.⁴
- The Claimants invested an additional US\$ 250,000 into the Cancun Project and US\$ 600,000 into the Cabo Project.⁵
- 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.¹⁷⁴ B-Cabo, LLC invested US\$ 600,000 through loans to Medano Beach, S. de R.L. de C.V.,¹⁷⁵ who used the majority of these funds to purchase property for the Cabo Project.⁶
- When Mexico unlawfully closed the Casinos on April 24, 2014, Claimants were about to launch an online gaming business.⁷
- 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.⁸

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.

Claimants' General Objections:

Claimants reject the propriety of Respondent's argumentation regarding factual and legal issues that should not be raised in the context of a document request. Specifically, although not exclusively, Claimants reject Respondent's conclusory arguments regarding Claimants' alleged failure to accompany statements or arguments with "supporting documentation." Respondent bears the burden of proving their jurisdictional objections, which in any event should have been raised during the bifurcated proceeding on jurisdiction, as well as its defenses to Claimants' claims for damages. Claimants have more than met their burden of production to prove that Claimants had made significant investments in relation to Cabo, Cancun, and Online Gaming projects and that they are entitled to recover the claimed damages in relation to Cabo, Cancun, and Online Gaming projects. Now Respondent bears the sole burden to prove its objections and defenses to Claimants' claims.

Claimants also object to the overly broad nature of the requested documents, as Respondent's requests generally lack any temporal limitation and seek documents that would have been created more than 10-15 years ago. As such, complying with Respondents' requests would be unreasonably burdensome on Claimants (IBA Rules, Art. 9.2(c)). In addition, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)), as Respondent offered no reason to support its belief that Claimants would still be in possession, custody, or control of the requested documents despite the significant lapse of time since the creation of such documents.

⁴ Memorial, ¶ 64.

⁵ Memorial, ¶ 65.

⁶ Memorial, ¶ 65.

⁷ Memorial, ¶ 72.

⁸ Memorial, ¶ 793.

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Respondent's General Reply:

Respondent is required to justify the relevance and materiality of its requests and cannot do so without going into the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. Claimants are of course free to “reject the Respondent’s conclusory arguments regarding Claimants’ alleged failure to accompany statements or arguments with ‘supporting documentation’” but the fact remains that the Respondent is entitled to test the veracity and accuracy of any and all statements contained in the witness statements of Mr. and Ms. Burr and Alfredo Moreno Quijano that, in the Respondent’s submission, are not supported by contemporaneous documents/evidence.

The Respondent also disputes that the Claimants have “more than met their burden of production to prove that Claimants had made significant investments in relation to Cabo, Cancun and Online Gaming.” But this is an issue that is before the Tribunal that does not need to be decided for the purposes of the request for documents.

The Respondent rejects that it should have raised the new objection to the Tribunal’s jurisdiction during the bifurcated proceeding. This would have been an impossibility because the Claimants had not presented their case and its evidence, and the Respondent was not aware that there would be a claim for damages in relation to projects that were never constructed and never became operational. Moreover, the Respondent could not have foreseen that the Claimants would rely almost exclusively on witness statements to support those claims.

In relation to the objection based on the “overly broad nature of the requested documents” due to the lack of temporal limitations in the requests and the fact that those documents would have been created more than 10 or 15 years ago the Respondent has two observations. The first is that the requests are as specific as possible, identifying specific documents in many cases. The “overly broad nature” of some of the requests is due to the overly general description of the events described in the Memorial. The Respondent cannot offer temporal limitations or narrow down the requests where the Claimants themselves have not been precise with respect to the dates in which the events transpired or the persons that were involved. Moreover, it ill-behooves the Claimant to argue lack of specificity/undue burden in relation to documents related to facts they describe in their pleading that, in turn, relate to transactions and negotiations to which they were a party. The Respondent cannot guess when those transactions or negotiations took place or who of the 37 Claimants were involved. The Claimants on the other hand, do have that information and cannot claim to be confused by the requests. The second observation is that the fact that some the requested documents would be 10 or 15 years old cannot be used as an excuse to avoid production. The Respondent observes that many of the documents that the Claimants have submitted into evidence are as old as the ones requested by the Respondent and that did not seem to be an obstacle for the Claimants.

With respect to the objection on the grounds of the Respondent’s alleged failure to establish that the requested documents are reasonably believed to exist, the Respondent will point out that most of the documents are in relation to allegations that the Claimants themselves make –e.g., the allegation that they loaned U.S. \$500 or \$600 thousand dollars to Medano Beach Hotel, S. de R.L. de C.V. Moreover, the Respondent did in fact explain that the documents were reasonably believed to exist. The Respondent specifically pointed out that the requested documents, such as MOUs, contracts, letters of intent, financing agreements and the like, would have been kept in the regular course of business.

Finally, the Respondent highlights the fact that the 37 Claimants make no claim that the requested documents do not exist. Moreover, it should be noted that Mr. Taylor stated that he possesses documents responsive to requests: 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 21ter (See, Mr. Taylor’s response to the Respondent’s Request for Production of Documents, 12 February 2021).

| 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 |
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| 11. | <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"> 1. draft agreements, MOUs, letters of intent; 2. documents identifying the property where the project was going to be developed. 3. projections; 4. financing agreements or draft agreements; 5. tax and legal research; 6. floor plan layouts; 7. cost estimates; 8. plans for opening an exclusive poker room with very high buy in. | <p>At paragraph 68 of the Memorial 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, 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.⁹</i></p> <p>At paragraph 73 of Mr. Burr Third Witness Statement (Exhibit CWS-50): “Together with Discovery, we identified the property, created projections, lined up financing, researched various tax and legal issues, and created floor layouts.</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Additional Projects”.</p> <p>In addition, Claimants object to this request on the basis that it is based on a false factual premise and, therefore, that the requested documents are neither sufficiently relevant to the case nor material to its outcome. (IBA Rules, Art. 9.2(a)). As explained in the Memorial and relevant witness statements, the “proposed project” between Discovery and Claimants ultimately did not come to fruition, and yet, Claimants still were able to develop plans for another project in Cabo aimed at targeting high-end tourists located on the bayside of Medano beach, which is the principal commercial beach in Cabo San Lucas. (CWS-50, ¶¶ 75-77; CWS-51, ¶¶ 73-76). This project, whose principal business partners were Mr. Farzin Ferdosi and Chris Erikson, and not Discovery, was what was at an advanced stage of development</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant’s general objections.</p> <p>The Respondent’s request is not based on a false premise as the Claimants contend. The Respondent is fully aware that the project with Discovery did not come to fruition. Nevertheless, it is part of the Claimants’ narrative attempting to create the impression that Mexico has been inappropriately interfering with the Claimants’ investments for a long time. At paragraph 68 of the Memorial the Claimants specifically allege that they “<i>did not move forward with Discovery because of the aggressive measures taken by Mexico against the Claimants and Mexico’s inaction in approving Claimants’ own permit [...]</i>”. If the Claimants are now attempting to suggest that the facts that they pled in relation to the Cabo project with Discovery are not relevant or material to this</p> | <p>Request denied: relevance and materiality not established.</p> |

⁹ Memorial, ¶ 68.

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| | <p>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 paragraph 71 of Ms. Burr’s Third Witness Statement (Exhibit CWS-51):</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 Nondisclosure and Noncircumvention Agreement, Discovery and our group further advanced the project by <u>identifying the ideal location</u> for the casino facility, <u>creating floor plans, researching potential legal and tax issues</u>, and having financiers ready. The total development <u>cost was estimated to be between US \$ 8-12 million.</u> It was an extremely interesting and exciting project, especially when it came to the plans to</i></p> | <p>when Mexico revoked E-Games’ permit and that forms the basis of Claimants’ damages claim in relation to the “Cabo Project.” (CER-4, ¶¶ 49-54). As such, the information solicited by Mexico, i.e., information related to the proposed project with Discovery, is not sufficiently related to the outcome of the present proceeding.</p> | <p>case, one has to wonder why they chose to plead them in the first place.</p> <p>In any event and as noted in the justification, the Respondent seeks to prove that the Claimants, and in particular Mr. and Ms. Burr, overstated and/or misrepresented these facts (see Counter-Memorial ¶¶ 489-491) and, importantly, that the decision not to go forward with the Cabo project with Discovery had nothing to do with “<i>the aggressive measures taken by Mexico against the Claimants and Mexico’s inaction in approving Claimants’ own permit.</i>”</p> | |
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| | | <p><i>cater to Discovery's residents in El Dorado, and I enjoyed working with Mr. Arenson and his team."</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 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> | | | |
| 11.Bis | Records of communications between the Claimants or any of the Mexican Enterprises and Discovery discussing the decision not to move forward with the project. | 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>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Additional Projects".</p> <p>In addition, Claimants object to this request on the basis that it is based on a false factual premise</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant's general objections.</p> <p>The Respondent's request is not based on a false premise as the Claimants contend. The Respondent is fully aware that</p> | Request denied: relevance and materiality not established. |

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| | <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 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> | <p>and, therefore, that the requested documents are neither sufficiently relevant to the case nor material to its outcome. (IBA Rules, Art. 9.2(a)). As explained in the Memorial and relevant witness statements, the “proposed project” between Discovery and Claimants did not come to fruition, and yet, Claimants still were able to develop plans for another project in Cabo aimed at targeting high-end tourists located on the bayside of Medano beach, which is the principal commercial beach in Cabo San Lucas. (CWS-50, ¶¶ 75-77; CWS-51, ¶¶ 73-76). This project, whose principal business partners were Mr. Farzin Ferdosi and Chris Erikson, and not Discovery, was what was at an advanced stage of development when Mexico revoked E-Games’ permit and that forms the basis of Claimants’ damages claim in relation to the “Cabo Project.” (CER-4, ¶¶ 49-54). As such, the information solicited by Mexico, i.e., information related to the proposed project with Discovery, is not sufficiently related to the outcome of the present proceeding.</p> | <p>the project with Discovery did not come to fruition. Nevertheless, it is part of the Claimants’ narrative attempting to create the impression that Mexico has been inappropriately interfering with the Claimants’ investments for a long time. At paragraph 68 of the Memorial the Claimants specifically allege that they “<i>did not move forward with Discovery because of the aggressive measures taken by Mexico against the Claimants and Mexico’s inaction in approving Claimants’ own permit [...]</i>”. If the Claimants are now attempting to suggest that the facts that they pled in relation to the Cabo project with Discovery are not relevant or material to this case, one has to wonder why they chose to plead them in the first place.</p> <p>In any event and as noted in the justification, the Respondent seeks to prove that the Claimants, and in particular Mr. and Ms. Burr, overstated and/or misrepresented these facts (see Counter-Memorial ¶¶ 489-491) and, importantly, that the decision not to go forward with the Cabo project with Discovery had nothing to do with “<i>the aggressive measures</i></p> | |
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| | | | | <i>taken by Mexico against the Claimants and Mexico's inaction in approving Claimants' own permit."</i> | |
| 12. | <p>Documents referred to by Mr. Burr at paragraph 67 of his Third Witness Statement regarding the Cabo Project, with Messrs. Ferdosi, Erickson and/or Medano Beach, including:</p> <ol style="list-style-type: none"> 1. market research; 2. financial models/projections; 3. negotiating documents including proposals and counterproposals; 4. draft agreements; 5. local permit applications. | <p>At paragraph 67 of Mr. Burr's Third Witness Statement (Exhibit CWS-50), 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>At paragraph 75 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 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</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Additional Projects".</p> <p>In addition, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that "Respondent believes the Cabo Project was not as advanced as the Claimants suggest in the Memorial and that it did not proceed for reasons other than the closure of the existing Casinos" However, Respondent does not provide any evidence to support this belief. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. On the other hand, Claimants have also already submitted and produced documents and testimony along with their Memorial that show</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant's general objections.</p> <p>The Respondent maintains that the relevance and materiality of the request is more than established. Claimants complain that Mexico's requests are based on speculation despite the absence of concrete evidence in support of many of their allegations.</p> <p>To be clear, Respondent disputes "that Claimants made significant progress in the development of the Cabo Project, including by investing significant amount of capital and other resources in the project" and that "Respondent already has received from Claimants documents establishing the investments at issue".</p> <p>It is clear that Mr. Burr referred to the requested documents to give the impression that the project was</p> | Request granted. |

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| | <p>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> | <p>that Claimants made significant progress in the development of the Cabo Project, including by investing significant amount of capital and other resources in the project. (CWS-50, ¶¶ 75-77; CWS-51, ¶¶ 73-76; Exhibit C-65). As such, Respondent's request is speculative, and Respondent already has received from Claimants documents establishing the investments at issue. As such the Tribunal should deny this request.</p> | <p>in an advance stage of development. However, he did not attach the documents to his witness statement and the Claimants did not submit them into evidence. It stands to reason that if the documents existed, they would have been submitted by the Claimant, but that did not occur. In Mexico's submission that omission casts serious doubts about the Claimants' representations and justifies the request.</p> <p>Moreover, as noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants' contention to justify a request for documents. In fact, it is the Respondent's submission that one the main objectives behind a request for documents is to obtain evidence to dispute allegations of fact made by the opposing party.</p> <p>The Respondent further submits it has the right to avail</p> | |
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| | | | | <p>itself of documents to test the Claimants’ allegations, particularly in view of the scant evidence provided in the Memorial. All of the documents in this request were referred to (but not produced) by Mr. Burr in his witness statement.</p> <p>The Claimants also seem to forget that the general justification also applies to this request and, as clearly explained therein: “[t]he requested documents are relevant to the case and material to its outcome as they provide crucial information <u>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.</u> [...] <u>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.</u>”</p> <p>The Respondent also notes that this is the only opportunity to request documents from the Claimants, which coupled</p> | |
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| | | | | with the fact that nearly 50% of the Claimants' claim for damages is related to these projects and that such claim is based on largely unsubstantiated allegations by Mr. Burr, Ms. Burr and Mr. Quijano, makes this request very much relevant to the case and material to its outcome. | |
| 13. | <p>Documents recording the alleged investments in the Cabo Project referred to in paragraph 69 of Mr. Burr's Third Witness Statement. (Exhibit CWS-50), including but not limited to:</p> <ol style="list-style-type: none"> 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. 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 paragraph 75) 3. Documents such as wire transfers and accounting records recording the | <p>At paragraph 69 of Mr. Burr's Third Witness Statement (Exhibit CWS-50), 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.</u> These investments are comprised of loans not fully repaid, option payments and related investments, capital expenditures for the purchase of permits and down payments on property. [...] B-Cabo, LLC invested <u>US\$ 600,000 through loans to Medano Beach, S. de R.L. de C.V.,</u>⁴⁵ 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</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Additional Projects".</p> <p>In addition, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that "[t]he 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." However, Respondent does not provide any evidence to cast doubt on the existence of investments in relation to the Cabo Project and</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant's general objections.</p> <p>The Respondent further submits it has the right to avail itself of documents to test the Claimants' allegations, particularly in view of the scant evidence provided in the Memorial. The documents in this request are closely related to allegations made in Mr. Burr's witness statement that were not backed by documentary evidence.</p> <p>Mr. Burr states that B-Cabo, LLC invested U.S. \$600,000 or \$500,000 (depending on where you read) in the Cabo project without providing any proof of the transfer of those funds or the amount that was repaid by the alleged debtors (see ¶¶ 65 of the Memorial).</p> | Request granted. |

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| | <p>initial US \$2.5 million that B-Mex II paid to secure the right to open new locations.</p> <p>4. Documents such as wire transfers and accounting records recording the capital expenditures for the purchase of the permits and down payments on property.</p> <p>5. Documents such as wire transfers and accounting 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>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 accounting records) should have been kept in the regular course of business.</p> | <p>the credibility of the Claimants' main witnesses. The speculative nature of Respondent's request is also demonstrated by the fact that it questions the existence of investments in the form of loans, but it still seeks to obtain "[r]ecords of communications to the debtors", acknowledging the existence of loans and therefore investments. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>On the other hand, Claimants have submitted and produced documents and testimony establishing that Claimants invested a substantial sum of money and other recourses in the Cabo Project. (CWS-50, ¶¶ 75-77; CWS-51, ¶¶ 73-76; Exhibit C-65; Exhibit C-66; Exhibit C-65). In particular, Exhibits C-66 and C-65 clearly demonstrate the objectives and amounts of loans that were made by Claimants in relation to the Cabo Project, and Mexico has no basis to dispute that such loans were actually made. The extent to which these loans have been repaid is immaterial as Respondent has not established that the loans were not made or that the liability created by them is not authentic. As such, Respondent is engaging in an unwarranted fishing</p> | <p>The requested documents go to those two key facts.</p> <p>The Respondent also disputes that the "Claimants invested a substantial sum of money and other resources in the Cabo Project" and that Exhibits C-65 and C-66 "demonstrated the objectives and amounts of the loans that were made". Again, proof of the loan, the amount of this loan and the amount outstanding under this loan at the time of the closures are relevant facts to determine the existence of an investment and issues of quantum.</p> <p>Moreover, as noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants' contention to justify a request for documents.</p> <p>The Claimants also seem to forget that the request was also based on issues of quantum. In particular that: <i>"Mexico also intends to use the information</i></p> | |
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| | | | <p>expedition that should not be allowed in the present proceeding.</p> <p>Moreover, given that Claimants' exhibits and witness statements already provide much of the information solicited by Mexico, Mexico's request is unnecessary and duplicative. Accordingly, complying with Respondent's request would be unreasonably burdensome for Claimants (IBA Rules, Art. 9.2(c)).</p> | <p><i>to submit an alternative valuation of the damages related to this project based on the amount invested, if appropriate</i>". The Claimant has not said anything in relation to this point and thus must be seen as implicitly accepting it. On this basis alone the request should be granted.</p> <p>The Respondent also notes that this is the only opportunity to request documents from the Claimants, which coupled with the fact that nearly 50% of the Claimants' claim for damages is related to these projects and that such claim is based on largely unsubstantiated allegations, makes this request very much relevant to the case and material to its outcome.</p> | |
| 14. | 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>Ms. Burr mentions in paragraph 80 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 (Exhibit CWS-51, ¶ 80).</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.</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Additional Projects".</p> <p>In addition, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant's general objections.</p> <p>Claimant's objection on the grounds of lack of relevance and materiality is meritless. The damages assessment in regard to this project is based on an opening date of the casino in mid-2016. Surely,</p> | Request granted. |

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| | <p>These dates are also relevant to the issue of quantum, as they are used by the Claimants' expert to determine when the Claimants would 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> | <p>(IBA Rules, Art. 9.2(a)). Respondent states as its justification that "it <i>intends</i> 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." However, Respondent does not provide any evidence to cast doubt on the witness statements of Gordon Burr and Erin Burr, who uniformly testify that Claimants planned that the construction of Cabo Project would begin in the first half of 2014. (CWS-51, ¶ 80; CWS-50, ¶ 82). Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> <p>Claimants further object to this request because it has failed to identify specific documents that Respondent reasonably believe exist in Claimants' possession, custody or control (IBA Rules, 3.3(a) and (c)). The request amounts to a fishing expedition for this reason as well.</p> | <p>Mexico is entitled to challenge that fact, particularly since the Claimants offered no documentary evidence in support of Ms. Burr's statement that "the construction of the Cabo project would begin in the first half of 2014, with an expected opening date in mid-2016".</p> <p>The objection based on lack of specificity is equally meritless. The Respondent specifically identified the types of documents it seeks (i.e., construction schedules, timelines, plans, records of communications) in relation to the Claimants' expectations regarding commencement of construction and opening of the casino. The Respondent cannot be expected to be more specific than that.</p> | |
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| 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>At paragraph 75 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>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning “Additional Projects”.</p> <p>Claimants further object to this request on the following grounds.</p> <p><i>First</i>, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that “[t]he Respondent <i>believes</i> that the project did not move forward for reasons other than the closure of the casino and <i>intends</i> to prove that point with the requested documents.” However, Respondent does not provide any evidence to support its <i>belief</i> that the Cabo Project did not move forward for reasons other than the closure of the Casinos, nor does Respondent articulate what the purported “other reasons” would be. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. Mexico should not be allowed to use the document</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant's general objections.</p> <p>The objection based on lack of relevance and materiality is meritless. The reasons for cancelling the project is at the heart of the dispute. Claimants claim that the Project was cancelled <i>because</i> of the closure of the existing casinos, yet they have offered no evidence (beyond the witness statement of Mr. Burr) that that was indeed the reason.</p> <p>The justification for this request also points to an inconsistency in the Claimants' narrative that supports the Respondent's suspicions about the veracity of Mr. Burr's statements. As explained in the justification, it seems odd that Mr. Burr identifies the <i>closure of the existing casinos</i> in April 2014 and not the revocation of the permit that occurred almost a year before (August of 2013) as the reason for not moving forward with the Cabo Project. It is also suspect that the closure of the existing casinos is blamed for not moving forward with an investment</p> | <p>Request denied: overly broad.</p> |
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| | | | <p>production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> <p><i>Second</i>, Mexico’s request is unreasonably burdensome because it is duplicative and unnecessary (IBA Rules, Art. 9.2 (c)). In the Memorial and relevant witness statements, Claimants clearly explained why they could not move forward with the Cabo Project—that is, Mexico unlawfully rescinded E-Games’ permit and shut down Claimants’ Casinos. Given that the communications solicited by Mexico—if they were to exist—would not show “the other reasons”, as Mexico suggests, the requested documents are unnecessary and complying with it would be unreasonably burdensome for Claimants.</p> | <p>that, as of then, appeared to have consisted in a loan to build a hotel.</p> <p>The Respondent will also draw the Tribunal’s attention to the fact that the relevance and materiality of the request was also premised on the issue of causation (see general justification referring to how “[the investments] were affected by the closure of the existing casinos”). The Claimant has not addressed this part of the justification and therefore has tacitly admitted it.</p> <p>With regard to the objection based on unreasonable burden the Respondent maintains that it is equally meritless. The Claimants do not explain why they believe the request would be “duplicative” and therefore, no reply is possible. The Respondent reiterates that Claimants have offered no supporting documentation for Mr. Burr’s statement regarding the reasons for not advancing with the Project.</p> <p>Moreover, the basis of the objection appears to be a <i>disputed</i> fact, namely, that “Claimants clearly explained why they could not move forward with the Cabo Project—that is, Mexico unlawfully rescinded E-</p> | |
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| | | | | <p>Games’ permit and shut down Claimants’ Casinos”.</p> <p>Claimants <i>did not</i> blame the discontinuation of this project on the loss of the permit. Mr. Burr clearly refers to the closure of the existing casinos as the turning point (see justification pointing to ¶ 75 of his Third Witness Statement). Further evidence can be found at ¶ 71 of the Memorial: “<u>If the Casinos had not been shut down, Claimants would have developed an extremely successful business both in Cabo and Cancun.</u>”</p> | |
| | Cancun Project | | | | |
| 16. | <p>1. Records of communications between any of the Claimants and the Marcos family concerning the Cancun Project.</p> <p>2. Draft agreements / MOU / letters of intent between the Claimants and the Marcos family.</p> | <p>At paragraph 84 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. 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</i></p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Additional Projects”.</p> <p>Claimants further object to this request on the following grounds.</p> <p><i>First</i>, particularly with respect to item (1), Respondent’s request is far from “narrow and specific” (IBA Rules, Art. 3.3(a)(ii)), as it seeks communications from a vast number of custodians, including all of the Claimants and the Marcos family, who is not a</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant’s general objections.</p> <p>With regard to the first objection, the Respondent cannot narrow Request 6(1) because the Claimants have not specified who was negotiating with the Marcos Family and when those negotiations allegedly took place. The Respondent assumes that it was Mr. Burr or his daughter, but it cannot be certain. The Claimants, on the</p> | <p>Request denied: relevance and materiality not established, overly broad, and, as regards (2), existence not established.</p> |

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| | <p><i>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 be US\$ 19 million annually after 5 years of operations.</i>⁵³ 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.⁵⁴ This hotel and Casino would have been spectacular.</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</p> | <p>party to this arbitration, for an unspecified period of time.</p> <p>Second, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that "Mexico intends to use the documents to corroborate the facts alleged by the Claimants or challenge the credibility of the Claimants' witnesses." However, Respondent does not provide any evidence and/or basis to question the facts as alleged by Claimants or undermine the credibility of Claimants' witnesses. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>On the other hand, Claimants have submitted and produced documents and testimony establishing that Claimants made significant progress in the development of the Cancun Project, including by investing a significant amount of capital and other resources in the project. (CWS-50, ¶¶ 84-86; CWS-51, ¶¶ 78-80; Exhibit C-88; Exhibit C-245; Exhibit C-374; Exhibit C-335). Mexico should not be</p> | <p>other hand, know perfectly well who participated in those negotiations and when. Therefore, it is unlikely that they would have to search the records of "a vast number of custodians".</p> <p>Claimants also appear to object to the request because the Marcos family "is not a party to this arbitration". However, the request clearly states that the records of communications that are being sought are those between any of the Claimants and the Marcos family.</p> <p>The Respondent maintains that the second objection (i.e., questionable relevance and materiality) should also be dismissed. Claimants have advanced a 42.4 million dollar claim with respect to the Cancun project, yet seek to shield production of any documents concerning the project. As in the case of the Cabo Project, the lack of documentary evidence to back the Claimants' witness statements and allegations is telling. The Respondent cannot be expected to take the Claimants' allegations at face value without evidence and this is the only opportunity it has to avail itself of documents in support of its defense.</p> | |
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| | | <p>mentioned in Mr. Burr’s Third Witness Statement.</p> | <p>allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> <p><i>Third</i>, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)). For instance, Respondent asserts that they believe “[d]raft agreements / MOU / letters of intent between the Claimants and the Marcos family” would exist in Claimants’ possession, custody, or control, because “they are mentioned in Mr. Burr’s Third Witness Statement.” However, no such document is mentioned in Gordon Burr witness statement.</p> | <p>The existence of agreements, letters of intent, MOUs and communications regarding the project with the Marcos family (their alleged partner in the Cancun project) is very much relevant to establish whether or not the Claimants had a project in Cancun to begin with, whether the project was as advanced as the Claimants contend and to determine what was the arrangement between Claimants and the Marcos family, which is relevant to quantum.</p> <p>The Respondent also observes that the relevance and materiality of the request was also premised on issues concerning damages and the Claimants have not contested the relevance and materiality of the request on those grounds. For this reason alone, the objection should be dismissed.</p> <p>One last observation regarding the second objection is that the Respondent disputes that Exhibits C-88 (right of first refusal agreement), C-245 (Cancun’s power point presentation dated 2011) and C-335 (update of the Cancun’s power point presentation dated 2013) demonstrate that the Claimants invested “significant amount of capital</p> | |
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| | | | | <p>and other resources in the project”.</p> <p>With regard to the third objection (i.e., failure to establish that the requested documents are reasonably believed to exist) the Respondent will simply point out that it is the Claimants contention that they “were approached by the Marcos family”. The Claimants also allege that “the Marcos family would have raised all necessary funds”. Surely, some type of arrangement and communications between the parties to the project must have existed if these statements are to be believed.</p> | |
| 17. | <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"> 1. Market research documents; 2. business plans; 3. financial projections; 4. pitches and/or presentations; 5. documents provided to potential investors and partners. | <p>In paragraph 78 of Ms. Burr Third Witness Statement (Exhibit CWS-51), it is mentioned that: “I helped Gordon in performing <u>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</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Additional Projects”.</p> <p>In addition, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent’s justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that “[t]he requested documents are relevant to</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant’s general objections.</p> <p>The Respondent reaffirms that the requested documents are relevant to the case and material to its outcome, if nothing else, because Ms. Burr refers to them in an attempt to suggest that the project was moving forward and was at an advanced stage of development. The fact that she did not bother to include these</p> | Request granted. |

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| | <p>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>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.</p> | <p>determine whether the Claimants made an investment under Article 1139 of the NAFTA." However, Mexico does not offer any evidence to dispute the existence of Claimants' investments in relation to the Cancun Project. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>On the other hand, Claimants have submitted and produced documents and testimony establishing that Claimants made significant progress in the development of the Cancun Project, including by investing a significant amount of capital and other resources in the project. (CWS-50, ¶¶ 84-86; CWS-51, ¶¶ 78-80; Exhibit C-88; Exhibit C-245; Exhibit C-374; Exhibit C-335). Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> <p>Furthermore, Mexico's stated justification for this request does not align with the documents requested and therefore does not comply with IBA Rules, Art. 3.3(b). Mexico attempts to justify this request by stating that "[t]he requested documents will refute the Claimants' allegations</p> | <p>documents with her witness statement is telling. Moreover, as noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants' contention to justify a request for documents.</p> <p>The Respondent disputes that Exhibits C-88 (right of first refusal agreement), C-245 (Cancun's power point presentation dated 2011), C-335 (update of the Cancun's power point presentation dated 2013) and C-374 (one-page render of a building facade) demonstrate that the Claimants invested "significant amount of capital and other resources in the project".</p> <p>The relevance and materiality of the requested documents was also based on the general justification and damages issues that were not addressed in the Claimants objections. For this reason alone, the</p> | |
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| | | | <p>that it was because of Mexico’s measures that the project did not move forward”. However, Respondent does not—and cannot—show how the documents requested, such market research documents, pitch materials, and documents provided to potential investors and partners, would refute Claimants’ allegations that the project did not further materialize because of Mexico’s closure of Claimants’ casinos. Their simply speculating about that.</p> <p>Lastly, Claimants submitted Exhibits C-245 and C-335, which already contain most, if not all, of the information solicited by Mexico in this request. Given that the requested documents are unnecessary and duplicative, complying with Respondent’s request will be unreasonably burdensome for Claimants. (IRA Rules, Art. 9.2(c)).</p> | Tribunal should grant the request. | |
| 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>At paragraph 80 of Ms. Burr Third Witness Statement (Exhibit CWS-51), 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</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Additional Projects”.</p> <p>Additionally, the relevance and materiality of these documents to the outcome of the case is questionable given that</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant’s general objections.</p> <p>The respondent maintains that the relevance and materiality of the request has been established. It goes <i>inter alia</i> to the question of whether</p> | Request granted. |

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| | <p>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 Project 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> <p>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.</p> | <p>Respondent’s justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that “[t]he requested documents are material to the issue of whether the Claimants have a protected investment in Cancun Project and to the issue of quantum”. However, Respondent does not provide any evidence to question the facts as alleged by Claimants or dispute Claimants’ investments in the Cancun Project. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>On the other hand, Claimants have submitted and produced documents and testimony establishing that Claimants made significant progress in the development of the Cancun Project, including by investing a significant amount of capital and other resources in the project. (CWS-50, ¶¶ 84-86; CWS-51, ¶¶ 78-80; Exhibit C-88; Exhibit C-245; Exhibit C-374; Exhibit C-245; Exhibit C-335). As an example, the Right of First Refusal Agreement between Colorado Cancun, LLC and B-Mex II, LLC—Exhibit C-88—shows that Claimant Colorado Cancun, LLC invested US\$ 250,000 towards an option to</p> | <p>there was an investment related to the alleged Cancun project and if so, in what amount. Moreover, as noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants’ contention to justify a request for documents.</p> <p>The Respondent disputes that Exhibits C-88 (right of first refusal agreement), C-245 (Cancun’s power point presentation dated 2011), C-335 (update of the Cancun’s power point presentation dated 2013) and C-374 (one-page render of a building facade) demonstrate that the Claimants invested “significant amount of capital and other resources in the project”.</p> <p>The relevance and materiality of the requested documents was also based on the general justification and damages issues (e.g., a potential alternative valuation based on</p> | |
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| | | | purchase a gaming license from B-Mex II in relation to the Cancun Project (Memorial, ¶ 65; CWS-50, ¶ 69). Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking. | sunk costs) that were not addressed in the Claimants objections. For this reason alone, the Tribunal should grant the request. | |
| 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>In paragraph 80 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> <p>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.</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Additional Projects”.</p> <p>Additionally, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent’s justification for this request is based on pure speculation (IBA Rules, Art. 9.2(a)). Respondent states as its justification that “[t]he 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.” However, Respondent fails to explain how the requested documents would controvert Gordon Burr’s testimony and support its conjecture that “there were no concrete plans to begin the</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant’s general objections.</p> <p>Once again, the Claimants object on grounds of relevance and materiality arguing that the justification offered is speculative. The Respondent believes that the lack of documentary evidence in relation to the timing for commencement of construction puts into question Ms. Burr’s witness statement.</p> <p>Moreover, as noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the</p> | Request granted. |

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| | | | <p>construction of the Casino in Cancun at the beginning of 2015 or open the casino in early 2017”. Indeed, Mexico assumes that the documents requested <i>would not</i> be in Claimants’ possession, custody, or control, because it believes that Claimants had no concrete plans to begin the construction of the Cancun Project. As such, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)). Nevertheless, Mexico still seeks to obtain the documents that it believes to be non-existent, thereby engaging in an unwarranted fishing expedition that should not be allowed in this proceeding.</p> | <p>Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants’ contention to justify a request for documents.</p> <p>The Respondent further observes that it also justified the request on issues of damages: <i>“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”</i> The Claimants do not contest the relevance and materiality of the requested documents on those grounds.</p> | |
| 20. | <p>2013 Cancun’s solidified business plan mentioned in paragraph 84 of Mr. Burr Third Witness Statement, including any of the following components of a typical business plan:</p> <ol style="list-style-type: none"> 1. market analysis; 2. legal structure; 3. specific location; 4. Timeline for construction and milestones; 5. operations plan; | <p>In paragraph 84 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</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Additional Projects”.</p> <p>Claimants further object to this request on the following grounds: <i>First</i>, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent’s justification for</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant’s general objections.</p> <p>Once again, the Claimants object on grounds of relevance and materiality arguing that the justification offered is speculative. The Respondent maintains the position that the relevance and materiality has been established for the</p> | Request granted. |

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| | <p>6. description of services offered;</p> <p>7. sales and marketing (pricing and sales information);</p> <p>8. management team;</p> <p>9. financing plan (initial investment, Capex, Opex, 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>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 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>this request is based on pure speculation (IBA Rules, Art. 9.2(a)). Respondent states as its justification that “[t]he 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.” However, Respondent fails to explain how the requested documents would controvert Claimants’ contention that the Cancun Project was in an advanced stage of development. Nor does Respondent provide any evidence to support its conjecture that the Cancun project “was in its very early stages at best.” Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>On the other hand, Claimants have submitted and produced documents and testimony establishing that Claimants made significant progress in the development of the Cancun Project, including by investing a significant amount of capital and other resources in the project. (CWS-50, ¶¶ 84-86; CWS-51, ¶¶ 78-80; Exhibit C-88; Exhibit C-245; Exhibit C-374; Exhibit C-245; Exhibit C-335). As such, Mexico should not be allowed to</p> | <p>reasons offered in the justification and general justification.</p> <p>However, even if this request is deemed to be speculative, it is worth noting that the Respondent also justified the relevance and materiality of the request on issues concerning damages. The Claimants do not contest the relevance and materiality of the requested documents on that front.</p> <p>Mexico disputes that Exhibit C-335 is a business plan and/or that it contains the usual components of a business plan. It is also worth noting that Mr. Taylor has identified additional documents falling within this request.</p> | |
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| | | | <p>use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> <p><i>Second</i>, Claimants have already submitted several “business plans” containing various “components of a typical business plan”, including market analysis, description of services offered, management team, projections and etc. (<i>See</i> Exhibit C-245; Exhibit C-335). In particular, Mexico has already been provided with the business plan that it seeks to obtain via this request, i.e., Exhibit C-335. This business plan, dated April 14, 2013, contains most, if not all, “components of a typical business plan”, as alleged by Respondent. Given that Respondent’s request is already in possession of the documents it seeks to obtain via this request, Respondent’s request is unreasonably burdensome (IBA Rules, Art. 9.2(c)).</p> | | |
| 21. | 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 paragraph 69 of Mr. Burr’s | In paragraph 69 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 | Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Additional Projects”. | Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant’s general objections. Claimants contend that the “relevance and materiality of | Request granted. |

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| <p>Third Witness Statement (Exhibit CWS-50).</p> | <p>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 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>Additionally, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that "[t]he requested documents are material to the issue of whether the Claimants have a protected investment in Cancun and to the issue of quantum". However, Respondent does not provide any evidence to question the facts as alleged by Claimants or dispute Claimants' investments in the Cancun Project. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>On the other hand, Claimants have submitted and produced documents testimony establishing that Claimants made significant progress in the development of the Cancun Project, including by investing a significant amount of capital and other resources in the project. (CWS-50, ¶¶ 84-86; CWS-51, ¶¶ 78-80; Exhibit C-88; Exhibit C-245; Exhibit C-374; Exhibit C-245; Exhibit C-335). As an example, the Right of First Refusal Agreement between</p> | <p>these documents to the outcome of the case is questionable" because the justification is purely speculative." As noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants' contention to justify a request for documents.</p> <p>The Respondent will also point to the absence of any concrete proof of a payment of US \$250,000 towards an option to purchase a gaming license or any other alleged form of investment is manifestly relevant in the context of the 42.4 million dollar claim submitted in relation to the Cancun project.</p> <p>Moreover, the Respondent specifically and alternatively justified the request on issues of quantum "<i>as the Respondent has offered sunk costs as an alternative to the Claimants' damages estimate</i></p> | |
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| | | | <p>Colorado Cancun, LLC and B-Mex II, LLC—Exhibit C-88—shows that Claimant Colorado Cancun, LLC invested US\$ 250,000 towards an option to purchase a gaming license from B-Mex II in relation to the Cancun Project (Memorial, ¶ 65; CWS-50, ¶ 69). Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> | <p><i>in case the Tribunal determines that an investment exists and the Respondent is liable</i>". The Claimants have not objected to the relevance and materiality of the request on these grounds.</p> <p>The Respondent further disputes that the evidence cited by the Claimants in their objection establishes that "Claimants made significant progress in the development of the Cancun Project". Exhibit C-88 (the example used by the Claimants in the objection) is not proof of any protected investment in Mexico under the NAFTA.</p> | |
| 21.bis | <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>At paragraph 86 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 witness statement without offering any proof of what he says. Mexico is entitled to the evidence he relied on to either</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Additional Projects".</p> <p>Additionally, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is based on false factual premise and speculation (IBA Rules, Art. 9.2(a)). Respondent states as its justification that "[t]he requested documents are relevant to the</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant's general objections.</p> <p>Claimants argue that the request is based on a false premise and therefore that its relevance and materiality is "questionable."</p> <p>The Respondent disputes that Exhibits C-245 and C-335 "provide explanation as to how Claimants estimated that "customers for the Cancun Casino would on average</p> | Request granted. |

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| | | <p>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>issue of the credibility of the witness.” However, Respondent does not provide any evidence to discredit Claimants’ witnesses or their testimony. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>Moreover, contrary to Mexico’s assertion, Gordon Burr’s witness statement is well accompanied by supporting documentation. For instance, his testimony concerning the average spend per player is not only consistent with, but further substantiated and supported by, Exhibits C-245 and C-335. Both of these exhibits provide explanation as to how Claimants estimated that “customers for the Cancun Casino would on average spend a minimum of US \$200 per player each visit” and indicate the relevant sources. As such, Mexico’s request is based on false factual premise and speculation, and Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> <p>Moreover, given that Respondent’s request is already in possession of the documents it seeks to obtain via this request,</p> | <p>spend a minimum of US \$200 per player each visit””. The Exhibits cite no sources for the estimate and do not explain how it was calculated.</p> | |
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| | | | Respondent's request is unreasonably burdensome (IBA Rules, Art. 9.2(c)). | | |
| 21.ter | 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>At paragraph 71 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 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> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning “Additional Projects”.</p> <p>Claimants further object to this request on the following grounds.</p> <p><i>First</i>, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that “[t]he 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 the shuttering of the Claimants' Casinos in 2014.” However, Respondent fails to explain how the requested documents would controvert Claimants' contention that the Cancun Project was at its advanced stage of development. Nor does Respondent provide any evidence to support its conjecture that the Cancun project was at its very early stage.</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant's general objections.</p> <p>The Respondent maintains that the relevance and materiality of the request has been established.</p> <p>The Claimants allege that the project was cancelled because Mexico shuttered the casinos and that but-for the closure, the project would have come to fruition. However, no evidence such as agreements, letters of intent or communications with their intended partner in the project (the Marcos family) have been submitted. This casts doubts on the veracity and accuracy of various representations made in the Memorial and the Claimants' witness statements (some of which are quoted verbatim in the justification). Mexico maintains that it is entitled to the requested documents to test the veracity of the Claimants' allegations and whether or not the project</p> | Request denied: relevance and materiality not established, and overly broad. |

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| | | | <p>Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>On the other hand, Claimants have submitted and produced documents testimony establishing that Claimants made significant progress in the development of the Cancun Project, including by investing a significant amount of capital and other resources in the project. (CWS-50, ¶¶ 84-86; CWS-51, ¶¶ 78-80; Exhibit C-88; Exhibit C-245; Exhibit C-374; Exhibit C-245; Exhibit C-335). As such, Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> <p><i>Second</i>, Mexico’s request is unreasonably burdensome because it is duplicative and unnecessary (IBA Rules, Art. 9.2 (c)). In the Memorial and relevant witness statements, Claimants clearly explained why they could not move forward with the Cancun Project—that is, Mexico unlawfully rescinded E-Games’ permit and shut down Claimants’ Casinos. Given that the communications solicited by Mexico—if they were to exist—would not show otherwise, the</p> | <p>was moving along at the time of the closure.</p> <p>The Respondent disputes that the Exhibits C-88, C-245, C-374 and C-335 demonstrate that “Claimants made significant progress in the Cancun project” and that the Claimants invested “significant amount of capital and other resources to the project”.</p> | |
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| | | | requested documents are unnecessary and complying with it would be unreasonably burdensome for Claimants. | | |
| | Online Casino | | | | |
| 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 regarding the contract for the online gaming platform</p> | <p>At paragraph 72 of the Memorial, 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>The Claimants further allege at paragraph 74 of the Memorial 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</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Additional Projects”.</p> <p>In addition, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent’s justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that “[t]he 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.” However, Mexico does not offer any evidence to dispute the existence of Claimants’ investments in relation to the Online Gaming Project, nor does it offer any evidence to contend that Claimants’ Online Gaming Project was not ready to kick off</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant’s general objections.</p> <p>The Respondent maintains that the relevance and materiality of the request is more than established. Claimants complain that Mexico’s requests are based on speculation despite: (i) the various inconsistencies in the Claimants’ witness statements and Memorial that have been identified in the Counter-Memorial and the requests for documents, and; (ii) the absence of concrete evidence in support of various of the Claimants’ allegations.</p> <p>In the case of the online casino project, the Claimants allege it would have opened two months after the closure of the existing Casinos but have provided little evidence (if any at all) of all the arrangements that were necessary to make that happen, including the</p> | <p>Request denied: relevance and materiality not established, and overly broad.</p> |

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| | | <p>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> | <p>in July 2014. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. On the other hand, Claimants have submitted and sufficient produced documents testimony establishing that Claimants had long invested their time, resources, and capital in the Online Gaming Project and that Claimants were about launch the Online Gaming Project at the time that Mexico unlawfully closed Claimants’ Casinos. (CWS-50, ¶¶ 88-91; CWS-51, ¶¶ 81-84; CWS-53, ¶¶ 25-34; Exhibit C-337; Exhibit C-338; Exhibit C-339). Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> | <p>documents in this request. In Mexico’s submission this casts serious doubts about the Claimants’ representations and justifies the request and more than justifies the request.</p> <p>Moreover, as noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants’ contention to justify a request for documents. In fact, one the main objectives behind a request for documents is to obtain evidence to dispute allegations of fact and arguments made by the opposing party.</p> <p>To be clear, the Respondent disputes that Claimants have submitted sufficient evidence to support their claims.</p> | |
| 23. | <p>1. Final draft of agreement with Bally incorporating the handwritten annotations that Mr.</p> | <p>At paragraph 28 of Mr. Moreno’s Second Witness Statement (CWS-53) claims that Bally’s proposal was modified to incorporate his handwritten annotations. At paragraph 32 he further</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to</p> | <p>1. Request granted. 2. Request granted.</p> |

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| | <p>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>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> | <p>Justification for its requests for documents concerning "Additional Projects".</p> <p>In addition, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that "[t]he requested documents will either corroborate the facts as alleged by Mr. Moreno Quijano or used to challenge the credibility of the witness." However, Mexico does not offer any evidence to dispute the facts as alleged by the Claimants or to cast shadow over Mr. Moreno's credibility. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> | <p>the Claimant's general objections.</p> <p>The Respondent maintains that the relevance and materiality of the request is more than established. Claimants complain that Mexico's requests are based on speculation despite: (i) the various inconsistencies in the Claimants' witness statements and Memorial that have been identified in the Counter-Memorial and the requests for documents, and; (ii) the absence of concrete evidence in support of various of the Claimants' allegations.</p> <p>In the case of the online casino project, the Claimants allege it would have opened two months after the closure of the existing Casinos but have provided little evidence (if any at all) of all the arrangements that were necessary to make that happen, including the documents in this request. In Mexico's submission this casts serious doubts about the Claimants' representations and justifies the request and more than justifies the request.</p> <p>Moreover, as noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward</p> | <p>3. Request denied: relevance and materiality not established, and overly broad.</p> |
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| | | | | <p>in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants' contention to justify a request for documents. In fact, one the main objectives behind a request for documents is to obtain evidence to dispute allegations of fact and arguments made by the opposing party.</p> <p>To be clear, the Respondent disputes that Claimants have submitted sufficient evidence to support their claims.</p> | |
| 24. | <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> | <p>The Claimants have submitted their "Online Gaming Proposal" as Exhibit C-338. However, as noted at ¶ 538 of the Counter-Memorial, 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.</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Additional Projects".</p> <p>In addition, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that "[t]he requested</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant's general objections.</p> <p>The Respondent maintains that the relevance and materiality of the request is more than established. Claimants complain that Mexico's requests are based on speculation despite: (i) the various inconsistencies in the Claimants' witness statements and Memorial that</p> | Request granted. |

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| <table><tr><th colspan="2">Inversion inicial</th></tr><tr><td>Licencias</td><td>1,53</td></tr><tr><td>EG</td><td>1,50</td></tr><tr><td>Cash box</td><td>3</td></tr><tr><td>Infraestructura</td><td>39</td></tr><tr><td>Adecuaciones</td><td>4</td></tr><tr><td>IT Site</td><td>35</td></tr><tr><td>Racks y accesorios</td><td>2</td></tr><tr><td>Mercadotecnia</td><td>55</td></tr><tr><td>Produccion de Video</td><td>5</td></tr><tr><td>Lanzamiento</td><td>50</td></tr><tr><td>Total</td><td>2,48</td></tr></table> | Inversion inicial | | Licencias | 1,53 | EG | 1,50 | Cash box | 3 | Infraestructura | 39 | Adecuaciones | 4 | IT Site | 35 | Racks y accesorios | 2 | Mercadotecnia | 55 | Produccion de Video | 5 | Lanzamiento | 50 | Total | 2,48 | <p>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 obtained and kept in the ordinary course of business.</p> | <p>documents are relevant to the issues of whether the Claimants had a protected investment related to the online casino” and “to the issue of the credibility of the Claimants’ witnesses.” However, Mexico does not offer any evidence to dispute the existence of Claimants’ investments in relation to the Online Gaming Project, nor does it offer any evidence to undermine the credibility of Claimants’ witnesses. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>On the other hand, Claimants have submitted and produced sufficient documents and testimony establishing that Claimants had long invested their time, resources, and capital in the Online Gaming Project and that Claimants were about to launch the Online Gaming Project at the time that Mexico unlawfully closed Claimants’ Casinos. (CWS-50, ¶¶ 88-91; CWS-51, ¶¶ 81-84; CWS-53, ¶¶ 25-34; Exhibit C-337; Exhibit C-338; Exhibit C-339). Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> | <p>have been identified in the Counter-Memorial and the requests for documents, and; (ii) the absence of concrete evidence in support of various of the Claimants’ allegations.</p> <p>In the case of the online casino project, the Claimants allege it would have opened two months after the closure of the existing Casinos but have provided little evidence (if any at all) of all the arrangements that were necessary to make that happen, including the documents in this request. In Mexico’s submission this casts serious doubts about the Claimants’ representations and justifies the request and more than justifies the request. Moreover, as noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants’ contention to justify a request for</p> |
|--|--------------------|------|-----------|------|----|------|----------|---|-----------------|----|--------------|---|---------|----|--------------------|---|---------------|----|---------------------|---|-------------|----|-------|------|---|--|--|
| | Inversion inicial | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Licencias | 1,53 | | | | | | | | | | | | | | | | | | | | | | | | | |
| | EG | 1,50 | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Cash box | 3 | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Infraestructura | 39 | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Adecuaciones | 4 | | | | | | | | | | | | | | | | | | | | | | | | | |
| | IT Site | 35 | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Racks y accesorios | 2 | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Mercadotecnia | 55 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Produccion de Video | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Lanzamiento | 50 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total | 2,48 | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| | | | | <p>documents. In fact, one the main objectives behind a request for documents is to obtain evidence to dispute allegations of fact and arguments made by the opposing party.</p> <p>The Respondent also disputes that Claimants have submitted sufficient evidence to support their claims. The exhibits cited in the objection do not establish the existence of an investment or that the online casino was about to be open when the existing casinos were shut down.</p> <p>Finally, the Respondent notes that the Claimants have completely ignored the following justification: “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>Since no objection to the relevance and materiality of the request on these grounds has been submitted, the Respondent maintains that relevance and materiality has been established and the</p> | |
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| | | | | Tribunal should order production of the requested documents. | |
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| 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 (Exhibit CWS-53, paragraph 33):</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 este importante contrato con PokerStars cuando México clausuró los Casinos.</i></p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Additional Projects”.</p> <p>In addition, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent’s justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that “[t]he requested documents are relevant to the issue of the facts alleged by the witnesses and their credibility.” However, Mexico does not offer any evidence to undermine the credibility of Claimants’ witnesses or to dispute the facts alleged by the witnesses regarding the Online Gaming Project (in particular, the proposed partnership with Poker Stars). Mexico merely expresses its view that Claimants “ha[ve] 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</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant’s general objections.</p> <p>The Respondent maintains that the relevance and materiality of the request is more than established. Claimants complain that Mexico’s requests are based on speculation despite: (i) the various inconsistencies in the Claimants’ witness statements and Memorial that have been identified in the Counter-Memorial and the requests for documents, and; (ii) the absence of concrete evidence in support of various of the Claimants’ allegations.</p> <p>In the case of the online casino project, the Claimants allege it would have opened two months after the closure of the existing Casinos but have provided little evidence (if any at all) of all the arrangements that were necessary to make that happen, including the documents in this request. In Mexico’s submission this casts serious doubts about the</p> | <p>1. Request denied; relevance and materiality not established; overly broad.</p> <p>2. Request granted.</p> |

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| | <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 explicitly mentions the agreement with PokerStars in his witness statement.</p> | <p>witness statements.” However, this is incorrect, as the relevant witness statements were well-accompanied by supporting documentation. For instance, Exhibits C-339 and C-340 demonstrate that by February 2014, the parties to the transaction (i.e., Claimants and PokerStars/Rational Group) had already made significant progress in their negotiation and it is therefore no surprise that by the time that Mexico unlawfully shut down Claimants' Casinos in April 2014, Claimants were about to finalize the agreement with PokerStars/Rational Group. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>As such, Mexico has no basis to challenge the credibility of Claimants' witnesses and it should not be allowed to use its speculation and the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> | <p>Claimants' representations and justifies the request and more than justifies the request.</p> <p>Moreover, as noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants' contention to justify a request for documents. In fact, one the main objectives behind a request for documents is to obtain evidence to dispute allegations of fact and arguments made by the opposing party.</p> <p>The Respondent also disputes that Claimants have submitted sufficient evidence to support their claims. The exhibits cited in the objection do not establish the existence of an investment or that the online casino was about to be open when the existing casinos were shut down.</p> <p>In addition, the Claimants have ignored that the Respondent's general</p> | |
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| | | | | <p>justification also applies to this request and, as clearly explained therein: “[t]he 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. [...] 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.”</p> <p>The Respondent is requesting documents that were specifically referred to by Mr. Moreno in his witness statement: <i>“las Demandantes estaban a una escasa semana o dos de firmar este importante contrato con PokerStars cuando México clausuró los Casinos”</i> (The Claimants were only a week or two from signing this key agreement with PokerStars</p> | |
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| | | | | when Mexico closed the casinos). | |
| 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 (Exhibit CWS-53) 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 prepared and kept in the ordinary course of business.</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Additional Projects".</p> <p>In addition, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that "[t]he 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." However, Mexico does not offer any evidence to dispute Claimants' contention on this issue. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>On the other hand, Claimants have submitted and produced sufficient documents and</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant's general objections.</p> <p>The Respondent maintains that the relevance and materiality of the request is more than established. Claimants complain that Mexico's requests are based on speculation despite: (i) the various inconsistencies in the Claimants' witness statements and Memorial that have been identified in the Counter-Memorial and the requests for documents, and; (ii) the absence of concrete evidence in support of various of the Claimants' allegations.</p> <p>In the case of the online casino project, the Claimants allege it would have opened two months after the closure of the existing Casinos but have provided little evidence (if any at all) of all the arrangements that were necessary to make that happen, including the documents in this request. In Mexico's</p> | <p>1. Request granted.</p> <p>2. Request denied: relevance and materiality not established; overly broad.</p> |

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| | | | <p>testimony establishing that Claimants had long invested their time, resources, and capital in the Online Gaming Project and that the Online Gaming Project was ready to kick off in July 2014. (CWS-50, ¶¶ 88-91; CWS-51, ¶¶ 81-84; CWS-53, ¶¶ 25-34; Exhibit C-337; Exhibit C-338; Exhibit C-339). Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> | <p>submission this casts serious doubts about the Claimants' representations and justifies the request and more than justifies the request.</p> <p>Moreover, as noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants' contention to justify a request for documents. In fact, one the main objectives behind a request for documents is to obtain evidence to dispute allegations of fact and arguments made by the opposing party.</p> <p>The Respondent also disputes that Claimants have submitted sufficient evidence to support their claims. The exhibits cited in the objection do not establish the existence of an investment or that the online casino was about to be open when the existing casinos were shut down.</p> | |
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| | | | | <p>The Claimants also seem to forget that the general justification also applies to this request and, as clearly explained therein: “[t]he 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. [...]”. 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.”</p> <p>The Respondent is requesting documents that were specifically referred to by Mr. Moreno in his witness statement, for the following proposition: “<i>cuando México clausuró los Casinos, ya estaba todo listo para que arrancara el que prometía ser el exitoso y lucrativo negocio de juego online de las Demandantes</i>” (when Mexico shut down the Casinos,</p> | |
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| | | | | everything was in place for what promised to be the Claimants' successful and lucrative online gambling business). | |
| 27. | <p>The cost studies referred to in Mr. Moreno's Second Witness statement regarding:</p> <ol style="list-style-type: none"> 1. installation of the servers 2. leasing an office and data room in which to install the servers 3. installing security and surveillance equipment to monitor the servers from anyway | <p>Mr. Moreno Quijano mentions at paragraph 30 of his Second Witness Statement (Exhibit CWS-53) 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 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>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Additional Projects".</p> <p>In addition, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent states as its justification that "[t]he requested documents will be used to either corroborate or challenge the Claimants' contention that they would have begun operations in July 2014." However, Mexico does not offer any evidence to dispute Claimants' contention on this issue. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request.</p> <p>On the other hand, Claimants have submitted and produced sufficient documents and</p> | <p>Respondent refers to and incorporates by reference both the general justification offered at the beginning of this section and the general reply to the Claimant's general objections.</p> <p>The Respondent maintains that the relevance and materiality of the request is more than established. Claimants complain that Mexico's requests are based on speculation despite: (i) the various inconsistencies in the Claimants' witness statements and Memorial that have been identified in the Counter-Memorial and the requests for documents, and; (ii) the absence of concrete evidence in support of various of the Claimants' allegations.</p> <p>In the case of the online casino project, the Claimants allege it would have opened two months after the closure of the existing Casinos but have provided little evidence (if any at all) of all the arrangements that were necessary to make that happen, including the documents in this request. In</p> | Request granted. |

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| | | <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> | <p>testimony establishing that Claimants had long invested their time, resources, and capital in the Online Gaming Project and that the Online Gaming Project was ready to kick off in July 2014. (CWS-50, ¶¶ 88-91; CWS-51, ¶¶ 81-84; CWS-53, ¶¶ 25-34; Exhibit C-337; Exhibit C-338; Exhibit C-339). Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> <p>Moreover as indicated in the witness statement of José Ramón Moreno, the initial cost studies ultimately evolved into a comprehensive investment plan for the Online Gaming Project referenced in paragraph 30 of José Ramón Moreno's Witness Statement (CWS-53). Mexico has already been provided with this document, as it was submitted as Exhibit C-338. As such, Mexico's request is unnecessary and duplicative and complying with it will be unreasonably burdensome for Claimants. (IBA Rules, Art. 9.2(c)). Claimants object to this request on this ground as well.</p> | <p>Mexico's submission this casts serious doubts about the Claimants' representations and justifies the request and more than justifies the request.</p> <p>Moreover, as noted in the general reply, in order to establish relevance and materiality the Respondent needs to explain the arguments it has or intends to put forward in this proceeding, and how the requested documents fit within those arguments. This is what the Respondent has done. Contrary to what the Claimants suggest, the Respondent is not required to submit evidence to dispute Claimants' contention to justify a request for documents. In fact, one the main objectives behind a request for documents is to obtain evidence to dispute allegations of fact and arguments made by the opposing party.</p> <p>The Respondent further submits it has the right to avail itself of documents to test the Claimants' allegations, particularly in view of the insufficient evidence provided in the Memorial. The requested documents were referred to by Mr. Moreno in his witness statement but were not attached to his witness</p> | |
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| | | | | <p>statements nor submitted into evidence by the Claimants.</p> <p>The Respondent disputes the Claimants' allegation that they "had long invested their time, resources, and capital in the Online Gaming Project" and that "the Online Gaming Project was ready to kick off in July 2014".</p> <p>Exhibits C-337 (the interactive gaming proposal), C-338 (casino project), and C-339 (Rational Group Memorandum) do not demonstrate the resources that were invested and that the project was ready would have started in July 2014. In particular, Exhibit C-338 does not contain any source information and dates and does not prove that an investment was actually made.</p> <p>The Claimants also ignored that the Respondent's justification is also premised on issues related to the claim for damages and have not challenged those grounds of relevance and materiality. For this reason alone, the Tribunal should grant the request.</p> | |
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D. Petolof

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| 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 |
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| 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). | <p>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 were not for the 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 style="padding-left: 40px;"><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</i></p> | <p>Pursuant to the Tribunal's PO No. 9, Claimants do not raise an objection to this request on grounds of privilege and/or confidentiality but reserve their right to do so in accordance with Section 2 of the PO No. 9.</p> <p>Claimants object to this request on the following grounds:</p> <p><i>First</i>, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)), as the requested documents are at least from more than 12 years ago and Respondent offered no reason to support its belief that Claimants would still be in possession, custody, or control of the requested documents despite the significant lapse of time.</p> <p><i>Second</i>, Claimants object to this request because the documents requested are not sufficiently relevant to the case or material to its outcome (IBA Rules, Art. 9.2(a)). Mexico contends that the requested documents are "relevant to the credibility of the Claimants' witnesses", because, in its view, "the Petolof precedent could not have been the reason behind the Claimants' decision to move to E-Mex's permit" since "the Petolof decision was issued some months after [E-Games' decision to move to E-Mex's permit] was made." Mexico's stated justification, however, is based on a false factual premise. Several years prior to SEGOB's resolution approving Petolof's</p> | <p>The Claimant's objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, in their Memorial the Claimants described how relevant the Petolof precedent was for their decision to move the operation of their casinos under E-Mex's permit. Due to the importance and relevance that Claimants have assigned to that precedent, it is reasonable to assume that the requested documents exist and are still in the possession, custody, or control of the Claimants.</p> <p>Moreover, the Claimants have been preparing for this arbitration since at least January 2013, when the Claimant's former counsel, White&Case, contacted the Respondent to discuss the matters involved in this arbitration (Memorial, ¶ 206). It is reasonable to assume that at least since 2013, the Claimants and their counsel gathered and reviewed all the relevant documents, including the requested documents, to prepare their claims.</p> <p><i>Second</i>, the Respondent has justified the relevance and materiality of this request. In her witness statement Mr. Burr explained how fundamental the Petolof</p> | <p>Request granted, subject to the Tribunal's resolution of any legal impediment objection as per PO9, ¶¶ 9(d) to (f).</p> |

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| | <p><i>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 anything subject to</i></p> | <p>independent operator status, Petolof's "acquired rights" to operate casinos was recognized by Mexican courts. Hence, even before SEGOB's resolution was issued, the Petolof precedent existed and was something that Claimants took into consideration when they decided to move under E-Mex's permit. Given that Respondent's justification for this request is based on a false factual premise, the relevance and materiality of the requested documents to the case and its outcome is highly questionable.</p> <p><i>Third</i>, Mexico's stated justification for this request does not align with the documents requested and therefore does not comply with IBA Rules, Art. 3.3(b). According to Mexico, there was no Petolof precedent prior to E-Games' decision to move under E-Mex's permit. As a corollary, there could not have been "internal documents containing legal analysis or discussion of the Petolof precedent predating the decision to move their operations under E-Mex's permit." Nevertheless, Mexico still seeks to obtain the documents it believes to be non-existent.</p> | <p>precedent was for the Claimant's business decision to move under the E-Mex permit (Exhibit CWS-50, paragraph 41). Ms. Burr also referred to that precedent stating: "[s]pecifically, in 2008, SEGOB recognized the independent operator status of Petolof, S.A. de C.V. ("Petolof") based on the theory of acquired rights (Exhibit CWS-51, paragraph 49-50).</p> <p>Now the Claimants switch positions to try to avoid production. For the first time, they argue now that: "<i>Several years prior to SEGOB's resolution approving Petolof's independent operator status, <u>Petolof's 'acquired rights' to operate casinos was recognized by Mexican courts</u></i>" without even specifying which court decision recognized "Petolof's 'acquired rights' to operate casinos, when the was it issued and how did they managed to obtain it. The Memorial does not provide an explanation or evidence.</p> <p>Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein.</p> | |
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| | <p><i>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</p> | | | |
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| | | of moving their operations under E-Mex's permit. | | | |
| 29. | Internal documents containing legal analysis or discussion of the Petolof precedent, that was considered prior to requesting the 27 May 2009 Resolution. | <p>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 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</p> | <p>Pursuant to the Tribunal’s PO No. 9, Claimants do not raise an objection to this request on grounds of privilege and/or confidentiality but reserve their right to do so in accordance with Section 2 of the PO No. 9.</p> <p>Claimants object to this request on the following grounds:</p> <p><i>First</i>, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)), as the requested documents are at least from more than 11 years ago and Respondent offered no reason to support its belief that Claimants would still be in possession, custody, or control of the requested documents despite the significant lapse of time.</p> <p><i>Second</i>, Claimants object to this request because the documents requested are not sufficiently relevant to the case or material to its outcome (IBA Rules, Art. 9.2(a). Mexico’s stated justification for this request is purportedly that “[t]he requested documents are relevant to show that Claimants identified or should have identified the crucial differences between Petolof and E-Games’ situations.” However, Mexico does not explain—and cannot explain—how the requested documents would show that Claimants identified or should have identified the crucial differences between Petolof and E-Games’ situations, because, as Claimants fully explained in their Memorial, Claimants never held the view that Petolof’s circumstances were dissimilar to E-Games’ and they applied for the independent operator status in reliance of their view that the Petolof precedent would be applicable to E-</p> | <p>The Claimant’s objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, in their Memorial the Claimants stated that E-Games’ request of the Oficio 2009-BIS was based on the Petolof precedent. That Oficio 2009-BIS eventually led to the revocation of E-Games’ permit. Due to the relevance that Claimants have assigned to the Petolof precedent, it is reasonable to assume that the requested documents exist and are still in the possession, custody, or control of the Claimants.</p> <p>Moreover, the Claimants have been preparing for this arbitration since at least January 2013, when the Claimant’s former counsel, White&Case, contacted the Respondent to discuss the matters involved in this arbitration (Memorial, ¶ 206). It is reasonable to assume that at least since 2013, the Claimants and their counsel gathered and reviewed all the relevant documents, including the requested documents, to prepare their claims.</p> <p><i>Second</i>, the Respondent’s request is relevant to this case, due to the Claimants’ allegation that E-Games relied on the Petolof case when it requested SEGOB the Oficio 2009-BIS. The Respondent contends that the Claimants assumed a high risk due to the important and evident differences between E-Games and Petolof. It is</p> | <p>Request granted, subject to the Tribunal’s resolution of any legal impediment objection as per PO9, ¶¶ 9(d) to (f).</p> |

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| | | <p>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> | <p>Games' permit application. As such, the information solicited by Mexico does not align with Respondent's stated justification and lacks relevancy and materiality to the outcome of this case.</p> | <p>reasonable to assume that such a high-risk decision was based on a thorough and serious assessment.</p> <p>Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein.</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.

Claimants' General Objections:

Claimants reject the propriety of Respondent's argumentation regarding factual and legal issues that should not be raised in the context of a document request. Specifically, Claimants reject Respondent's conclusory argument that the documents requested in this section are relevant to the case and material to its outcome. Respondent has failed to offer even a good

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faith factual basis to raise the issue of “unclean hands” and the illegality of Claimants’ investments, and it is on fishing expedition in an attempt to manufacture this defense. This is nothing more than outright speculation by Respondent based exclusively on Mr. Taylor’s Affidavit, submitted by Respondent as Exhibit R-75 to its Counter Memorial on the Merits. However, as Respondent also explicitly acknowledges, it has not been able to verify the allegations contained in Mr. Taylor’s Affidavit (Counter Memorial, ¶ 861). As such, the relevance and materiality of the documents requested to the outcome of this case has not been established and Respondent’s admission in this respect establish that they are on a fishing expedition to attempt to establish some argument based on the doctrine of “unclean hands.” Moreover, Respondent bears the burden of proving its objections and defenses, not Claimants. Respondent should not be allowed to use the document production phase of this proceeding to engage in an unwarranted fishing expedition aimed at obtaining any document it may be able to use to find support for its wishful thinking, which in turn has no factual basis but instead is exclusively based on unverified allegations contained in Mr. Taylor’s Affidavit.

Claimants also object to the overly broad nature of the requested documents, as Respondent’s requests generally lack any temporal limitation and potentially span an excessively long period of time. As such, complying with Respondents’ requests would be unreasonably burdensome on Claimants (IBA Rules, Art. 9.2(c)).

Respondent’s General Reply

The application of the “clean hands” doctrine to the present arbitration is detailed in paragraphs 859-880 of the Counter-Memorial. Contrary to the 37 Claimant’s General Objections, the Respondent’s allegations are not based upon “speculation” and are not a “fishing expedition”. The Respondent’s allegations are supported by an Affidavit sworn by Mr. Randall Taylor which is attached as Exhibit R-075 (“Taylor Affidavit”). The information contained in that Affidavit is, in turn, supported by documentary exhibits attached thereto.

All of the document requests made by the Respondent are fully supported by the Taylor Affidavit. The specifics of the illegality are summarized at paragraph 860 of the Counter-Memorial. That paragraph identifies where in the Taylor Affidavit evidence of each allegation can be found.

The 37 Claimants’ General Objections misrepresents paragraph 861 of the Counter-Memorial as an “explicit acknowledgement” that the Respondent “has not been able to verify the allegations contained in Mr. Taylor’s Affidavit. Paragraph 861 actually reads as follows: “At this stage, without fulsome disclosure from all the Claimants, it is not possible for the Respondent to assess the veracity of these allegations” (emphasis added).

All of the documents requested by the Respondent relating to the “unclean hands” doctrine, as set out in Nos. 30-39 of the Redfern Schedule are relevant to both the merits and the assessment of damages in this case. As set out in paragraphs 864-871 of the Counter-Memorial, illegal conduct by the Mexican Investments can deprive the Claimants of substantive treaty protection under NAFTA and can also result in reducing the amount of damages. Under such circumstances, it would be an error of law for the Claimants to be permitted to withhold documents relating to their own illegal conduct.

The documents requested by the Respondent are not overly broad. They all relate to specific and identifiable conduct by the Claimants as established by the Taylor Affidavit. Moreover, the fact that the legal behaviour is alleged to have occurred over an extended period of time does not mean that the requests lack temporal limitations or potentially span an excessively long period of time. The documents requested are fully in align with the evidence contained in the Taylor Affidavit.

Furthermore, the Respondent’s requests do not create an unreasonable burden on the 37 Claimants. To this end, according to the Taylor Affidavit, many of the allegations of illegality have already been summarized by in a letter written by one of the 37 Claimants, Dan Rudden, to their legal counsel (see Taylor Affidavit, Exhibit 2, Page 7 of 53).

Finally, the Respondent highlights the fact the 37 Claimants make no claim that the requested documents do not exist. Moreover, it should be noted that Mr. Taylor stated that he possesses documents responsive to the requests in this Section (See, Mr. Taylor’s response to the Respondent’s Request for Production of Documents, 12 February 2021).

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| 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 |
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| 30. | <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"> 1. Embezzlement by administrators of the Mexican Enterprises; 2. Payments made to family members of the administrators of the Mexican Enterprises without those family members performing work; 3. The improper removal of money from casino vaults; 4. The failure to properly report and/or account for money in books, records or | <p>See general justification.</p> <p>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.</p> <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> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Mr. Taylor's Affidavit".</p> <p>In addition, Claimants object to this request for the following reasons.</p> <p><i>First</i>, Mexico's request soliciting internal documents or communications that address a wide-ranging number of topics and over an excessively long period of time is simply an impermissible fishing expedition that does not comply with IBA Rules, Art. 3.3(a)(i) or (ii) and is therefore unreasonably burdensome under IBA Rules, Art. 9.2(c).</p> <p><i>Second</i>, Respondent has failed to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)). Respondent contends that given the seriousness of the allegations contained in Mr. Taylor's Affidavit, it considers that the requested documents would have been prepared and kept in the ordinary course of business. However, the allegations contained in Mr. Taylor's Affidavit are allegations of his own, without any independent factual basis, and there is no good faith basis for Mexico to</p> | <p>Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein.</p> <p>Contrary to the 37 Claimants' allegations, the Respondent's request does not address a "wide-ranging" number of topics over an "excessively" long period of time. The Respondent's request is limited to 9 specific and identifiable acts of illegality. All nine acts of illegality are expressly identified in the Taylor Affidavit. The requests are entirely consistent with Article 3.3 of the IBA rules and do not create an unreasonable burden under Article 9.2 of the IBA Rules.</p> <p>The Respondent has also not failed to establish that the requested documents are reasonably believed to exist. The Taylor Affidavit is not limited to only allegations made by Mr. Taylor. It is supported by independent documentary evidence and transcripts of conversations with other Claimants. This evidence clearly</p> | <p>Request denied: unduly burdensome.</p> |

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| | <p>other accounting documents;</p> <p>5. The payment of money to people or projects without proper accounting controls;</p> <p>6. The failure of the Mexican Enterprises to pay taxes on all revenue;</p> <p>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, 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</p> | | <p>believe that the requested documents would have been created and kept in the ordinary course of business.</p> | <p>provides a basis for the Respondents reasonable belief that the requested documents exist.</p> | |
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| | <p>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 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>Pursuant to the Tribunal’s PO No. 9, Claimants do not raise an objection to this request on grounds of privilege and/or confidentiality but reserve their right to do so in accordance with Section 2 of the PO No. 9.</p> <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Mr. Taylor’s Affidavit”.</p> | <p>Respondent refers to and incorporates the Respondents’ Response to the Claimants’ General Objections by reference as if fully set forth herein. If the Claimant subsequently objects on the grounds of privilege and/or confidentiality, the Respondent reserves its right to respond to such a claim.</p> | <p>Request granted, subject to the Tribunal’s resolution of any legal impediment objection as per PO9, ¶¶ 9(d) to (f).</p> |

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| | | 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. | | | |
| 32. | Internal documents and records of communications related to the presentation that John Conley was requested to attend in México | <p>See general justification.</p> <p>Mr. Taylor's affidavit states that John Conley attended a meeting in Mexico where he learned, <i>inter alia</i>:</p> <ul style="list-style-type: none"> a) how Gordon Burr and others were removing money from the vaults (pages 5-9 of 53) b) how cash was taken "straight out of the vault" (pages 5-8 of 53) c) how millions of dollars were not properly reported on the books (page 5 of 53) d) How cash was used in paying millions of dollars to Pepe Rojas without proper controls (pages 5, 9-14 of 53) e) How cash was used to pay for construction projects without proper accounting controls (pages 5, 10-14); and f) how accounting records were improperly removed from the vault (pages 5, 9-11) <p>This Information is relevant to the application of the "clean hands" doctrine and to the Casinos' adherence to domestic law.</p> | Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Mr. Taylor's Affidavit". | Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as if fully set forth herein. | Request denied: existence not established. |

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| | | 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. | | | |
| 33. | 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>See general justification.</p> <p>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"> 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 200,000 from the vault, too" (pages 7-9 of 53) 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>All of these documents are relevant to the application of the "clean hands" doctrine and to the Casinos' adherence to domestic law.</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Mr. Taylor's Affidavit".</p> <p>In addition, Claimants object to this request because Mexico's request soliciting "all books, records, ledger, chits, or other accounting records for each casino and for all of the Mexican Enterprises" is overbroad and simply an impermissible fishing expedition that does not comply with IBA Rules, Art. 3.3(a)(i) or (ii) and is therefore unreasonably burdensome under IBA Rules, Art. 9.2(c). Moreover, Mexico has already been provided with audited and unaudited financial statements of E-Games and the Juegos Companies spanning almost the entire period of their operations. (<i>See</i> Exhibits BRG-063-064; 111-134). Given that the information solicited by Mexico is duplicative and unnecessary, Respondent's request is unreasonably burdensome under IBA Rules, Art. 9.2(c).</p> | <p>Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as if fully set forth herein.</p> <p>The documents requested all relate to the accounting practices of the Casinos, and in particular, the fact that cash was improperly removed from the casino vaults and that it was being used for improper purposes. If this occurred, such improper payments would not be included in the audited or unaudited financial statements provided at Exhibits BRG-063-064; 111-134. In this context, the requests are consistent with all applicable IBA Rules.</p> | Request denied: overly broad. |

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| | | <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. | <p>All documents relating to payroll, including a list of all employees who were paid by the Mexican Enterprises.</p> | <p>See general justification.</p> <p>Mr. Taylor's Affidavit states that "Please note that when the company was formed, John and 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 and kept in the ordinary course of business.</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Mr. Taylor's Affidavit".</p> <p>In addition, Claimants object to this request because Mexico's request soliciting "[a]ll documents relating to payroll" is overbroad and simply an impermissible fishing expedition that does not comply with IBA Rules, Art. 3.3(a)(i) or (ii) and is therefore unreasonably burdensome under IBA Rules, Art. 9.2(c).</p> | <p>Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as if fully set forth herein.</p> <p>Contrary to allegations made by the 37 Claimants, this request is not overly broad and is not a "fishing expedition. The Taylor Affidavit establishes that individuals were paid as employees even though they did not actually work for the Mexican Enterprises. Some of these "employees" are identified by the Taylor Affidavit. One example is Matt Roberts – who is identified as one of the 37 Claimants' stepson (John Conley's stepson). In this context, the requests are consistent with all applicable IBA Rules.</p> | <p>Request denied: overly broad.</p> |

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| 35. | <p>The following Records of Communication and/or Internal Documents:</p> <ol style="list-style-type: none">1. Minutes of the Special Meeting of Managers dated on or about January 14, 2016;2. All documents provided to managers as directed by the Minutes of the January 14, 2016 meeting;3. All internal or external investigations, including draft findings and final report, undertaken pursuant to the January 14, 2016 | <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>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Mr. Taylor’s Affidavit”.</p> <p>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.</p> <p>Furthermore, the Special Meeting of the Managers took place nearly one and a half years after Mexico’s closure of Claimants’ Casinos and Mexico does not—and cannot— explain how that Meeting or anything discussed during that Meeting are relevant to the application of the “clean hands” doctrine (or any other issue relevant and material to the outcome of the case). As such, Mexico’s request fails to comply with the IBA Rules, Art. 9.2(a) and amounts to the type of fishing expedition that should not be allowed in the present arbitration. Claimants object to Respondent’s request on this ground as well.</p> | <p>Respondent refers to and incorporates the Respondents’ Response to the Claimants’ General Objections by reference as if fully set forth herein.</p> <p>The Respondent agrees with the 37 Claimants that “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.”</p> <p>According to the Taylor Affidavit, allegations of malfeasance and breach of fiduciary duty were addressed at the special meeting. The fact that the meeting took place after closure of the casinos does not make the request irrelevant. The minutes required that “all relevant documents should be provided to all managers from all sources”. The documents provided to the managers as part of their internal investigation of impropriety are clearly relevant the doctrine of “unclean hands”. If the documents were relevant to the managers’ investigation then they are equally relevant to this Tribunal’s consideration of unclean hands.</p> | <p>Requests granted.</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"> 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; 2. That gaming machines and other equipment were stolen from the casinos after closure; 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; | <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>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Mr. Taylor’s Affidavit”.</p> <p>In addition, Claimants object to this request because Mexico’s request soliciting internal documents or communications that address a wide-ranging number of topics and over an excessively long period of time is simply an impermissible fishing expedition that does not comply with IBA Rules, Art. 3.3(a)(i) or (ii) and is therefore unreasonably burdensome under IBA Rules, Art. 9.2(c).</p> <p>Moreover, Claimants object to this request on the basis that the documents requested do not align with Mexico’s stated justification and therefore this request does not comply with IBA Rules, Art. 3.3(b). Mexico seeks to justify its request by stating that the requested documents are “relevant to the application of the “clean hands” doctrine and to the Casinos’ adherence to domestic law.” However, Mexico provides no explanation as to how the documents requested in items (1)-(5) of this request will contain information relevant to the issue of whether the doctrine of clean hands is applicable to the present case. For instance, the information solicited by Mexico in relation to the purported theft of gaming machines and other equipment from Claimants’ casinos and to Mr. Conley and others’ plan to open casinos that “rival Plaintiffs’ casino assets”—in the event that any of</p> | <p>Respondent refers to and incorporates the Respondents’ Response to the Claimants’ General Objections by reference as if fully set forth herein.</p> <p>Contrary to the 37 Claimants’ allegations, the Respondent’s request does not address a “wide-ranging” number of topics over an “excessively” long period of time. The Respondent’s request is limited to 9 specific and identifiable acts of illegality. All nine acts of illegality are expressly identified in the Taylor Affidavit. The requests are entirely consistent with Article 3.3 of the IBA rules and do not create an unreasonable burden under Article 9.2 of the IBA Rules.</p> <p>With respect to the purported theft of gaming machines, at paragraph 444 of the Memorial, the Claimants allege unlawful lifting of the closure seals by SEGOB and unauthorized removal of the machines. The Taylor Affidavit demonstrates that at least two of the 37 Claimants believed that people acting on behalf of some of the Claimants were actually the ones who broke closure seals and removed the casino equipment. This is expressly addressed at paragraphs 374-375 of the Counter-Memorial.</p> | <p>Request denied: overly broad, unduly burdensome.</p> |
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| | <p>4. Mr. Conley and former employees were working to open casinos that rival 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>documents responsive to this request were to exist—would not contain the information relevant in determining whether Claimants established their investments and operated their Casinos in accordance with Mexican laws and regulations. Similarly, the information related to who was on the payroll of B-Mex, an entity incorporated in the U.S., is irrelevant in determining the “Casinos’ adherence to domestic law” [i.e., Mexican law]. Claimants object to this request on this ground as well.</p> | <p>The breaking of closure seals and theft of casino equipment is directly related to domestic law [Mexican law]. The involvement of any of the Claimants in such unlawful actions is relevant to the doctrine of clean hands. Moreover, the breaking of the closure seals and theft of the casino equipment is also relevant to whether the Respondent can be held responsible for damages arising from the stolen casino equipment.</p> | |
| 37. | <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 possession, custody, or control of the Claimants because they are referenced in Mr. Taylor’s Affidavit, and such documents</p> | <p>Claimants refer to and incorporate by reference as if fully set forth herein Claimants’ General Objections to Respondents’ General Justification for its requests for documents concerning “Mr. Taylor’s Affidavit”.</p> <p>Furthermore, as apparent from Mr. Taylor’s Affidavit (<i>see</i> Exhibit R-75, pp. 16-17), the Letter dated March 7, 2016 or the allegations of breach of fiduciary responsibilities purportedly contained in that Letter relate to the proposed transaction with Grand Odyssey, which, as established during the jurisdictional phase of the present proceeding, has no relationship to the outcome of the present case. As such, the information solicited by Mexico is neither relevant to the case nor material to its outcome (IBA Rules, Art. 9.2(a)). Mexico should not be allowed to use the document production phase of this proceeding to engage in an unwarranted</p> | <p>Respondent refers to and incorporates the Respondents’ Response to the Claimants’ General Objections by reference as if fully set forth herein.</p> <p>Grand Odyssey is raised by paragraph 114 of the Third Witness Statement of Mr. Burr. According to Mr. Burr, a proposal to reopen the casinos, that included a possible sale of the Juegos Companies and their assets to Grand Odyssey failed because SEGOB refused to provide approval. The Respondent addressed this issue in paragraphs 415-416 of the Respondents’ Counter-Memorial. As the Tribunal will see from the Counter-Memorial, the Taylor Affidavit establishes that negotiations for that alleged</p> | <p>Request denied: relevance and materiality not established.</p> |

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| | | also would have been prepared and kept in the ordinary course of business. | fishing expedition. Claimants object to Respondent's request on this ground as well. | transaction were fraudulent. It is in this context that the requested documents are relevant within the meaning of the applicable IBA Rules. | |
| 38. | <p>1. All emails to and from Gordon Burr and the Board of Directors or Managers of the Mexican Enterprises;</p> <p>2. An email dated 7-29-16 from Gordon Burr to Board of Managers of B-MEX, B-MEX II and/or Las Palmas.</p> | <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> <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>Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to Respondents' General Justification for its requests for documents concerning "Mr. Taylor's Affidavit".</p> <p>In addition, Claimants object to this request, because Mexico's request soliciting "[a]ll emails to and from Gordon Burr and the Board of Directors or Managers of the Mexican Enterprises" is overbroad and simply an impermissible fishing expedition that does not comply with IBA Rules, Art. 3.3(a)(i) or (ii) and is therefore unreasonably burdensome under IBA Rules, Art. 9.2(c).</p> <p>Mexico also fails to establish the relevance and materiality of the requested documents to the outcome of the present case (IBA Rules, Art. 9.2(a)), as Mexico provides no explanation at all as to how the requested documents—i.e., "emails to and from Gordon Burr and the Board of Directors or Managers of the Mexican Enterprises"—are relevant and material to the outcome of the case. Respondent's request therefore amounts to the type of fishing expedition that should not be allowed in this arbitration.</p> | <p>Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as if fully set forth herein.</p> <p>Contrary to the 37 Claimants' allegations, the Respondent's request is not overly broad and not a fishing expedition. The requested documents are relevant within the meaning of the applicable IBA Rules.</p> | <p>1. Request denied: overly broad, unduly burdensome.</p> <p>2. Request granted.</p> |
| 39. | Records of Communication and/or Internal Documents | See general justification. | Claimants refer to and incorporate by reference as if fully set forth herein Claimants' General Objections to | Respondent refers to and incorporates the Respondents' Response to the Claimants' | Request denied: Relevance and |

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| | <p>sent by Gordon Burr, or by any other Claimant, or sent on behalf of a Mexican Enterprise to the FBI.).</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 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> | <p>Respondents’ General Justification for its requests for documents concerning “Mr. Taylor’s Affidavit”.</p> <p>Additionally, Claimants object to this request on the basis that the documents requested does not align with Mexico’s stated justification and therefore does not comply with IBA Rules, Art. 3.3(b). Mexico seeks to justify its request by stating that “[w]hat 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.” However, Mexico provides no explanation as to how the communications and documents exchanged with the FBI will contain information relevant to the issue of whether the doctrine of clean hands is applicable to the present case.</p> | <p>General Objections by reference as if fully set forth herein.</p> <p>According to the Taylor Affidavit, the Mexican Enterprises made improper cash payments to a number of people, including Pepe Rojas. The Taylor Affidavit also establishes that Gordon Burr claimed that he did everything possible to stop Pepe Rojas from “stealing our companies” including keeping the FBI informed of “everything that was happening.”</p> <p>Mr. Burr would not keep the FBI “informed of everything that was happening” if he did not believe that some form of improper or illegal activity was occurring with or within the Mexican Enterprises. The information provided to the FBI is relevant to the applicability of the clean hands doctrine because it is contemporaneous reporting of potential improper or illegal activity by one of the directing minds of the Mexican enterprises.</p> <p>Moreover, Mr. Rojas was not an employee or agent of the Respondent. Whatever activity took place between Mr. Rojas and the Mexican enterprises that led Mr. Burr to believe that the casinos could be “stolen”, and to provide information to the FBI, is relevant to the application of the clean hands doctrine and to</p> | <p>materiality not established.</p> |
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| | | | | <p>the assessment of damages. In this context, the involvement of the Claimants, or any of them, in improper or illegal activity that took place with Mr. Rojas could potentially exclude the claim from treaty protection, and also significantly limit damages attributable to the Respondent. It is also relevant if Gordon Burr obtained immunity from the FBI for himself, for the Mexican enterprises or any of the other Claimants. If immunity was granted, then the Respondent is entitled to know the improper or illegal activities were subject to that immunity.</p> <p>In assessing the relevance of this information, it is worthwhile to highlight that the Taylor Affidavit provides evidence that:</p> <ol style="list-style-type: none">1. Pepe Rojas was paid 4 million from the Mexican enterprises (page 12 of 53);2. Gordon Burr needed extra security because Pepe Rojas was going to kill him (page 14 of 53);3. Gordon Burr “got immunity” (page 15 of 53); and <p>In an email written by Gordon Burr, he confirms that he did everything he could to stop Pepe</p> | |
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| | | | | Rojas including going to the FBI (page 31 of 53) | |
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F. Miscellaneous

| N o | 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 |
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| 40. | The contract between BlackCube and Claimants, including but not limited to the Engagement Letter. | <p>In paragraph 218 of the Memorial, 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>” (Exhibit CWS-57, paragraph 26).</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 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</p> | <p>Pursuant to the Tribunal’s PO No. 9, Claimants do not raise an objection to this request on grounds of privilege and/or confidentiality but reserve their right to do so in accordance with Section 2 of the PO No. 9.</p> <p>Claimants object to this request for the following reasons:</p> <p><i>First</i>, for clarity and as indicated in the quoted portions of the Memorial and Avi Yanus’ testimony, Quinn Emanuel retained Black Cube, not Claimants. The hiring of Black Cube, the terms, scope, and purpose of the engagement, as well as the investigations that would be conducted under the same, were discussed and agreed to by and between Quinn Emanuel and Black Cube. As such, Respondent has failed to establish that the requested documents (i.e., “[t]he contract between Black Cube and Claimants”) are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)).</p> <p><i>Second</i>, the documents requested—if they were to exist—would neither be sufficiently relevant to the case nor material to its outcome</p> | <p>The Claimant’s objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, the Respondent clearly stated that the requested documents are necessary to understand the scope of work, the instructions given to Black Cube and if the contract provides a contingency fee in order to determine whether Black Cube has an economic interest in this arbitration.</p> <p>It is irrelevant whether Black Cube was retained by Quinn Emanuel or the Claimants. In fact, the Memorial is not clear about this point. While it states that “the Claimants hired Black Cube” (Memorial, ¶ 218), Mr. Avi Yanus testified that “Black Cube was retained by attorney for the Claimants” (Exhibit CWS-57, ¶ 26)). In any event, Quinn Emanuel acts for the Claimants and it stands to reason that it engaged Black Cube on behalf of the Claimants.. Hence, for greater certainty, the request should be understood in the context of the contract between Quinn Emmanuel and Black Cube.</p> | Request denied: relevance and materiality not established. |

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| | <p>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 paragraph 434 of its Counter-Memorial 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> | <p>(IBA Rules, Art. 9.2(a)). Mexico justifies this request by stating that “[t]he 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 Black Cube. However, as indicated in the quoted portions of the Memorial and Avi Yanus’ testimony, Mexico is already clearly aware of “the scope of work and instructions provided by [Quinn Emanuel] to Black Cube”. Black Cube was hired and instructed by Quinn Emanuel to “investigate Mexico’s seemingly inexplicable behavior towards them, particularly the motives behind the Mexican revocation of E-Games’ permit.” (Memorial, ¶ 218; CWS-57, ¶ 26). As such, the documents requested will be unnecessary for Mexico to understand “the scope of work and instructions provided by [Quinn Emanuel] to Black Cube”. In any event, the information concerning “the scope of work and instructions provided by [Quinn Emanuel] to Black Cube” is completely irrelevant and immaterial to the outcome of the case and Mexico fails to explain in any specific manner how such information is relevant and material to the outcome of the case.</p> <p>Mexico’s further stated justification for this request is purportedly that the requested documents “will show whether Black Cube was hired on a contingency fee and has economic interests in this proceeding.” However, Respondent’s justification is purely speculative and Respondent does not provide any evidence to question the integrity or motive of Black Cube. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the</p> | <p><i>Second</i>, the Claimants state that “Black Cube was hired and instructed by Quinn Emanuel to ‘investigate Mexico’s seemingly inexplicable behavior towards them, particularly the motives behind the Mexican revocation of E-Games’ permit’”, but this is too generic. Mexico is entitled to know not only the general-purpose but all the other objectives and specific tasks entrusted to Black Cube, and the particular conditions, including whether a contingency fee was included. It is relevant to determine whether Black Cube has a financial interest in the case. This can only be ascertained by reviewing Black Cube’s contract, including the engagement letter.</p> <p><i>Third</i>, the Respondent request is relevant and material to the outcome of this case, to show the economic interest of Black Cube in this proceeding, and the scope of the work performed. The Claimants, however, object to this request arguing that it is speculative, but the Respondent is aware of Black Cube’s practice to include contingency fees in its contracts:</p> <ul style="list-style-type: none"> • Quinn Emmanuel is representing other claimants in another investment arbitration against Mexico. Quinn Emmanuel also retained Black Cube to conduct a similar investigation. The documents obtained in that arbitration show that a contingency fee was agreed. • Public sources also show that the negotiation of contingency clauses is usual for Black Cube. In the Weinstein case, there are several press articles that describe such deals. One of those articles mentions that: “Farrow reported | |
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| | | | <p>foundation for their speculative request. Mexico's request thus amounts to nothing more than a fishing expedition that should not be allowed in this arbitration.</p> <p>In addition and for the reasons explained above, complying with this request would be unreasonably burdensome, given that it seeks unnecessary and duplicative information (IBA Rules, Art. 9.2(c)).</p> | <p>that Boies' firm paid Black Cube \$100,000 on Oct. 28, 2016, toward an eventual \$600,000 invoice. <u>Black Cube was promised a "success fee" of \$300,000 if it managed to block the Times from publishing its report on Weinstein.</u>" The article also provides a copy of Black Cube's engagement letter with the client (item #16 in the letter) signed by Mr. Yanus.¹⁰</p> <p>As can be seen, there are sufficient reasons that justify this request.</p> <p><i>Fourth</i>, the request is not unreasonably burdensome and duplicative. On the contrary, they would be producing the necessary information to determine the objectives and specific tasks entrusted to Black Cube and, mainly, if said company has an economic interest in the arbitration outcome.</p> <p>Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein.</p> | |
| 41. | Complete and unedited .mp3 files (or original format) attached to Mr. Avi Yanus Witness Statement (Exhibit CWS-57). | 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 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 | <p>Claimants object to this request because it is based on a false factual premise. Respondent asserts that Claimants have not provided the complete and unedited recordings and in particular notes that it views that the following mp3 files are edited or incomplete:</p> <ul style="list-style-type: none"> - "OAM 07.25.2018 (2).mp3" - "OAM 07.25.2018 (4).mp3" - "KR 12.14.2018 (1).mp3" | <p>The Claimant's objections are without merit and should be dismissed for the following reasons:</p> <p>The Claimants assert that "the recordings produced as Annex A to Avi Yanus Witness are complete recordings of the conversations that Black Cube agents". However, the Respondent noticed that the recordings identified in this request seem to be edited or incomplete. Specifically:</p> | Request granted. |

¹⁰ See, <https://www.npr.org/sections/thetwo-way/2017/11/07/562631069/report-weinstein-hired-agents-to-investigate-and-suppress-accusations-against-hi>

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| | <p>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">- “OAM 07.25.2018 (2).mp3”- “OAM 07.25.2018 (4).mp3”- “KR 12.14.2018 (1).mp3” <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 paragraph 222 of the Memorial 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 statements during the meeting”. This is also mentioned in Mr. Yanus witness statement at paragraph 10 (CWS-57). Furthermore, Mr. Yanus testifies at paragraph 11 that: “Black Cube preserves each of the audio recordings in its entirety and does not</p> | <p>However, Mexico’s assertion is not true. As testified by Avi Yanus, “[f]or purposes of producing copies of the recordings to the Tribunal, Black Cube used software to distort the voices of the agents in order to protect their identities and ensure that they are not subject to retaliation. Black Cube made no other alterations to the recordings. Black Cube, however, maintains the originals of the recordings without any alterations in its files.” (CWS-57, ¶ 11).</p> <p>As such, the recordings produced as Annex A to Avi Yanus Witness Statement are not modified in any way from the originals kept by Black Cube, except for the voice alterations that Black Cube made to protect the identities of its agents. Claimants also confirm that the recordings produced as Annex A to Avi Yanus Witness are complete recordings of the conversations that Black Cube agents had with the two interviewees: Obdulio Ávila Mayo and Kevin Rosenberg.</p> | <ul style="list-style-type: none">• The recording of the meeting on 25 July 2018, ends at minute 9:28 of the OAM 07.25.2018(4).mp3 file, but the conversation was still on going.• The recording of the meeting on 14 December 2018, with Mr. Kevin Rosenberg, KR 12.14.2018(1).mp3 file, begins in the middle of the conversation, so the beginning is missing.• At minute 27:45 of the OAM 07.25.2018 (2) mp3 file (meeting of July 25, 2018) Mr. Ávila said “...<i>principalmente en Exiting Games sí había extranjeros, pero el control...</i>” and the recording is interrupted before Mr. Ávila finished his comment. <p>Finally, the Respondent refers to and incorporates the Respondents’ Response to the Claimants’ General Objections by reference as is fully set forth herein.</p> | |
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| | | alter the original recordings in any way” and that “Black Cube, however, maintains the originals of the recordings without any alterations in its files.” | | | |
| 42. | <p>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.</p> <p>2. BlackCube’s transcripts of the interviews referred to in the first item of this request.</p> <p>3. Reports elaborated by</p> | <p>Mr. Yanus testifies in paragraph 27 of his Witness Statement (CWS-57) 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 at paragraph 11 (CWS-57) 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,</p> | <p>Pursuant to the Tribunal’s PO No. 9, Claimants do not raise an objection to this request on grounds of privilege and/or confidentiality but reserve their right to do so in accordance with Section 2 of the PO No. 9.</p> <p>Claimants object to this request on the following grounds.</p> <p><i>First</i>, Respondent fails to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)). Respondent unjustifiably speculates that Black Cube may have “cherry picked recordings that favour the Claimants’ case while leaving out other interviews or recordings that go against their interests.” But Mexico does not offer any evidence to support its conjecture. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> <p><i>Second</i>, Claimants object to this request on the basis that while per Procedural Order No. 1 and the IBA Rules, Respondent’s right is limited to examining any document on which the witness <i>has relied</i> in his statement, Respondent nevertheless explicitly seeks to obtain recordings, transcripts, and reports—in the event that any of documents responsive to</p> | <p>The Claimant’s objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, it is reasonable to assume that the documents requested exist. Mr. Yanus stated that Black Cube <u>contacted several sources</u> familiar “with the circumstances surrounding Claimants’ operation in Mexico as well as Mexico’s closure of Claimants’ casinos”, but concluded that Black Cube made contact with two persons (i.e., Mr. Avila and Mr. Rosenberg). (CWS-57, ¶ 28). Mr. Yanus’ statement provide reasonable basis to believe that Black Cube contacted more than two persons. Moreover, the Claimants’ objection to this request provides further support to the Respondent’s reasonable belief that the requested documents exist. For instance, in their objection the Claimants stated that “all of the recordings <u>on which witness Avi Yanus relied</u> in his statement have been produced as Annex A to his witness statement”. It can be reasonable inferred that there are other recordings on which Mr. Yanus did not rely in his statement, and, therefore, that Mr. Yanus selected only the recordings of two persons for his statement.</p> <p><i>Second</i>, Claimants stated that they are not required to provide the requested information because the Avi Yanus Witness Statement was not based on such information. However, neither the OPI nor</p> | Request denied: relevance and materiality not established. |

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| | BlackCube in relation to its agents' findings. | maintains the originals of the recordings without any alterations in its files." | this request were to exist—that were <i>not</i> relied upon by Avi Yanus in his witness statement. Procedural Order No. 1, Section 17.1 provides that witness statements and their supporting documentations shall be filed together with the parties' pleadings. Article 4.5(b) of the IBA Rules states that the witness statement shall contain "[d]ocuments on which the witness relies that have not already submitted." Claimants have complied with the relevant provisions of Procedural Order No. 1 and the IBA Rules because all of the recordings on which witness Avi Yanus relied in his statement have been produced as Annex A to his witness statement. | the IBA Rules allows a party to object a request of document on the grounds argued by the Claimants. Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein. | |
| 43. | Internal documents and records of communications between Claimants and BlackCube containing an analysis, opinion or discussion regarding: <ul style="list-style-type: none"> The people that BlackCube interviewed for the purpose of this arbitration; The "targets" that | 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, | Pursuant to the Tribunal's PO No. 9, Claimants do not raise an objection to this request on grounds of privilege and/or confidentiality but reserve their right to do so in accordance with Section 2 of the PO No. 9. Claimants object to this request on the following grounds. <i>First</i> , this request solicits internal documents or communications that contain an analysis, opinion, or discussion regarding a wide-ranging number of topics and over an unspecified period of time. This is simply an impermissible fishing expedition that does not comply with IBA Rules, Art. 3.3(a)(i) or (ii) and is therefore unreasonably burdensome under IBA Rules, Art. 9.2(c). <i>Second</i> , to clarify, Quinn Emanuel retained Black Cube, not Claimants. The hiring of Black Cube, the terms, scope, and purpose of the engagement, as well as the investigations that would be conducted under the same, were discussed and agreed to by and between | <i>First</i> , the requested documents cover a host of specific issues. The first two bullets of the request refer to the documents and records of communications between Black Cube and the Claimants (or Quinn Emanuel) about the people that Black Cube interviewed for this arbitration and the "targets" that Black Cube was supposed to investigate. About the third category of documents (third bullet), it pertains to documents and records of communications between Black Cube and the Claimants (or Quinn Emanuel) describing the decision to include the interviews of Messrs. Ávila and Rosenberg (and the parts that were included) in the final report, and whether there were other people, institutions or competitors that were also investigated and decided not to include in the final report. The Claimants argue that the request does not provide a specific period of time. However, the Memorial and its exhibits, do not provide enough references about the | Request denied: relevance and materiality not established, and unreasonably burdensome. |

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| | <p>BlackCube was supposed to investigate;</p> <ul style="list-style-type: none">• The final report prepared by BlackCube | <p>institutions or competitors that were investigated. Black Cube could have conducted a more ample investigation and omitted evidence that was contrary to the Claimants objectives in this proceeding. The requested documents are also 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> | <p>Quinn Emanuel and Black Cube. As such, Respondent has failed to establish that the requested documents are reasonably believed to exist (Procedural Order No. 1, Section 15.2.1; IBA Rules, Art. 3.3(a)).</p> <p><i>Third</i>, the relevance and materiality of these documents to the outcome of the case is questionable given that Respondent's justification for this request is purely speculative (IBA Rules, Art. 9.2(a)). Respondent unjustifiably speculates that Black Cube "could have conducted a more ample investigation and omit evidence that was contrary to the Claimants objectives in this proceeding." But Mexico does not provide any evidence to support this assertion. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> | <p>date Black Cube started to work for Quinn Emmanuel for the purposes of this arbitration. In any event, the documents can be easily identified since they must be in possession, custody, or control of Black Cube. In the file containing the documents related to the contract with Black Cube and its investigation.</p> <p><i>Second</i>, for purpose of this request, it is irrelevant whether Black Cube was retained by Quinn Emanuel or the Claimants. In fact, the Memorial is not clear about this point. While it states that "the Claimants hired Black Cube" (Memorial, ¶ 218), Mr. Avi Yanus testified that "Black Cube was retained by attorney for the Claimants" (Exhibit CWS-57, ¶ 26)). In any event, Quinn Emanuel acts for the Claimants. Hence, for greater certainty, the request should be understood in the context of the contract between Quinn Emmanuel and Black Cube.</p> <p><i>Third</i>, the request is not speculative. It is reasonable to assume that the documents requested exist. Mr. Yanus stated that Black Cube <u>contacted several sources</u> familiar "with the circumstances surrounding Claimants' operation in Mexico as well as Mexico's closure of Claimants' casinos", but concluded that Black Cube made contact with two persons (i.e., Mr. Avila and Mr. Rosenberg). (CWS-57, ¶ 28). Mr. Yanus' statement provide reasonable basis to believe that Black Cube contacted more than two persons. Moreover, due to the Claimants' objections to this request, it is reasonably to infer that the requested documents exist.</p> | |
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| | | | | Finally, the Respondent refers to and incorporates the Respondents' Response to the Claimants' General Objections by reference as is fully set forth herein. | |
| 44. | <p>Financial statements and ledgers of the following companies:</p> <ul style="list-style-type: none"> - B-Mex - B-Mex II - Oaxaca Investments - B-Cabo LLC | <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 (Memorial, paragraphs 64-65, 72). 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 (Counter-Memorial, paragraph 481). 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 Claimants because they would have been prepared and kept in the regular course of business.</p> | <p>Claimants object to this request for the following grounds.</p> <p><i>First</i>, Claimants object to this request as it is unduly burdensome on Claimants (IBA Rules, Art. 9.2(c)) because it lacks any temporal limitation and seeks documents that can potentially span an excessively long period of fifteen years. In addition, Claimants have already produced and submitted documents and testimony in this proceeding that evidence Claimants' protected investments in relation to Cabo, Cancun, and Online Gaming projects. <i>See, e.g.</i>, Exhibit C-88, Exhibit C-65, Exhibit C-66; CWS-50, ¶¶ 64-87; CWS-51, ¶¶ 67-80; CWS-53, ¶¶ 25-34). Given that Respondent's request is duplicative and unnecessary, Respondent's request is unreasonably burdensome. d</p> <p><i>Second</i>, Claimants object to this request because the documents requested are neither sufficiently relevant to the case nor material to its outcome (IBA Rules, Art. 9.2(a)). Mexico's assertion that Claimants have failed to prove the existence of a protected investment in relation to Cabo, Cancun, and Online Gaming Projects is unfounded and clearly contradicted by the record, including the relevant testimony and supporting documentation produced by Claimants along with their Memorial. Given that Respondent's justification for this request is based on a false factual premise, the relevance</p> | <p>The Claimant's objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, the request cannot possibly be considered unduly burdensome. These are basic corporate documents that any company would have readily available for a variety of reasons. However, in order to ease the Claimants concerns, the Respondent is willing to limit its request to the period between 2007 and 2014</p> <p>It is worth noting that the Claimants asserted in their Memorial that they "invested an additional US\$250,000 into the Cancun Project and US\$600,000 into the Cabo Project" (Memorial, ¶ 65). The Claimants object the request arguing that they "have already produced and submitted documents and testimony in this proceeding that evidence Claimant's protected investments in relation to Cabo, Cancun, and Online Gaming projects" and referred to some exhibits and portions of witness statements in support of their objection. It is not for them to unilaterally decide whether the documents they submitted into evidence suffice to prove the existence of the Claimants' alleged investments. Obviously, this is disputed by the Respondent. Moreover, it is plain to see that the documents cited in the Claimants'</p> | <p>Request denied: relevance and materiality not established; unduly burdensome.</p> |

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| | | | <p>and materiality of the requested documents to the case and its outcome is highly questionable. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. Mexico should not be allowed to use the document production phase of this proceeding to engage in a fishing expedition that relies on guess work and wishful thinking.</p> | <p>objections do not prove the existence of an investment.</p> <p>Exhibit C-88 contains a Right of First Refusal Agreement between Colorado Cancun, LLC and B-Mex II, LLC entered into 27 April 2011. Under this agreement, the former would pay the latter an amount of USD\$250,000 (Payment Fee) to acquire the right of first refusal to purchase a license to operate a gaming facility under E-Games' agreement with E-Mex to operate up to 7 dual game facilities. The agreement does not show, however, if the Payment Fee was made or whether the license was purchased.</p> <p>Exhibit C-65 contains an Investment Loan Agreement between B-Cabo LLC and Medano Beach Hotel entered into 5 April 2013. According to the agreement, B-Cabo would lend up to USD\$4 million to the Hotel for the construction of a hotel in Cancun. The agreement also stated the possibility that B-Cabo might not be able to raise the full amount of the loan, in which case, the funds raised would be used as the Loan.</p> <p>Exhibit C-66 contains a letter dated 16 May 2013 from Mr. Burr to the Medano Beach Hotel representatives. In his letter, Mr. Burr noted that the Hotel representatives requested him to provide "some of all of [the] funds" agreed in the Investment Loan Agreement referred to above. Mr. Burr promised to provide funds for \$500,000 "by May 17, 2013". This exhibit, however, does not show whether any loan or transaction ever occurred. It also shows that the loan agreement in Exhibit C-65 had not been made as of the date of Mr. Burr's letter.</p> | |
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| | | | | <p>With respect to the Online Gaming project, the witness statements referred to by the Claimants and the Memorial, are less clear as to any amount transferred or intended to be transferred.</p> <p>For the above reasons, it is impossible to provide a reference of time to the requested documents. However, the information the Respondent is seeking through this request (i.e., evidence regarding any of these alleged investments) must provide sufficient reference to the Claimants. To the extent that those investment were made, the Respondent request the Financial statements and ledgers that support evidence of such alleged investments.</p> <p><i>Second</i>, the Claimants object to this request because, in their opinion, the documents requested “are neither sufficiently relevant to the case nor material to its outcome”. In support of their objection, they stated that they have provided “relevant testimony and supporting documentation produced by Claimants along with their Memorial”. As explained above, the Claimants have not offered any evidence that the alleged investment ever occurred. Therefore, this request is not based on a false factual premise. It is based on what the Claimants have (or have not) produced so far in the record. The requested documents are relevant to determine whether the alleged investments ever occurred, and therefore, the request is relevant to the case and material to its outcome.</p> <p>Finally, the Respondent refers to and incorporates the Respondents’ Response to</p> | |
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| | | | | the Claimants' General Objections by reference as is fully set forth herein. | |
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| 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" (Memorial, paragraph 380).</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 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 (Counter-Memorial, paragraphs 325-327).</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</p> | <p>Pursuant to the Tribunal's PO No. 9, Claimants do not raise an objection to this request on grounds of privilege and/or confidentiality but reserve their right to do so in accordance with Section 2 of the PO No. 9.</p> <p>Claimants object to this request on the following grounds:</p> <p><i>First</i>, this request solicits internal documents that contain "an analysis of any kind" or "discussion" regarding two broad topics and over an unspecified period of time. This is simply an impermissible fishing expedition that does not comply with IBA Rules, Art. 3.3(a)(i) or (ii) and is therefore unreasonably burdensome under IBA Rules, Art. 9.2(c).</p> <p><i>Second</i>, the relevance and materiality of the requested documents to the case and its outcome is highly questionable given that Respondent's justification for this request is based on a false factual premise (IBA Rules, Art. 9.2(a)). Respondent states as its justification that "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." However, as explained in the Memorial and relevant witness statements, at the time that Mexico closed the Casinos, Claimants clearly viewed that "SEGOB was legally prevented from closing down the Casinos because (i) Claimants' appeal proceedings regarding the fulfilment and enforcement of the <i>amparo</i> judgment in the <i>Amparo</i> 1668/2011 proceeding had not yet been resolved and</p> | <p>The Claimant's objections are without merit and should be dismissed for the following reasons:</p> <p><i>First</i>, the request pertains to documents containing the internal analysis or discussions of the District Court's decision of 10 March 2014 and/or E-Games' decision to request permits for each the Claimants' Casinos on 4 April 2014. Due to the relevance of the District Court's decision on E-Games' permit, the Claimants should have discussed or analyzed the effects of the decision on E-Games' permit. E-Games' requests for new permits were, thus, likely the result of those discussions and analysis. Also, the District Court's decision and E-Games' requests for new permits provide a period that can be identified (i.e., between March 2014 and 4 April 2014).</p> <p><i>Second</i>, the Claimants object to this request arguing that the Respondent's justification is based on a false factual premise, but the facts provide support to the request. After District Court's decision, issued on 10 March 2014, the Claimants requested SEGOB new permits. This action reveals that it is likely that the Claimants were aware that, at least as of 10 March 2014, E-Games was operating casinos without a permit in clear breach of the law. There is no logic in requesting a new permit if E-Games still had a valid permit in the Claimants' view. The requested documents will corroborate that the Claimants knew</p> | Request denied: unduly burdensome, and relevance and materiality not established. |

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| | <p>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 Claimants because they would have been prepared and kept in the regular course of business.</p> | <p>Mexican law provides that pending a final resolution of the case, the relevant authorities cannot act to the detriment of any of the parties; and (ii) there was a judicial order that explicitly prevented SEGOB from acting against E-Games pending a final resolution in the <i>Amparo</i> 1668/2011 proceeding.” (Memorial, ¶ 381; CWS-52, ¶ 70). Accordingly, Mexico’s assertion 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” is unfounded and purely speculative, because Claimants always viewed that SEGOB was not allowed to close down the Casinos by virtue of the pending nature of the <i>Amparo</i> 1668/2011 proceeding and the injunctive order in place. Their arguments to the contrary are pure speculation and they are then using their speculative argument as the foundation for their speculative request. In any event, Claimants’ internal discussion or analysis regarding “the District Court’s decision of 10 March 2014 and/or E-Games’ decision to request [new] permits” has no implication on the issue of whether SEGOB was legally allowed to close down Claimants’ casinos.</p> <p><i>Third</i>, to the extent that Mexico seeks to obtain information related to Claimants’ decisions to request new permits, Mexico’s request is unreasonably burdensome because it is duplicative and unnecessary (IBA Rules, Art. 9.2 (c)). In the Memorial and relevant witness statements, Claimants clearly explained the reasons for their application for new permit—that is, it was their good faith effort to fix the unravelling situation while the <i>Amparo</i> 1668/2011 and 1151/2012</p> | <p>that their permit had been effectively revoked.</p> <p><i>Third</i>, the Claimants object the request on the grounds of unreasonably burdensome because it is duplicative and unnecessary. Claimants explained that they requested new permits in a “good faith effort to fix the unravelling situation while the <i>Amparo</i> 1668/2011 and 1151/2012 proceedings were still pending”. However, the requested documents would show the reasons behind the Claimants’ actions after the District Court’s decision of 10 March 2014. The LFJS is clear about the legal consequences of operating a casino without a valid permit. Thus, the relevance of having a valid permit to operate casinos is a legal matter that should have been carefully analyzed and discussed. The opposite would show a lack of due diligence and a high-risk decision.</p> <p>Finally, the Respondent refers to and incorporates the Respondents’ Response to the Claimants’ General Objections by reference as is fully set forth herein.</p> | |
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| | | | proceedings were still pending. (Memorial, ¶ 467; CWS-52, ¶ 73; CWS-50, ¶ 126). | | |
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