

PROCEDURAL ORDER NO. 13

ANNEX A

BEFORE THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT
DISPUTES- ADDITIONAL FACILITY

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

BETWEEN:

**Gordon G. Burr; Erin J. Burr; John Conley; Neil Ayervais; Deana Anthone;
Douglas Black; Howard Burns; Mark Burr; David Figueiredo; Louis Fohn; Debbie
Lombardi; Scott Lowery; Thomas Malley; Ralph Pittman; Daniel Rudden;
Marjorie “Peg” Rudden; Robert E. Sawdon; James H. Watson, Jr.;
B-Mex, LLC; B-Mex II, LLC; Oaxaca Investments, LLC; Palmas South, LLC;
B-Cabo, LLC; Colorado Cancún, LLC; Santa Fe Mexico Investments, LLC;
Caddis Capital, LLC; Diamond Financial Group, Inc.;
Family Vacation Spending, LLC; Financial Visions, Inc.; J. Johnson Consulting, LLC;
J. Paul Consulting; Las KDL, LLC; Mathis Family Partners, Ltd.;
Palmas Holdings, Inc.; Trude Fund II, LLC; Trude Fund III, LLC; Victory Fund, LLC**

Claimants

and

United Mexican States

Respondent

Claimants’ Joint Privilege/Confidentiality Log Over QEU&S Claimants’ Documents

19 April 2021

Pursuant to the Tribunal’s Procedural Order No. 9 dated February 25, 2021 and Procedural Order No. 11 dated April 5, 2021, the 37 Claimants represented by Quinn Emanuel Urquhart & Sullivan (“**QEU&S**”) (the “**QEU&S Claimants**”) and Claimant Randall Taylor (“**Mr. Taylor**”) have conferred and hereby produce a joint privilege/confidentiality log listing 23 documents in the QEU&S Claimants’ possession that the QEU&S Claimants have identified as responsive to the Tribunal’s Procedural Order No. 10 dated March 26, 2021 and over which either the QEU&S Claimants or Mr. Taylor claim can be withheld on the basis of privilege and/or confidentiality. Where the QEU&S Claimants and Mr. Taylor disagree over a claim of privilege/confidentiality by the other, it is indicated as such in the joint privilege/confidentiality log below.

Document log number 1	
<i>Requested Party</i>	Date: 01/14/2016
	Author(s)/Sender(s)
	Recipient(s)
	Minutes of Special Meeting of Managers B-Mex LLC, B-Mex II, LLC and Palmas South, LLC discussing details of Claimants’ Engagement Agreement with NAFTA Counsel
	<p><i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> The Engagement Agreement entered into between Quinn Emanuel Urquhart & Sullivan, LLP (“QEU&S”) and Claimants requires confidentiality as to the terms and details of said agreement. The Minutes of Special Meeting of Managers B-Mex LLC, B-Mex II, LLC and Palmas South, LLC were entered at a time when the Engagement Agreement with QEU&S was being negotiated, and the minutes reflect the terms and of the agreement as well as other work product and attorney-client communications. The document is protected from disclosure under the attorney work-product doctrine and the attorney-client privilege. Under the International Bar Association Rules on the Taking of Evidence in International Arbitration (“IBA Rules”), Article 9.3(c), the Tribunal may take into consideration “the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen.” The QEU&S Claimants expected that the Engagement Agreement and any terms related to the same would be confidential. They also expected that their discussions with counsel would be confidential, privileged and protected from disclosure. Therefore, under the IBA Rules, Articles 9.2(b) and 9.3(c), this document is privileged and confidential and thus not subject to disclosure.</p> <p><i>Taylor objection to QEU&S Claimants’ basis for privilege or confidentiality claim:</i> Under the terms of the Operating Agreement and State Law, the Minutes are available to all members of B-Mex LLC, B-Mex II, LLC and Palmas South, LLC. The Minutes have already been revealed to and circulated among many of the B-Mex members. Quotes from these Minutes are part of the record in the Denver District Court and are available to the public without limitation, in the case Randall Taylor and David Ponto, as Plaintiffs and B-Mex LLC and B-Mex II, LLC, as Defendants.</p>

<i>Requesting Party</i>	<p>Pursuant to Article 9.3(d), the Tribunal may take into account a possible waiver of any applicable legal impediment or privilege by virtue of earlier disclosure. Thus, the fact that the requested documents have been made available to all members of B-Mex LLC, B-Mex II, LLC and Palmas South, LLC, and that quotes from the minutes are publicly available in the Denver District Court favours a finding that the Claimants have waived any potential legal impediment or privilege that would impede the disclosure of the document.</p> <p>The Respondent requests that, to the extent that the Minutes of the Special Meeting of Managers contains or describes the terms of the Engagement Agreement that information should be redacted, and the document produced to the Respondent. Alternatively, Claimants should produce a copy of the document for the Tribunal’s eyes only for a final determination on the objection to production.</p>
<i>Tribunal</i>	<p>The QE Claimants are directed to produce the 14 January 2016 Minutes of Special Meeting of Managers B-Mex LLC, B-Mex II, LLC and Palmas South, LLC, <u>subject to</u> the redaction of those portions reflecting or recording (i) the terms of the Engagement Agreement and (ii) any attorney work product and attorney-client communications, <u>save insofar</u> as such portions have been previously disclosed in litigation between Randall Taylor, David Ponto and B-Mex LLC and B-Mex II, LLC, which portions should remain unredacted.</p>
Document log number 2	
<i>Requested Party</i>	Date: 05/26/2005
	Author(s)/Sender(s): Roberto Ignacio Ortuño Burgoa
	Recipient(s): Antonio Moreno
	Memorandum from outside counsel to B-Mex, LLC to the legal representative of one of the Claimants’ Mexican Companies containing legal advice regarding the legality of the Monterrey Resolution
	<i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> Attorney-Client Privilege; IBA Rules, Articles 9.2(b) and 9.3(a).
<i>Requesting Party</i>	<p>Pursuant to Article 9.3(d), the Tribunal may take into account a possible waiver of any applicable legal impediment or privilege by virtue of, <i>inter alia</i>, “affirmative use of the Document, statement or oral communication or advice contained therein”. At paragraphs 22, 32 and 33 of its Memorial the Claimants argue that they conducted extensive due diligence to ensure that operations under Monterrey’s Resolution were legal. It is the Respondent position that, by relying on this advice to argue that point, they have waived any confidentiality or privilege issues applicable to the advice contained in the requested document.</p>
<i>Tribunal</i>	<p>No assertion is made in paragraphs 22 and 32 of the Memorial as regards the conclusions reached by legal counsel regarding the legality of the Monterrey Resolution. However, such assertion clearly is made in paragraph 33: “Both Mexican law firms determined that JEV Monterrey’s operations were legal and that Monterrey’s Resolution was a valid</p>

	<p>administrative instrument that allowed JEV Monterrey to operate certain skill gaming machines without SEGOB’s further authorization”. The Claimants cannot disclose (and thereby waive privilege over) the legal contents of the memorandum yet rely on privilege to resist the disclosure of the relevant portions of the memorandum recording that contents. The QE Claimants are therefore directed to produce the 26 May 2005 memorandum, <u>subject to</u> redaction of any portions unrelated to the conclusion that “JEV Monterrey’s operations were legal and that Monterrey’s Resolution was a valid administrative instrument that allowed JEV Monterrey to operate certain skill gaming machines without SEGOB’s further authorization”.</p>
Document log number 3	
<i>Requested Party</i>	Date: 07/11/2008
	Author(s)/Sender(s): Mike Baker
	Recipient(s): Gordon Burr
	Communication between Prescience and Claimants with respect to Mr. Rojas Cardona
	<p><i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> On the advice of counsel, Gordon Burr engaged Prescience LLC’s services, an intelligence firm, to perform due diligence and background investigation of Mr. Rojas Cardona. Mr. Burr’s expectation at the time he engaged Prescience LLC, mainly due to security concerns, was that the terms of the engagement and any communications, work product and/or documents resulting from said engagement would remain confidential. Therefore, under the IBA Rules, Articles 9.2(b) and 9.3(c), this document is privileged and confidential and thus not subject to disclosure.</p>
<i>Requesting Party</i>	<p>Claimants have failed to identify the basis for their claim of legal impediment or privilege, required under Article 9.2(b).</p> <p>Respondent notes that a Party’s purported expectations are not an alternative basis for claiming confidentiality or privilege over a document under Article 9.3(c). That provision simply states that a Tribunal “may take into account: [...] the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen.” It is clear from the foregoing that establishing the basis for the legal impediment or privilege is still required to seek exclusion from production.</p> <p>It is also worth noting that, under Article 9.3(d), the Tribunal may take into account: “any possible waiver of any applicable legal impediment or privilege by virtue of [...] affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise”. The Claimants have relied on Prescience’s advice to justify the decision to enter into a partnership with Mr. Rojas (See CWS 50, ¶¶ 38, 45 and Memorial ¶ 84-). Therefore, even if the requested documents were subject to privilege and/or confidentiality (which is denied), it is the Respondent’s position that any privilege or confidentiality has been waived by the Claimants’ reliance on the advice received from Prescience.</p>

<i>Tribunal</i>	The Tribunal does not discern from the description of the 11 July 2008 communication between Prescience and Claimants with respect to Mr. Rojas Cardona the possibility of that document containing legal advice, attorney work product or attorney-client communication. Nor is there any suggestion that the document was created in contemplation of this arbitration. The QE Claimants are therefore directed to produce the 11 July 2008 communication between Prescience and Claimants with respect to Mr. Rojas Cardona.
Document log number 4	
<i>Requested Party</i>	Date: 07/11/2008
	Author(s)/Sender(s): Mike Baker
	Recipient(s): Gordon Burr
	Attachment to communication between Prescience and Claimants with respect to Mr. Rojas Cardona
	<i>QEU&S Claimants' basis for privilege or confidentiality claim:</i> On the advice of counsel, Gordon Burr engaged Prescience LLC's services, an intelligence firm, to perform due diligence and background investigation of Mr. Rojas Cardona. Mr. Burr's expectation at the time he engaged Prescience LLC, mainly due to security concerns, was that the terms of the engagement and any communications, work product and/or documents resulting from said engagement would remain confidential. Therefore, under the IBA Rules, Articles 9.2(b) and 9.3(c), this document is privileged and confidential and thus not subject to disclosure.
<i>Requesting Party</i>	Please refer to Respondent's response re Document log number 3.
<i>Tribunal</i>	The Tribunal does not discern from the description of the attachment to the 11 July 2008 communication between Prescience and Claimants with respect to Mr. Rojas Cardona the possibility of that document containing legal advice, attorney work product or attorney-client communication. Nor is there any suggestion that the document was created in contemplation of this arbitration. The QE Claimants are therefore directed to produce the attachment to the 11 July 2008 communication between Prescience and Claimants with respect to Mr. Rojas Cardona.

Document log number 5	
<i>Requested Party</i>	Date: 11/29/2007
	Author(s)/Sender(s): Prescience LLC
	Recipient(s): Gordon Burr
	Document reflecting key finding of due diligence performed by Prescience LLC on Mr. Rojas Cardona
	<i>QEU&S Claimants' basis for privilege or confidentiality claim:</i> On the advice of counsel, Gordon Burr engaged Prescience LLC's services, an intelligence firm, to perform due diligence and background investigation of Mr. Rojas Cardona. Mr. Burr's expectation at the time he engaged Prescience LLC, mainly due to security concerns, was that the terms of the engagement

	and any communications, work product and/or documents resulting from said engagement would remain confidential. Therefore, under the IBA Rules, Articles 9.2(b) and 9.3(c), this document is privileged and confidential and thus not subject to disclosure.
<i>Requesting Party</i>	Please refer to Respondent's response re Document log number 3.
<i>Tribunal</i>	The Tribunal does not discern from the description of the 29 November 2007 communication between Prescience and Mr. Burr the possibility of that document containing legal advice, attorney work product or attorney-client communication. Nor is there any suggestion that the document was created in contemplation of this arbitration. The QE Claimants are therefore directed to produce the 29 November 2007 communication between Prescience and Mr. Burr.
Document log number 6	
<i>Requested Party</i>	Date: 11/29/2007
	Author(s)/Sender(s): Prescience LLC
	Recipient(s): Gordon Burr
	Attachment to document reflecting key finding of due diligence performed by Prescience LLC on Mr. Rojas Cardona
	<i>QEU&S Claimants' basis for privilege or confidentiality claim:</i> On the advice of counsel, Gordon Burr engaged Prescience LLC's services, an intelligence firm, to perform due diligence and background investigation of Mr. Rojas Cardona. Mr. Burr's expectation at the time he engaged Prescience LLC, mainly due to security concerns, was that the terms of the engagement and any communications, work product and/or documents resulting from said engagement would remain confidential. Therefore, under the IBA Rules, Articles 9.2(b) and 9.3(c), this document is privileged and confidential and thus not subject to disclosure.
<i>Requesting Party</i>	Please refer to Respondent's response re Document log number 3.
<i>Tribunal</i>	The Tribunal does not discern from the description of the attachment to the 29 November 2007 communication between Prescience and Mr. Burr the possibility of that document containing legal advice, attorney work product or attorney-client communication. Nor is there any suggestion that the document was created in contemplation of this arbitration. The QE Claimants are therefore directed to produce the attachment to the 29 November 2007 communication between Prescience and Mr. Burr.
Document log number 7	
<i>Requested Party</i>	Date: 11/29/2007
	Author(s)/Sender(s): Prescience LLC
	Recipient(s): Gordon Burr
	Attachment to document reflecting key finding of due diligence performed by Prescience LLC on Mr. Rojas Cardona
	<i>QEU&S Claimants' basis for privilege or confidentiality claim:</i> On the advice of counsel, Gordon Burr engaged Prescience LLC's services, an intelligence firm, to perform due diligence and background investigation of

	Mr. Rojas Cardona. Mr. Burr’s expectation at the time he engaged Prescience LLC, mainly due to security concerns, was that the terms of the engagement and any communications, work product and/or documents resulting from said engagement would remain confidential. Therefore, under the IBA Rules, Articles 9.2(b) and 9.3(c), this document is privileged and confidential and thus not subject to disclosure.
<i>Requesting Party</i>	Please refer to Respondent’s response re Document log number 3.
<i>Tribunal</i>	The Tribunal does not discern from the description of the attachment to the 29 November 2007 communication between Prescience and Mr. Burr the possibility of that document containing legal advice, attorney work product or attorney-client communication. Nor is there any suggestion that the document was created in contemplation of this arbitration. The QE Claimants are therefore directed to produce the attachment to the 29 November 2007 communication between Prescience and Mr. Burr.
Document log number 8	
<i>Requested Party</i>	Date: 11/29/2007
	Author(s)/Sender(s): Prescience LLC
	Recipient(s): Gordon Burr
	Attachment to document reflecting key finding of due diligence performed by Prescience LLC on Mr. Rojas Cardona
	<i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> On the advice of counsel, Gordon Burr engaged Prescience LLC’s services, an intelligence firm, to perform due diligence and background investigation of Mr. Rojas Cardona. Mr. Burr’s expectation at the time he engaged Prescience LLC, mainly due to security concerns, was that the terms of the engagement and any communications, work product and/or documents resulting from said engagement would remain confidential. Therefore, under the IBA Rules, Articles 9.2(b) and 9.3(c), this document is privileged and confidential and thus not subject to disclosure.
<i>Requesting Party</i>	Please refer to Respondent’s response re Document log number 3.
<i>Tribunal</i>	The Tribunal does not discern from the description of the attachment to the 29 November 2007 communication between Prescience and Mr. Burr the possibility of that document containing legal advice, attorney work product or attorney-client communication. Nor is there any suggestion that the document was created in contemplation of this arbitration. The QE Claimants are therefore directed to produce the attachment to the 29 November 2007 communication between Prescience and Mr. Burr.
Document log number 9	
<i>Requested Party</i>	Date: 11/29/2007
	Author(s)/Sender(s): Prescience LLC
	Recipient(s): Gordon Burr
	Attachment to document reflecting key finding of due diligence performed by Prescience LLC on Mr. Rojas Cardona
	<i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> On the advice of counsel, Gordon Burr engaged Prescience LLC’s services, an

	intelligence firm, to perform due diligence and background investigation of Mr. Rojas Cardona. Mr. Burr's expectation at the time he engaged Prescience LLC, mainly due to security concerns, was that the terms of the engagement and any communications, work product and/or documents resulting from said engagement would remain confidential. Therefore, under the IBA Rules, Articles 9.2(b) and 9.3(c), this document is privileged and confidential and thus not subject to disclosure.
<i>Requesting Party</i>	Please refer to Respondent's response re Document log number 3.
<i>Tribunal</i>	The Tribunal does not discern from the description of the attachment to the 29 November 2007 communication between Prescience and Mr. Burr the possibility of that document containing legal advice, attorney work product or attorney-client communication. Nor is there any suggestion that the document was created in contemplation of this arbitration. The QE Claimants are therefore directed to produce the document reflecting key finding of due diligence performed by Prescience LLC on Mr. Rojas Cardona attached to the attachment to the 29 November 2007 communication between Prescience and Mr. Burr.

Document log number 10	
<i>Requested Party</i>	Date: 11/29/2007
	Author(s)/Sender(s): Prescience LLC
	Recipient(s): Gordon Burr
	Attachment to document reflecting key finding of due diligence performed by Prescience LLC on Mr. Rojas Cardona
	<i>QEU&S Claimants' basis for privilege or confidentiality claim:</i> On the advice of counsel, Gordon Burr engaged Prescience LLC's services, an intelligence firm, to perform due diligence and background investigation of Mr. Rojas Cardona. Mr. Burr's expectation at the time he engaged Prescience LLC, mainly due to security concerns, was that the terms of the engagement and any communications, work product and/or documents resulting from said engagement would remain confidential. Therefore, under the IBA Rules, Articles 9.2(b) and 9.3(c), this document is privileged and confidential and thus not subject to disclosure.
<i>Requesting Party</i>	Please refer to Respondent's response re Document log number 3.
<i>Tribunal</i>	The Tribunal does not discern from the description of the attachment to the 29 November 2007 communication between Prescience and Mr. Burr the possibility of that document containing legal advice, attorney work product or attorney-client communication. Nor is there any suggestion that the document was created in contemplation of this arbitration. The QE Claimants are therefore directed to produce the attachment to the 29 November 2007 communication between Prescience and Mr. Burr.
Document log number 11	
<i>Requested Party</i>	Date: 11/30/2007
	Author(s)/Sender(s): Mike Baker

	Recipient(s): Gordon Burr
	Communication between Prescience and Claimants with respect to Mr. Rojas Cardona
	<i>QEU&S Claimants' basis for privilege or confidentiality claim:</i> On the advice of counsel, Gordon Burr engaged Prescience LLC's services, an intelligence firm, to perform due diligence and background investigation of Mr. Rojas Cardona. Mr. Burr's expectation at the time he engaged Prescience LLC, mainly due to security concerns, was that the terms of the engagement and any communications, work product and/or documents resulting from said engagement would remain confidential. Therefore, under the IBA Rules, Articles 9.2(b) and 9.3(c), this document is privileged and confidential and thus not subject to disclosure.
<i>Requesting Party</i>	Please refer to Respondent's response re Document log number 3.
<i>Tribunal</i>	The Tribunal does not discern from the description of the 30 November 2007 communication between Prescience and Mr. Burr the possibility of that document containing legal advice, attorney work product or attorney-client communication. Nor is there any suggestion that the document was created in contemplation of this arbitration. The QE Claimants are therefore directed to produce the 30 November 2007 communication between Prescience and Mr. Burr.
Document log number 12	
<i>Requested Party</i>	Date: 05/28/2008
	Author(s)/Sender(s): Julio Gutierrez Morales
	Recipient(s): Neil Ayervais
	Email communication between B-Mex management and B-Mex outside counsel seeking legal advice regarding negotiations with BlueCrest and providing legal advice regarding same.
	<i>QEU&S Claimants' basis for privilege or confidentiality claim:</i> Attorney-Client Privilege; IBA Rules, Articles 9.2(b) and 9.3(a).
<i>Requesting Party</i>	Pursuant to Article 9.3(d), the Tribunal may take into account any possible waiver of any applicable legal impediment or privilege by virtue of "affirmative use of the Document, statement, oral communication or advice contained therein". Claimants have relied on the advice obtained from Mr. Gutierrez to argue that "Claimants engaged in extensive due diligence with BlueCrest and Advent" (Memorial, ¶ 83 citing to Julio Gutiérrez Statement, CWS-52, ¶ 14. See also ¶ 15 therein). In doing so, they have waived attorney-client privilege over the requested document.
<i>Tribunal</i>	The QE Claimants' privilege claim is upheld in full. Neither paragraph 84 of the Memorial nor paragraphs 14 and 15 of CWS-52 disclose the <u>contents</u> of the advice sought and rendered in the 28 May 2008 communication from Mr. Guttierrez Morales and thus no issue of waiver arises.
Document log number 13	
<i>Requested Party</i>	Date: 04/08/2013
	Author(s)/Sender(s): Neil Ayervais
	Recipient(s): Julio Gutierrez Morales

	Email from B-Mex’s outside corporate legal counsel to B-Mex outside counsel seeking legal advice related to the Cabo transaction and including attachments provided to assist in rendering legal advice regarding same.
	<i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> Attorney-Client Privilege; IBA Rules, Articles 9.2(b) and 9.3(a).
<i>Requesting Party</i>	Mexico does not challenge the stated claim of privilege and/or confidentiality.
<i>Tribunal</i>	No decision required.

Document log number 14

<i>Requested Party</i>	Date: 04/08/2013
	Author(s)/Sender(s): Neil Ayervais
	Recipient(s): Julio Gutierrez Morales
	Attachment to email from B-Mex’s outside corporate legal counsel to B-Mex outside counsel seeking legal advice related to the Cabo transaction.
	<i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> Attorney-Client Privilege; IBA Rules, Articles 9.2(b) and 9.3(a).
<i>Requesting Party</i>	Mexico does not challenge the stated claim of privilege and/or confidentiality.
<i>Tribunal</i>	No decision required.

Document log number 15

<i>Requested Party</i>	Date: 04/08/2013
	Author(s)/Sender(s): Neil Ayervais
	Recipient(s): Julio Gutierrez Morales
	Attachment to email from B-Mex’s outside corporate legal counsel to B-Mex outside counsel seeking legal advice related to the Cabo transaction.
	<i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> Attorney-Client Privilege; IBA Rules, Articles 9.2(b) and 9.3(a).
<i>Requesting Party</i>	Mexico does not challenge the stated claim of privilege and/or confidentiality.
<i>Tribunal</i>	No decision required.

Document log number 16

<i>Requested Party</i>	Date: 01/18/2016
	Author(s)/Sender(s): Daniel Rudden
	Recipient(s): Neil Ayervais
	Correspondence from a member and manager of B-Mex to B-Mex’s outside corporate legal counsel seeking legal advice from Claimants’ NAFTA counsel relating to various company matters.
	<i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> Attorney-Client Privilege; IBA Rules, Articles 9.2(b) and 9.3(a).
<i>Requesting Party</i>	Claimants’ description states that the correspondence between Messrs. Rudden and Ayervais was for the purpose of “seeking legal advice from Claimants’ NAFTA counsel”, however, neither Mr. Rudden nor Mr.

	<p>Ayervais are recognized as “NAFTA counsel” for the Claimants. This puts into question whether the correspondence at issue was for the purposes of seeking legal advice from Mr. Ayervais in his capacity as “B-Mex’s outside legal counsel” and therefore, would not be subject to attorney-client privilege.</p> <p>The mere fact that Mr. Ayervais is a lawyer does not mean that all communications with him are automatically subject to attorney-client privilege. This is particularly important in this case because Mr. Ayervais is also a claimant party. It cannot be presumed that any correspondence that identifies him as an author or recipient is automatically subject to privilege. Only correspondence in which he is providing legal advice would be subject to attorney-client privilege. Correspondence where he is not providing legal advice must be produced.</p>
<i>Tribunal</i>	<p>The QE Claimants have asserted that the document in question had the purpose of “seeking legal advice”. Their counsel must be presumed to have abided by their professional responsibility obligation of not uncritically parroting that assertion but having verified and confirmed the merit of the assertion. That being the case, it does not matter from which legal counsel the legal advice was sought: privilege would attach regardless. The QE Claimants’ privilege claim is upheld.</p>
Document log number 17	
<i>Requested Party</i>	Date: 07/29/2016
	Author(s)/Sender(s): Gordon Burr
	Recipient(s): Tery Larrew; John Conley; Daniel Rudden
	Email from Gordon Burr to certain members of B-Mex, LLC, B-Mex II, LLC and Palmas South, LLC discussing, <i>inter alia</i> , the details of Claimants’ Engagement Agreement with NAFTA Counsel.
	<p><i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> The Engagement Agreement entered into between QEU&S and Claimants requires confidentiality as to the terms and details of said agreement and is protected from disclosure under the attorney work-product doctrine and the attorney-client privilege. Accordingly, and also pursuant to the Operating Agreements of B-Mex, LLC, B-Mex II, LLC and Palmas South, LLC, Messrs. Burr, Larrew, Conley, and Rudden expected that their communication discussing the details of the Engagement Agreement and QEU&S’ representation of Claimants in the NAFTA arbitration would remain confidential and privileged. Therefore, under the IBA Rules, Articles 9.2(b) and 9.3(c), this document is not subject to disclosure.</p> <p>The QEU&S Claimants also note that a portion of this communication was submitted by Respondent on record as part of Respondent’s Exhibit R-075 (<i>i.e.</i>, Taylor Declaration). The QEU&S Claimants hereby explicitly reserve their right to seek the Tribunal’s leave to exclude Respondent’s Exhibit R-075 in full or in part from the record on the basis that Respondent’s Exhibit R-075 contains confidential and privileged materials that are protected from</p>

	<p>disclosure to third parties other than the QEU&S Claimants and Mr. Taylor for the reasons explained above. The QEU&S Claimants hereby request that Mexico and its counsel return all copies of or destroy Respondent’s Exhibit R-075, or that it redact out any portion of that exhibit that contains any portion of the QEU&S Claimants’ Engagement Agreement with its counsel, as the QEU&S Claimants have not waived privilege or confidentiality with respect to their Engagement Agreement. Moreover, nothing asserted herein should constitute a waiver of any rights to assert privilege and/or confidentiality over this document and/or any other documents.</p> <p><i>Taylor objection to QEU&S Claimants’ basis for privilege or confidentiality claim:</i> There were no lawyers involved in this communication nor was legal advice sought in the communication. The email was shared with Taylor by Rudden the very next day with no request for confidentiality. The email has already been revealed to and circulated among many of the B-Mex members. The full and complete email is part of the record in the Denver District Court in the case Randall Taylor and David Ponto, as Plaintiffs and B-Mex LLC and B-Mex II, LLC, as Defendants and is currently available to the public without limitation.</p>
<p><i>Requesting Party</i></p>	<p>The Claimants offer conflicting descriptions of the document.</p> <p>Mr. Taylor has noted that the parties involved in the requested communications were not lawyers and were not seeking legal advice. If Mr. Taylor’s observations are accurate (and Respondent does not have any reason to put them into question) there would be no basis for a claim of confidentiality or privilege by the QE Claimants on grounds of attorney-client privilege.</p> <p>The QE Claimants acknowledge that the contents of the email are not limited to the discussions of the Engagement Agreement (it is described as “Email from ... discussing, <i>inter alia</i>, the details of Claimants’ Engagement Agreement”). The Respondent requests that, to the extent the email contains or describes the terms of the Engagement Agreement that information should be redacted, and the document produced to the Respondent. Alternatively, Claimants should produce a copy of the document for the Tribunal’s eyes only for a final determination on the objection to production.</p> <p>Moreover, under article 9.3(d) the Tribunal may take into account any possible waiver of any applicable legal impediment or privilege by virtue of earlier disclosure. Mr. Taylor has stated that the “full and complete email” was submitted before the Denver District Court and it is available to the public (Counter-Memorial, ¶ 860). The Respondent therefore submits that any applicable legal impediment or privilege has been waived.</p> <p>Finally, respondent reiterates that Article 9.3(c) does not offer alternative grounds for excluding evidence from production (see Respondent’s objection to Document log number 3), but even if did, Mr. Taylor has noted</p>

	<p>that when Mr. Rudden shared that email with him, he did not ask that it be treated as confidential. Thus, there cannot be an expectation of confidentiality over these documents.</p> <p>The Respondent will not address the issue of Exhibit R-075 here, as it is unrelated to production of documents and more specifically, the privilege log that the Tribunal ordered the parties to prepare. Mexico reserves the right to address the issue of Exhibit R-075, which the Respondent obtained from the publicly available record of the Denver District Court, if and when the Claimants raise it before the Tribunal.</p>
<i>Tribunal</i>	<p>The Tribunal notes that the QE Claimants propose to withhold the 29 July 2016 email on the basis that it “discuss[es], <i>inter alia</i>, the details of Claimants’ Engagement Agreement with NAFTA Counsel” and that “[t]he Engagement Agreement entered into between QEU&S and Claimants requires confidentiality as to the terms and details of said agreement and is protected from disclosure under the attorney work-product doctrine and the attorney-client privilege”. The QE Claimants are directed to produce the 29 July 2016 email, <u>subject</u> to the redaction of those portions recording or reflecting the terms of the Claimants’ Engagement Agreement with QEU&S <u>save insofar</u> as it is already available to the public from the proceedings before the Denver District Court.</p>
Document log number 18	
<i>Requested Party</i>	Date: 09/01/2005
	Author(s)/Sender(s):
	Recipient(s):
	Memorandum from Gordon Burr to investors reflecting and discussing legal advice from outside counsel to the B-Mex Companies regarding the operating authority for Claimants’ intended operations in Mexico. It is protected from disclosure under the attorney work-product doctrine and the attorney-client privilege.
	<i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> Attorney-Client Privilege; IBA Rules, Articles 9.2(b) and 9.3(a).
<i>Requesting Party</i>	<p>Pursuant to Article 9.3(d) the Tribunal may consider any possible waiver of any applicable legal impediment or privilege by virtue of earlier disclosure. Respondent takes the position that any potential attorney-client privilege applicable to the memorandum was waived when it was made available to “investors”. In relation to the foregoing, the Respondent notes that the Claimants have failed to list the recipients (i.e., the investors to whom the memorandum was made available) as indicated by PO 9, item 9 and Annex A.</p> <p>The Respondent notes that notwithstanding that both attorney-client privilege and attorney work-product doctrine are mentioned in the description of the document, only attorney-client privilege has been invoked as a basis for exclusion from production.</p>

<i>Tribunal</i>	The QE Claimants are directed to identify, within one week from their receipt of the Tribunal's decision, the "investors" who were the recipients of the 1 September 2005 memorandum, so as to enable the Tribunal to assess the Respondent's claim of waiver of privilege. Decision reserved.
Document log number 19	
<i>Requested Party</i>	Date: 08/24/2007
	Author(s)/Sender(s): Julio Gutierrez Morales
	Recipient(s): Gordon Burr; Neil Ayervais; Alfredo Moreno
	Memorandum from B-Mex outside counsel to B-Mex management and its outside corporate legal counsel, Mr. Ayervais, providing legal advice regarding the legal status of EDENSA permit. It is protected from disclosure under the attorney-work product doctrine and the attorney-client privilege.
	<i>QEU&S Claimants' basis for privilege or confidentiality claim:</i> Attorney-Client Privilege; IBA Rules, Articles 9.2(b) and 9.3(a).
<i>Requesting Party</i>	The description offered by the Claimant is vague and insufficient to assess whether the Claimants have waived any potential attorney-client privilege by virtue of affirmative use of the document, statement, oral communication or advice contained therein. The Respondent notes that "EDENSA" has not been referred to in any of the Parties' pleadings. The Respondent requests the Tribunal to order the Claimant to elaborate on the description of the document, and reserves the right to object to the entry once the Claimant has done so.
<i>Tribunal</i>	The QE Claimants not having placed reliance on the contents of the 24 August 2007 memorandum in this arbitration, the Tribunal does not discern a basis for a waiver claim. The QE Claimants' privilege call is upheld.
Document log number 20	
<i>Requested Party</i>	Date: 10/31/2013
	Author(s)/Sender(s):
	Recipient(s):
	Account Statement of Video Gaming Services Inc. for October 2013.
	<i>QEU&S Claimants' basis for privilege or confidentiality claim:</i> The Account Statement documents certain transaction made pursuant to a confidential settlement agreement, which requires confidentiality as to the terms of said agreement, including settlement amount. The parties to the settlement agreement had expectations that the agreement and its terms, would remain confidential and disclosure of the terms of that settlement agreement, including the amounts paid pursuant to the agreement, would breach the confidentiality provisions of the agreement. Therefore, under the IBA Rules, Articles 9.2(b), 9.3(b), and 9.3(c), this document, which reflects the confidential terms of settlement agreement, is not subject to disclosure.
<i>Requesting Party</i>	<i>QEU&S Claimants</i> have not shown the relationship between the Account Statement to a settlement agreement, or the existence of the settlement agreement itself. There is no reference in the case file to a settlement agreement celebrated on or around October 31, 2013.

	<p>Moreover, even if the agreement contains confidentiality provisions, such a contractual agreement is not binding upon this Tribunal and does not create a legitimate basis for the Claimants to refuse production. A private contractual agreement between parties to maintain confidentiality is not binding upon this Tribunal. The claim that such a private agreement creates a basis to refuse production is an improper attempt to unduly expand the scope of IBA Rule Article 9.3(b) to protect the Account Statement should be rejected. If the Tribunal were to uphold such a claim, it would undermine the integrity of this arbitrations production process because it would permit claimants to withhold relevant documents so long as they agree (amongst themselves or with third parties) that they will be treated as “confidential”. This would result in circumvention of the general obligation to disclose all relevant documents subject to the limited exceptions recognized in the IBA Rules.</p> <p>Furthermore, <i>QEU&S Claimants</i> did not even attempt to identify the parties to the settlement agreement, but state, without more, that “the parties” to the settlement agreement had expectations that its terms would remain confidential as per the terms of the agreement. Thus, <i>QEU&S Claimants’</i> objection under IBA Rules 9.3(c) should also be rejected.</p>
<i>Tribunal</i>	The QE Claimants are directed to provide (i) the identity of all the parties to the settlement agreement; (ii) the date of the settlement agreement; and (iii) the text of the confidentiality provision in the settlement agreement relied upon. Decision reserved.
Document log number 21	
<i>Requested Party</i>	Date: 11/29/2013
	Author(s)/Sender(s):
	Recipient(s):
	Account Statement of Video Gaming Services Inc. for November 2013.
	<i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> The Account Statement documents certain transactions made pursuant to a confidential settlement agreement, which requires confidentiality as to the terms of said agreement, including settlement amount. The parties to the settlement agreement had expectations that the agreement and its terms would remain confidential and disclosure of the terms of that settlement agreement, including the amounts paid pursuant to the agreement, would breach the confidentiality provisions of the agreement. Therefore, under the IBA Rules, Articles 9.2(b), 9.3(b), and 9.3(c), this document, which reflects the confidential terms of settlement agreement, is not subject to disclosure.
<i>Requesting Party</i>	<p>Please refer to Document log number 20.</p> <p>In addition, <i>QEU&S Claimants</i> have not shown the relationship between the Account Statement to a settlement agreement, or the existence of the settlement agreement itself. There is no reference in the case file to a settlement agreement celebrated on or around November 29, 2013. The</p>

	<p>attempt to unduly expand the scope of IBA Rule Article 9.3(b) to protect the Account Statement should be rejected.</p> <p>Furthermore, <i>QEU&S Claimants</i> did not even attempt to identify the parties to the settlement agreement, but state, without more, that “the parties” to the settlement agreement had expectations that its terms would remain confidential as per the terms of the agreement. Thus, <i>QEU&S Claimants’</i> objection under IBA Rules 9.3(c) should also be rejected.</p>
<i>Tribunal</i>	The QE Claimants are directed to provide (i) the identity of all the parties to the settlement agreement; (ii) the date of the settlement agreement; and (iii) the text of the confidentiality provision in the settlement agreement relied upon. Decision reserved.
Document log number 22	
<i>Requested Party</i>	Date: 12/31/2013
	Author(s)/Sender(s):
	Recipient(s):
	Account Statement of Video Gaming Services Inc. for December 2013.
	<i>QEU&S Claimants’ basis for privilege or confidentiality claim:</i> The Account Statement documents certain transactions made pursuant to a confidential settlement agreement, which requires confidentiality as to the terms of said agreement, including settlement amount. The parties to the settlement agreement had expectations that the agreement and its terms would remain confidential and disclosure of the terms of that settlement agreement, including the amounts paid pursuant to the agreement, would breach the confidentiality provisions of the agreement. Therefore, under the IBA Rules, Articles 9.2(b), 9.3(b), and 9.3(c), this document, which reflects the confidential terms of settlement agreement, is not subject to disclosure.
<i>Requesting Party</i>	<p>Please refer to Document log number 20.</p> <p>In addition, <i>QEU&S Claimants</i> have not established the relationship between the Account Statement and a yet to be identified settlement agreement, or the existence of the settlement agreement itself. There is no reference in the case file to a settlement agreement celebrated on or around December 31, 2013. The attempt to unduly expand the scope of IBA Rule Article 9.3(b) to protect the Account Statement should be rejected.</p> <p>Furthermore, <i>QEU&S Claimants</i> did not even attempt to identify the parties to the settlement agreement, but they state, without more, that “the parties” to the settlement agreement had expectations that its terms would remain confidential as per the terms of the agreement. Thus, <i>QEU&S Claimants’</i> objection under IBA Rules 9.3(c) should also be rejected.</p>
<i>Tribunal</i>	The QE Claimants are directed to provide (i) the identity of all the parties to the settlement agreement; (ii) the date of the settlement agreement; and (iii) the text of the confidentiality provision in the settlement agreement relied upon. Decision reserved.
Document log number 23	

<i>Requested Party</i>	Date: 02/28/2014
	Author(s)/Sender(s):
	Recipient(s):
	Account Statement of Video Gaming Services Inc. for February 2014.
	<i>QEU&S Claimants' basis for privilege or confidentiality claim:</i> The Account Statement documents certain transactions made pursuant to a confidential settlement agreement, which requires confidentiality as to the terms of said agreement, including settlement amount. The parties to the settlement agreement had expectations that the agreement and its terms would remain confidential and disclosure of the terms of that settlement agreement, including the amounts paid pursuant to the agreement, would breach the confidentiality provisions of the agreement. Therefore, under the IBA Rules, Articles 9.2(b), 9.3(b), and 9.3(c), this document, which reflects the confidential terms of settlement agreement, is not subject to disclosure.
<i>Requesting Party</i>	<p>Please refer to Document log number 20.</p> <p>In addition, <i>QEU&S Claimants</i> have not shown the relationship between the Account Statement to a settlement agreement, or the existence of the settlement agreement itself. There is no reference in the case file to a settlement agreement celebrated on or around February 28, 2014. The attempt to unduly expand the scope of IBA Rule Article 9.3(b) to protect the Account Statement should be rejected.</p> <p>Furthermore, <i>QEU&S Claimants</i> did not even attempt to identify the parties to the settlement agreement, but they stated, without more, that “the parties” to the settlement agreement had expectations. Thus, <i>QEU&S Claimants' objection</i> under IBA Rules 9.3(c) should also be rejected.</p>
<i>Tribunal</i>	The QE Claimants are directed to provide (i) the identity of all the parties to the settlement agreement; (ii) the date of the settlement agreement; and (iii) the text of the confidentiality provision in the settlement agreement relied upon. Decision reserved.