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Date: July 24, 2003

To: Mr. Gonzalo Flores, ICSID - (202) 522-2615
Mr. Hugo Perezcano Diaz - +52.5557.299.310

From: James D. Crosby

Re: Article 1134 Motion for Interim Protective Measures

Enclosures: Claimant's Additional Observations on the Pending 1134 Motion
for Interim Protective Measures.

Number of Pages including Cover: 4

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July 24, 2003

Via Fax For Distribution to the Tribunal.

Mr. Gonzalo Flores

International Centre for the Settlement of Investment Disputes

818 H Street N.W.

Washington, D.C. 20433

International Thunderbird Gaming Corporation v. The United Mexican States

**Claimant's Additional Observations on the Pending
1134 Motion for Interim Protective Measures.**

The July 17, 2003 observations of respondent The United Mexican States ("Mexico") contain the disturbing disclosure that two of Thunderbird's three skill machine facilities (Matamoros and Nuevo Laredo) have apparently been looted. The approximate 200 machines in these purportedly-sealed locations are missing and presumably stolen, along with other valuable equipment and important records. Records contained in those facilities constituted evidence in these proceedings. Claimant had no knowledge of these events until receiving respondent's July 17, 2003 observations and did not know the full extent of the problem until today when the undersigned counsel received a full translation of Mexico's observations. Claimant has no knowledge of the steps Mexico has undertaken, if any, to fully investigate these matters or of the efforts by Mexico, if any, to find and retrieve Thunderbird's machines, equipment and records. It now appears that not only have Thunderbird's investment enterprises in Mexico been seized and sealed, the machines, equipment, documents and other property of two of those enterprises have been stolen.

Mexico asserts the facilities are under the "trusteeship" of EDM employees. Claimant will undertake its own investigation to attempt to determine what the true state of affairs was, and presently is, with respect to actual physical control of these facilities. In that regard, Mexico's observations state that nobody was to be allowed access to the facilities without SEGOB authority and formal lifting of the seals. Respondent does not address the efforts, if any, made by its authorities and agencies to insure that SEGOB's authority over the facilities was maintained.

While respondent reports the present state of affairs, it fails to address directly the substance of the motion. Mexico states no position as to the relief requested. Yet, Mexico's observations provide a clear indication of the need for protective measure. Thunderbird asserts that Mexico's

description of the present state of affairs provides dramatic confirmation that interim protective measures are necessary, if not compelled. In addressing Thunderbird's document production, Mexico complained the production was not complete. Thunderbird's production was in fact complete except as to those records which were purportedly still sealed in the three facilities. It now appears a significant portion of those records are gone and no longer available to Thunderbird or as evidence before the Tribunal in the context of these proceedings. Claimant respectfully asserts that to avoid further loss of property, records and potential evidence in these proceedings, the Tribunal must take action and order appropriate interim measures of protection.

Thunderbird requests that the Tribunal issue orders incorporating all of Items i through vi of the "Relief Requested" in claimant's June 27, 2003 "Motion to Obtain an Interim Order Under NAFTA Article 1134" with the following proposed modifications:

- **Item i** - Requesting an order directing Mexico and its agents "Not to destroy, alter, damage, move or otherwise render unavailable or unusable any documents or records which were located at any of the Investor's facilities at Matamoros, Nuevo Laredo, or Reynosa as of the dates of their closure"

Proposed Modification - Order to include not only the above-stated prohibitory language, but also affirmative language directing Mexico and its agents to take reasonable steps to safeguard equipment, property and records still remaining in the three facilities.

I note from Mexico's observations that such affirmative steps to safeguard may be ongoing in Reynosa. Perhaps, this explains why Reynosa apparently remains sealed and intact. Nevertheless, Thunderbird asserts that the obligation to take reasonable steps to safeguard the facilities should be encompassed in a tribunal order of protective measures.

- **Item ii** - Requesting an order directing Mexico and its agents "To provide a full and complete accounting of its custody of all of the documents and records which were located at any of the Investor's facilities at Matamoros, Nuevo Laredo, or Reynosa as of the dates of their closure."

Item iii - Requesting an order directing Mexico and its agents To provide a full and complete accounting of its custody of all of the cash which was located at any of the Investor's facilities at Matamoros, Nuevo Laredo, or Reynosa as of the dates of their closure."

Item iv - Requesting an order directing Mexico and its agents "To provide a full and complete accounting of its custody of all of the equipment which was located at any

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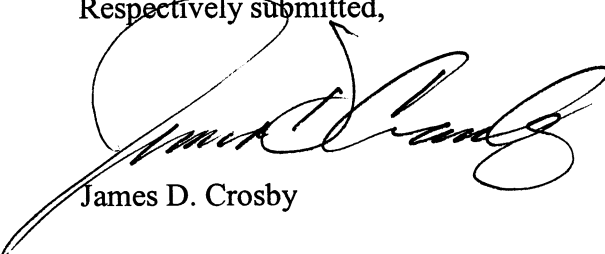
of the Investor's facilities at Matamoros, Nuevo Laredo, or Reynoso as of the dates of their closure."

Proposed Modification - As to these items, Order to include full and complete accountings of documents, records, cash and equipment not only as of the date of closures but additionally and, perhaps, more importantly as of now.

Mexico could avoid the problems associated with its continuing control of and authority over the facilities by simply restoring to Thunderbird and/or its respective investment enterprises possession of the machines, equipment, records and other property and allowing their removal from Mexico. Claimant concedes the Tribunal does not have the authority to order such restitution. Nevertheless, claimant believes that such actions would benefit both parties and, by this correspondence, again invites Mexico to consider this alternative. Under such circumstances, documents, records and other evidence so retrieved would be made available to respondent for review, inspection and copying in the context of these proceedings. I note that nothing in respondent's July 17 observations appears to foreclose the possibility of Mexico voluntarily restoring possession to Thunderbird and/or its respective investment enterprises.

Irrespective of any voluntary actions Mexico might take now or in the future to restore possession of the machines, equipment, records and other property to Thunderbird and/or its respective investment enterprises, claimant asserts that immediate issuance of interim protective measures by the Tribunal pursuant to its authority under Article 1134 is appropriate and necessary.

Respectively submitted,



James D. Crosby

cc: Hugo Perezcano Diaz (Via fax and e-mail)
Albert Atallah (Via e-mail)
Todd Weiler (Via e-mail)

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