

IN THE ARBITRATION UNDER CHAPTER ELEVEN OF THE  
NORTH AMERICAN FREE TRADE AGREEMENT AND THE  
UNCITRAL ARBITRATION RULES

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In the matter of Arbitration between:      :
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INTERNATIONAL THUNDERBIRD GAMING CORPORATION, :
:
    Claimant/Investor,                      :
:
    and                                       :
:
THE UNITED MEXICAN STATES,                  :
:
    Respondent/Party.                       :
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Volume II

Tuesday, April 27, 2004

The World Bank  
1818 H Street, N.W.  
The "MC" Building  
Conference Room C1-108  
Washington, D.C.

The hearing in the above-entitled matter  
resumed on, pursuant to notice, at 9:10 a.m. before:

ALBERT JAN VAN DEN BERG, President of the  
Tribunal

THOMAS WALDE, Arbitrator

AGUSTIN PORTAL-ARIOSA, Arbitrator

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P R O C E E D I N G S

1  
2 PRESIDENT VAN DEN BERG: The hearing in  
3 the Thunderbird versus Mexico day two. Before we  
4 continue the cross-examination of Mr. Mitchell,  
5 first always I have to do the housekeeping to see  
6 we are on administrative matters.

7 We left last night for the parties with  
8 some homework. We are not back to school, but the  
9 question, of course, is offer the table.

10 Mr. Crosby?

11 MR. CROSBY: The dog ate my homework.

12 We have provided a revamped organizational  
13 list by E-mail. I think we provided that to  
14 Mr. Flores this morning, and we will run it off on  
15 legal-sized paper today for the Tribunal members  
16 and the opposition, or counsel, on the list of  
17 dramatis personae, if I'm pronouncing that right.

18 I think we've agreed upon a list; it was  
19 faxed to me or e-mailed to me last night, and that  
20 list is fine, and I don't think we've cleaned up  
21 and done the time line yet, so I would...

1           PRESIDENT VAN DEN BERG: That's still  
2 under construction or in progress?

3           MR. CROSBY: Yes. We just didn't get to  
4 it last night, so I assume that we will do that  
5 tonight and have it to you tomorrow.

6           PRESIDENT VAN DEN BERG: The last thing,  
7 the list of issues, the draft of it?

8           MR. CROSBY: We have no objections to list  
9 of issues. It lays out, we believe, an appropriate  
10 framework for analyzing the case.

11          PRESIDENT VAN DEN BERG: One question  
12 there is. One of the issues I put between the  
13 scrap records is to check the terminology. Is the  
14 terminology acceptable? That was the word  
15 functionality we used.

16          MR. CROSBY: It's fine. Functionality is  
17 fine.

18          PRESIDENT VAN DEN BERG: Thank you.

19          Mr. Perezcano, your side?

20          MR. PEREZCANO: As regards the list of  
21 dramatis personae, we are in agreement. I don't

1 believe we sent it to the Tribunal because, in  
2 effect, yesterday we sent a copy to Mr. Crosby, and  
3 I don't think we have yet sent anything to the  
4 Tribunal.

5           The time line is in progress.

6           As regards the list of issues, we do have  
7 some comments to make. We are still reviewing it,  
8 and it's likely that we'll have some comments for  
9 the Tribunal today, but later on.

10          PRESIDENT VAN DEN BERG: I thank you very  
11 much for the cooperation of both sides. Than we  
12 may continue the cross-examination of Mr. Mitchell.

13          Mr. Mitchell, I hope you had a peaceful  
14 evening, night.

15          MR. CROSBY: Mr. President, if I may  
16 interrupt and address one issue with respect  
17 to--excuse me--with respect to witness planning,  
18 Mr. McDonald is here today with the machine.

19          PRESIDENT VAN DEN BERG: If you give me  
20 one second, because I have to take out the list,  
21 although this is an evolving document, let's put it

1 that way.

2 I'm with you, Mr. Crosby.

3 MR. CROSBY: The machine, the  
4 demonstration machine is here. It's going to be  
5 made available for viewing by respondent over  
6 lunch, and then we hope to put Mr. McDonald on for  
7 the demonstration right after lunch. He had to  
8 leave, and I would request leave that if we have  
9 some testimony going at the time, we can interrupt  
10 that live testimony to do his demonstration. And  
11 I've asked counsel about that.

12 PRESIDENT VAN DEN BERG: The point of  
13 this, we have allowed Mr. McDonald to be  
14 cross-examined by the respondent, so if he has to  
15 leave after lunch, what I would suggest is that  
16 after we have heard Mr. Mitchell, that we go  
17 immediately to Mr. McDonald's business of first the  
18 demonstration and then the questions to be asked,  
19 or is that not the idea of the respondent?

20 MR. PEREZCANO: Mr. President, we've not  
21 seen the machine. It's our understanding that

1 Mr. McDonald arrived last night late. We've not  
2 had a chance to see it. Indeed, we'd like Mr. Rose  
3 to be able to see it, but he won't be here until  
4 tomorrow. So, without having seen it, I wouldn't  
5 want to make any comment.

6 PRESIDENT VAN DEN BERG: One is, when is  
7 Mr. McDonald's briefcase version physically present  
8 here? Is it really here?

9 MR. CROSBY: We can have it in an hour.  
10 He's in his hotel room.

11 PRESIDENT VAN DEN BERG: What I would  
12 suggest is can you call Mr. McDonald to come as  
13 quickly as he can. After you have finished, I  
14 would suggest that first the parties simply get  
15 together and show it to each other how this  
16 briefcase version works, because then I think you  
17 will then have your rights to defense of the  
18 safeguard that you have from previous view of what  
19 this machine is about.

20 Let me add one other thing. The question  
21 is between, if it's relevant or not, between skill

1 and slot machines. The Tribunal wondered yesterday  
2 amongst itself whether a pure skill machine is, for  
3 example, the Play Station game I have to play with  
4 my son of 13, which is snow boarding, where, of  
5 course, I go out of the curve, as the first curve,  
6 but he makes with incredible speed until the end.

7           The question there is, but it's simply as  
8 an example to try to visualize for the Tribunal  
9 what is the difference between skill and slot, but  
10 then put it into extremes because we understand  
11 that gradation. So perhaps if the parties could  
12 help it through the witnesses, the Tribunal to find  
13 the distinctions and the criterion for  
14 distinguishing between slot and skill, it would be  
15 much appreciated, so perhaps we can explore this  
16 question. I don't know whether Play Station Two  
17 with this snow boarding is an example for skill.  
18 For me at least it was.

19           MR. CROSBY: I think it's a good example,  
20 and I would propose that even Mr. Mitchell, in some  
21 questioning from the Tribunal, can address that.

1           PRESIDENT VAN DEN BERG: Thank you.

2           All right. I'm not suggesting here that  
3 we are going to replay this Nintendo Play Station  
4 Two thing, snow boarding.

5           Is there any other thing, Mr. Perezcano,  
6 from your side from administrative matters?

7           MR. PEREZCANO: No, Mr. President.

8           PRESIDENT VAN DEN BERG: Can you then make  
9 the call to Mr. McDonald.

10           (Pause.)

11           PRESIDENT VAN DEN BERG: We could go back  
12 on record.

13           Mr. Crosby, the phone call is made?

14           MR. CROSBY: Yes, Mr. McDonald is on his  
15 way. He will be here in an hour.

16           PRESIDENT VAN DEN BERG: Right. And I  
17 suggest after Mr. Mitchell, we will then have first  
18 Mr. Gomez, who is then, I think, the next witness,  
19 wasn't it, on the list?

20           MR. CROSBY: We were actually planning on  
21 putting on Peter Watson, and I spoke to counsel

1 about it, but I would suggest if Mr. McDonald gets  
2 here, maybe we can take a recess, do a review of  
3 the machine and put it on.

4 PRESIDENT VAN DEN BERG: Wonderful.  
5 Agreed?

6 MR. PEREZCANO: Yes, we agree.

7 PRESIDENT VAN DEN BERG: We will continue  
8 the cross-examination of Mr. Mitchell.

9 MR. MOWATT: Thank you, Mr. President.

10 CONTINUED CROSS-EXAMINATION

11 BY MR. MOWATT:

12 Q. Mr. Mitchell, yesterday you mentioned that  
13 Thunderbird's gaming machines that come back from  
14 revenue share agreements with Indian tribes are  
15 sold to SCI, who refurbishes them and resells them;  
16 is that correct, sir?

17 A. Well, I indicated, I believe, that that is  
18 one of the sources that we used to sell or  
19 get--move on excess equipment.

20 Q. SCI is Support Consultant, Inc.; right?

21 A. Yes.

1 Q. And Kevin McDonald is a principal in that  
2 firm, isn't he?

3 A. As far as I know, yes.

4 Q. Kevin McDonald has a prior history with  
5 the company in the sense that I understand from  
6 reading the company's annual reports, he and SCI  
7 took an assignment of debts that were owed to  
8 Thunderbird by the various Indian tribes and helped  
9 collect those debts; is that right?

10 A. That's correct.

11 Q. So, he's acted as a consultant for  
12 Thunderbird for some period of time prior to the  
13 Mexico investment; is that right, sir?

14 A. Correct.

15 Q. And SCI carries on business in Temecula,  
16 California, in a premises that formerly belonged to  
17 Thunderbird; is that right, or were leased by  
18 Thunderbird?

19 A. Well, we had a revenue-sharing contract  
20 with the Temecula Band of the Sanio Indians. We  
21 never had any--it's not legal to have ownership or

1 any kind of equity in a tribal American business  
2 operation.

3 Q. Just to simplify the point, SCI and Kevin  
4 McDonald carry on business today in the premises  
5 that Thunderbird carried on business previously?

6 A. I believe Mr. McDonald still does business  
7 with that tribe.

8 Q. In the same premises physically that was  
9 occupied by your firm?

10 A. I'm sorry?

11 Q. Is the premises that he carries business,  
12 where he carries on business, his office and  
13 warehouse and other facilities the same as the  
14 premises that Thunderbird had in Temecula?

15 A. I haven't been to his office for two or  
16 three years, so I don't really know where that's at  
17 right now.

18 Q. Well, the address--

19 A. Originally, it was. He originally took  
20 over the lease to the building that we were  
21 involved with.

1 Q. Right. I was just trying to establish  
2 that.

3 Could you turn, sir, to Tab 22. It's  
4 Respondent's Exhibit 57, R-57, and it's an extract  
5 from the annual report for the year 2001. I'd like  
6 to direct your attention to the first or the second  
7 paragraph, actually, of the letter to shareholders,  
8 which discusses the situation in Mexico and  
9 concludes with the following sentence.

10 MR. CROSBY: Counsel, I'm very sorry for  
11 interrupting. We don't have the book, and we need  
12 to find it, I'm sorry. So we need to find the book  
13 with the exhibits in it, and my co-counsel has  
14 gone to get it. My apologies.

15 PRESIDENT VAN DEN BERG: We will wait for  
16 a minute.

17 (Pause.)

18 MR. CROSBY: Thanks very much. My  
19 apologies.

20 PRESIDENT VAN DEN BERG: Please proceed.

21 BY MR. MOWATT:



1 Q. The last sentence reads as follows: "The  
2 company wrote off \$209,000 of gaming equipment that  
3 was intended to be refurbished for the Mexico  
4 market."

5 So, at least in 2001, the company had some  
6 gaming machines that it was going to place in  
7 Mexico that came from its inventory or came on  
8 return from Indian bands; is that correct?

9 A. I assume that to be correct, that  
10 statement.

11 Q. Would Mr. McDonald have been the  
12 refurbisher of that equipment?

13 A. Most likely.

14 Q. And was this a practice that had occurred  
15 in the past, that there had been refurbished  
16 equipment from Thunderbird sent down through  
17 Mr. McDonald down to the Mexican operations?

18 A. I know that we were working with him in  
19 some event to do that. I don't recall exactly when  
20 and what was done in that regard.

21 Q. Thank you.

1 Would you turn to Tab 9. This is just an  
2 extract from Exhibit C-89. It's a record of the  
3 daily revenues for the opening month of EDM in  
4 Matamoros, and I'm wondering if you could confirm  
5 some figures for me. Firstly, under the column  
6 Drop, that's the amount drop paid into the machines  
7 in total for the day shown; is that correct?

8 A. No.

9 Q. What is it?

10 A. When a person deposits an amount of  
11 currency into a machine, sometimes they win,  
12 sometimes they lose. Drop can become, and  
13 oftentimes becomes a function of if they replay  
14 those winnings. So, whereas it seems like a very  
15 simple concept, actually it's very complicated  
16 because if a person goes in and then plays for a  
17 few hours, which is the goal, they win some, they  
18 lose some. So, it's not the exact amount of money  
19 that they put in. It's the amount of money they  
20 played with over that evening, some of which is  
21 their winnings.

1 Q. Let's look at--the next column is tickets  
2 paid, and after that amounts to deposits. Am I not  
3 correct in saying that drop is the cash received,  
4 ticket paid; tickets paid is the amounts paid out,  
5 and the amount to deposit what's left effectively  
6 as the--we'll say the gross profit for the day to  
7 put into the bank?

8 A. The amount of deposit is the amount of  
9 money left over after all the customers leave.

10 Q. Right. And that's the difference between  
11 the drop and the tickets paid; correct?

12 A. Correct.

13 Q. So, the house win percentage of  
14 36 percent, for example, on the first day, if you  
15 were to look at the flip side of that, what the  
16 customers won or what the payout ratio was to the  
17 customer was 64 percent, approximately?

18 A. That's not really how it's calculated. I  
19 mean, I understand what your observation is, but  
20 really what's calculated is that--and again, this  
21 is not that easy to comprehend, but what happens is

1 that percentage represents the amount that ends up  
2 showing on the drop and the amount that was paid  
3 out or that was left over at the end of the day.  
4 There was a whole series of transactions that  
5 occurred during that period of time that would  
6 differ in terms of what the percentage was.

7 Q. Right. But this is the average  
8 percentage, and the house win average for the day  
9 was 36 percent, on the very first day of operations  
10 that's recorded here.

11 A. Again, I'm agreeing--I agree generally  
12 with what you stated. It's just a complicated  
13 concept because what happens is even though the  
14 device may pay back 3 percent, if you keep playing  
15 over and over and over again at the end of the  
16 night, even though the device was only winning  
17 3 percent and you were winning back 97 percent, you  
18 still can end up with a 35 percent for the house,  
19 even though the win percentage of the device, the  
20 computer program, is very different from  
21 35 percent.

1 Q. I see.

2 A. That's the point I'm trying to make.

3 Q. Sir, yesterday you testified as to the  
4 importance to you of the 15 August 2000 letter  
5 issued by Gobernacion, and I have two questions  
6 arising from that.

7 One is supposing or what if that letter  
8 had never been issued at all. What would  
9 Thunderbird have done?

10 A. Well, we would not have gone forward with  
11 putting skill machines in without that letter.

12 Q. And what if the letter had been issued and  
13 said something like, instead of we don't allow slot  
14 machines, we don't allow machines of the kind, for  
15 example, that are in use by Mr. Guardia?

16 A. We would not have then put machines in  
17 that were--that were equivalent to what we were  
18 told were not allowed.

19 MR. MOWATT: Thank you, sir. That's all  
20 my questions.

21 PRESIDENT VAN DEN BERG: Mr. Crosby,

1 redirect, please.

2 MR. CROSBY: I have no redirect.

3 PRESIDENT VAN DEN BERG: Thank you.

4 Mr. Walde has questions.

5 QUESTIONS BY THE TRIBUNAL

6 ARBITRATOR WALDE: Mr. Mitchell, I'm just  
7 trying to understand your business strategy in  
8 relation to the insurances. I want to understand  
9 properly your business strategy in its relation  
10 with the insurances. Originally, after the  
11 discussion with the Ong and Oien, your idea was  
12 that you would go in there and work in the same way  
13 Guardia was working. That was the first idea.

14 THE WITNESS: Correct.

15 ARBITRATOR WALDE: And that was working  
16 with these amparos.

17 THE WITNESS: Correct.

18 ARBITRATOR WALDE: Then, as we move in the  
19 year 2000, you get more worried--you get worried  
20 that this is not enough.

21 THE WITNESS: Correct.

1           ARBITRATOR WALDE: Then you get  
2 advice--I'm retesting my understanding if this is  
3 correct. Then you get advice by, and you correct  
4 me if my understanding is not correct. Then you  
5 get advice by Baker & McKenzie that there is the  
6 possibility with the form letter by SEGOB.

7           THE WITNESS: Correct. And part of that  
8 advice was also very clearly that the amparo  
9 process was not strong enough to rely upon and have  
10 confidence that we would be--we wouldn't have  
11 problems.

12          ARBITRATOR WALDE: But you did invest  
13 something before that--I mean, investment is a  
14 gradual process, so you invested something before  
15 you got the letter on August 15.

16          THE WITNESS: We invested a lot of money  
17 in development and researching and legal fees and  
18 understanding--

19          ARBITRATOR WALDE: And some machines as  
20 well?

21          THE WITNESS: No, I don't--I don't recall

1 we invested any money for machines before the  
2 letter. It's possible. I would have to look at  
3 records. I don't recall that.

4           ARBITRATOR WALDE: So, you wanted more  
5 assurance after you looked at the amparo strategy  
6 of Guardia in the kind of first part of 2000--2000?

7           THE WITNESS: Exactly.

8           PRESIDENT VAN DEN BERG: Was it also  
9 prompted by your discussions which you described  
10 yesterday as very much informal with important  
11 investors?

12          THE WITNESS: Exactly.

13          ARBITRATOR WALDE: Like, I'm sorry, I had  
14 retained the--

15          THE WITNESS: We had a--we have a  
16 significant relationship with a prominent lawyer in  
17 Panama.

18          ARBITRATOR WALDE: Girault is it?

19          THE WITNESS: De la Guardia is his name.

20          And he came with us on a trip to Matamoros  
21 and Laredo, and we had meetings with--Baker &

1 McKenzie was at that meeting, with Luis de Velasco.  
2 And we discussed all of the amparo process, and he  
3 indicated that it was his strong opinion that it  
4 was not something that we should rely upon to make  
5 any significant investment, that there were a lot  
6 of risks in it, a court may disagree with prior  
7 decisions.

8           The thing that was the most important to  
9 me is that you didn't have the binding decisions,  
10 so that if one court decided one thing, another  
11 court might deliver an entirely different decision,  
12 so you couldn't rely that you were going to get the  
13 same result because there had been a decision.

14           ARBITRATOR WALDE: So, it's also your  
15 discussion with the investors who prompted you to  
16 go for more assurance?

17           THE WITNESS: You know, I felt pretty  
18 strongly that I needed to get this in order for  
19 myself to be comfortable, and I have a--if I'm not  
20 comfortable, I'm not ever going to take something  
21 to one of my investors that I've worked with for

1 years, so I'm not sure that I really was relying  
2 upon an investor's comments or feedback. I think  
3 it was more I had to get myself comfortable before  
4 I was going to move forward to recommend this and  
5 invest our companies' resources.

6           ARBITRATOR WALDE: You also mentioned a  
7 lawyer called Tino Minaldo, who went to Mexico and  
8 checked everything out. Was he also saying you  
9 need more assurance?

10           THE WITNESS: Well, I don't recall the  
11 exact timing of all of the input of Tino, but  
12 Mr. Minaldo is an extremely diligent, probably one  
13 of the most diligent lawyers I've ever worked with.  
14 He's an investor that's worked for ours company,  
15 and he's literally gone to every property, he's  
16 interviewed all of our counsel everywhere, and he's  
17 an extremely diligent person, and we were having an  
18 ongoing conversation. It's normal for us to speak  
19 with him on a weekly or a biweekly basis about what  
20 the company's doing, what we are looking at, what  
21 the problems are. He always has a thousand

1 questions, so I just don't know when he interceded  
2 in this process, if it was early on or if it was  
3 after we were already doing business at Matamoros  
4 or what the timing was.

5 ARBITRATOR WALDE: For whom does he work,  
6 Mr. Minaldo?

7 THE WITNESS: He works for Dennis Langley,  
8 who is a large pipeline developer and owns several  
9 large oil and gas pipelines in the United States.

10 ARBITRATOR WALDE: So, when you got this  
11 letter, did you find it was good enough or would  
12 you have liked to have it seen differently?

13 THE WITNESS: At that point in time I was  
14 really relying upon the knowledge of our Baker &  
15 McKenzie counsel, and they felt that it was very,  
16 very strong, and in effect iron-clad, that it  
17 really took all of the governmental risk out of our  
18 operations. So, I tend to rely upon these types of  
19 advisors in these countries.

20 ARBITRATOR WALDE: But you are a lawyer  
21 and a very kind of effective businessmen. Did you

1 look at it, did you not form a judgment of your  
2 own?

3 THE WITNESS: Yeah, I believed that it was  
4 adequate in that it distinguished between skill,  
5 and I felt comfortable with the letter.

6 ARBITRATOR WALDE: I think that's it.

7 PRESIDENT VAN DEN BERG: I understood  
8 earlier you testified that on one of the drafts of  
9 the letter your handwriting appeared; was that  
10 correct? Was it you or was it--

11 THE WITNESS: I don't believe so. No, I  
12 don't believe so.

13 PRESIDENT VAN DEN BERG: I got confused  
14 with another.

15 THE WITNESS: Yeah.

16 PRESIDENT VAN DEN BERG: But in general,  
17 were you aware that the letter with the Gobernacion  
18 was being negotiated or discussed?

19 THE WITNESS: Yes.

20 PRESIDENT VAN DEN BERG: How much time did  
21 that take?

1 THE WITNESS: Well, I went to a meeting.  
2 I believe the formal solicitation was on August  
3 3rd, and I went to a meeting in the latter part of  
4 July, just a week or so before that, and all of the  
5 principal lawyers, Arroyo, Aspe, and then the Baker  
6 & McKenzie lawyers were there, and everyone  
7 discussed the subject of the solicitud, and the  
8 fact that there was an ongoing process, and that  
9 there were discussions and, in effect, drafts being  
10 passed around between the lawyers and the  
11 Gobernacion lawyers.

12 So, I knew that it was a process. I  
13 didn't know exactly what the details were of the  
14 various elements. I think the Baker & McKenzie  
15 lawyers should have a very good idea of how those  
16 discussions occurred.

17 PRESIDENT VAN DEN BERG: Better to ask  
18 them, then.

19 Mr. Crosby, any further questions?

20 MR. CROSBY: No.

21 PRESIDENT VAN DEN BERG: Questions of the

1 Tribunal?

2 Mr. Mowatt?

3 FURTHER CROSS-EXAMINATION

4 BY MR. MOWATT:

5 Q. Can you give us the date for the meeting  
6 you just referred to.

7 A. I can't tell you the exact date, but it  
8 was sometime in the latter part of July. It was in  
9 July of 2000.

10 Q. Can you tell me precisely who was present.

11 A. I believe that Luis de Velasco was there.  
12 I believe that the lawyers Mr. Arroyo and Mr. Aspe  
13 were there, and I believe Mr. Watson was there,  
14 too, but I can't be certain of that. There were so  
15 many meetings, and I was there obviously.

16 I believe Mauricio Girault was there also.

17 MR. MOWATT: Thank you, Mr. President.

18 PRESIDENT VAN DEN BERG: You may have  
19 again the opportunity after our questions because  
20 we have further questions. Actually, two.

21 Mr. Portal, please.

1 QUESTIONS BY THE TRIBUNAL

2 ARBITRATOR PORTAL-ARIOSIA: I have one. In  
3 the process of obtaining the legal advice to do  
4 business and negotiate, as you mentioned, the  
5 outcome of this SEGOB decision, did your Mexican  
6 counsel have access to the machines so they could  
7 get direct knowledge of--

8 THE WITNESS: Yes. What had happened was  
9 Mr. Girault, who was our business partner, in the  
10 operation and advising us, we had shipped some  
11 examples of the machines, and they were located in  
12 his office. And I don't recall specifically that I  
13 was there in that office with Mr. Velasco, but it  
14 was common knowledge that people could come and  
15 should come and see the machines in his office.  
16 So, I feel pretty confident that Mr. Velasco was  
17 there at one point or another and saw the machines,  
18 but I wasn't personally there when that occurred.

19 ARBITRATOR PORTAL-ARIOSIA: Now that  
20 wouldn't be necessary for the case of Aspe and  
21 Arroyo. As you mentioned yesterday, they had

1 specific knowledge of Guardia's--

2 THE WITNESS: I'm sure that Aspe and  
3 Arroyo were many, many times in Juarez in the  
4 operation where the machines were operating because  
5 they had months, if not years of experience in  
6 working with that client.

7 ARBITRATOR PORTAL-ARIOSIA: But not your  
8 machines?

9 THE WITNESS: I don't know if they went to  
10 Mr. Girault's office and saw our machines. I'm not  
11 certain about that.

12 They were around a lot, so I would be  
13 surprised if they didn't go to the office and see  
14 the machines, but I just wasn't there when it  
15 occurred.

16 ARBITRATOR PORTAL-ARIOSIA: Thank you.

17 ARBITRATOR WALDE: Sorry, you actually had  
18 these machines that were in Velasco's--is it  
19 Mr. Luis Velasco's?

20 THE WITNESS: No, we had a Mexican  
21 partner, who was a very good friend of Mr. Velasco,



1 Mauricio Girault. He's a Mexican gentleman, and  
2 that's where we were conducting our business office  
3 was at his offices.

4 ARBITRATOR WALDE: I misunderstood. They  
5 were not in Velasco's office, they were in  
6 Girault's office?

7 THE WITNESS: Correct. And all of  
8 our--many of our meetings and much of our  
9 interaction was in Mr. Girault's office which was  
10 very close to where all of these things occurred.

11 ARBITRATOR WALDE: In Mexico City?

12 THE WITNESS: Yes, in Mexico City.

13 ARBITRATOR WALDE: So, how many of these  
14 machines roughly were in that office?

15 THE WITNESS: I believe it was three or  
16 four. It wasn't a large number, but it was more  
17 than one and less than six.

18 ARBITRATOR WALDE: Why were they in  
19 Mr. Girault's office?

20 THE WITNESS: Because we thought it was  
21 useful for anybody who was working in this matter

1 to have access to the actual machines that we were  
2 going to utilize.

3 ARBITRATOR WALDE: And who actually  
4 visited these machines?

5 THE WITNESS: I can't--again, I can't give  
6 you a large list because I don't know who all saw  
7 them, but certainly anybody that we were working  
8 with and any meetings we had, they were displayed  
9 very openly and discussed openly.

10 ARBITRATOR WALDE: Did the SEGOB officials  
11 you were dealing with, did they come to Girault's  
12 office?

13 THE WITNESS: I don't know. I'm not aware  
14 that they did.

15 ARBITRATOR WALDE: Since like today I was  
16 reading The Washington Post, the report on the war  
17 in Iraq apparently was open to only to the U.S.  
18 Senators and not their staff, guarded by security  
19 guards, but only six, I think, actually went to see  
20 them.

21 PRESIDENT VAN DEN BERG: One further

1 question. Perhaps the respondent can help me.  
2 Yesterday, there was a document shown about the  
3 instructions for transferring the \$300,000 to  
4 California account to a certain Mr. Rafael. Could  
5 that document be shown to Mr. Mitchell. I will try  
6 to find it.

7 THE WITNESS: It's number 13, I believe.

8 MR. MOWATT: Tab 13 of the  
9 cross-examination brief, Mr. President. It comes  
10 from Exhibit--Respondent's Exhibit 107, R-107.

11 PRESIDENT VAN DEN BERG: Mr. Mitchell, you  
12 see the name of the beneficiary.

13 First of all, the bank account is in  
14 California; is that correct? The Bank of America,  
15 Concord, CA.

16 THE WITNESS: I'm assuming Concord,  
17 California, is what that means. Yes.

18 PRESIDENT VAN DEN BERG: And it says the  
19 beneficiaries the Consultoria Internacional Casa de  
20 Cambio.

21 THE WITNESS: Correct.

1 PRESIDENT VAN DEN BERG: Do you know which  
2 entity is that one?

3 THE WITNESS: No.

4 PRESIDENT VAN DEN BERG: But you were CEO  
5 of the company. You're making a payment of  
6 \$300,000. Should you not know who is the  
7 beneficiary?

8 THE WITNESS: Well, what we were doing was  
9 acting upon the instructions of the people that  
10 were owed the money, and it's not unusual when we  
11 pay consultants or people in our business that they  
12 provide wiring instructions for what account they  
13 want money to go to, and we really don't view that  
14 as our responsibility to research the destination  
15 of those funds or the circumstances regarding how  
16 they've directed their payment. That would be  
17 quite an effort for us to undertake.

18 PRESIDENT VAN DEN BERG: And Mr. Rafael  
19 Ramos Velasco.

20 THE WITNESS: Correct.

21 PRESIDENT VAN DEN BERG: That is the

1 ultimate beneficiary I see here.

2 THE WITNESS: Correct.

3 PRESIDENT VAN DEN BERG: Do you know him?

4 THE WITNESS: No.

5 PRESIDENT VAN DEN BERG: If you flip the  
6 page, please.

7 THE WITNESS: Yes.

8 PRESIDENT VAN DEN BERG: You see the  
9 second page.

10 Does this refresh your memory?

11 THE WITNESS: I think what may have  
12 happened here is we may have paid the money to  
13 Baker & McKenzie, and they may have--they may  
14 have--they may have taken care of the transaction.  
15 I'm speculating on that, but that's what it looks  
16 like may have happened here, because this has an  
17 ABA number for Baker & McKenzie, which would  
18 indicate that maybe these were wired instructions  
19 for Baker & McKenzie, so they may have been  
20 handling the payment transaction.

21 PRESIDENT VAN DEN BERG: Mr. Crosby, any

1 further follow-up questions?

2 MR. CROSBY: No, Mr. President.

3 PRESIDENT VAN DEN BERG: I see some  
4 consultations on the respondent's side among the  
5 lawyers.

6 MR. MOWATT: I have two questions arising  
7 from the Tribunal's questions.

8 FURTHER CROSS-EXAMINATION

9 BY MR. MOWATT:

10 Q. You said there were three or four machines  
11 in Girault's offices. Can you tell us the names of  
12 the machines that he had there?

13 A. I don't recall the names of those  
14 machines.

15 Q. Would you be able to recall if it was the  
16 Bestco Pot-O-Gold machine or, for example, the Very  
17 Cherry Bonus or Red White and Blue Sevens machines  
18 that we have seen photos of in this case?

19 A. I don't recall the specific type that they  
20 were.

21 Q. Do you know if the machines that were on

1 display there had the dollar bill acceptors  
2 installed on them?

3 A. I believe that they did. I believe that  
4 the machines that we--all of the machines that we  
5 had there had dollar acceptors.

6 Q. Did you see them personally?

7 A. I saw the machines, yes.

8 Q. Do you recall whether they had dollar bill  
9 acceptors?

10 A. I don't recall specifically that there was  
11 a bill acceptor on them.

12 Q. Thank you.

13 If you would turn to Exhibit 12, Tab 12,  
14 I'm sorry, and it's Exhibit R-106. This is the  
15 Spanish version of the letter we looked at  
16 yesterday. There are two things that I want to ask  
17 you about this letter. Although it purports to be  
18 from International Thunderbird Gaming, it's not on  
19 company letterhead, and secondly, it's unsigned on  
20 behalf of the company.

21 Can you explain why?

1 A. No.

2 MR. MOWATT: That's all, Mr. President.

3 PRESIDENT VAN DEN BERG: Thank you.

4 Mr. Mitchell, thank you for testifying.

5 You are now excused as a witness.

6 (Witness steps down.)

7 PRESIDENT VAN DEN BERG: I think we could  
8 continue with Mr. Watson.

9 MR. CROSBY: May I have a moment? We can  
10 see if Mr. McDonald is here.

11 PRESIDENT VAN DEN BERG: Yes, yes.

12 (Pause.)

13 PRESIDENT VAN DEN BERG: Mr. Crosby, your  
14 side is ready? I see Mr. Weiler is still--

15 MR. CROSBY: We're fine. He's just going  
16 to make a copy for me.

17 PRESIDENT VAN DEN BERG: Are you ready,  
18 Mr. Perezcano?

19 MR. PEREZCANO: Yes, Mr. President.

20 PRESIDENT VAN DEN BERG: Mr. Crosby, have  
21 you given also a copy of the handout to the

1 interpreters?

2 MR. CROSBY: I don't believe we have, and  
3 I apologize. It's really one document, which is  
4 footnote 97 in the rejoinder. I mean, that's  
5 really all it is, and I can provide it to them  
6 right now.

7 PRESIDENT VAN DEN BERG: It's for the  
8 interpreters.

9 (Pause.)

10 PRESIDENT VAN DEN BERG: We could continue  
11 now. Mr. Watson, you are a witness called by the  
12 claimant in this case. Could you please state your  
13 full name for the record.

14 PETER WATSON, CLAIMANT'S WITNESS, AFFIRMED

15 THE WITNESS: Peter Hustad Watson,  
16 H-U-S-T-A-D, W-A-T-S-O-N.

17 PRESIDENT VAN DEN BERG: And your place  
18 and date of birth.

19 THE WITNESS: Minneapolis, Minnesota,  
20 March the 24th, 1949.

21 PRESIDENT VAN DEN BERG: Your nationality?

1 THE WITNESS: United States citizen.

2 PRESIDENT VAN DEN BERG: You are familiar  
3 with the procedure of examining witnesses in this  
4 case?

5 THE WITNESS: Generally, yes.

6 PRESIDENT VAN DEN BERG: So I don't need  
7 to explain it to you?

8 THE WITNESS: I don't believe so.

9 PRESIDENT VAN DEN BERG: If any question  
10 is unclear to you, either because of language or  
11 otherwise, please do seek a clarification.

12 THE WITNESS: I will.

13 PRESIDENT VAN DEN BERG: Barring that, the  
14 Tribunal assumes that you fully understood the  
15 question and your answer corresponds to the  
16 question.

17 THE WITNESS: Fair enough.

18 PRESIDENT VAN DEN BERG: You will also  
19 appreciate that appearing as a witness before a  
20 court or an Arbitral Tribunal is very serious  
21 business?

1 THE WITNESS: I do appreciate that.

2 PRESIDENT VAN DEN BERG: And in that  
3 connection we would like to ask you to make a  
4 declaration, which is hopefully in front of you.

5 THE WITNESS: Do you wish me to stand?

6 PRESIDENT VAN DEN BERG: No, that's not  
7 necessary.

8 THE WITNESS: I will raise my right hand.

9 PRESIDENT VAN DEN BERG: Also not  
10 necessary. We have to trust you on your word.

11 THE WITNESS: I solemnly declare upon my  
12 honor and conscience that I shall speak the truth,  
13 the whole truth, and nothing but the truth.

14 PRESIDENT VAN DEN BERG: Thank you.

15 Could you please go to your witness  
16 statement, Mr. Watson. There are three witness  
17 statements given by you. One on the 15th of  
18 August, 2003.

19 If you go to page 15 of your witness  
20 statement, which is actually dated 4th of August,  
21 2003, although the cover page has 15 August, but

1 that's the final date. Could you please confirm  
2 that that is your signature?

3 THE WITNESS: I have an unexecuted copy,  
4 Your Honor. I can--

5 PRESIDENT VAN DEN BERG: You may look at  
6 mine.

7 THE WITNESS: That is my signature. I  
8 confirm it.

9 PRESIDENT VAN DEN BERG: We have one of  
10 the 17 January, which is dated 19th of January.

11 Can you also confirm that that is your signature?

12 THE WITNESS: Yes. I now have executed  
13 copies, and I can confirm that both of those  
14 signatures are, indeed, mine.

15 PRESIDENT VAN DEN BERG: And then we have  
16 the one dated 6 February, 2004, and there was also  
17 a notary public already attached to your signature.

18 THE WITNESS: That's my secretary.

19 PRESIDENT VAN DEN BERG: Thank you.

20 Mr. Crosby, please proceed with the direct  
21 examination.

## 1 DIRECT EXAMINATION

2 BY MR. CROSBY:

3 Q. Mr. Watson, do you have any corrections to  
4 make to your first declaration?5 A. Yes, I do. There are two errors in the  
6 declaration of August 15th. One is found at page  
7 11, at line 16 and 17, where it says: "As of the  
8 date of closure, we were remodeling or beginning  
9 construction in Monterey."10 That is not precisely accurate. We had  
11 signed a lease. We had engaged construction  
12 companies for bids, and we had several diagrams and  
13 drawings of the proposed construction, but we had  
14 not begun actual construction of this site in  
15 Monterey.16 And the other change is found at page 12,  
17 line number 23 and 24, where I said: "I told him I  
18 had been the lawyer for Makro Centro." I was the  
19 lawyer for one of the investors, United States  
20 investors in Makro Centro, so that's not  
21 specifically accurate. I apologize.1 PRESIDENT VAN DEN BERG: Which witness  
2 statement are you looking at?3 THE WITNESS: I'm looking at the  
4 August 15th, the first statement.5 PRESIDENT VAN DEN BERG: If you go to page  
6 11, first correction.7 THE WITNESS: Page 11, first correction,  
8 paragraph 46, subparagraph B.9 PRESIDENT VAN DEN BERG: I think you're  
10 reading from another document.

11 THE WITNESS: I apologize.

12 PRESIDENT VAN DEN BERG: Six and seven,  
13 line six and seven?

14 THE WITNESS: Yes.

15 PRESIDENT VAN DEN BERG: I apologize for  
16 the confusion.17 THE WITNESS: No, the mistake is mine  
18 because on the unexecuted copy I have the  
19 pagination is different.20 PRESIDENT VAN DEN BERG: And it says as of  
21 date of closure, we were remodeling or beginning

1 construction in Monterey, so--and it should read...

2 THE WITNESS: It should read that we had  
3 begun plans to undertake construction,  
4 reconstruction.

5 PRESIDENT VAN DEN BERG: And the next one  
6 is page 12, which line is it there?

7 THE WITNESS: This would be on the  
8 original copy. It would be--it would be line 13.  
9 I told him I had been the lawyer for Makro Centro.  
10 And I was the lawyer for one of the investors in  
11 the Makro Centro business. I was not representing  
12 the entity per se.

13 PRESIDENT VAN DEN BERG: Okay. The lawyer  
14 for one of the investors in Makro Centro. That's  
15 the addition you would like to make?

16 THE WITNESS: Yes.

17 PRESIDENT VAN DEN BERG: Those are the  
18 corrections you wish to make to your statement?

19 THE WITNESS: Those are all that I find.

20 PRESIDENT VAN DEN BERG: Thank you.

21 Mr. Crosby, please proceed.

1 BY MR. CROSBY:

2 Q. What was your involvement in the Makro de  
3 la Suerte--Makro Centro de la Suerte facilities?

4 A. There was an investor with some experience  
5 in gaming and entertainment from Minnesota who  
6 retained me to travel with him to Monterey, Mexico,  
7 in approximately 1998, to look at the Makro Centro  
8 investment, which essentially was a license or a  
9 quasi-license given by the national lottery of  
10 Mexico, which allowed this entity to bring slot  
11 machines into the country for the purpose of  
12 dispensing lottery tickets as winnings. It sounds  
13 a little convoluted, but that was essentially the  
14 business venture. I advised him not to do the--not  
15 to make the investment. He did in spite of that.  
16 So, I looked at the entire operation, and I was  
17 familiar with what they were doing. I was familiar  
18 with their machines and with what they were  
19 intending.

20 Q. Is the consulting work you did in that  
21 connection typical of consulting work you do in



1 Mexico?

2 A. My consulting work in Mexico is very  
3 varied. I represent food companies, finance  
4 companies, joint ventures, but it would be the type  
5 of thing that I would do, yes. I retained local  
6 counsel, tried to advise the client, tried to do  
7 some due diligence on the owners of Makro Centro.  
8 Those types of things would be typical.

9 Q. And what was the difference between the  
10 facilities operated by Makro Centro de la Suerte,  
11 and the EDM facilities at issue in these  
12 proceedings?

13 A. Well, Makro Centro de la Suerte had slot  
14 machines from International Gaming Technologies.  
15 There was no pretext of anything else. They had  
16 the arm that the player stands in front of the  
17 machine and pulls the arm down and waits to see the  
18 result of whether he's won something or not. There  
19 is no interaction whatsoever between the player and  
20 the machine, and it's strictly a random win or  
21 lose.

1 Q. During your involvement with Thunderbird  
2 and the EDM entities, did you have a discussion  
3 with Cabeza de Vaca concerning the closure of the  
4 Makro Centro facilities?

5 A. I did.

6 Q. And what was that conversation?

7 A. That conversation took place in the  
8 offices of Mr. Umberto Aguilar. Mr. Cabeza de Vaca  
9 was present, and also I think Ruiz de Velasco, Ruiz  
10 Luis de Velasco, and Ambassador Jorge Montano.

11 And Mr. Cabeza de Vaca said that everybody  
12 comes into our office and says they are the good  
13 guys. Makro Centro was here some time ago, and  
14 they say they're the good guys. And I explained to  
15 him that I was familiar with Makro Centro de la  
16 Suerte, and that there was really no comparison,  
17 that those were unapologetic slot machines and no  
18 pretext at any involvement or level of skill  
19 required by anyone playing, and that he should not  
20 paint us with the same brush, and that was more or  
21 less the substance of the conversation.

1 Q. And what was his response?

2 A. He just shrugged. My sense was that he  
3 was unfamiliar with any distinction or was  
4 unconcerned.

5 Q. Thank you.

6 I have put before you--

7 PRESIDENT VAN DEN BERG: Before you  
8 continue, Mr. Crosby, because I do not fully  
9 understand the situation at Makro Centro at the  
10 time. You said in 1997, 1998, you traveled with a  
11 client to the Mexico in order to see whether  
12 investment should be made in Makro Centro.

13 THE WITNESS: Yes.

14 PRESIDENT VAN DEN BERG: And you further  
15 testified that that facility operated on a license  
16 granted by the national lottery; is that correct?

17 THE WITNESS: Yes. A letter license, a  
18 type of empowerment.

19 PRESIDENT VAN DEN BERG: Type of  
20 empowerment. And the national lottery, how does  
21 that fit in with SEGOB, Gobernacion?

1 THE WITNESS: The national lottery is a  
2 separate organization which is exempted, in my  
3 understanding, under the laws and the Constitution  
4 of Mexico, which permits the lottery to administer  
5 the Lotteria Nacional, the national lottery.

6 In this particular instance, the letter  
7 they gave to Makro Centro de la Suerte allowed them  
8 to utilize slot machine for the purpose for the  
9 purpose of dispensing or increasing the volume of  
10 sales of lottery tickets such that if a player went  
11 into this Makro Centro and, for example, he would  
12 go to the burser and buy a hundred dollars worth of  
13 tokens. Now he goes over to the machine and he  
14 plays the tokens in the slot machines. If he wins  
15 \$125, he can redeem his original \$100 in cash, and  
16 he can redeem his \$25 winnings with lottery  
17 tickets, so he's actually winning a chance to win  
18 something. That was the initial scheme of the  
19 matter.

20 And it is my understanding that after my  
21 departure--I advised my client, number one, not to

1 do it because I couldn't do any due diligence on  
2 the owners and for a variety of reasons, business  
3 reasons as well.

4           It's my understanding that after that  
5 time, the owners of Makro Centro tried to expand  
6 their ability to give away prizes, lottery-related  
7 prizes such as cars and other types of prizes, but  
8 the initial--at the time of my involvement, the  
9 scheme was you could win a chance to win by  
10 winning--redeeming, and that is governed by the  
11 Lotteria Nacional.

12           PRESIDENT VAN DEN BERG: But according to  
13 your due diligence, your legal due diligence that  
14 you conducted at the time, was Lotteria Nacional  
15 empowered to give this type of letters?

16           THE WITNESS: We certain--well, one of the  
17 big cautions that I gave my client is the  
18 Secretaria de Gobernacion also had jurisdiction  
19 over issues of gaming, and indeed, if he intended  
20 to expand later into other prizes, he could run  
21 afoul of Gobernacion because they could come in and

1 say that this violates the law of Juegeos y  
2 Sorteros, of games and drawings.

3           PRESIDENT VAN DEN BERG: But on the basis  
4 of the investigation that you made at the time, was  
5 it legally correct, if I may use that term, that  
6 Lotteria Nacional gave a letter allowing to use  
7 pure slot machines?

8           THE WITNESS: Yes, yes.

9           PRESIDENT VAN DEN BERG: And there was no  
10 interference possible there at SEGOB, so it was  
11 within their jurisdiction to allow this, to use  
12 these slot machines for the purpose of increasing  
13 the sales of tickets?

14           THE WITNESS: Your Honor, in Mexico,  
15 nothing is certain. Gobernacion may have had a  
16 very different position, but the letter itself  
17 stated that this company was empowered to engage in  
18 this activity because they were trying to increase  
19 their volume of lottery ticket sales. Whether they  
20 ever--obviously, they did eventually run afoul of  
21 SEGOB when they began to give prizes in other

1 matters. But the distinction that I was trying to  
2 draw with Mr. Cabeza de Vaca is that those were  
3 slot machines, plain and simple, and that there was  
4 a distinction to be analyzed in this case, in our  
5 case, which was very, very different.

6           PRESIDENT VAN DEN BERG: But the origin of  
7 that--of the usual slot machines, pure slot  
8 machines there, was very specific purpose, to boost  
9 sales of national lottery tickets?

10           THE WITNESS: Originally, yes.

11           PRESIDENT VAN DEN BERG: Originally, yes,  
12 okay. I'm not expressing an opinion what happened  
13 later, although I know the expression all at this  
14 point in time, I should say.

15           THE WITNESS: Understood.

16           PRESIDENT VAN DEN BERG: Mr. Crosby,  
17 please continue.

18           BY MR. CROSBY:

19           Q. Mr. Watson, I set before you one portion  
20 of the rejoinder which is footnote 97 of the  
21 rejoinder, and I think everybody has it in front of

1 them. In that footnote, Mexico calls into question  
2 your credibility rather vigorously, based upon your  
3 testimony concerning a meeting with Mr. La Bastida.

4           What is your response to the assertions in  
5 questioning your credibility in that footnote?

6           A. Well, in my declaration, I did not state,  
7 nor did I intend to imply, that Francisco La  
8 Bastida was giving me some opinion in any official  
9 capacity whatsoever. I was at a dinner party, a  
10 small dinner party with him, there were, I believe,  
11 10 guests, and we were seated at the dinner table,  
12 and one of the people at table was interested in  
13 becoming a potential investor with Thunderbird, and  
14 it was clear that they had discussed the opinion  
15 letter from Gobernacion, and Mr. La Bastida stated  
16 in general terms that he was aware of the skill  
17 game litigation that had taken place in northern  
18 Mexico; that in light of the outcome of that, he  
19 felt that the letter which Gobernacion had issued  
20 to us was appropriate under the circumstances  
21 because of some precedent that he perceived.

1 He did not state that in any official  
2 capacity. He was not acting as head of  
3 Gobernacion. And I apologize if there is any  
4 implication, but I don't think there is, in all  
5 candor.

6 Q. Mr. Watson, what was your involvement in  
7 the decision to approach the government to seek an  
8 opinion on the EDM machines?

9 A. Well, my involvement was that I think that  
10 I was the first person, along with Luis Ruiz de  
11 Velasco, who learned from Messrs. Aspe and Arroyo  
12 that it would be possible to seek such an opinion,  
13 and I recorded that to Jack Mitchell and to Albert  
14 Atallah, and the consensus at that time which grew  
15 was that without having some clear definition, we  
16 would never be able to take the risk, nor attract  
17 any investors, so we initiated the proceeding.

18 Q. Did you agree with that consensus?

19 A. Absolutely.

20 Q. And why is that?

21 A. Well, because I have several of my dear

1 and close friends as investors in this who would  
2 not have otherwise invested, nor would I have  
3 wanted them to because of any lack of certainty or  
4 clarity.

5 And furthermore, Mr. Mitchell hired me as  
6 a consultant so that I basically was going to put  
7 the rest of my law practice and consulting business  
8 on the shelf to become the director of development  
9 of this operation, and I certainly would not have  
10 ventured into something like that without having a  
11 very high degree or what I felt was a high degree  
12 of certainty with respect to the government's  
13 approval or, if not approval, at least clarifying  
14 for certain that the activity was not prohibited.

15 Q. Thank you.

16 In testimony yesterday, the respondent  
17 pointed out what they believed to be a  
18 contradiction in certain of your witness  
19 statements. That contradiction as they assert  
20 being in your later declarations you described  
21 yourself as passive investor in the EDM entities

1 but they had pointed out that in your first  
2 declaration you went on in detail about your  
3 involvement in the creation of the EDM entities and  
4 the creation of the investments in Mexico.

5 Do you believe that's a contradiction, and  
6 if not, please explain why.

7 A. It's not a contradiction. I was both. I  
8 was both an investor, and I became hired as the  
9 director of development for Mexico.

10 My investment friends and I have a rule,  
11 and that is if I don't put skin in the game, they  
12 won't put skin in the game.

13 So I had to, and I felt it was appropriate  
14 that I invest as an EDM investor in stock, and I  
15 put \$50,000 of my own money in.

16 So, in that sense, I was a passive  
17 investor just like them in the sense that I was  
18 working directly for Jack Mitchell as director of  
19 development. I was, indeed, undertaking to meet  
20 with all the Mayors and the Aldermen of the various  
21 jurisdictions and work with the lawyers in Mexico

1 to make this venture happen. And I don't think  
2 that there is any contradiction.

3 Q. In your work as consultant for Thunderbird  
4 with respect to the EDM entities, under whose  
5 direction and control did you act?

6 A. Jack Mitchell.

7 Q. Do you know who Mauricio Girault is?

8 A. Yes, Mauricio Girault is a very dear  
9 friend of mine, who became involved also at my  
10 request because he is a very conversant and lives  
11 in Mexico City and has great many contacts, and I  
12 felt that he would be of great benefit to us. He  
13 also put \$50,000 worth of his money in, if my  
14 recollection serves me. I think he made some  
15 investment, but he became a paid consultant for  
16 Thunderbird part-time, I think, but he still put  
17 effort in and took his directions from Jack  
18 Mitchell.

19 Q. And to your knowledge, in his capacity as  
20 a consultant for Thunderbird, under whose direction  
21 and control did he act in Mexico?

1 A. Jack Mitchell, always.  
2 MR. CROSBY: Thank you. I have no further  
3 questions.  
4 PRESIDENT VAN DEN BERG: Thank you,  
5 Mr. Crosby.  
6 Mr. Becker, at this time for the  
7 cross-examination?  
8 MR. BECKER: Could we have five minutes,  
9 please?  
10 PRESIDENT VAN DEN BERG: Sure.  
11 Mr. Watson, if you want to take coffee,  
12 feel free, but you're not allowed to discuss the  
13 case. You are under testimony.  
14 THE WITNESS: I understand.  
15 (Brief recess.)  
16 PRESIDENT VAN DEN BERG: Mr. Crosby, I see  
17 Mr. Weiler is not there.  
18 MR. CROSBY: We can proceed.  
19 PRESIDENT VAN DEN BERG: We can proceed.  
20 Your side also ready, Mr. Becker?  
21 MR. BECKER: Yes.

1 QUESTIONS FROM THE TRIBUNAL  
2 PRESIDENT VAN DEN BERG: Before you  
3 proceed with the cross-examination, the Tribunal  
4 has some further questions if it's not inconvenient  
5 to you.  
6 Mr. Watson, you testified before the break  
7 on the Makro Centro operation.  
8 THE WITNESS: Yes.  
9 PRESIDENT VAN DEN BERG: And the Tribunal  
10 has some further questions in that respect.  
11 You testified that they operated under  
12 letter permits from the lottery commission, if we  
13 may call them that way, and then you further  
14 testified, I believe, an example, if somebody had  
15 gained 125 points, and the ticket would come out,  
16 and 25, if that was the gain, would be paid out in  
17 tickets for lottery; is that correct?  
18 THE WITNESS: Yes, that's correct.  
19 PRESIDENT VAN DEN BERG: What happened to  
20 the hundred?  
21 THE WITNESS: You could redeem your

1 original hundred for the cash that you had paid for  
2 it or you could take it in lottery tickets, as you  
3 wished.

4           PRESIDENT VAN DEN BERG: And now, if they  
5 lost the hundred, who would get the money?

6           THE WITNESS: The Makro Centro de la  
7 Suerte.

8           PRESIDENT VAN DEN BERG: Did the lottery  
9 commission get anything from that?

10          THE WITNESS: No, the lottery commission  
11 earned money because they sold the tickets to Makro  
12 Centro which gave them as winnings. And, in fact,  
13 they sold them at a discount, as I recall.

14          So their--what the lottery received, I  
15 don't know if there was any other compensation, but  
16 my understanding was that the compensation that  
17 they were receiving was that they were--it was a  
18 scheme for them to increase the volume of their  
19 ticket sales.

20          PRESIDENT VAN DEN BERG: Then the payout  
21 rates under these machines, these slot machines, as

1 you described them, to the owners, what was the  
2 percentage?

3           THE WITNESS: I couldn't tell you. I'm  
4 sorry, I don't know.

5           PRESIDENT VAN DEN BERG: You don't  
6 remember that?

7           THE WITNESS: You mean what the win rate  
8 on the machines was?

9           PRESIDENT VAN DEN BERG: Yes.

10          THE WITNESS: Well, I think with the slot  
11 machine that can be set, and I honestly don't know  
12 or recall what they set it at. That wasn't really  
13 why they were consulting with me.

14          PRESIDENT VAN DEN BERG: Okay. Because as  
15 an investment, then, it would be an attractive  
16 investment as such, wouldn't it?

17          THE WITNESS: Well, I personally--you  
18 should never rely on a lawyer for investment  
19 advice, but I thought that the investment was a bad  
20 one because I couldn't see how anybody would pay  
21 for a chance to win, a chance to win. It was kind



1 of a double chance.

2 But my client, in the event, made the  
3 investment, and he lost the investment because,  
4 frankly, he was a minority shareholder in the  
5 venture, and he was pushed out. But the venture  
6 itself, as I understand it, until they ran afoul of  
7 their problems with Gobernacion several years  
8 later, was very successful.

9 PRESIDENT VAN DEN BERG: In the sense that  
10 they made profits in the original scheme which was  
11 paying out only in lottery tickets?

12 THE WITNESS: Yes.

13 PRESIDENT VAN DEN BERG: And what happened  
14 next, to your recollection?

15 THE WITNESS: My understanding is--

16 PRESIDENT VAN DEN BERG: The original  
17 scheme was we pay out only in lottery tickets.

18 THE WITNESS: Yes.

19 PRESIDENT VAN DEN BERG: I understood you  
20 also testified later you could also win cars and  
21 whatever.

1 THE WITNESS: That's true. I don't know  
2 if you could win cars, but when I was in Monterey  
3 developing our side for Thunderbird, I went over to  
4 Makro Centro to look at it again because I had  
5 originally seen it when it was just at its initial  
6 stages of development, and they had kind of a wall  
7 with prizes on it, and they had a car out in front,  
8 and I don't know if the car--surely the implication  
9 was you might win this car. I don't know if they  
10 ever gave away a car, but there were radios and  
11 electronic equipment and other things which they  
12 were now offering as a redemption in addition to  
13 the tickets. So, they kind of pushed the  
14 parameters, if you will, of their licensure, and I,  
15 in fact, saw another letter through a friend of  
16 mine where the lottery had issued more of these  
17 letters, and given the holder of the letter the  
18 ability to use--to distribute lottery or  
19 lottery-related prizes.

20 PRESIDENT VAN DEN BERG: What is a  
21 lottery-related prize?

1 THE WITNESS: I don't know. Electronics.  
2 And that clearly, you know, may be a basis for  
3 Gobernacion's ability to step in and take some  
4 action, because clearly they were games of chance.  
5 They made no apologies. Makro Centro de la Suerte,  
6 of course, means big place of luck. That's all it  
7 was.

8 PRESIDENT VAN DEN BERG: Mr. Portal has a  
9 question.

10 ARBITRATOR PORTAL-ARIOSIA: Are you aware  
11 of any other operations like the one of Makro  
12 Centro?

13 THE WITNESS: That use slot machines?

14 ARBITRATOR PORTAL-ARIOSIA: This  
15 arrangement of slot machines with lottery and maybe  
16 other prizes.

17 THE WITNESS: No, I think that Makro  
18 Centro expanded its facilities and had more than  
19 the original one that my client was looking at an  
20 investment in, but I had never seen them and don't  
21 have any personal familiarity with them.

1 ARBITRATOR PORTAL-ARIOSIA: Would you say  
2 that a sales mechanism of lottery tickets of that  
3 kind was available to anyone?

4 THE WITNESS: I have no knowledge of that.  
5 My impression was that it was not, because the  
6 person who had started Makro Centro de la Suerte  
7 boasted of his close relationships with the  
8 director of the national lottery and how difficult  
9 it was to obtain such a letter. He also implied  
10 that this was kind of an experiment that the  
11 lottery was undertaking. So, that's all I know.

12 ARBITRATOR PORTAL-ARIOSIA: Thank you.

13 PRESIDENT VAN DEN BERG: Mr. Walde.

14 ARBITRATOR WALDE: These letters, do you  
15 have copies?

16 THE WITNESS: You know, I think I could  
17 find a copy for you. Yes, somewhere in the file I  
18 would have it. I would need the permission of my  
19 client to release it, but I'm sure he would give it  
20 to me because he's very upset.

21 ARBITRATOR WALDE: If I understood it

1 properly, that experience which you made of the  
2 Makro Centro de la Suerte, did this lead them to  
3 advice to Thunderbird to seek the letter out?

4 THE WITNESS: No, sir. It has no relation  
5 whatsoever. In fact, when I first became involved  
6 in Makro Centro de la Suerte, the first thing I did  
7 was I hired local counsel in Monterey through my  
8 friend Mauricio Girault, and I developed a very  
9 good relationship with a lawyer in Monterey, and we  
10 looked at that. And the fear and caution we had  
11 for our client was that they were really entering  
12 into a venture which probably--which, although it  
13 had some blessing from the lotteria, there was  
14 nothing from SEGOB, and SEGOB, of course, is the  
15 governing, the regulating agency for any activities  
16 of this nature.

17 So, we cautioned him and told him that it  
18 would probably be far better if he sought some type  
19 of clarification from SEGOB in order to go forward,  
20 and, you know, he didn't listen to us, and frankly  
21 went ahead against our advice.

1 But that was really two or three years  
2 before I became involved with Jack Mitchell and  
3 Thunderbird, and clearly I understood that any  
4 activity that we wished to become engaged in in  
5 Mexico we needed to look carefully and work with  
6 Gobernacion.

7 I hope that answers your question. I  
8 don't know.

9 PRESIDENT VAN DEN BERG: One last question  
10 of the Tribunal on this point. Who were at the  
11 time in 1997 and 1998 the owners of Makro Centro,  
12 or the investors?

13 THE WITNESS: Well, the only person that I  
14 met as the owner was a man by the name Manuel  
15 Galvan, G-A-L-V-A-N, and he held himself out as the  
16 owner or progenitor of this business. Who his  
17 partners were or whether he had silent partners, I  
18 don't know, but he purported to own 51 percent of  
19 the venture.

20 PRESIDENT VAN DEN BERG: Thank you.

21 Mr. Becker, please proceed with the

1 cross-examination.

2 MR. BECKER: Mr. President, may I have one  
3 minute, please?

4 PRESIDENT VAN DEN BERG: Okay.

5 (Pause.)

6 CROSS-EXAMINATION

7 BY MR. BECKER:

8 Q. Mr. Watson, you testified earlier during  
9 your direct examination about your attending a  
10 meeting at paragraph 16 of your witness statement.  
11 This is paragraph 16 of your first witness  
12 statement.

13 I just wanted to clarify, in the testimony  
14 you presented, you talked about the basically the  
15 last two sentences of the paragraph, your private  
16 meeting with Senior La Bastida, but I wanted to  
17 focus on the paragraph that states, and this is  
18 referring to the August 15th letter from  
19 Gobernacion--it says, "The letter was signed not  
20 just by Mr. Antunano, but also by Sergio Orozco  
21 Aceves, the Governor of Gobernacion under Francisco

1 La Bastida."

2 I wanted to clarify that you were saying  
3 you did not intend that to be interpreted to  
4 suggest that Mr. La Bastida was in the government  
5 at the time the August 15, 2000 letter was issued?

6 A. Yeah. I don't know whether he was.  
7 Aceves did act.

8 Q. On August 15, 2000?

9 A. I don't know.

10 Q. Thank you.

11 MR. BECKER: That's all our questions.  
12 Thank you, Mr. President.

13 PRESIDENT VAN DEN BERG: Mr. Crosby?

14 MR. CROSBY: No redirect.

15 PRESIDENT VAN DEN BERG: Okay.

16 THE WITNESS: May I be excused?

17 (Pause.)

18 QUESTIONS FROM THE TRIBUNAL

19 PRESIDENT VAN DEN BERG: Could you please  
20 go to your witness statement to paragraph 49.

21 THE WITNESS: Yes, sir.

1           PRESIDENT VAN DEN BERG: Lines 21 to 23,  
2 you state: "First we pursued all our judicial  
3 remedies in the amparo courts of Reynosa," and then  
4 comes, "Gobernacion did everything possible to  
5 improperly influence those courts." You say that  
6 Mr. Alcantara flew to Reynosa and spent over eight  
7 hours cloistered in an ex parte session with the  
8 Tribunal.

9           THE WITNESS: Yes, sir.

10          PRESIDENT VAN DEN BERG: Do you have any  
11 foundation to make that statement?

12          THE WITNESS: Yes, I do. We, of course,  
13 retained Baker & McKenzie for the purpose of  
14 defending us and attempting to obtain amparos, and  
15 Baker & McKenzie had utilized the service of a  
16 notary in Reynosa to file the documents and make  
17 certain that we did everything and complied with  
18 the requests of the Tribunal. That notary advised  
19 myself and Mr. Javier Navarro, who was the lawyer  
20 in charge of amparos, that to his surprise,  
21 Mr. Alcantara had arrived the day before the

1 Tribunal was to consider this matter, and had spent  
2 over 13 hours in locked, closed door session with  
3 the Colegiado of the Tribunal, which is a member  
4 of--former eight-year member of the Board on  
5 Judicial Standards of Minnesota shocked me. I  
6 didn't know that ex parte communications were  
7 permitted in Mexico, and certainly felt that this  
8 was improper.

9           And it's also my understanding in speaking  
10 with Mr. Navarro that it's very irregular for a  
11 lawyer from the central office of amparos in Mexico  
12 City to travel to one of the outlying states when  
13 they have an office there where, as a matter of  
14 routine, these things would be handled through the  
15 local legal counsel for Gobernacion.

16          So, that's the knowledge that I have, and  
17 actually we verified it on several occasions.

18          ARBITRATOR WALDE: Just on the  
19 earlier--your meeting with Francisco La Bastida,  
20 what you said is you met him at dinner, and of  
21 sitting the table with 10. As a businessman

1 lobbyist, you naturally want to use this.

2 Now, did you engage in discussion with him  
3 on the gaming industry in Mexico?

4 THE WITNESS: Yes. Well, let me describe  
5 the dinner for you. There were only perhaps seven  
6 of us there. It was a very intimate dinner. It  
7 was very private, and I think that the purpose  
8 overall of the dinner was to meet him and to get  
9 his opinion about this type of activity and whether  
10 he felt that the coming gaming legislation had any  
11 impact or whether they would be amplifying or  
12 making permission for other types of gaming  
13 activities such as Bingo.

14 He described the many difficulties in  
15 arriving at new legislation because historically  
16 they have "pelea de gallos," cock fights. They  
17 have a famous fair at Feria de Aguascalientes,  
18 which was in the paper last week, where  
19 historically they bring 2,000 slot machines in.  
20 They're very old, old slot machines, and people  
21 play them. And then at the close of the fair, they

1 officially come and say it's illegal, you can't do  
2 this.

3 So, he said we have to deal with many of  
4 the traditional issues, and they also have to deal  
5 with Bingo, which is everywhere in the country, and  
6 which has never really, to my knowledge, been  
7 specifically authorized by statute.

8 We had polite discussions about travel and  
9 family and everything else at the beginning of the  
10 dinner, and then after, during cigars and coffee,  
11 we had a discussion about gaming.

12 ARBITRATOR WALDE: Did he suggest that one  
13 way might be to get a letter from the government?

14 THE WITNESS: No, sir. This had happened  
15 long after we had a letter. This occurred perhaps,  
16 I think this was in May, about two months before  
17 the administrative proceeding had occurred, would  
18 be the approximate timing of that dinner.

19 ARBITRATOR WALDE: Did he suggest to you  
20 steps to solve the dispute?

21 THE WITNESS: Well, at that point in time,

1 we really felt that we had the dispute solved,  
2 because there had been this initial closure by this  
3 Guadalupe, and then we had gone to Mexico City,  
4 engaged the services of Mr.--Ambassador Montano,  
5 gone in and spoken with Mr. Coronado. Under an  
6 agreement we reopened, and they gave us every  
7 indication that they said to us over and over  
8 again, you're the only people who asked, you're the  
9 good guys. This is transparent. We want to have a  
10 mesa redonda, a working table discussion, so that  
11 we could understand this and move forward.

12           So, we really didn't have any expectation  
13 that we were going to be received or treated in any  
14 unfair manner at the hearing which ensued in June,  
15 which is the subject of my declaration and that of  
16 many others.

17           PRESIDENT VAN DEN BERG: Mr. Portal has  
18 some further questions.

19           ARBITRATOR PORTAL-ARIOSIA: After reading  
20 your declaration, it is clear to me that you made  
21 many efforts to bring us many professionals or

1 people that could try to help you. You contacted  
2 La Bastida. There is the name of another two  
3 lawyers, Mr. Flores and Mr. Corcuera, that you  
4 brought in to try to help in your case.

5           Since you were the person that initiated  
6 the whole process through your knowledge of Mexico,  
7 is it proper to assume that you participated in the  
8 decision to withdraw from the judicial procedures  
9 that the company had initiated, the Mexican  
10 entities had initiated against these actions from  
11 the government?

12           THE WITNESS: That really was more the  
13 decision of Jack Mitchell, but it became  
14 increasingly clear to us that there was simply no  
15 way that we were going to, in spite of the repeated  
16 false assurances, that we were going to be able to  
17 make any type of settlement or prevail, given the  
18 type of what I perceived as undue influence.

19           I might add that Mr. Guillermo Flores was  
20 suggested to us. I didn't seek his help.  
21 Mr. Coronado said that he was the liaison working

1 on the new legislation, and he could be the person  
2 who could help with resolving this case, and that  
3 was after this so-called administrative proceeding.

4 But, the decision at the end of the day  
5 was Jack Mitchell's.

6 ARBITRATOR PORTAL-ARIOSA: Did you have  
7 any particular views as to the advisability of stop  
8 the judicial processes or continuing?

9 THE WITNESS: No, I'm not an expert on  
10 NAFTA remedies, exhaustion of remedies or those  
11 types of things, but it was very clear that there  
12 was, in my view, an extreme undue influence being  
13 exercised at the Colegiado. I mean, we were  
14 winning on the District Court level, and  
15 Gobernacion would simply ignore orders to reopen  
16 and just wait until it hit the three-judge  
17 Tribunal, and they would adopt their language in  
18 toto, and reverse.

19 So, it was very clear that we were unable  
20 to obtain any appropriate relief for reasons that  
21 we felt were not based on the merits. That's all I

1 can really say.

2 ARBITRATOR PORTAL-ARIOSA: Thank you.

3 PRESIDENT VAN DEN BERG: Mr. Crosby, any  
4 follow-up questions?

5 MR. CROSBY: No, Mr. President.

6 PRESIDENT VAN DEN BERG: Mr. Becker?

7 MR. BECKER: One moment, please.

8 PRESIDENT VAN DEN BERG: Sure.

9 (Pause.)

10 MR. PEREZCANO: I do have some questions  
11 for the witness.

12 THE WITNESS: I understand Spanish, yes,  
13 but I prefer to give the answers in English.

14 MR. PEREZCANO: I could ask them in  
15 English as well.

16 PRESIDENT VAN DEN BERG: No, that's fine.  
17 If you want to speak in Spanish, that's perfectly  
18 fine.

19 MR. PEREZCANO: I will ask them in  
20 English. Mr. Watson has been testifying in English  
21 as well.



## 1 FURTHER CROSS-EXAMINATION

2 BY MR. PEREZCANO:

3 Q. Mr. Watson, are you aware that in the  
4 Nuevo Laredo judicial proceeding, in the first  
5 instance, before a district judge, the case was, in  
6 fact, decided against EDM?

7 A. Yes.

8 Q. And do you recall that that was a case  
9 that EDM took to appeal before the Colegiado that  
10 record the three-judge Tribunal?

11 A. Yes.

12 Q. Your answer was yes; correct?

13 A. Yes.

14 Q. And the three, the Colegiado confirmed the  
15 dismissal by the district judge; is that correct?

16 A. You're correct.

17 Q. Now, are you aware that EDM also initiated  
18 a juicio de nullidad, an annulment judicial  
19 proceeding before the Fiscal and Administrative  
20 Justice Court?

21 A. I am aware of that.

1 Q. And are you aware that that court also in  
2 first instance dismissed the action filed by EDM?

3 A. They did not dismiss the action. What  
4 they did was they did not grant the temporary  
5 injunctive relief that was being requested for the  
6 specific reason that it was too political. They  
7 didn't say that in their decision, but they  
8 informed us that, of that fact.

9 Q. I'll try to find that decision so that we  
10 can go directly to what the decision says, sir.

11 A. I've never seen the decision.

12 Q. There is a decision. Let me just try to  
13 get it.

14 MR. CROSBY: Is this a document that's in  
15 evidence?

16 MR. PEREZCANO: It is.

17 BY MR. PEREZCANO:

18 Q. This is Exhibit R-029.

19 MR. PEREZCANO: I'm sorry, I don't have  
20 copies, so it's Respondent's Exhibit 029.

21 PRESIDENT VAN DEN BERG: Counsel, I assume

1 that you can find it in R-29, you say?

2 MR. PEREZCANO: Yes. This is the  
3 decision.

4 PRESIDENT VAN DEN BERG: I got it.

5 Now, Mr. Watson, does he have a copy?

6 MR. PEREZCANO: I will show it to him.

7 THE WITNESS: My answer to this is I have  
8 never seen the document before. It would take me a  
9 long time to analyze it, and I think it's a  
10 question better addressed to Luis Ruiz Velasco. My  
11 understanding based solely on my conversation with  
12 Luis Ruiz Velasco was that they had denied our  
13 request for the temporary injunctive relief to  
14 reopen, and that we needed to make a decision about  
15 whether to go forward with the substantive claim.  
16 If my understanding is incorrect, I apologize. I  
17 do believe we abandoned the substantive claim when  
18 we filed for the arbitration. That's all I can  
19 say.

20 PRESIDENT VAN DEN BERG: The point is  
21 this: In your paragraph 49, and as you testified

1 earlier today, you said there were ex parte  
2 discussions between representatives of SEGOB, and  
3 more in particular Mr. Alcantara, and the amparo  
4 court.

5 THE WITNESS: Yes. That's true.

6 PRESIDENT VAN DEN BERG: And then from  
7 that decision, appeal was taken to the Colegiado,  
8 isn't it?

9 THE WITNESS: No, sir. The discussions  
10 that I allege in my paragraph 49 relate to the  
11 appeal, the appellate court, which is the  
12 Colegiado. That is where my understanding of the  
13 ex parte discussions took place.

14 PRESIDENT VAN DEN BERG: So, you're not  
15 talking about paragraph 49 with the amparo courts,  
16 but the appeal court?

17 THE WITNESS: The appeal court, the  
18 Colegiado, is the appellate amparo court, and  
19 that's my--that's what I'm referring to in that  
20 paragraph, and I do not wish to a change any  
21 testimony in that regard.

1 PRESIDENT VAN DEN BERG: Okay.

2 Please feel free to ask follow-up  
3 questions, Mr. Perezcano.

4 BY MR. PEREZCANO:

5 Q. I can proceed with Mr. Luis de Velasco,  
6 but just to--I just want you to confirm that this  
7 is just arising out of a conversation that you had  
8 with the Luis de Velasco; is that correct?

9 A. My understanding of the procedural status  
10 of the tax litigation, yes.

11 Q. And you may be wrong that it only--the  
12 decision only concerned the temporary injunction?

13 A. I may be wrong.

14 Q. Okay. Thank you. So, I can proceed with  
15 this later on with Mr. Luis Velasco who can be  
16 here.

17 And in fact, for the other cases, do you  
18 recall that they were dismissed before any decision  
19 was arrived at?

20 A. I do not know the procedural ultimate  
21 moment at which the amparo proceedings were

1 abandoned, but I would agree with you that I  
2 believe they were dismissed before the substantive  
3 matter was addressed.

4 Q. Okay.

5 MR. PEREZCANO: Thank you, Mr. President.  
6 I have no further questions.

7 PRESIDENT VAN DEN BERG: I see.

8 Mr. Crosby--

9 MR. CROSBY: No re, re, redirect.

10 PRESIDENT VAN DEN BERG: Okay. Thank you.

11 Mr. Watson, thank you for testifying, and  
12 you are now excused as a witness.

13 (Witness steps down.)

14 PRESIDENT VAN DEN BERG: The question to  
15 Mr. Crosby and Mr. Perezcano, the demonstration  
16 with the machines. Have you had a chance already  
17 to confer amongst yourselves about the  
18 demonstration of the machines?

19 MR. CROSBY: I've advised counsel, both  
20 Mr. Becker and Mr. Perezcano, that the machine is  
21 here. It's up and running. My suggestion has been

1 if we had time before lunch, they could view the  
2 machine, we'd do the demonstration, they could  
3 cross-examine Mr. McDonald, consistent with the  
4 procedural order, or alternatively, we could do it  
5 after lunch, and they would have the lunch hour to  
6 take a look at the machine as well. But he has to  
7 leave late afternoon today.

8 PRESIDENT VAN DEN BERG: Mr. Perezcano,  
9 your side?

10 MR. PEREZCANO: We do need to look at the  
11 machine in operation before we are able to say  
12 anything else about it.

13 PRESIDENT VAN DEN BERG: Would you like to  
14 see it--would you like to proceed now?

15 MR. PEREZCANO: Yes, yes, yes, we could  
16 proceed now.

17 PRESIDENT VAN DEN BERG: First, amongst  
18 yourselves, look for if I may call it a dry run of  
19 the machine, to see how it works and then you  
20 proceed with the demonstration, the claimant's  
21 proceeds with the demonstration here at the hearing

1 upon which you can cross-examine Mr. McDonald.

2 MR. PEREZCANO: Yes, we could do that once  
3 we looked at the machines.

4 PRESIDENT VAN DEN BERG: We will adjourn  
5 for I think 10 minutes or so much time as you need  
6 to see how the machine works, and then we resume  
7 after that.

8 MR. PEREZCANO: Yes, sir.

9 PRESIDENT VAN DEN BERG: Okay.

10 (Brief recess.)

11 PRESIDENT VAN DEN BERG: Mr. Crosby, your  
12 side ready?

13 MR. CROSBY: We are.

14 PRESIDENT VAN DEN BERG: Mr. Perezcano?

15 MR. PEREZCANO: Yes, Mr. President.

16 KEVIN McDONALD, CLAIMANT'S WITNESS, AFFIRMED

17 PRESIDENT VAN DEN BERG: Mr. McDonald, you  
18 are appearing as a witness with a witness  
19 statement, I should say three, in plural, having  
20 been submitted by the claimant in this case, and  
21 you are called at request of the Tribunal. Could

1 you please state your full name for the record.

2 THE WITNESS: Kevin McDonald.

3 PRESIDENT VAN DEN BERG: Could you give,  
4 please, your place and date of birth.

5 THE WITNESS: July 8, 1966. Saint  
6 Joseph's, Missouri.

7 PRESIDENT VAN DEN BERG: And you are a  
8 U.S. national or U.S. citizen?

9 THE WITNESS: Yes.

10 PRESIDENT VAN DEN BERG: Thank you. You  
11 are familiar with the procedure of examining  
12 witnesses in this case, although we will deviate  
13 here in your case from the ordinary proceedings?

14 THE WITNESS: I assume so, yes.

15 PRESIDENT VAN DEN BERG: It means in this  
16 case the first questions will be asked by the  
17 Tribunal and then by the parties, particularly by  
18 the respondent, who has been granted to  
19 cross-examination you in relation to matters about  
20 which you are going to testify.

21 THE WITNESS: Okay.

1 PRESIDENT VAN DEN BERG: If there is any  
2 question which is unclear, either because of  
3 language or for other reasons, please do seek a  
4 clarification.

5 THE WITNESS: Okay.

6 PRESIDENT VAN DEN BERG: Barring that, the  
7 Tribunal assumes that you have fully understood the  
8 question and that your answers correspond to the  
9 question.

10 THE WITNESS: Okay.

11 PRESIDENT VAN DEN BERG: Now, you will  
12 also appreciate that testifying as a witness before  
13 a Tribunal or a court is very serious business?

14 THE WITNESS: Yes.

15 PRESIDENT VAN DEN BERG: In that respect,  
16 the Tribunal requires you to make a statement, and  
17 I think the statement is in front of you.

18 THE WITNESS: Okay. I solemnly declare  
19 upon my honor and conscience, that I shall speak  
20 the truth, the whole truth, and nothing but the  
21 truth.

1           PRESIDENT VAN DEN BERG: Thank you. Could  
2 you verify the signatures on the witness  
3 statements.

4           The first witness statement is dated the  
5 first day of August, 2003.

6           THE WITNESS: Yes.

7           PRESIDENT VAN DEN BERG: If you go to page  
8 four, could you please affirm that that is your  
9 signature?

10          THE WITNESS: That is my signature.

11          PRESIDENT VAN DEN BERG: Then the second  
12 statement is dated the 2nd of February, 2004.

13          THE WITNESS: That is my signature.

14          PRESIDENT VAN DEN BERG: And the third  
15 statement is dated the 19th of January, 2004?

16          THE WITNESS: That is my signature.

17          QUESTIONS FROM THE TRIBUNAL

18          PRESIDENT VAN DEN BERG: Thank you.  
19 Before proceeding with the actual demonstration of  
20 the briefcase version of the machines as it is  
21 called by the claimant in this case--

1           THE WITNESS: Yes.

2           PRESIDENT VAN DEN BERG: --the Tribunal  
3 would like to ask you a number of questions  
4 relating to the operation of the machines as had  
5 been operated by the EDM companies in Mexico.

6           THE WITNESS: Okay.

7           PRESIDENT VAN DEN BERG: I understand--I  
8 have to apologize because sometimes I might say  
9 CSI, but it has an entirely different reason,  
10 because I have watch these programs with my  
11 children. Okay. I will do my best. SCI, you are  
12 the Senior Executive Officer of SCI?

13          THE WITNESS: Yes.

14          PRESIDENT VAN DEN BERG: You were the one  
15 or your company was the one who manufactured these  
16 machines for EDM; is that correct?

17          THE WITNESS: We assembled the machines  
18 for EDM, yes.

19          PRESIDENT VAN DEN BERG: Assembled? What  
20 is the difference between assembling and  
21 manufacturing? Manufacturing being of course a

1 more general term.

2 THE WITNESS: Yeah, to clarify assembly,  
3 we purchase parts--

4 PRESIDENT VAN DEN BERG: Components?

5 THE WITNESS: Components, metal, and then  
6 we assemble them together.

7 PRESIDENT VAN DEN BERG: And the machines  
8 in question, which were purchased by EDM in this  
9 case, were all assembled machines?

10 THE WITNESS: Yes.

11 PRESIDENT VAN DEN BERG: Especially for  
12 Mexico, for these facilities, these three  
13 facilities we talked about?

14 THE WITNESS: Yes.

15 PRESIDENT VAN DEN BERG: They were not  
16 refurbished machines.

17 THE WITNESS: Some were refurbished.

18 PRESIDENT VAN DEN BERG: Some were  
19 refurbished. Where did they come from, the  
20 refurbished ones?

21 THE WITNESS: They came from my warehouse,

1 which has--at that time had quite a few machines,  
2 so somewhere--they went through the same assembly  
3 process. Some would have been new, some would have  
4 been refurbished.

5 PRESIDENT VAN DEN BERG: And when you used  
6 the word "some," what was the total number of  
7 machines you have sold to EDM?

8 THE WITNESS: I'm not sure. I'd have to  
9 look.

10 PRESIDENT VAN DEN BERG: Because  
11 about--what was the percentage of the refurbished  
12 ones of the number that you sold?

13 THE WITNESS: I would say roughly half.

14 PRESIDENT VAN DEN BERG: And do you know  
15 where these machines came from, the refurbished  
16 one, where were they used originally?

17 THE WITNESS: I would have taken some in  
18 trade through other machine deals, from Indian  
19 reservations, or they could have come--some could  
20 have come from Thunderbird, some of their other  
21 facilities.

1           PRESIDENT VAN DEN BERG: And are you  
2 familiar with a number of pictures that has been  
3 shown which are in the record here? Perhaps I  
4 could show you.

5           THE WITNESS: No, I'm not.

6           PRESIDENT VAN DEN BERG: If you're not  
7 familiar with it.

8           Can the documents be shown which have been  
9 used yesterday by Mr. Becker?

10          MR. BECKER: Do you want to see the  
11 photographs?

12          PRESIDENT VAN DEN BERG: Yes.

13          MR. BECKER: This is Respondent's Exhibit  
14 001.

15          PRESIDENT VAN DEN BERG: It's the last  
16 photo in Respondent's Exhibit R-001.

17          THE WITNESS: Yes.

18          PRESIDENT VAN DEN BERG: You see this one?  
19 And that is--identifies, I understand, the type of  
20 the machine used?

21          THE WITNESS: Yes.

1           PRESIDENT VAN DEN BERG: And what--the  
2 respondent had pointed out that there are three  
3 holes on the picture.

4           THE WITNESS: Correct.

5           PRESIDENT VAN DEN BERG: Which would  
6 suggest and the first were apparently being used by  
7 the new plate that there was formerly another  
8 plate; is that correct?

9           THE WITNESS: Yes.

10          PRESIDENT VAN DEN BERG: Which plate goes  
11 on it?

12          THE WITNESS: I don't know.

13          PRESIDENT VAN DEN BERG: And is it your  
14 practice to change plates on the back of the  
15 machine?

16          THE WITNESS: When a machine is completely  
17 refurbished, yes.

18          PRESIDENT VAN DEN BERG: In this case also  
19 about these machines, you used, and I'm trying to  
20 find that one, a description of the type. And that  
21 can be shown, Exhibit C-87, page nine. Can that be



1 shown to him, to Mr. McDonald.

2 MR. BECKER: Is it the invoice?

3 PRESIDENT VAN DEN BERG: Yes.

4 Then can you show the letter of 3 August  
5 2000, where you have this reference number to the  
6 type, because that was the point you made  
7 yesterday.

8 (Pause.)

9 PRESIDENT VAN DEN BERG: Do you also have  
10 C-17 for the witness? If you go to the English  
11 translation, first of the C-17, that is a letter of  
12 3 August 2000, that is commonly referred to as a  
13 sollicitud in this case. You go to the first page  
14 to the penultimate paragraph. You see there in the  
15 second line, model MTL 19 U-8L.

16 Do you see that?

17 THE WITNESS: Yes.

18 PRESIDENT VAN DEN BERG: Is that a model  
19 number you commonly use? Or specifically use?

20 THE WITNESS: That is not a model number  
21 for my company. That is a model number for Bestco.

1 PRESIDENT VAN DEN BERG: Is this a model  
2 number of Bestco that you recognize?

3 THE WITNESS: I'm not familiar with their  
4 model numbers.

5 PRESIDENT VAN DEN BERG: Thank you. Now  
6 then we--let's move on to the machines themselves.  
7 You can close the binders.

8 We are ignorant as Tribunal members on how  
9 slot and skill machines work.

10 THE WITNESS: Okay.

11 PRESIDENT VAN DEN BERG: So if I may ask  
12 you to help us, and actually keep in mind as if you  
13 are writing dummy for gambling machines, and then  
14 you would help the Tribunal very much.

15 First of all, can you explain to us what  
16 is in a slot machine? How does it work? Have you  
17 a motherboard to help with an understanding, and  
18 you have a circuit?

19 THE WITNESS: Correct.

20 PRESIDENT VAN DEN BERG: And you have  
21 reels, and have you one arm, a lever to pull,

1 always talking about one-armed bandits.

2 THE WITNESS: Yes. Well, that is one  
3 version of a slot machine, yes.

4 PRESIDENT VAN DEN BERG: Could you,  
5 please, tell me how it works.

6 THE WITNESS: A traditional slot machine  
7 you're describing--

8 PRESIDENT VAN DEN BERG: A pure slot  
9 machine you talk about?

10 THE WITNESS: --a pure slot machine is  
11 controlled. Every manufacturer is different, and  
12 I'm speaking in generic terms, is controlled by a  
13 logic board, which has a random number generator  
14 that controls the spinning of the reels and the  
15 stopping of those reels.

16 PRESIDENT VAN DEN BERG: The logic board,  
17 and then you have the random number generator?

18 THE WITNESS: Yes.

19 PRESIDENT VAN DEN BERG: What is that  
20 technically, a random number generator?

21 THE WITNESS: Once again, speaking in

1 generic terms, because depending on the manufacture  
2 or the type of game, it can be developed, you  
3 know--it's software. It's a program, but a generic  
4 term of a random number generator is a computer  
5 program that has a group of numbers that--

6 PRESIDENT VAN DEN BERG: Algorithms?

7 THE WITNESS: Yes, or maybe if you want to  
8 think of it in a simpler form is, think of numbers,  
9 an infinite number of numbers in a basket that the  
10 computer program draws from, and that number  
11 represents a symbol or a stop on the reel.

12 PRESIDENT VAN DEN BERG: Can that software  
13 program be manipulated in one way or the other?

14 THE WITNESS: Could you--manipulated in  
15 which way?

16 PRESIDENT VAN DEN BERG: In which way so  
17 that you say so many stops should be with the--if  
18 you have three reels because now you have four and  
19 five, I understand, but if you assume the simple  
20 one, you use three reels.

21 THE WITNESS: Yes.

1           PRESIDENT VAN DEN BERG: That they stop,  
2 one stops, and also let's take it simply as a fruit  
3 machine. That's the easiest one. So, you have the  
4 lemons, three lemons should appear, that the  
5 machine can control, well, should not be three  
6 lemons that appear on one line?

7           THE WITNESS: There is a theoretical par  
8 sheet or the math of the machine that is based on a  
9 number of plays in a cycle of the game. For  
10 example, and this is just an example,  
11 hypothetically, that in 15 million plays of that  
12 game, you will hit theoretically X number of any  
13 combination that you can think of that will be a  
14 certain percentage of those combinations hit  
15 through a cycle of a game.

16          PRESIDENT VAN DEN BERG: And perhaps I  
17 used words, which is not neutral enough,  
18 manipulated but you can set, then, the number of  
19 cycles in a software?

20          THE WITNESS: Theoretically.

21          PRESIDENT VAN DEN BERG: Theoretically?

1           THE WITNESS: You program it--it becomes a  
2 math problem.

3           PRESIDENT VAN DEN BERG: But it means that  
4 the operator can influence the payout rate or the  
5 success rates as I think I understand now the lingo  
6 to be for this industry, the patron of the machine,  
7 simply the player?

8           THE WITNESS: The slot machine, yes, the  
9 operator can set a theoretical payout to the  
10 player.

11          PRESIDENT VAN DEN BERG: Mr. Walde has a  
12 question.

13          ARBITRATOR WALDE: So, over what period  
14 can we set that theoretical--that payout? I'm now  
15 thinking in terms of probability theory, and I'm  
16 far from being an expert, but over what period?  
17 Would it be a day? An hour? A week? Half a year?

18          THE WITNESS: It's usually done on number  
19 of plays.

20          ARBITRATOR WALDE: And how many--kind of  
21 how often do you expect the machine under average

1 use to be played per day?

2 THE WITNESS: Every property is different.

3 ARBITRATOR WALDE: How many plays would  
4 you normally in the industry would be that cycle?

5 THE WITNESS: Every manufacturer is  
6 different, but it's usually based on millions of  
7 plays.

8 ARBITRATOR WALDE: Millions of plays?

9 THE WITNESS: Yes.

10 ARBITRATOR WALDE: So, we can calculate on  
11 this how many days?

12 THE WITNESS: Yes.

13 ARBITRATOR WALDE: It's quite a long  
14 period, then.

15 THE WITNESS: Yes.

16 ARBITRATOR WALDE: So, it's not kind of  
17 within a day or so?

18 THE WITNESS: No.

19 PRESIDENT VAN DEN BERG: Mr. McDonald,  
20 then simply for understanding of the Tribunal,  
21 completely on the other side of the spectrum, the

1 pure skill game.

2 THE WITNESS: Yes.

3 PRESIDENT VAN DEN BERG: I described it  
4 earlier this morning. I don't know whether it has  
5 been told to you, is that when I played with my son  
6 the Play Station Two is the snow boarding.

7 THE WITNESS: Yes.

8 PRESIDENT VAN DEN BERG: Would you  
9 describe it as a pure skill game? You're familiar  
10 with that game?

11 THE WITNESS: I'm familiar, but I'm not  
12 familiar with how it is programmed.

13 PRESIDENT VAN DEN BERG: That's my next  
14 question, yes. I would like to know what is the  
15 difference between the two.

16 THE WITNESS: I don't know.

17 PRESIDENT VAN DEN BERG: You don't know.  
18 So, what would you describe as a pure skill game

19 with which you are familiar? How is it programmed?

20 THE WITNESS: I think it's difficult to  
21 define a true--could you clarify the question.

1           PRESIDENT VAN DEN BERG: Yes.  
2           You have just described to us how a pure  
3 slot machine works.  
4           THE WITNESS: Yes.  
5           PRESIDENT VAN DEN BERG: In generic terms.  
6 I know, of course, it's depending on the  
7 manufacturer that may differ, but the basic idea.  
8 Now we are talking about a skill game.  
9           THE WITNESS: Yes.  
10          PRESIDENT VAN DEN BERG: Pure skill. What  
11 are their essential components?  
12          THE WITNESS: The player has to affect the  
13 outcome of the game either by choice or dexterity.  
14          PRESIDENT VAN DEN BERG: "Dexterity" I  
15 understand, but what do you mean by "choice"?  
16          THE WITNESS: I can make it clearer when I  
17 demonstrate the game, but certain skill games give  
18 you decision-making capability to decide what to do  
19 with symbols issued on the game, and your decisions  
20 affect the outcome of that game.  
21          PRESIDENT VAN DEN BERG: The basic

1 structure as such in a skill game is the same as in  
2 a slot machine; is that correct? Except that you  
3 have now the possible interaction by--  
4           THE WITNESS: Could you clarify  
5 "structure."  
6           PRESIDENT VAN DEN BERG: What you just  
7 described about, you have the logic board, the  
8 random number generator software, and the next  
9 thing you have the reels, but that is something  
10 which is--  
11          THE WITNESS: The hardware can be the  
12 same, speaking of the metal and the components  
13 inside. Even the logic board can be the same. The  
14 difference is the software or the game chip and how  
15 the game is played within that program determines  
16 skill or not.  
17          PRESIDENT VAN DEN BERG: When we talk  
18 about the game chip, it's the same as the software  
19 you talked about, not to confuse.  
20          THE WITNESS: Yes.  
21          PRESIDENT VAN DEN BERG: And it depends

1 how you program, then, the software whether you  
2 allow interaction by a player?

3 THE WITNESS: Correct.

4 PRESIDENT VAN DEN BERG: And there you  
5 have different levels, I assume you can have a  
6 little interaction, more interaction?

7 THE WITNESS: Correct.

8 PRESIDENT VAN DEN BERG: So, it's a matter  
9 of degrees we are talking about?

10 THE WITNESS: Yes.

11 ARBITRATOR WALDE: It goes in the same  
12 direction--

13 THE WITNESS: Not only, just let me just  
14 clarify something. Not only degrees, but there are  
15 types of interaction.

16 ARBITRATOR WALDE: The same direction as  
17 our President, you are saying the decisions affect  
18 in this what you called pure skill games. The  
19 decisions affect the outcome of the game.

20 Now, if I interpret affect, it means have  
21 an influence on, but not completely determine,

1 which means 10 percent, 20 percent, 80 percent,  
2 99 percent; is that right?

3 THE WITNESS: The decision can determine  
4 the outcome of a game. I cannot assign a number to  
5 that because that would be based on the skill of  
6 the player.

7 ARBITRATOR WALDE: So, could it be in the  
8 pure skill machine that an outstanding player of  
9 one of these teenagers who does nothing but sit  
10 there for nights on end instead of going after  
11 girls, that he would actually kind of constantly  
12 beat the machine, actually be able to earn his  
13 living by playing against Thunderbird?

14 THE WITNESS: That is possible.

15 ARBITRATOR WALDE: So, in that case, you  
16 don't have against this super skilled player, you  
17 don't have the possibility of correcting this by  
18 adding element of chance to make sure you don't  
19 get--you don't lose against the super skilled  
20 player?

21 THE WITNESS: No. I mean, a super skilled

1 player can beat the game.

2 ARBITRATOR WALDE: And a super skilled  
3 player is not just a theoretical mathematical  
4 probability. A super skilled player is actually a  
5 human possibility. What I'm saying, it could  
6 exist. It's not something that only exists in the  
7 virtual world. There could be a very skilled  
8 teenager who could constantly beat one of these  
9 machines?

10 THE WITNESS: Yes, over a period of time.

11 ARBITRATOR WALDE: And how do you protect  
12 yourself against super skilled players? Because  
13 they're clearly not in the interest of an operator  
14 of such machines.

15 THE WITNESS: That's really up to the  
16 specific property. I could give you an analogy.  
17 How do Las Vegas-style casinos protect themselves  
18 from card counters?

19 ARBITRATOR WALDE: I have been twice to  
20 Las Vegas. I've always lost. What is a card  
21 counter? I'm the--

1 THE WITNESS: I don't want to stray too  
2 much from the subject at hand, but I will give you  
3 an example. In the game of Blackjack, which is  
4 considered a game of skill, people--there are  
5 people that have the ability, the skill to do the  
6 math in their head to figure out the probability of  
7 the card that's going to be dealt next and can beat  
8 the house.

9 ARBITRATOR WALDE: Having like prophets,  
10 so to say, a constant probability analysis being  
11 applied?

12 THE WITNESS: Yes.

13 ARBITRATOR WALDE: And over a series of  
14 hundred or 500 games that must prevail?

15 THE WITNESS: Yes, they determine over X  
16 number of games on how they play that they can win.

17 PRESIDENT VAN DEN BERG: And then they are  
18 refused entrance? Is that what happens in Las  
19 Vegas?

20 THE WITNESS: In Las Vegas, yes.

21 PRESIDENT VAN DEN BERG: So, in this case,

1 if you have a too skilled player, the facility  
2 owners may also refuse access?

3 THE WITNESS: That is up to the specific  
4 facility.

5 PRESIDENT VAN DEN BERG: To be the super  
6 skilled player, how long does it take? How many  
7 plays does it take to get a super skilled player,  
8 assuming you have already the ability?

9 THE WITNESS: That is a difficult question  
10 to answer because it would depend on the game, the  
11 player, and the player's level of intelligence,  
12 which is--I'm not qualified to answer that question  
13 specifically.

14 PRESIDENT VAN DEN BERG: But does that not  
15 depend on how difficult or how easy it is to  
16 interact with the machine in the period to learn  
17 it?

18 THE WITNESS: It comes down to the ability  
19 how quickly they can process math probability.

20 ARBITRATOR WALDE: Can you--you, can you  
21 beat your machines?

1 THE WITNESS: I am not a super skilled  
2 player. I would be what would be defined as a  
3 basic skill player. I liked to chase girls when I  
4 was younger, so I didn't take the time to sit in  
5 front of the machines too much.

6 PRESIDENT VAN DEN BERG: But then in the  
7 end you would lose from these machines?

8 THE WITNESS: No, not always. I have  
9 basic skill, so, I mean, it becomes--I can win  
10 sometimes, and I can lose sometimes, depending on  
11 my skill at that time, you know, or how much time  
12 I'm willing to play the game.

13 PRESIDENT VAN DEN BERG: Can you program  
14 the software to an extent that it requires more or  
15 less time to acquire the skill?

16 THE WITNESS: That's game-dependent. It  
17 would depend on the game you're talking about. I  
18 mean, I would say some games, yes, some games, no.

19 PRESIDENT VAN DEN BERG: Now we have seen  
20 in certain manuals there is a reference to a  
21 percentage of payout, between 50 and 93 percent of



1 these machines. How do you achieve that?

2 THE WITNESS: I would have to see the  
3 manual and what you're referring to specifically  
4 when you're talking about that.

5 PRESIDENT VAN DEN BERG: Can the manual be  
6 shown.

7 Incidentally, roulette, is that skill game  
8 or chance game, if I may call it that way?

9 THE WITNESS: It would depend on the  
10 jurisdiction that you ask.

11 PRESIDENT VAN DEN BERG: I see. Why?

12 THE WITNESS: I mean, because you could go  
13 to one jurisdiction, and they could define a game  
14 as a game of chance. You go to another  
15 jurisdiction; they could define it as a game of  
16 skill or combination of the two.

17 PRESIDENT VAN DEN BERG: Why would  
18 roulette be different for jurisdiction concern?

19 THE WITNESS: If there is a live person  
20 controlling the ball or if there is a computer  
21 controlling the ball.

1 PRESIDENT VAN DEN BERG: What is the skill  
2 in this ball you have to turn around, unless there  
3 is a pedal under the table?

4 THE WITNESS: Well, now, let me go on  
5 record saying I'm not a roulette expert. Okay.  
6 And I'm not a roulette expert, but being in the  
7 business, I have talked to people, I mean, if  
8 certain jurisdictions you can't have a live person  
9 do it, because they feel that there are people out  
10 there that have the skill to determine to watch a  
11 repetitiveness, how the person uses the ball, you  
12 know, the force behind the ball, the speed of the  
13 ball, and that they can determine within, you know,  
14 certain degrees of success where that ball is going  
15 to land and bet accordingly.

16 PRESIDENT VAN DEN BERG: All right.  
17 Assuming incidentally that it is controlled by  
18 machine which does it at random so that neutralizes  
19 that aspect.

20 THE WITNESS: Correct.

21 PRESIDENT VAN DEN BERG: Is it

1 statistically then such that the bank will also  
2 win--will win in the long run, because you have the  
3 zero?

4 THE WITNESS: Once again, I'm not a  
5 roulette expert. I mean, I'm not an expert. I'm  
6 not comfortable--I don't think I can comment on  
7 that game.

8 MR. BECKER: For the transcript, this is  
9 the Fantasy Five Game Manual, it's Exhibit R-15,  
10 and we're going to be looking at page 19.

11 THE WITNESS: Could I ask whose manual is  
12 that?

13 MR. BECKER: Bestco.

14 THE WITNESS: I'll take a look at it, but  
15 I understand that is not my manual.

16 PRESIDENT VAN DEN BERG: If you don't feel  
17 competent to testify on the manual, please say so.  
18 If you read this, what would you--

19 THE WITNESS: I would prefer to just  
20 testify on my own equipment.

21 PRESIDENT VAN DEN BERG: But your manuals,

1 do they have--you mention that you can set the  
2 payout rate?

3 THE WITNESS: It would depend on what  
4 manual you had. If you had a generic manual--let  
5 me--and it's explained in one of my affidavits. We  
6 have--SGI has a generic cabinet and a generic logic  
7 board. The cabinet and the logic board can be used  
8 in different jurisdictions for different classes of  
9 gaming. What determines the type of game is the  
10 software in the game chip. That is what is  
11 specific to a jurisdiction.

12 In saying that, manuals may have  
13 references that apply to certain jurisdictions but  
14 not others.

15 PRESIDENT VAN DEN BERG: But that raises  
16 for me another question, on this point, this  
17 explanation. Can the report of R-SG or R-GS be  
18 shown? You know the--

19 MR. BECKER: PGR?

20 PRESIDENT VAN DEN BERG: PGR, sorry.

21 MR. BECKER: Mr. President, that is

1 actually the Netcomm report.

2           PRESIDENT VAN DEN BERG: I know. That's  
3 all right, because there I have the question, which  
4 relates to the question to a statement you just  
5 made.

6           (Pause.)

7           MR. BECKER: Mr. President, we have it  
8 here. It's from Exhibit C-69, beginning on page  
9 eight of the PDF file. We actually have copies of  
10 it.

11           PRESIDENT VAN DEN BERG: Wonderful. If  
12 you could hand it out.

13           MR. CROSBY: Is that the translated  
14 version?

15           MR. BECKER: This is the original signed  
16 version.

17           PRESIDENT VAN DEN BERG: I will help you  
18 out on that one to the extent I can.

19           It may be helpful, incidentally, if you  
20 have a translation.

21           MR. CROSBY: There is a translated version

1 in our Exhibit 69-A.

2           I was under the mistaken impression that  
3 there was an English translation in the record. I  
4 don't believe that's the case.

5           PRESIDENT VAN DEN BERG: All right. If  
6 you simply can go to page 22, if you put up your  
7 headphone, I look at the interpreter. Do you have  
8 the exhibits? They don't. Perhaps Mr. Perezcano  
9 can translate at page 22. We should find the  
10 paragraph M.

11           MR. PEREZCANO: Page 22, M, the electronic  
12 machines are games of--

13           PRESIDENT VAN DEN BERG: The next one.

14           MR. CROSBY: Counsel, could I ask you to  
15 stop until he gets his translation? My apologies.

16           MR. PEREZCANO: Excuse me, Mr. Chairman,  
17 it's paragraph N, and it reads, "where all the  
18 games that are described here involve the ability  
19 and dexterity because the components of the logic  
20 board (the board or the logic board) don't contain  
21 any circuits that control randomly the results of

1 the game."

2           PRESIDENT VAN DEN BERG: You understood  
3 the translation?

4           THE WITNESS: Yes.

5           PRESIDENT VAN DEN BERG: It says no  
6 circuits or chips. I understand it to be that  
7 control randomly results of the game. Is it  
8 possible, because what I understand from your  
9 earlier testimony, you said, look, one way or the  
10 other there is a software that's controlled--that's  
11 random, how do you call it, a number generator  
12 which controls randomly except that you can do a  
13 little bit with the software to make it--to adjust  
14 it for certain jurisdiction to make it more skill  
15 or less skill.

16           THE WITNESS: Well, when we were talking  
17 about the random number generator, we were talking  
18 specifically the slot machines. Okay? When we are  
19 discussing the game that I will be demonstrating,  
20 skill is the predominant factor in the game. There  
21 is--you know, there is an element of randomness in

1 the beginning, but the players' skill after that  
2 determines the outcome of the game.

3           PRESIDENT VAN DEN BERG: But your  
4 machines, the chips, they do have a random choice  
5 of numbers in a chip, isn't it? To a certain  
6 extent?

7           THE WITNESS: To a certain extent in this  
8 game, it's based on a finite group of numbers and  
9 symbols, which is important, because the slot  
10 machine is based on an infinite number.

11           PRESIDENT VAN DEN BERG: But then still I  
12 come back to the question. Can Netcomm conclude  
13 that there are no circuits which control randomly  
14 the results of the game?

15           THE WITNESS: If I understand it  
16 correctly, there are no circuits that control the  
17 outcome of this game by complete randomness. Is  
18 that what it's saying?

19           PRESIDENT VAN DEN BERG: It says it very  
20 broadly, do not contain circuits with control  
21 randomly the results of the game.

1 THE WITNESS: That's correct to an extent.

2 I mean, there is--

3 PRESIDENT VAN DEN BERG: So it's  
4 incomplete what they say here? They should have  
5 had it? What you said, for example, just an  
6 infinite number or a finite number, excuse me?

7 THE WITNESS: Well, that's--I think it  
8 will be more clear after the demonstration of the  
9 game. I mean, I'd rather comment on it after the  
10 demonstration of the game.

11 PRESIDENT VAN DEN BERG: Feel free to do  
12 so.

13 THE WITNESS: This statement is not  
14 incorrect.

15 PRESIDENT VAN DEN BERG: You can be  
16 halfway correct or fully correct.

17 THE WITNESS: I think let's discuss it  
18 after the demonstration of the game.

19 PRESIDENT VAN DEN BERG: But before we do  
20 that, I think my co-arbitrators have also questions  
21 in this respect. Mr. Portal would like to ask you

1 some questions.

2 ARBITRATOR PORTAL-ARIOSIA: I'm going to  
3 ask to ask you to put the speakers because I'm  
4 going to feel more comfortable in Spanish.

5 As regards the descriptions that you just  
6 gave us, I understood that this circuit board,  
7 card, or boards in general form of the machines  
8 could be identical, and that as the software  
9 inserted on a chip that might make the machine or  
10 that could make the machine operate by skill or by  
11 luck; is this correct?

12 THE WITNESS: That is correct.

13 ARBITRATOR PORTAL-ARIOSIA: The definition  
14 of skill has to do with the interaction between the  
15 user and the machine or does it have to do with the  
16 design of software that's inserted on the chip?

17 THE WITNESS: Could you repeat the  
18 question.

19 ARBITRATOR PORTAL-ARIOSIA: The definition  
20 of a skill machine, does it have to do with the  
21 interaction between the user and the machine, or

1 with the design of the software that's on the chip?

2 THE WITNESS: It's both. A skill game is  
3 the interaction and the skill and the dexterity and  
4 the interaction of the player with the software of  
5 the game.

6 ARBITRATOR PORTAL-ARIOSA: Could you  
7 clarify, please.

8 THE WITNESS: To use Mr. President's  
9 example of the Play Station, you're playing against  
10 a game, and you have to use your skill and  
11 dexterity to do it, but you're interacting with the  
12 software of the game. If there is not the software  
13 of the game, there is no interaction. You have to  
14 have both the software and the player to interact.

15 ARBITRATOR PORTAL-ARIOSA: Would it be  
16 correct to presume that there could be interaction,  
17 but that if the software contains an infinite  
18 number of possibilities, it would make it a game of  
19 chance?

20 THE WITNESS: If there is player  
21 interaction, it is still a game of skill, even with

1 an infinite number of possibilities, the chances of  
2 succeeding are lessened by the number of  
3 possibilities. It goes to the ability of how  
4 quickly you can process math probability problems.

5 ARBITRATOR PORTAL-ARIOSA: If my memory  
6 serves me well, when something is divided by  
7 infinity, the result is zero.

8 THE WITNESS: I'm not a math major, but if  
9 the player--I mean, your question does not apply to  
10 the software I provided Thunderbird, but your  
11 question, as long as the player's interacting with  
12 the game, the greater his skill, the greater the  
13 probability of a favorable outcome.

14 ARBITRATOR PORTAL-ARIOSA: The likely  
15 result--or let me rephrase it. Would it be correct  
16 to say that the likely outcome of each play depends  
17 on the number of combinations that exist in the  
18 software and the specific moment at which the user  
19 presses the buttons?

20 THE WITNESS: Yes, but it's game-specific.  
21 That could--that is a possibility.

1 ARBITRATOR PORTAL-ARIOSIA: Is it possible  
2 to learn these combinations?

3 THE WITNESS: Yes.

4 ARBITRATOR PORTAL-ARIOSIA: As regards the  
5 software inserted on the chip, and which makes it  
6 possible for a machine to have a finite, small, or  
7 infinite number of numerical combinations, is that  
8 design visible to a person?

9 THE WITNESS: Yes.

10 ARBITRATOR PORTAL-ARIOSIA: What level of  
11 knowledge do you believe, for example, for me, who  
12 is a lawyer, and I have seen chips, and I  
13 understand the concept of software, but I haven't  
14 seen it, it would be impossible on seeing a chip  
15 with software containing finite numbers of  
16 combinations and another with infinite number to be  
17 able to distinguish between them? The software  
18 that is--the software is inserted in the design of  
19 the chip; correct?

20 THE WITNESS: Correct.

21 ARBITRATOR PORTAL-ARIOSIA: What level of

1 specialty is required for a person to be able to  
2 distinguish the one from the other?

3 THE WITNESS: Depending on the game, once  
4 again it's a game-specific question. It would  
5 determined during the play of the game.

6 ARBITRATOR PORTAL-ARIOSIA: No, I'm  
7 referring to a physical analysis of the machines.  
8 If a person opens up the machine to look at how it  
9 works--or not how it works, but to examine its  
10 elements and performs an analysis of its  
11 components, what level of knowledge is required to  
12 be able to distinguish between the software  
13 inserted on one chip with a limited number of  
14 combinations and an equivalent one with an  
15 unlimited number of combinations?

16 THE WITNESS: You cannot determine that by  
17 looking at hardware. You would have to play the  
18 software. You would have to physically watch the  
19 game being played to determine that. I mean,  
20 someone that knew software could play the game and  
21 determine if it was based on a finite number of

1 combinations or an infinite number of combinations.

2           PRESIDENT VAN DEN BERG: Without knowing  
3 the design of the software, is it possible?

4           THE WITNESS: Is it possible for a layman  
5 to play the game and determine its level of skill?  
6 Is that what you're asking?

7           ARBITRATOR PORTAL-ARIOSIA: No. Is it  
8 possible to figure out without knowing the software  
9 that distinguishes one type of results from another  
10 to know with certainty whether it's software that  
11 results in an infinite or finite number?

12          THE WITNESS: Yes, it is possible.

13          ARBITRATOR PORTAL-ARIOSIA: Could you  
14 describe for us how such an analysis could be made.

15          THE WITNESS: A player evaluating the pay  
16 table that is shown on the glass or by playing X  
17 number of games and having the knowledge of  
18 mathematical probabilities to determine it.

19          ARBITRATOR PORTAL-ARIOSIA: I don't think  
20 I'm getting my point across. I'm very interested  
21 in the technical component. I just want to focus

1 on the design of the software.

2           THE WITNESS: Okay.

3           ARBITRATOR PORTAL-ARIOSIA: To the extent  
4 that one can determine whether there is an  
5 objectively measurable result and not so much based  
6 on the user's assessment. For example, a piece of  
7 sugar can be placed in a machine and the machine  
8 gives you a very precise result regarding its  
9 characteristics. I'm trying to figure out whether  
10 there is some equivalence in terms of figuring out  
11 the functioning of one software compared to the  
12 other, and in this regard get to know what  
13 difficulties there might be.

14          THE WITNESS: I apologize, I'm still  
15 confused by the question. Are you talking about a  
16 player or a laboratory evaluating the game?

17          ARBITRATOR PORTAL-ARIOSIA: A laboratory, a  
18 technical experiment on software matters.

19          THE WITNESS: Yes, there are gaming  
20 laboratories that can hook up to a machine and  
21 determine how the math is done, whether it's finite



1 or infinite, yes.

2           ARBITRATOR PORTAL-ARIOSIA: Is that the  
3 only way to determine whether the software design  
4 is one or the other?

5           THE WITNESS: No. By playing the game,  
6 you know, by actually playing the game over time,  
7 you can determine it also. What a laboratory does  
8 is they do, as we discussed earlier, thousands or  
9 millions of play in a shorter time span than an  
10 actual player to determine the mathematical  
11 probability.

12           And I'm not really qualified--you know,  
13 I'm not a gaming laboratory technician. I can't  
14 really comment on the exact procedure. I have  
15 submitted product. I know basic procedures, but  
16 I'm not a gaming laboratory technician.

17           ARBITRATOR PORTAL-ARIOSIA: Last question:  
18 Is it possible for a person to distinguish between  
19 the type of software without playing the game and  
20 without using a gaming laboratory?

21           THE WITNESS: It's possible by viewing the

1 pay tables on the glass. You could possibly  
2 determine how the game is structured, but that's  
3 very game-specific, and it's really hard for me to  
4 answer without showing me a specific example.

5           ARBITRATOR PORTAL-ARIOSIA: If you look at  
6 the report that's been presented, there are some  
7 photos in this report which would appear to  
8 indicate that an expert, after seeing the elements  
9 that make up the machine, concluded, reached a  
10 conclusion, a certain result. Nonetheless, if I  
11 understand it properly, the two methods for  
12 adequately distinguishing whether the results of  
13 the software or the outcome of the software will be  
14 random or subject to determination or capable of  
15 being determined through skill is using the  
16 machine, not knowing its components, or by using  
17 laboratory equipment.

18           And the report that we have before us  
19 appears to indicate to us visual analysis of the  
20 parts, and that's why we're interested in learning  
21 whether it's possible by making a visual analysis

1 of the parts to distinguish the operation of the  
2 machine.

3 THE WITNESS: It's possible, and I have  
4 not read the report, and I'm not familiar, so I'm  
5 not quite sure. I'm not really qualified, because  
6 I don't know what procedures they used. I mean,  
7 it's possible to, you know, look at pay tables on  
8 glass, look at the board setup and see that, you  
9 know, if you had a knowledge of logic boards, that  
10 it didn't contain the game chip, the board  
11 configuration. It's possible. I'm not qualified  
12 to answer because I don't know the procedures they  
13 used.

14 ARBITRATOR PORTAL-ARIOSIA: In the case of  
15 the machines that you design and manufacture for  
16 Thunderbird, is the distinction to be found in the  
17 software or in the physical components that make up  
18 the motherboard?

19 THE WITNESS: The distinction is in the  
20 software.

21 ARBITRATOR PORTAL-ARIOSIA: Thank you very

1 much.

2 THE WITNESS: You're welcome.

3 ARBITRATOR WALDE: I want to look at it  
4 again from the user's point of view. And what I'm  
5 interested in is actually to define what skill  
6 means.

7 Now, listening to you--and you correct  
8 me--I am identifying what types of human skill in  
9 interacting with this machines and how they  
10 operate. First, a skill of perception and  
11 reaction, and secondly, a skill of carrying out  
12 instinctive or rapid or scientific in your head  
13 probability analysis.

14 Am I right?

15 THE WITNESS: Yes, I believe the first one  
16 you're referring to is a skill-stop.

17 ARBITRATOR WALDE: Where you see and push  
18 fast?

19 THE WITNESS: Correct. And the second is  
20 analytical, correct. Those are the two types of  
21 skim games.

1           ARBITRATOR WALDE: We actually have, if I  
2 think about it all our life consists of matching  
3 random events with probability analysis and skill.  
4 If I play football, I mean, which we regard as  
5 skill, but the door keeper will have a experience  
6 over his life of when a foot kicks the ball in  
7 which directions it might fall. If one plays pool,  
8 I think is the British name, the Germans call it  
9 billiard, pool table, I mean, the skill will be  
10 eye, direction of the ball, but it will also be  
11 a--by long experience born a skill to evaluate out  
12 of the three or four directions the ball might  
13 suddenly come from.

14           ARBITRATOR WALDE: You are right.

15           THE WITNESS: Yes.

16           ARBITRATOR WALDE: I'm not asking as a  
17 full expert, but I'm just trying to understand the  
18 skills here.

19           THE WITNESS: Yes.

20           ARBITRATOR WALDE: Different from Albert  
21 Young, who's got teenagers, I've got a six-year-old

1 daughter. I play a game which is called in English  
2 Max and the Magician, and we have all our--we look  
3 at from our experience. The boy sits on a broom  
4 and flies in a cocoa, and then come various objects  
5 he's flying to the witch, and then there comes  
6 various objects which if he knocks one of them,  
7 he'll fall down and you lose the game.

8           So, you fly. You can only go up or down.

9 So, I assume this is really eye coordination and  
10 how fast you deal with the course. It's really a  
11 six-year-old's games, but I assume, though, that  
12 these objects fly against him which tend to be  
13 other witches, that they are generated by some kind  
14 of random generator.

15           THE WITNESS: I would assume. I'm not  
16 familiar with the software, but I would assume,  
17 yes.

18           ARBITRATOR WALDE: So, when I do it with  
19 my daughter, there are three levels I can do. I  
20 can only do the easiest level. My daughter can't  
21 do anything yet. I'm tend to be in the middle

1 because in the middle I can correct something  
2 coming from above or below. If it comes straight  
3 from the middle, it's more difficult to disappear  
4 rapidly.

5           So what I'm doing here is my skill is by  
6 partly I am--by flying the middle, I'm killing out  
7 a chance, a random. It's like military strategy.  
8 I carry out the calculation of the probability of  
9 these untoward events, which I can't predict with  
10 preciseness, but I say well, there is a chance it  
11 come and then I react to it. Is that right?

12           THE WITNESS: Yes.

13           ARBITRATOR WALDE: And you're saying that  
14 machine is actually similar?

15           THE WITNESS: Yes. There is a random  
16 event in the beginning of the game. The player has  
17 an analytical decision to figure out the  
18 probability of what choices the player makes to  
19 determine the outcome of the game.

20           ARBITRATOR WALDE: What you're saying is  
21 Augusto, my distinguished colleague, he looks at

1 the trick and the fulcrum. I look at from the  
2 user's perspective. I will learn this by playing  
3 it very often so I get a feeling I can build up  
4 probability analysis. Otherwise, I wouldn't be  
5 surviving in life. I'm quite sure from football  
6 players or tennis, in tennis, someone plays a ball,  
7 I do have a certain experience that the ball might  
8 go here and here, so I might prepare myself for  
9 those two contingencies. So that's your saying  
10 it's like playing tennis; you learn how that  
11 machine goes, and then I will--am I right?

12           THE WITNESS: Yes.

13           PRESIDENT VAN DEN BERG: I suggest we go  
14 before going further down the road of football  
15 playing and Mr. Beckham, we may now go to the  
16 actual analysis. But before doing that, I have one  
17 small question about the gaming laboratory  
18 technician. Are those actually the ones who can  
19 really analyze a machine, whether it's a skill or a  
20 slot machine, according to the criteria set?

21           THE WITNESS: Well, they're independent.

1 You know, programmers can evaluate software, but in  
2 the gaming industry, people go to laboratory or  
3 have technical standards to develop product by, and  
4 depending on the jurisdiction, there are  
5 laboratories per jurisdiction. If there are no  
6 technical standards or laboratory per jurisdiction,  
7 you go on the best of your ability and your  
8 programming knowledge to fit what standards were  
9 provided.

10           PRESIDENT VAN DEN BERG: Okay. So, to  
11 your knowledge, I don't know whether--you are  
12 familiar with the Mexican market?

13           THE WITNESS: Just the only business I  
14 have done in the Mexican market is within this  
15 case.

16           PRESIDENT VAN DEN BERG: Is Netcomm a  
17 gaming laboratory technician.

18           THE WITNESS: I'm not familiar with that  
19 company.

20           PRESIDENT VAN DEN BERG: They say they are  
21 systemis telecomunicaciones, which sounds to me

1 like somebody from the telephone or the telecom  
2 industry. Would somebody from the telecom industry  
3 be competent to analyze skill and slot machines?

4           THE WITNESS: I don't know. I mean, I  
5 don't know.

6           PRESIDENT VAN DEN BERG: All right. Then  
7 may I invite you to show the demonstration.

8           THE WITNESS: This game is game. It's  
9 called La Mina de Oro symbolic game of skill. This  
10 game, the theme is a mine, a gold mine. What you  
11 have is a group of 52 symbols, a finite group of 52  
12 symbols. There are four types of mining carts, and  
13 the carts, different types of mining carts are  
14 determined by the jewel that is in the cart. You  
15 have an emerald, a ruby, a diamond, and a gold  
16 nugget.

17           The four types of carts have types of  
18 numbers 1 through 13 assigned to each type of cart,  
19 which makes up the 52 groups of symbols.

20           Up here are your possible winning  
21 combinations. You can have two carts of the same

1 number greater than 10. You can have two pairs of  
2 similar numbered carts. You could have three  
3 similar carts, and it goes all the way up to carts  
4 numbered 9 through 13 of the same type of cart,  
5 which would be the top winning prize.

6           So, the player engages the game, hits the  
7 start button, which the machine issues you five  
8 symbols.

9           So, at this point we have to make a  
10 decision, a choice of what we want to keep or what  
11 we want to discard. So, in this instance, we have  
12 two types. We have a pair of nines, which doesn't  
13 get us into the level here because we need 10, but  
14 I'm going to make the decision to keep these nines.  
15 I already played the game. I'm sorry. Let's start  
16 over. That was finishing the game.

17           Start over again. Same scenario. I got  
18 two 7s, so I'm going to do the same thing. I'm  
19 going to keep the sevens. In my mind, I can still  
20 go for a "Carls Conoro," or I could go for three  
21 cart or an oro bueno, which is four carts of the

1 same number.

2           So, I have those choices, those  
3 possibilities, and that's why I decided to keep  
4 those two carts. Then the machine issued me new  
5 symbols, and I didn't receive any of those  
6 combinations, so I start over. Every time I start  
7 over, it starts over with a group of 52. 13 times  
8 four. I'm down to 47. I have left, I'm going to  
9 just keep the 10 because that's the best decision  
10 here because it gives me the best chance at least  
11 to get the bottom prize, and it didn't happen.

12           So, once again, I start over, and I'm  
13 going to attempt to keep the six, eight, and seven  
14 and go for a straight. I'm going to make that  
15 choice. Didn't happen.

16           My skill is not good today. I'm going to  
17 keep the--oops, I hit the wrong button, which is  
18 also a possibility. You got to make sure you're  
19 paying attention and hit the right button, which I  
20 didn't do there, so I'm going to start over again.  
21 It's right there.

1 Right now, I've already qualified for the  
2 bottom prize, which I have two 13s, which I can  
3 keep those, and I'm guaranteed that prize, and I  
4 can go for--there is a combination of three other  
5 prizes that I can get, or I can decide to take a  
6 big risk and not hold any and start over again, but  
7 I'm going to play it safe here, so I'm guaranteed  
8 that, and that was the safe move there.

9 PRESIDENT VAN DEN BERG: This assumes that  
10 you have put a number of dollars in the machine?

11 THE WITNESS: Yes. It's based on your  
12 playing, I'm playing five credits at a time. I  
13 based the machine on credits, and that credit can  
14 represent any denomination.

15 PRESIDENT VAN DEN BERG: Okay.

16 THE WITNESS: Once again, I got the two  
17 13s, which are greater than 10, and I qualified for  
18 the bottom prize. I will go--keep the threes,  
19 didn't get anything on that.

20 Qualified for the bottom prize here, so  
21 keep those. And what happened was I kept those,

1 and I got two 8s and two 11s, which qualified me  
2 for that prize level.

3 ARBITRATOR WALDE: The thunder goes up  
4 again. You start with a balance, and then it goes  
5 up and down, depending on the success?

6 THE WITNESS: Correct. The credits that I  
7 played, these are the credits that I received, and  
8 this is the balance of credits, you know, debit or  
9 credit, and this tells me what I've won.

10 I'm going to play it safe here. I'm a  
11 basic skill player, so I don't take huge risk.  
12 That's why, if I could take greater risk--

13 ARBITRATOR WALDE: Where is here the  
14 visual and reaction time skill? I don't see that.

15 THE WITNESS: That is not on this game.  
16 This is purely analytical. This is purely figuring  
17 out probability based on the numbers that are  
18 there. This does not have the dexterity aspect to  
19 it. This is strictly analytical.

20 MR. CROSBY: May I ask just an informative  
21 question for the Tribunal. Am I correct that this

1 represented 30 to 40 percent of the games?

2 THE WITNESS: Yes, somewhere between 30 to  
3 40 percent.

4 ARBITRATOR WALDE: How do you call that  
5 game? Mina de Oro?

6 THE WITNESS: Mina de Oro, gold mine in  
7 English.

8 PRESIDENT VAN DEN BERG: This machine  
9 doesn't have the pay table?

10 THE WITNESS: This is the pay table here.  
11 This is the payout.

12 What I'm not showing here what it would  
13 have is--is an explanation in a piece of glass up  
14 here of the symbol combination that would represent  
15 that payout. There's not--I don't have--what I  
16 don't have attached here is there would be a  
17 graphical representation of these payouts.

18 PRESIDENT VAN DEN BERG: I understand  
19 that, but how the machine has performed just before  
20 I started to play? Is that shown? In order to  
21 help my probability analysis? I would like to know

1 what happened before I came to the machine.

2 THE WITNESS: It doesn't matter in this  
3 game because every time you play, you start over  
4 from that group of 52, so it's an independent game  
5 every time you play. It's not an infinite number  
6 of games being played or a large number of finite  
7 games. It's a small number of 52. So, when I  
8 played there, I'm now down to 47. So, there's 47  
9 symbols and numbers attached to those symbols that  
10 I had to figure what's the best probability for me  
11 to play. And I'm playing very safe. There is  
12 people much smarter than me that would know what to  
13 hold. I'm just a basic player.

14 And I'm just getting safe results.

15 ARBITRATOR WALDE: I have a question. You  
16 designed these games?

17 THE WITNESS: I work with programmers to  
18 design it. I did not do the actual program.

19 ARBITRATOR WALDE: You test this? You've  
20 got people who are testing them to see how it  
21 works?



1 THE WITNESS: Yes.

2 ARBITRATOR WALDE: Who are these people?

3 THE WITNESS: I brought in a variety of  
4 people. I brought in technicians I knew that had  
5 higher levels of skill, and then I paid random  
6 players to come in and play and to give me what  
7 would you call a game evaluation.

8 ARBITRATOR WALDE: Who are the base  
9 players usually? What type of person? Adolescent  
10 teenagers?

11 THE WITNESS: The people who are very good  
12 in math, math-oriented players.

13 ARBITRATOR WALDE: Who are trained?

14 THE WITNESS: Usually computer, people in  
15 the computer industry and people that have a very  
16 heavy understanding of math.

17 ARBITRATOR WALDE: By training or natural  
18 instinct?

19 THE WITNESS: Both. I mean, it can be  
20 natural or it can be learned. If I took the time  
21 to sit there and, you know, the more I play, the

1 more I will learn. Or if I took more statistical  
2 analysis classes or something like that, that would  
3 probably prep my brain.

4 ARBITRATOR PORTAL-ARIOSA: Do you have the  
5 other, one of the reel--

6 THE WITNESS: I do not have the reel game.  
7 I just have this game.

8 ARBITRATOR WALDE: Have you got a game  
9 with perception and dexterity?

10 THE WITNESS: I did not bring that, no.  
11 The sourcecode I had for that game does not work  
12 with this test kit because it uses--that uses a  
13 touch screen monitor, and this is a regular  
14 monitor, and I did not have both.

15 ARBITRATOR WALDE: But you have supplied  
16 games with dexterity and skill?

17 THE WITNESS: Yes.

18 ARBITRATOR WALDE: To EDM?

19 THE WITNESS: Yes.

20 ARBITRATOR WALDE: And is it 60 percent?  
21 You said 30, 40 percent roughly were that type,

1 with this particular program?

2 THE WITNESS: I--30 percent of the games  
3 on the floor in total, 30 to 40 percent of the  
4 total games on the floor, of all the facilities,  
5 were this program. There were additional games  
6 that would have been the--the rest would have been,  
7 you're correct, but the percentage that I provided  
8 was probably another 20 percent of the real games.  
9 The other vendors--

10 ARBITRATOR WALDE: Were Bestco?

11 THE WITNESS: Bestco and Summit, yes.

12 ARBITRATOR WALDE: May I actually play the  
13 game?

14 THE WITNESS: Yes.

15 (Off the record.)

16 ARBITRATOR WALDE: Another question. The  
17 advantage of the house is that it does know more  
18 about the probabilities than the player except the  
19 player who has played with this a long time and who  
20 has played also with other games which may have  
21 different images, but have the same logic behind?

1 THE WITNESS: Yes, they count on people  
2 with basic skill playing.

3 PRESIDENT VAN DEN BERG: I think what I  
4 would allow is what you have the cross-examination,  
5 but I will allow a couple of minutes if the  
6 claimant would like to ask some questions directly,  
7 I would look first to give the opportunity to the  
8 claimant to ask some questions in direct related to  
9 what we have seen here.

10 MR. CROSBY: I have no direct.

11 PRESIDENT VAN DEN BERG: Thank you. Who  
12 of the respondent's team will address? I see two  
13 volunteers.

14 MR. PEREZCANO: I was going to say  
15 Mr. Becker.

16 PRESIDENT VAN DEN BERG: Okay.

17 MR. BECKER: It's quarter to one. Would  
18 it make sense to break for the lunch?

19 THE WITNESS: How many minutes do you  
20 anticipate?

21 MR. BECKER: I need to consult with my

1 colleagues. I really can't say right now. There  
2 was quite a bit of discussion this morning.

3           PRESIDENT VAN DEN BERG: Because the time,  
4 shall we resume at half past one? Is that okay for  
5 the interpreters? There was some downtime this  
6 morning. It's 40 minutes. Is that fine for  
7 everybody?

8           MR. CROSBY: That's fine.

9           PRESIDENT VAN DEN BERG: Mr. McDonald, you  
10 are under testimony. That means that you cannot  
11 discuss this case with anybody during it, so I  
12 suggest you take a nice walk outside.

13           THE WITNESS: I will do that.

14           (Whereupon, at 12:48 p.m., the hearing  
15 was adjourned until 1:30 p.m., the same day.)

16  
17  
18  
19  
20  
21

1                           AFTERNOON SESSION

2           PRESIDENT VAN DEN BERG: Let's start. I  
3 have a technical question, first.

4           Mr. Crosby, your side ready?

5           MR. CROSBY: Yes.

6           MR. PEREZCANO: Yes.

7           PRESIDENT VAN DEN BERG: Mr. McDonald,  
8 during the break I couldn't, of course, resist  
9 pushing the button. There's always what my wife  
10 reproaches me. First I push the button and then I  
11 read the manual. It is a bad thing to do anyway  
12 because I lack the patience.

13           So, what I did was I pushed the button  
14 setup, and then and if I got first screen setup,  
15 and then I pushed the button completely to the  
16 right and then I got another screen, and perhaps  
17 Mr. Mowatt, can you push the button. Perhaps you  
18 can come over here. Then you get this screen, and  
19 the screen gives you all kind of information about,  
20 for example, if you look to the bottom, percentage  
21 of success, the premiums, the percentage of payout?

1 THE WITNESS: This is a game history that  
2 just describes everything that has happened within  
3 the game during the life of the game, so that if  
4 there is ever a dispute between a player or just  
5 any reconciliation of accounting that needs to be  
6 done, you can go back into the machine and check  
7 the history of the game.

8 PRESIDENT VAN DEN BERG: Okay. But every  
9 machine has this feature?

10 THE WITNESS: Yes.

11 PRESIDENT VAN DEN BERG: And a player, him  
12 or herself, can see that?

13 THE WITNESS: No. That is what you access  
14 and I don't know--I actually didn't--I'm not quite  
15 sure how did you it, but on this test, but on a  
16 machine, the only way to access this information is  
17 to have--every facility is different, but it would  
18 be a secured key that would go in there and key,  
19 and you would have a code to get in to get back  
20 into the game history.

21 PRESIDENT VAN DEN BERG: Is this also

1 on-line available in a control room of a facility?

2 THE WITNESS: If a facility has an on-line  
3 accounting system, they could hook it up to the  
4 machine and get this information, yes.

5 PRESIDENT VAN DEN BERG: This goes per  
6 game or also the history of the machine per day or  
7 for a certain period of time?

8 THE WITNESS: You know, there are meters  
9 that are for the life of the game, and then there's  
10 daily information.

11 PRESIDENT VAN DEN BERG: And you can  
12 combine it and put it in a server in a computer,  
13 and then it could be seen, all this information can  
14 be averaged by a facility?

15 THE WITNESS: Yes.

16 PRESIDENT VAN DEN BERG: I will tell you  
17 how I did it. I simply pushed setup.

18 THE WITNESS: Okay. That's fine.

19 PRESIDENT VAN DEN BERG: Okay. So, that  
20 information would incidentally be useful for a  
21 player to have it beforehand, wouldn't it, or

1 during the game?

2 THE WITNESS: Well, it's--not really,  
3 because it doesn't--it doesn't affect the skill  
4 factor of the game. It just tells you what other  
5 players have done. It doesn't affect what you do,  
6 because every time you play the game, it starts  
7 from a new group of symbols.

8 PRESIDENT VAN DEN BERG: I see. Because  
9 if I see that the percentage, exitos, the success  
10 rate.

11 THE WITNESS: Right. I mean, it tells  
12 you, you know, what certain, you know, prizes that  
13 there had been a certain number of prizes, but not  
14 specifically which one.

15 PRESIDENT VAN DEN BERG: If I know a  
16 machine which this has 40 percent, that would be  
17 displayed, I understand it is not displayed, but I  
18 see next machine with 60 percent, which machine  
19 would I choose?

20 THE WITNESS: Well, that's not a relevant  
21 question because you can't see this information.

1 PRESIDENT VAN DEN BERG: Exactly, but if  
2 it were displayed, then I would choose probably the  
3 60 percent, with my limited math.

4 THE WITNESS: 60 percent that--oh, that is  
5 left or that is played? Yeah. I mean, you could  
6 look at it that way.

7 PRESIDENT VAN DEN BERG: All right. There  
8 is one further question. You could please sit  
9 down, please. Professor Walde has a question.

10 MR. CROSBY: Not only do we have a hot  
11 bench, but we have a very curious bench.

12 ARBITRATOR WALDE: These are the fulcrum  
13 chips here?

14 THE WITNESS: Yes, those are the game  
15 Eproms.

16 ARBITRATOR WALDE: So if you replace it,  
17 then suddenly out of the Mina de Oro comes the reel  
18 of seven or the cash or something?

19 THE WITNESS: Yeah. There is a variety of  
20 games that could be placed on this board. These  
21 games, is it possible to engineer a change

1 probability. If you suddenly see as a manager of  
2 the facility that suddenly you've got big payouts,  
3 can you do something to change that payout?  
4 Basically, what you can do, can you then put in a  
5 Mina de Oro which has instead of 60 percent, you  
6 could put in 50 percent payout probability? Is it  
7 difficult? Can I trust I could I open it up like a  
8 "simcard" and put in a new one?

9 THE WITNESS: You can put in a new game  
10 chip, but it would be the same math. The one  
11 time--I mean, the only thing that is possible, you  
12 know, that a problem is that if the Eprom was  
13 damaged in some way, which is possible, or there is  
14 a short in the board, which could cause a problem  
15 with the game, you may want to replace chips at  
16 that time. But the game, this game, you know, is  
17 set the way I describe it. 52 symbols, so the  
18 probability is set within that game.

19 In a slot machine, you're correct. You  
20 can set the theoretical percentages in a nonskill  
21 real game.

1 ARBITRATOR WALDE: But here you can't?

2 THE WITNESS: No.

3 ARBITRATOR WALDE: Except if you know it  
4 from someone like you--

5 THE WITNESS: Unless it was a completely  
6 different game. I mean, then I'm not talking this  
7 style of game, but I mean some other game that you  
8 developed, you know. But with the skill game, you  
9 know, skill is the predominant feature, so  
10 it's--you can't set a percentage because you're  
11 having to--it's theoretical because you have to  
12 create a game on a basic skill level of the player.

13 ARBITRATOR WALDE: If you could go to my  
14 colleagues' questions, if you would, instead of the  
15 52 times something, if you would make it hundred  
16 four times something, wouldn't that--then that  
17 would make the game much more difficult?

18 THE WITNESS: Correct. You would have  
19 much more possible combinations that you would have  
20 to figure.

21 ARBITRATOR WALDE: If you would reduce it

1 to 52 and 12, then it would be much easier.

2 THE WITNESS: Correct.

3 ARBITRATOR WALDE: It's like my daughter's  
4 game where I have three levels of difficulty.

5 THE WITNESS: Correct.

6 PRESIDENT VAN DEN BERG: Mr. Becker,  
7 please proceed with the cross-examination.

8 CROSS-EXAMINATION

9 BY MR. BECKER:

10 Q. Thank you, Mr. McDonald. I would like to  
11 go back and just review the basics of the game  
12 you've demonstrated. There are 52 carts; is that  
13 right?

14 A. 52 symbols.

15 Q. Symbols, right. And that's the same  
16 number of cards in a deck of cards, isn't it?

17 A. Correct. Not counting jokers. I mean, if  
18 you have two jokers, it would be 54 at that point.

19 Q. And there are four sets of 13 symbols in  
20 each set of carts or each set of symbols; is that  
21 right?

1 A. Correct.

2 Q. So, that's just like a deck of playing  
3 cards where you have four suits, each with 13  
4 cards; is that right?

5 A. Similar if you don't count jokers as wild.

6 Q. Right. Okay. Could we go through again  
7 the payout schedule here on the game. There is a  
8 list of, I guess, the payout odds with names on  
9 them. We could stand up and go through this again,  
10 but the--

11 A. I just want to say you can't really base  
12 anything on that. That is a program we set up for  
13 a demo, and it's just over a short life of the  
14 game, so it's just being based on basically three  
15 days' worth of play. So, I mean, you cannot--

16 Q. You misunderstood me. I mean, on the main  
17 screen of the game, it says basically you have, if  
18 you get a Mina de Oro, you get a certain number of  
19 credits and these other words, but I just wanted to  
20 verify with you that those names match up to things  
21 like two of a kind, three of a kind, a straight,

1 straight flush; is that right?

2 A. Yes. Yes, there are similarities.

3 Q. Similarities. In fact, they're absolutely  
4 equivalent, aren't they?

5 A. Depending on what--there is a number of  
6 different--it's similar to poker games, but you  
7 would have to specify a specific poker game.

8 Q. Sure.

9 A. I mean, there's a number of different  
10 types of poker games. It's similar to poker.

11 Q. Now, when the transcript was off when we  
12 were getting ready for the break, you told  
13 Mr. Walde that the real machines, of course, would  
14 spit out a ticket that could then be exchanged for  
15 cash; is that correct?

16 A. I didn't say cash. I said a ticket was  
17 dispensed that represented credits, and the credits  
18 would be exchanged for whatever prize the facility  
19 chose.

20 Q. Okay. And that could include cash?

21 A. I'm not an operator of a facility. I

1 mean, it could be whatever the operator and the  
2 jurisdiction allows.

3 Q. You never visited any of the Mina de Oro  
4 facilities in Mexico?

5 A. No, I did not.

6 Q. Okay. All right. Now, supposing for a  
7 moment that the games were being played for money.  
8 Mr. McDonald, you're generally familiar with U.S.  
9 law in gambling, aren't you?

10 A. Certain jurisdictions, yes.

11 Q. Yes. And certainly in the United States  
12 in general, when you play a card game like poker or  
13 Blackjack against the house for money, that's  
14 regulated as gambling, isn't it?

15 A. It depends on the jurisdiction. It's a  
16 gaming classification.

17 Q. But that's why people fly to Las Vegas and  
18 Atlantic City to play cards against the house;  
19 right?

20 A. But it's--there's cards, there's house  
21 bank, there's--



1 Q. I'm talking about house bank here only.  
2 You're placing against the house for money. That's  
3 regulated as gambling, isn't it?  
4 A. Are you talking about Nevada?  
5 Q. No.  
6 A. No, Nevada--you have to--  
7 Q. Okay, I'll give you a specific.  
8 A. I want to make a statement here. When you  
9 start talking about U.S. law in gaming, there's  
10 hundreds of jurisdictions and classifications of  
11 gaming within those jurisdictions, and I cannot  
12 answer anything unless you specify a jurisdiction  
13 and a classification of gaming.  
14 Q. All right. How about North Carolina?  
15 A. Okay. What about North Carolina?  
16 Q. Is gambling against the house with cards  
17 for money regulated as gambling?  
18 A. It is regulated as skilled gaming on  
19 Indian reserves.  
20 Q. Yes, but not on Indian reservations. In  
21 downtown Charlotte, North Carolina.

1 A. I'm not familiar with the law outside  
2 Indian reservations.  
3 Q. Okay, thank you.  
4 Now, I believe you testified earlier and I  
5 want to you confirm that this game would contain a  
6 random number generator to decide what symbols to  
7 put up on the screen; is that right?  
8 A. An element of it to initially start the  
9 game, yes.  
10 Q. Okay. So, the first five symbols you  
11 would see. And then you'd hold--the player would--  
12 A. But it was randomly generated out of a  
13 group, out of a finite group.  
14 Q. Yes, I understand that. And then if the  
15 player were to hold two or three or four cards or  
16 symbols, excuse me, then--and you hit the button  
17 again, then it would also randomly generate another  
18 set of symbols that fill up the extra spaces--  
19 A. Out of the remaining 47.  
20 Q. That's right, thank you.  
21 Mr. McDonald, the briefcase version of

1 this machine that you brought to the Gobernacion  
2 hearing in July of 2001, didn't it contain examples  
3 of two reel games?

4 A. I believe the only game we demonstrated  
5 was the Mina de Oro.

6 Q. There is no game with the spinning reels?

7 A. We may have had the reel games with us, I  
8 don't recall, but the only one we demonstrated was  
9 the Mina de Oro. It was a different case.

10 Q. Okay. Now, do you have an operating  
11 manual for this game?

12 A. I have a generic operating manual for the  
13 4205 board with corresponding cabinetry.

14 Q. Okay. But you don't have one for this  
15 specific game? Didn't you tell us during the  
16 demonstration that there was one, that Thunderbird  
17 had it?

18 A. The generic manual.

19 Q. Okay. But not a manual for this specific  
20 game?

21 A. No, there may have been--no.

1 Q. Was there ever one put together?

2 A. They were in the process. What I provided  
3 Thunderbird was our generic manual that covered our  
4 generic cabinet, our generic logic board, okay?  
5 And depending on the software and the jurisdiction,  
6 you know, you would make alteration--alterations  
7 to that manual to fit that jurisdiction.

8 Information was provided, but I believe the  
9 facilities were shut down before those translations  
10 were complete.

11 Q. Okay.

12 A. I left--I gave Thunderbird the information  
13 to develop their own manual.

14 MR. BECKER: All right. Mr. President, I  
15 have a copy of the SCI instruction manual, and I'm  
16 going to show it to the witness. We also have  
17 extra copies we could hand out.

18 PRESIDENT VAN DEN BERG: All right.

19 This is a document that's in the record?

20 MR. BECKER: Yes. It's Exhibit R-11.

21 BY MR. BECKER:

1 Q. You have seen this manual before,  
2 Mr. McDonald?

3 A. Yes, I have seen elements of this manual  
4 before.

5 Q. Excuse me. The cover says Support  
6 Consultants, Inc.?

7 A. Yes.

8 Q. So, this is your SCI manual, isn't it?

9 A. Yes, yes, but it's a combination. Like I  
10 said, it's a generic combination of a number of  
11 manuals.

12 Q. Okay.

13 A. I can see in here games from different  
14 jurisdictions already.

15 Q. Mr. McDonald, can I direct your attention  
16 to the cover.

17 A. Yes.

18 Q. Do you see there under the picture of the  
19 circuit board is it says 4205 Game Board series,  
20 Eight Line Skill/Mina de Oro skill games.

21 A. Yes.

1 Q. So, this was a manual for use at the Mina  
2 de Oro facility, was it not?

3 A. Yes. I mean, for them to pull information  
4 that was pertinent to that area.

5 Q. All right.

6 A. I did not edit the manual.

7 Q. You did not edit the manual.

8 Did you generate--did you prepare this  
9 manual?

10 A. I didn't personally.

11 Q. Someone on your staff wrote it?

12 A. The entire manual or the cover page? What  
13 are you talking about?

14 Q. Well, the manual as a whole.

15 A. Well, once again, I assembled the manual.  
16 If you look at certain parts like the printer, that  
17 was provided by the printer manufacturer. The bill  
18 acceptor by the bill acceptor manufacturer.

19 Q. I'm referring to the front part--

20 A. The cover page?

21 Q. No, the Table of Contents, and the first

1 20 pages or so. That actually describe the games.

2 A. Depending on the game. A lot of these  
3 games are irrelevant to this proceeding.

4 Q. I'm just asking you--

5 (Simultaneous conversation.)

6 Q. My question, I'm trying to be very simple  
7 here, Mr. McDonald. I'm asking you to look at the  
8 first 20 pages and just tell me were these prepared  
9 by you and your staff at SCI?

10 A. No.

11 Q. Who prepared this manual?

12 A. A combination of people.

13 Q. Okay.

14 A. The cabinet manufacturer, the components  
15 manufacturer, the board manufacturer, and the  
16 software programmers were applicable.

17 Q. Did they prepare the manual under your  
18 instructions?

19 A. They provided me the information on what  
20 parts or products I purchased from them.

21 Q. Okay. Let me turn you more specifically

1 to page 10, please. This is the page that starts  
2 off at the top, "Game Play Instructions." So,  
3 you're saying someone else prepared this for your  
4 machine?

5 A. It's a generic explanation on game play  
6 instructions. I mean, we could have cut and pasted  
7 from someplace else. Someone in my company could  
8 have written it. It's like I said; this is a  
9 compilation of manuals I had for a number of years,  
10 and I was not--it's been added to and deleted over  
11 the years.

12 Q. Okay. So, you don't really know where any  
13 of this came from?

14 A. Specifically off the top of my head, no.

15 Q. Okay. The next exhibit I'm going to hand  
16 out is Exhibit R-16. This is the Thunderbird  
17 manual for the 4205 Game Board series.

18 A. Correct.

19 Q. Would you please turn to page 10 of this  
20 manual.

21 Mr. McDonald, this is a--isn't this just

1 simply a photocopy--I'm sorry, isn't page 10 out of  
2 the SCI manual simply a photocopy of the page 10  
3 our of the Thunderbird manual?

4 A. Yes.

5 Q. All right. So, the SCI manual is a copy  
6 of the Thunderbird manual?

7 A. Yes.

8 Q. All right. But your testimony is that  
9 your SCI version is just a generic version. It  
10 wasn't for Mexico, notwithstanding that it has the  
11 Mina de Oro on the cover?

12 A. Well, SCI purchased the 4205 board when I  
13 created the company years ago, and then I added to  
14 it and created. So, this is an older version of  
15 what this is.

16 Q. Okay.

17 A. And it was added to it as time went on.

18 PRESIDENT VAN DEN BERG: The record will  
19 reflect what this is, and what that is. What was  
20 older than what?

21 THE WITNESS: The Thunderbird manual

1 precedes--

2 PRESIDENT VAN DEN BERG: Which is the  
3 R-16?

4 THE WITNESS: Precedes the SCI manual.

5 PRESIDENT VAN DEN BERG: Which is the  
6 R-11.

7 MR. BECKER: In our next exhibit for ease  
8 of comparison, we have placed certain pages from  
9 the SCI manual side by side with the corresponding  
10 page from the Thunderbird manual.

11 BY MR. BECKER:

12 Q. Mr. McDonald, I'm going to ask you to look  
13 at the first page in this package, which is page 15  
14 out of both manuals.

15 A. Yes.

16 Q. And I want to draw your attention to the  
17 fact that the SCI manual again is simply a  
18 photocopy of the Thunderbird manual, and there is  
19 one difference, however. If you look up on top of  
20 the label award tables on page 15 of the  
21 Thunderbird manual, that's the one on the right,

1 you see the word poker.

2 Do you see that? On the right-hand side  
3 of the page?

4 A. On the right-hand side of the page, yes.

5 Q. Where it says poker.

6 Now, if you look at left-hand side of the  
7 page with the same page out of the SCI manual and  
8 you look at the heading "War Tables," you will see  
9 that the word "poker" is missing but that the pages  
10 are otherwise identical; is that right?

11 A. I'm lost here.

12 Q. Again, at the top, on the right-hand side,  
13 you see a page 15 of the Thunderbird manual. You  
14 see the word "tables"?

15 A. Yes.

16 Q. And you see the word "poker" above it.

17 A. That's on the Thunderbird side, not the  
18 SCI side.

19 Q. Yes. On the SCI side, the word "poker"  
20 has been whited out above the title "Award Tables;"  
21 isn't that right?

1 A. It's not there.

2 Q. It's not there.

3 A. No.

4 Q. Okay. So, would you have been the one who  
5 removed the word "poker" from the SCI version?

6 A. I don't know why it's been removed.

7 Q. But did you do it?

8 A. I did not personally do it.

9 Q. Do you think someone from SCI did it?

10 A. I don't know.

11 Q. All right. Would you turn to the next  
12 page, please, in this package. This shows a side  
13 by side?

14 PRESIDENT VAN DEN BERG: Basic question  
15 from the Tribunal. What is keno, K-E-N-O?

16 THE WITNESS: Keno, it's not a game that  
17 was offered or was not put into Mexico. This game  
18 is not relevant to this proceeding. Like I stated  
19 previously, the whole library of games is contained  
20 in my generic manual, so there's games from  
21 different jurisdictions within this manual.

1 Keno, basically, for a short, is a--a  
2 short definition, is similar to a lottery game.  
3 You choose numbers. Numbers are drawn. You win by  
4 matching numbers.

5 PRESIDENT VAN DEN BERG: Okay.

6 BY MR. BECKER:

7 Q. Mr. McDonald, again I see here on the page  
8 17 we have a side-by-side comparison of the two  
9 manuals, and you will see that the word "keno" is  
10 in the Thunderbird version, but again it's missing  
11 from the SCI version; is that right?

12 A. Yes.

13 Q. Okay. And this is a page that talks about  
14 setting payback percentages by manipulating switch  
15 banks; is that right?

16 A. Yes.

17 Q. All right. Thank you.

18 Would you turn to the next page in the  
19 package.

20 A. I would like to say, though, that this is  
21 not relevant. This is not a game that is relevant

1 to this proceeding.

2 Q. Well, I'm just examining the differences  
3 between the two manuals right now.

4 This next page you will see again is a  
5 side-by-side comparison of page 21 of the  
6 Thunderbird manual and page 21 of the SCI manual,  
7 and again, this is a page that shows various dip  
8 switch bank settings.

9 Do you see there towards the top of the  
10 table on the Thunderbird side again there is the  
11 word poker, and then on the SCI version on the left  
12 you see the word poker again is missing.

13 A. Yes.

14 Q. All right. I ask you again: Did you  
15 delete the word poker from the SCI version?

16 A. No, I did not.

17 Q. All right. And you don't--do you know if  
18 anyone from your company did the deletion?

19 A. I don't know.

20 Q. Okay. Do you think that someone from  
21 Thunderbird or EDM did it?

1 A. I have no idea.  
2 Q. Okay. Mr. McDonald--  
3 A. Yes.  
4 Q. --turning away from this machine for a  
5 moment, you've also testified a little bit about  
6 the reel games.  
7 A. Yes.  
8 Q. Do the button stop reel games or the touch  
9 screen real games, do those have number random  
10 generators?  
11 A. To the extent to start the game.  
12 Q. Start the game. But not to stop it?  
13 A. The player stops the game.  
14 Q. All right. And does it make a difference  
15 to the skill component whether or not the reels are  
16 set to spin at different speeds?  
17 A. We had the reel set at one speed.  
18 Q. Can you show me where in the manual it  
19 shows that. Where does it show the setting of the  
20 reel speed?  
21 A. It's not in the manual, to my knowledge.

1 Q. It's not in the manual. Okay.  
2 Mr. McDonald, can I take you to page 15 of  
3 the SCI manual. You see these award tables for  
4 different types of poker?  
5 A. Yes.  
6 Q. Do you see here on the bottom left side  
7 there is a game called Jacks and Better?  
8 A. Yes.  
9 Q. All right. And do you see the payout odds  
10 are for Jacks or Better two pair, three of a kind,  
11 straight flush, et cetera?  
12 A. Yes.  
13 Q. That's quite similar to the odds on the  
14 payout, odds on the game you've just showed us,  
15 isn't it?  
16 A. Yes.  
17 Q. Is it the same game?  
18 A. It's similar.  
19 Q. How does it differ?  
20 A. It differs in that it's set on the--let me  
21 see here on this. I'm trying to figure out if it



1 offers just as many payouts--and let me count real  
2 quick. It's very similar.

3 Q. Okay. If not identical?

4 A. Well, this uses--does not use any cards.

5 Q. It uses 52 symbols?

6 A. Correct.

7 Q. And this game here uses images of cards or  
8 symbols; is that right, which is described in the  
9 manual?

10 A. Yes.

11 Q. There is no physical cards involved, are  
12 there?

13 A. No, but the math would be the same.

14 Q. Yes, thank you.

15 MR. BECKER: I have no more questions at  
16 this time. Thank you, Mr. President. Thank you,  
17 Mr. McDonald.

18 PRESIDENT VAN DEN BERG: Mr. Crosby, any  
19 questions for redirect?

20 MR. CROSBY: Just one or two.

21 REDIRECT EXAMINATION

1 BY MR. CROSBY:

2 Q. Mr. McDonald, take a look at the  
3 side-by-side comparison there Mr. Becker's provided  
4 to you?

5 A. Yes.

6 Q. Especially on the side of SCI.

7 A. Yes.

8 Q. Look in the center column. What does it  
9 say right there below awards tables?

10 A. Joker Poker.

11 Q. And what are all these phrases in here,  
12 five of a kind, royal flush, straight flush, four  
13 of a kind? Aren't those common poker phrases?

14 A. Yes.

15 Q. The second table, what game does this  
16 apply to?

17 A. Keno.

18 Q. Was that a game played in Mexico?

19 A. No.

20 Q. The third page, what is this page? I ask  
21 you the question Mr. Becker didn't ask you. What

1 is this?

2 A. That is a--I do not believe it applies to  
3 the 4205 board because the 4205 board does not have  
4 dip switch. The bet, the denomination, all the  
5 features are embedded in the chip. Things like  
6 there is obviously--there is no double up feature,  
7 you know, on this game. There is no auto hold, so  
8 this is referring to--it can refer to a poker  
9 program, but not to the one here and not  
10 necessarily to the 4205 board.

11 MR. CROSBY: Thank you.

12 QUESTIONS FROM THE TRIBUNAL

13 ARBITRATOR WALDE: It's a dip switch,  
14 which last time I've seen dip switches was in Epson  
15 printers of the 1980s. Now, if you do--can you  
16 actually with a dip switch, can you increase the  
17 number of possibilities from this 52 times whatever  
18 the other numbers were, just by pushing a dip  
19 switch?

20 THE WITNESS: Not on this board, no. And  
21 not on any of the boards that I provided to the

1 EDMs.

2 ARBITRATOR WALDE: But there are kind of  
3 other producers but yourself, but it's  
4 theoretically possible?

5 THE WITNESS: I'm not familiar with the  
6 other manufacturers' boards. I cannot comment.

7 PRESIDENT VAN DEN BERG: I have one  
8 question. The games, the machine you delivered to  
9 the EDM Companies, the hardware and the control,  
10 what is it, the control number, random control  
11 numerator? The generator--

12 THE WITNESS: The logic board, yes.

13 PRESIDENT VAN DEN BERG: That was fairly  
14 standard hardware, wasn't it, or software?

15 THE WITNESS: The software was specific to  
16 Mexico. The hardware is generic to a number of  
17 jurisdictions. As to my affidavit, there is a  
18 chart laying out.

19 PRESIDENT VAN DEN BERG: The software has  
20 been adapted to Mexico, or has it been created from  
21 scratch?

1 THE WITNESS: It was created from scratch.

2 PRESIDENT VAN DEN BERG: Entirely new  
3 software, so it's not software which you have the  
4 basic software which you can take off the shelf and  
5 then you started to modify?

6 THE WITNESS: No. The 4205, everything  
7 that was developed for Mexico we used knowledge and  
8 graphics. There was parts of software that were  
9 used, but it was assembled to meet the skill  
10 requirements for Mexico. The software is specific  
11 to Mexico. That software is not running in any  
12 other jurisdiction.

13 PRESIDENT VAN DEN BERG: I understand  
14 that, but is it not such that what you can do is  
15 you have what I call standard software, and then  
16 you go to change a number of things in the  
17 software?

18 THE WITNESS: You can start with a base  
19 sourcecode for a number of games and build off that  
20 sourcecode, yes.

21 PRESIDENT VAN DEN BERG: Can it go

1 further? You have simply--you have simply on the  
2 shelf standard software that you are going to  
3 adapt?

4 THE WITNESS: You have I want to use  
5 software, but sourcecode, basically the math behind  
6 it, depending on what type of game. It's  
7 game-specific.

8 PRESIDENT VAN DEN BERG: In which other  
9 jurisdiction, to your knowledge, EDM machines with  
10 that software being used which is looking similar?

11 THE WITNESS: In no other jurisdiction is  
12 that EDM software being used other than Mexico.

13 PRESIDENT VAN DEN BERG: But similar was  
14 my question.

15 THE WITNESS: Define "similar."

16 PRESIDENT VAN DEN BERG: I leave aside the  
17 images because it's based on the card play.  
18 Basically that's the structure, isn't it?

19 THE WITNESS: There's elements of the  
20 sourcecode of the Mina de Oro that could have  
21 been--that were taken from poker math.

1           PRESIDENT VAN DEN BERG: Yes, and that  
2 type of software is being used where? In which  
3 machines? In which jurisdiction?

4           THE WITNESS: At different times,  
5 California, New Mexico, Idaho, Panama.

6           PRESIDENT VAN DEN BERG: In those  
7 jurisdictions, that software is still legal?

8           THE WITNESS: Yes.

9           PRESIDENT VAN DEN BERG: Okay. Now, is it  
10 easy to change the software from one to the other  
11 by changing the graphics?

12          THE WITNESS: It's more than a graphic  
13 change.

14          PRESIDENT VAN DEN BERG: More than a  
15 graphic change?

16          THE WITNESS: You could change the  
17 graphics and you can change the sound, but you  
18 still have to change elements of the sourcecode and  
19 add elements of skill to determine the outcome of  
20 the game.

21          PRESIDENT VAN DEN BERG: Could you

1 describe generally what you exactly did to meet  
2 your understanding of the standards in Mexico, to  
3 the software.

4           THE WITNESS: I was not the programmer.  
5 What I did was I talked to Thunderbird. They gave  
6 me the standards, and I communicated those with the  
7 programmer, and he programmed games to follow those  
8 standards.

9           PRESIDENT VAN DEN BERG: So, what were the  
10 standards that Thunderbird gave you?

11          THE WITNESS: A game that featured skill,  
12 that the outcome was predominantly skill based.

13          PRESIDENT VAN DEN BERG: That was the  
14 whole design brief, if I may call it that way?

15          THE WITNESS: Pardon me?

16          PRESIDENT VAN DEN BERG: That was the  
17 whole design brief you got?

18          THE WITNESS: Well, I was going off what  
19 Thunderbird told me. There were no technical  
20 standards or gaming laboratory for Mexico to base.  
21 There was no technical standard checklist to go by

1 you need to do A, B, C, or D. I was basing what  
2 Thunderbird relayed to me from the letter that they  
3 received from Gobernacion and their inspections of  
4 properties in Juarez that were running similar  
5 games.

6           PRESIDENT VAN DEN BERG: When did you  
7 develop this software?

8           THE WITNESS: August of--is it 2001? I'm  
9 not sure the year. It's in the affidavit.

10          PRESIDENT VAN DEN BERG: Were the invoices  
11 not shipped already in July of 2000?

12          THE WITNESS: The cabinets were shipped,  
13 not the software.

14          PRESIDENT VAN DEN BERG: So, the software  
15 was developed.

16          THE WITNESS: Yes, because while we were  
17 developing the software, as they were getting the  
18 properties up and running and getting more  
19 definitions from Gobernacion, we delivered the  
20 cabinetry. We shipped the cabinetry ahead of time,  
21 so we didn't run into any delays in customs, and we

1 also could place the hardware in place, the power  
2 needs, so when they are ready to open, all we had  
3 to do was ship the software and plug the software  
4 into the games.

5           PRESIDENT VAN DEN BERG: And the  
6 instruction you received was to develop software  
7 which was predominantly skill?

8           THE WITNESS: Yes. And predominantly  
9 skill, which developed the Mina de Oro on, and I  
10 developed the skill-stop games off their  
11 inspections of games that were running in Juarez, I  
12 believe was the city that they told me.

13          PRESIDENT VAN DEN BERG: Could you repeat  
14 the last part.

15          THE WITNESS: The parameters I were given  
16 were from two sources. One from a letter from  
17 Gobernacion with their definition of what a skill  
18 game was, and two, Thunderbird's inspections of  
19 properties that were running similar skill-stop  
20 games in Juarez.

21          PRESIDENT VAN DEN BERG: Juarez. And

1 could you be more specific what they told you about  
2 Juarez.

3 THE WITNESS: From memory, they told that  
4 there were line games, be it eight line or five  
5 line, that had spinning reels where the player had  
6 the ability to stop the reel and affect the outcome  
7 of the game.

8 PRESIDENT VAN DEN BERG: Is it correct  
9 that both these criteria give you a fairly large  
10 measure of discretion to determine what is  
11 predominantly skill and what can be done with a  
12 skill-stop button?

13 THE WITNESS: There were no specific  
14 parameters given to me.

15 PRESIDENT VAN DEN BERG: So, you actually  
16 had a fairly large free hand, isn't it, in  
17 developing software? If the same machine had to be  
18 developed, for example, for Las Vegas, you had a  
19 whole list to go by, isn't it?

20 THE WITNESS: Correct.

21 PRESIDENT VAN DEN BERG: And It has to go

1 to laboratory to check, to test whether it  
2 complies?

3 THE WITNESS: Correct.

4 PRESIDENT VAN DEN BERG: So, how many  
5 pages that would be, if you had to develop such a  
6 machine for Las Vegas?

7 THE WITNESS: The checklist?

8 PRESIDENT VAN DEN BERG: What you have to  
9 comply with, so it's a machine which complies with  
10 that jurisdiction.

11 THE WITNESS: It could be up to, you know,  
12 a 30-page checklist, depending on what they  
13 encompass. If you're talking hardware and  
14 software, they require both.

15 PRESIDENT VAN DEN BERG: But if you're  
16 talking only about the software in this case.

17 THE WITNESS: It's a number of pages  
18 because they--there is extensive testing on the  
19 math.

20 PRESIDENT VAN DEN BERG: Why do they do  
21 that in Las Vegas?

1 THE WITNESS: To--I'm trying to think of  
2 the word. For the credibility of the game.

3 PRESIDENT VAN DEN BERG: What did you  
4 understand by credibility of the game?

5 THE WITNESS: That Nevada standards have a  
6 certain parameter payback to the player that games  
7 must follow.

8 PRESIDENT VAN DEN BERG: Percentages?

9 THE WITNESS: Correct.

10 PRESIDENT VAN DEN BERG: For example,  
11 Nevada percentages?

12 THE WITNESS: 85 percent.

13 PRESIDENT VAN DEN BERG: Payback?

14 THE WITNESS: Yes.

15 PRESIDENT VAN DEN BERG: Machines here,  
16 the software developed here for Mina de Oro, what  
17 was the percentage?

18 THE WITNESS: Closer to 97.

19 PRESIDENT VAN DEN BERG: This was 97  
20 payout, payback?

21 THE WITNESS: Yes.

1 PRESIDENT VAN DEN BERG: How can that be  
2 reconciled that they have these profit margins of  
3 30 to 40 percent of Thunderbird?

4 THE WITNESS: Because of the--you have to  
5 base those percentages, go back to my statement  
6 earlier, are based over millions of plays, so over  
7 the cycle of that game, however--let's just use,  
8 for example, 5 million plays, after 5 million  
9 plays, the payback percentage would be 97 percent.

10 PRESIDENT VAN DEN BERG: But is it correct  
11 that you could adjust the 97 percent? Is it the  
12 maximum payback or could you also adjust it  
13 backwards as operator of the facility to  
14 50 percent?

15 THE WITNESS: Not on the board. You would  
16 have to reprogram it.

17 PRESIDENT VAN DEN BERG: What do you have  
18 to reprogram, then, to get it to push it back to  
19 50 percent? Do you have to reprogram the chip, the  
20 software?

21 THE WITNESS: Yes.

1           PRESIDENT VAN DEN BERG: An operator could  
2 do that, or only the manufacturer?

3           THE WITNESS: Only the programmer could do  
4 that. In the percentages you're talking about are  
5 not possible in a game like that. Because of  
6 you're dealing with the finite group of numbers, so  
7 there is only--

8           PRESIDENT VAN DEN BERG: Thank you.

9           ARBITRATOR WALDE: There are these  
10 different regulatory standards in these 150 or 200  
11 U.S. jurisdictions that's all the states on the  
12 Indian reservations. They have developed as a  
13 follow-up for implementation a similar set of  
14 technical standards with which you would work.

15          THE WITNESS: Yes.

16          ARBITRATOR WALDE: You wouldn't look at  
17 law, at least, not being a lawyer. You would  
18 rather look at how the legal standard is translated  
19 into a technical standard?

20          THE WITNESS: Correct.

21          ARBITRATOR WALDE: And in Mexico, you

1 didn't have a--you didn't have a technical  
2 standard?

3           THE WITNESS: No.

4           ARBITRATOR WALDE: So basically, what you  
5 did was you made this up yourself based on--what  
6 did you base it on? Did you look at something what  
7 you thought was similar to the Mexican  
8 requirements, let's say the Blackfoot Reservation  
9 in Idaho or whatever?

10          THE WITNESS: Based on my experience of  
11 skill games and what met legal requirements in  
12 other jurisdictions with payback percentages.

13          ARBITRATOR WALDE: The Ciudad Juarez  
14 reference case, this was to say something tangible.  
15 Did you go Ciudad Juarez, or did you get  
16 information on how that's done, or did you supply  
17 the Ciudad Juarez machines yourself, or did you  
18 know somebody who supplied them?

19          THE WITNESS: I did not supply the Juarez  
20 machines. I didn't know who supplied the Juarez  
21 machines. I did not inspect the Juarez property.



1 That information about Juarez was given to me by  
2 Thunderbird.

3 PRESIDENT VAN DEN BERG: Mr. Crosby,  
4 follow-up questions?

5 MR. CROSBY: No, Mr. President.

6 PRESIDENT VAN DEN BERG: Mr. Becker,  
7 follow-up questions?

8 MR. BECKER: Yes, I have a few follow-up  
9 questions.

10 RE-CROSS-EXAMINATION

11 BY MR. BECKER:

12 Q. Mr. McDonald, you just said machines  
13 similar to this, basically poker-type based  
14 videotape games were in use in California, New  
15 Mexico, Idaho, and Panama, and this was in response  
16 to a question about where they were legal; is that  
17 correct?

18 A. I was talking about jurisdictions where I  
19 provided similar games, personally.

20 Q. For example, in California, was that to an  
21 Indian reservation?

1 A. Yes.

2 Q. Was that also in New Mexico and Idaho?  
3 Were those to Indian reservations?

4 A. Yes.

5 Q. All right. So, these machines are  
6 regulated, would be regulated. These similar  
7 machines you're talking about would be regulated as  
8 Class III gambling devices under Indian gaming law,  
9 wouldn't they?

10 A. Depends on the jurisdiction and the time.

11 Q. How about today?

12 A. Today, they would be considered Class III  
13 gaming devices.

14 Q. Okay. Thank you.

15 ARBITRATOR WALDE: Under the Indian Gaming  
16 Act?

17 MR. BECKER: That's right.

18 BY MR. BECKER:

19 Q. You were just testifying or you were just  
20 saying--

21 A. Let me go back to that question. I'm not

1 referring to the skill games provided to Mexico.

2 Q. No, you were referring to the games you  
3 said were similar in nature that may be of use in  
4 the United States.

5 A. Yes, there are some similarities to those  
6 games, but not the same game.

7 Q. Okay. Now, you were just saying that you  
8 felt that these machines were programmed to pay out  
9 97 percent.

10 A. Correct?

11 Q. What was put into them; is that right?

12 A. Pardon me?

13 Q. Pay out 97 percent of what was put into  
14 them?

15 A. Correct, over the cycle.

16 Q. So, they had a predetermined payout  
17 percentage?

18 A. No. It's a theoretical math--what's  
19 called a par sheet, it's a theoretical payout  
20 percentage.

21 Q. Par sheet; is that right?

1 ARBITRATOR WALDE: Par sheet?

2 THE WITNESS: It's a generic term used in  
3 the gaming industry referring to the math of the  
4 game.

5 BY MR. BECKER:

6 Q. It refers to the percentage of payouts,  
7 doesn't it?

8 A. Refers to the math of the game. The  
9 percentage of payout can be a component, depending  
10 on the game.

11 Q. Okay. So, over a period of time, though,  
12 you know that it's going to pay out at a certain  
13 percentage; is that correct?

14 A. Theoretically, yes. Theoretically, yes.

15 Q. Okay, thank you.

16 You also said in response--

17 A. Let me preface that. That's based on  
18 basic skill, that payback percentage that you're  
19 referring to. Somebody with greater skill can skew  
20 that and beat the game.

21 Q. So a machine could--the payout could

1 actual go over a hundred percent?

2 A. Yes.

3 Q. Are you aware of any instances where over  
4 a period of time these machines have paid out over  
5 a hundred percent?

6 A. Machines in Mexico or machines in general?

7 Q. Machines in Mexico.

8 A. I have not seen any accounting information  
9 on the machines in Mexico.

10 Q. Okay. In response to a question from  
11 Mr. Crosby, I believe, you said there were no dip  
12 switches on the 4205 board; is that correct?

13 A. That the percentages are not dip sketch  
14 settable.

15 Q. But you said there were no dip switches.  
16 There are dip switches on the board?

17 A. No.

18 Q. None at all?

19 A. No.

20 Q. So, all these references in the  
21 Thunderbird and SCI manuals to dip switch settings

1 on the 4205 board series--

2 A. It's a generic term dealt in the program,  
3 that you could reprogram it. There is not an  
4 actual dip switch--you have to be familiar  
5 with--dip switch is a generic term where there  
6 actually used to be on boards dip switch settings.

7 Dip switch settings could mean a different program.  
8 You would have to program the change. There is not  
9 an actual physical dip switch to switch anything.

10 Q. Just to be clear, so you're saying when  
11 they say dip switch, that could actually mean  
12 changing the programming?

13 A. You would have to be a different program  
14 to provide that change, different chip.

15 Q. So, when it says--talks about dip switch  
16 settings and placements on the board, say move to  
17 one to two, move this one to three--

18 A. It's also--I don't know what you're  
19 referring to, which specific games. Now, from  
20 looking through there, there is a lot of references  
21 to older games that weren't provided on the 4205

1 and may have referenced an older board. I cannot  
2 be sure of that because like I said, it's a generic  
3 copy.

4 Q. Just to be clear, in your opinion, this  
5 game here is a game that involves predominantly  
6 skill?

7 A. Yes.

8 MR. BECKER: Mr. President, that's all we  
9 have for now. Thank you.

10 MR. CROSBY: No further questions.

11 PRESIDENT VAN DEN BERG: Mr. McDonald,  
12 thank you for testifying. You are excused as a  
13 witness now.

14 Who is next on the program? We take a  
15 10-minute break, I suggest, but who is next?  
16 Mr. Gomez is the next one, isn't it?

17 MR. CROSBY: We are going to call Luis  
18 Ruiz de Velasco.

19 (Brief recess.)

20 MR. CROSBY: I would just like to notify  
21 the Tribunal that at the start of the proceedings

1 we sought leave to have Mr. Tino Minaldo sit in,  
2 he's one of EDM's principal investors, and he is  
3 here for I believe the rest of the afternoon.

4 PRESIDENT VAN DEN BERG: Welcome. I see  
5 somebody else from the United States of America.  
6 Could you please identify yourself for the record.

7 MS. EVANS: I'm Kimberly Evans. I'm from  
8 the U. S. Treasury Department.

9 PRESIDENT VAN DEN BERG: Welcome,  
10 Ms. Evans.

11 MS. EVANS: Thank you.

12 MR. CROSBY: Mr. Perezcano? Are you  
13 ready?

14 MR. PEREZCANO: I'm ready, Mr. President.

15 PRESIDENT VAN DEN BERG: Welcome,  
16 Mr. Velasco.

17 LUIS RUIZ DE VELASCO, CLAIMANT WITNESS, SWORN  
18 PRESIDENT VAN DEN BERG: Could you state

19 your full name for the record.

20 THE WITNESS: My full name? Luis Ruiz de  
21 Velasco.

1           PRESIDENT VAN DEN BERG: And the place and  
2 date of birth, Mr. Velasco.

3           THE WITNESS: April 25, 1947, Mexico City.

4           PRESIDENT VAN DEN BERG: And you are a  
5 Mexican national?

6           THE WITNESS: Yes.

7           PRESIDENT VAN DEN BERG: You are familiar  
8 with the manner in which witnesses are examined in  
9 this case.

10          THE WITNESS: Yes.

11          PRESIDENT VAN DEN BERG: So I don't need  
12 to explain that?

13          THE WITNESS: No.

14          PRESIDENT VAN DEN BERG: If any question  
15 is difficult because of language or for any reason  
16 please do seek a clarification.

17          THE WITNESS: I would like to make my  
18 things in Spanish.

19          PRESIDENT VAN DEN BERG: You would like to  
20 testify in Spanish. We will use the translation.  
21 I speak Spanish, but I don't have the practice that

1 I need.

2           So, I'll ask when there is any question  
3 that isn't clear to you because of language or for  
4 other reasons, please do seek a clarification.

5           THE WITNESS: Yes, sir.

6           PRESIDENT VAN DEN BERG: If you don't do  
7 so, the Tribunal assumes that you fully understood  
8 the question.

9           THE WITNESS: Okay.

10          PRESIDENT VAN DEN BERG: And that your  
11 answer corresponds to the question.

12          THE WITNESS: Very good.

13          PRESIDENT VAN DEN BERG: You will  
14 appreciate that testifying before a court or an  
15 Arbitrable Tribunal is a very serious business.

16          THE WITNESS: Yes.

17          PRESIDENT VAN DEN BERG: In that context  
18 the Tribunal requires to you make a declaration,  
19 and I understand that the declaration is in front  
20 of you on the table.

21          THE WITNESS: Yes, it is. Do you want me

1 to do it?

2 THE WITNESS: I solemnly delay on my honor  
3 and conscience I will tell the truth, only the  
4 truth and nothing but the truth.

5 PRESIDENT VAN DEN BERG: Thank you. Would  
6 you turn to your witness statement, which is dated  
7 August 2003. There is not a specific date  
8 inserted.

9 THE WITNESS: That's correct.

10 PRESIDENT VAN DEN BERG: At page seven.  
11 Could you please affirm for the record that it is  
12 your signature.

13 THE WITNESS: Yes, it is.

14 PRESIDENT VAN DEN BERG: Thank you.  
15 Mr. Crosby.

16 DIRECT EXAMINATION

17 BY MR. CROSBY:

18 Q. Mr. de Velasco, are you a member of the  
19 law firm of Baker & McKenzie?

20 A. Yes, I am.

21 Q. And in what office?

1 A. In the City of Mexico.

2 Q. And did you act as counsel to Thunderbird,  
3 International Thunderbird Gaming Corporation in the  
4 EDM entities?

5 A. Yes, that is correct.

6 Q. And what was the scope of your  
7 representation on behalf of those entities?

8 A. Mainly I gave them advice in connection  
9 with the organization and formation of the  
10 companies that were going to be created under  
11 Mexican law. These companies were going to operate  
12 the skill games, if the--if Gobernacion approved  
13 this.

14 MR. CROSBY: Mr. Chair, I don't have any  
15 more questions on direct, and we would leave him  
16 open to cross-examination.

17 PRESIDENT VAN DEN BERG: Thank you,  
18 Mr. Crosby.

19 Mr. Perezcano, please proceed with your  
20 cross-examination.

21 CROSS-EXAMINATION

1 BY MR. PEREZCANO:

2 Q. Thank you, Mr. President.

3 Mr. de Velasco, you and I are going to be  
4 speaking Spanish, and we are going to have  
5 simultaneous interpreters that are going to be  
6 interpreting the proceedings. Perhaps we are going  
7 to have to talk a little slower so that we can have  
8 the interpreters follow us along.

9 You were hired by Thunderbird in March  
10 2000?

11 A. Yes.

12 Q. And the first duty that you were tasked  
13 with was to analyze the possibility that they had  
14 they were looking at a race track field in Nuevo  
15 Laredo/

16 A. Yes, that is correct.

17 Q. And that is a new investment that they  
18 were looking into also included foreign books and  
19 sports books also in Nuevo Laredo?

20 A. No, I didn't go that far in connection  
21 with my involvement in the operation.

1 Q. Thunderbird, in the--do you know the  
2 pleadings that Thunderbird has presented in these  
3 proceedings?

4 A. Yes, some of them.

5 Q. Did you read in the complaint?

6 A. No, I didn't read the whole thing, no.

7 Q. On page four, lines two to five of the  
8 complaint, Thunderbird assessed that you were  
9 involved in analyzing the purchase of a race track  
10 field and also a sports book facility. In order to  
11 have more information about that--

12 A. Yes, indeed, we visited the place.

13 Q. What are you talking about, the place?

14 PRESIDENT VAN DEN BERG: Could you wait  
15 for a couple of second--if I could ask could you  
16 wait a couple of seconds for the interpreters to  
17 have some time to catch up. It's difficult, I  
18 know, but please try.

19 THE WITNESS: So, we visited the track  
20 field, the race track field, and we looked at the  
21 recommendations. I know that part of the business

1 was connected with this sports books business.  
2 However, the majority of or focus in this business  
3 was the race track itself because there was some  
4 problems vis-a-vis Gobernacion and also there were  
5 some financial problems. So, because of those  
6 problems, the client decided not to go ahead and do  
7 this business.

8 BY MR. PEREZCANO:

9 Q. What kinds of problem did it have  
10 vis-a-vis Gobernacion?

11 A. I think there was some kind of trustee  
12 there, and I think there were some taxes owed. I'm  
13 trying to remember this. I'm not--I'm talking from  
14 memory.

15 Q. And this intervention, this trustee that  
16 would have been there, why would they have been  
17 there? Because of the gaming and betting there?

18 A. I don't know.

19 Q. So, does Gobernacion have any other  
20 jurisdiction?

21 A. Yes, but only in connection with betting

1 but also in connection with licenses and permits,  
2 not only betting operations, but also licenses and  
3 Bettings.

4 Q. What kind of permits?

5 A. Well, the permit to operate as a gaming  
6 facility because this was a race track.

7 Q. As a betting center?

8 A. Yes, we could class it as such.

9 Q. So, this sports books business, it's  
10 also--is it also a betting business, if you will?

11 A. Yes.

12 Q. You advised Thunderbird specifically in  
13 connection with these businesses and in connection  
14 with the application of the federal law of games  
15 and sweepstakes?

16 A. In connection with the business of Nuevo  
17 Laredo and not specifically in connection with that  
18 law, no, but I would rather wait for your next  
19 question, then.

20 Q. So, you did not give advice to Thunderbird  
21 at that time in connection with the federal law on



1 games and sweepstakes?

2 A. No.

3 Q. You mentioned that around April 2000  
4 Watson, Mitchell, and Girault told you that they  
5 were also interested in looking into this  
6 possibility of operating skill machines in Mexico;  
7 is that true?

8 A. That is true.

9 Q. You also stated that Mr. Girault, Watson,  
10 and Mitchell met with a number of investors that  
11 were operating in Mexico, and they were operating  
12 these kinds of machines; do you remember this?

13 A. Yes.

14 Q. The investment, was this Mr. Jose Maria  
15 Guardia?

16 A. No.

17 Q. Who was he?

18 A. I never met them.

19 Could I clarify something?

20 Q. Please do.

21 A. Did you say they were operating or that

1 had the possibility of acquiring an operation that  
2 was going to take place in the future? Those are  
3 two different things.

4 Q. Well, you have your witness testimony  
5 before you, and I think on page three--on page one,  
6 item three, number 14, I'm going to read it in  
7 English, excuse me, it's line 12. And Mitchell  
8 advised me that they had met some potential  
9 investors and that Thunderbird was interested in  
10 exploring the possibility of operating  
11 skill-machine facilities in Mexico.

12 A. So, they were not operating. It was a  
13 possibility for them to operate these machines.

14 Q. Who was operating this?

15 A. This Mitchell person. There were  
16 potential investors that they had met, and they  
17 were interested in exploring the possibility.

18 Q. Also, you stated that these investors  
19 presented or introduced two lawyers, Arroyo and  
20 Julio Aspe. They introduced these two lawyers to  
21 Mr. Watson, Girault and Mitchell; true?

1 A. Yes, true.  
2 Q. So you did meet Arroyo and Aspe?  
3 A. I didn't know them before. I met them at  
4 that time.  
5 Q. Then, later on, you say that Aspe and  
6 Arroyo told you that they had helped an individual,  
7 Mr. Guardia, I think it's Jose Maria Guardia, who  
8 operated skill machines in Juarez and also in  
9 Mexico City; correct?  
10 A. Yes. In Mexico.  
11 Q. Well, your testimony says in Mexico City.  
12 Was it not in Mexico City?  
13 A. Yes, in Mexico City.  
14 Q. The investors you referred to in the third  
15 paragraph, Mr. Guardia, they're not the same?  
16 A. As far as I know, they're not.  
17 Q. Or could they be the same?  
18 A. I don't think so.  
19 Q. Could you explain that a bit.  
20 A. As I recall, there were people who were in  
21 Ciudad Juarez, or in the north of the Mexican

1 republic, and Mr. Guardia was already operating his  
2 facilities in Juarez and Mexico City.  
3 And these lawyers had advised Mr. Guardia  
4 with regard to his operations in Ciudad Juarez.  
5 Q. Mr. Guardia was already operating these  
6 machines; is that right?  
7 A. I understand he was.  
8 Q. Did you visit the establishment or  
9 facilities of Mr. Guardia?  
10 A. No, sir.  
11 Q. Nevertheless, you discussed with lawyers  
12 Aspe, Arroyo, and with Mitchell Watson a method to  
13 open up similar facilities; is that true?  
14 A. Yes.  
15 Q. To open one of these facilities with these  
16 types of machines is not the same thing as starting  
17 any business, for instance, car distributorship or  
18 a clothing store; right?  
19 A. Yes.  
20 Q. And in view of Mr. Guardia's experience,  
21 if you were simply opening up one of these in these

1 facilities with these machines of skill, one might  
2 reasonably expect that Gobernacion would intervene;  
3 isn't that right?

4 A. Yes.

5 Q. And, in fact, Mr. Guardia's modus  
6 operandi, as described by Messrs. Aspe and Arroyo,  
7 was to open a facility, wait for Gobernacion to  
8 close it, turn to amparo, obtain a suspension in  
9 the amparo judgment, and then continue operating  
10 under the suspension that had been granted; isn't  
11 that true?

12 A. Yes, sir.

13 Q. And when you point out in your testimony,  
14 paragraph three, lines 14, 15, where you say that  
15 the two Mexican lawyers who claimed to know how to  
16 operate these machines legally in Mexico, you were  
17 talking to these--

18 A. Yes, the ones you just described.

19 Q. And this is what led Mr. Guardia to a  
20 claimant in this proceeding has characterized to a  
21 significant legal dispute; is that right?

1 A. Yes, that's true.

2 Q. Thank you.

3 Now, you recommended or rather you opposed  
4 that Thunderbird follow this strategy; is that  
5 true?

6 A. Well, I wouldn't qualify it as opposing,  
7 but that advice given by Messrs. Aspe and Arroyo, I  
8 felt, was not totally orthodox and well-founded,  
9 and it did not provide Thunderbird with legal  
10 certainty as to be able to operate.

11 Q. In fact, your conclusion was that that  
12 operating method would not fall within the confines  
13 of the law.

14 A. When you are referring to advice from Mr.  
15 Aspe and Arroyo or my advice?

16 Q. I'm talking about--well, I don't know if  
17 it would come--

18 PRESIDENT VAN DEN BERG: One at a time,  
19 please.

20 BY MR. CROSBY:

21 Q. Well, let me be specific. I'm talking

1 about the operating mechanism of Mr. Guardia's  
2 establishment.

3 A. Well, if I get an amparo, I fall within  
4 the law.

5 Q. But in your testimony, paragraph four,  
6 line 20, you indicate that we concluded, I suppose  
7 that "we" refers to Baker & McKenzie and that  
8 includes you?

9 A. And the gentlemen here.

10 Q. Which gentlemen?

11 A. Well, Mitchell. It's Baker & McKenzie.

12 Q. Since we concluded and advised Thunderbird  
13 that although the process had been effective for  
14 Guardia, in other words, for Mr. Guardia, it was  
15 likely not within the limits of applicable law.  
16 That was your testimony; is that right?

17 A. Yes.

18 Q. Would you agree with me in that if  
19 Gobernacion considered an activity or the  
20 operations of--with machines of dexterity as legal  
21 for the operator of one establishment, then it

1 would have to consider them equally legal for any  
2 other operation; isn't that true?

3 A. Yes. In principle, that's the way it  
4 should be.

5 Q. And contrary, if Gobernacion felt that  
6 operations with these types of machines were  
7 illegal for one operator, they would have to  
8 consider them equally illegal in the case of any  
9 other operator if we are talking about the same  
10 issues?

11 A. Well, what happened was that--something is  
12 missing. There is the matter of skill, but with  
13 betting. That's as I understand Mr. Guardia's  
14 place was closed down. I'm not a hundred percent  
15 sure of that.

16 Q. Well, if the operations were the same  
17 operations, in the way the business operated as  
18 such was the same, then Gobernacion, if it  
19 considered them legal in one case would have to  
20 consider them legal in the case of another  
21 operator; is that true, assuming that the

1 activities were identical?

2 A. Well, assuming they were the same, but it  
3 would be good to double-check that.

4 Q. Well, conversely, if the operations are  
5 the same and Gobernacion considers them illegal in  
6 the case of one operator, they should be considered  
7 equally illegal in the case of any other operators.

8 A. Well, that's the way it should be, yes,  
9 but we must understand that I don't have them with  
10 me what the reasons were for closing down the  
11 Guardia operation, true.

12 Q. Your understanding is there was betting.  
13 There was betting in Mr. Guardia's facilities.

14 A. Yes, sir.

15 Q. Excuse me, all of this is being recorded,  
16 and it's important to have clear answers to get  
17 them correctly into the record.

18 Your opinion was that if there was no  
19 betting, and there was no elements of chance, then  
20 Gobernacion simply did not have competence in this  
21 field?

1 A. No, that was not my opinion. If I had  
2 that opinion, I would have provided it in writing  
3 without having to go to Gobernacion. I had to have  
4 the opinion of Gobernacion to know whether we were  
5 right or not. I'm not an expert in the skill  
6 machines.

7 Q. Did you know about the activities of EDM  
8 at that time when the opinion was requested from  
9 Gobernacion?

10 A. I didn't understand the question.

11 Q. Did you know the machines?

12 A. I saw them once.

13 Q. Before asking for the opinion from  
14 Gobernacion?

15 A. Yes.

16 Q. Did you have a chance to play with the  
17 machines?

18 A. No, sir.

19 Q. How did you get to see them?

20 A. Well, I saw them physically, I was  
21 explained how they operated, how they worked so

1 that we could prepare something for this  
2 consultation with Gobernacion.

3 Q. Did you have a chance to go to Matamoros  
4 to see them in operation?

5 A. Later on when they opened. I don't recall  
6 the date.

7 Q. Mr. Luis de Velasco, in your testimony you  
8 assert that you prepared the application submitted  
9 to Gobernacion; is that right?

10 A. If I said prepared, what I did was I  
11 helped Messrs. Arroyo and Aspe in drafting it.

12 Q. Yes, that's right. You played a role.  
13 You assisted them. You didn't write it yourself?

14 A. No, I helped them.

15 Q. And yet, if I may distribute to the  
16 Tribunal and to the other party some folders with  
17 documents that I would be referring to, I'd like to  
18 look at some of these items or issues together.  
19 All of these documents come from the records and  
20 the files of this case. We will identify them in  
21 turn.

1 Mr. Velasco, if you could turn to Tab 2 in  
2 the black binder, do you recognize that document?

3 A. Yes, sir.

4 Q. Can you identify it, please.

5 A. It's the request.

6 Q. The application of 3 August that  
7 Entertainmens de Mexico presented to Gobernacion?

8 A. That's right.

9 PRESIDENT VAN DEN BERG: C-17?

10 MR. PEREZCANO: Yes, it's Exhibit C-17,  
11 I'm sorry, Mr. Chairman.

12 BY MR. PEREZCANO:

13 Q. If you look at the first paragraph, you  
14 will see your name as an authorized representative  
15 to receive and to listen to notifications; is that  
16 true?

17 A. Yes.

18 Q. Let me ask you the following: EDM was  
19 already operating when this application was  
20 submitted; is that true?

21 A. According to what the application says,

1 yes, it was operating.

2 Q. Even if you look at paragraph four, it  
3 says on the first page the video machines for games  
4 of skill that we operate in the place mentioned in  
5 this document, and then there is a description of  
6 those machines, and paragraph two is where this  
7 place is located in Matamoros? Is that the EDM  
8 place in Matamoros?

9 A. Yes.

10 Q. So, Gobernacion was told that these  
11 machines were already operating; is that right?

12 A. Yes, according to this application, yes.

13 Q. Do you have any doubts as to whether that  
14 were the case?

15 A. No. That's what is stated here.

16 Q. Messrs. Aspe and Arroyo, according to  
17 their written testimony, indicated that they could  
18 assist Thunderbird in getting an answer or reply to  
19 this application; is that true? Do you recall  
20 that?

21 A. Yes, sir.

1 Q. And according to your testimony, that was  
2 so because they said that they knew the officials  
3 at Gobernacion who would be reviewing the  
4 application; is that true?

5 A. Yes.

6 Q. How did you and Messrs. Aspe and Arroyo  
7 subdivide the work that you did for Thunderbird?

8 A. Up to that moment, there was the initial  
9 preparation that was carried out by Messrs. Arroyo  
10 and Aspe, the original.

11 Q. Could you explain what you mean by the  
12 initial preparation?

13 A. How can I explain this? The first draft  
14 of application was submitted to me. I do not now  
15 remember what my role was when it came to the  
16 drafting, but I had something to do in drafting the  
17 documents. That was the only division of labor,  
18 and then it was submitted, and they were involved  
19 in the processing, and they met with the officials  
20 of Gobernacion.

21 Q. You didn't process the application?

1 A. No, not directly, no, I didn't.

2 Q. If we may go back to the application, if  
3 you can turn to page two of that application of  
4 August 3rd, the second full paragraph which starts  
5 with, "We request the opinion"--can you see it?

6 A. Yes.

7 Q. Fourth line on the right says, "We have  
8 concluded that they're not within the field  
9 application of federal law on gaming and  
10 lotteries." And this, of course, refers to  
11 machines for games of skill that were then operated  
12 by EDM; right?

13 A. Yes.

14 Excuse me, what paragraph are we on?

15 Q. Second paragraph. I'm going to read it.  
16 We request opinion of that Director-General. We  
17 are on page two of the application.

18 A. Yes, I found it, I found it.

19 Q. We request the opinion of the general  
20 directorate, which is the general directorate on  
21 government of the Gobernacion, so that my client,

1 in other words, EDM; right?

2 A. Yes, that's true.

3 Q. May have legal certainty as to the  
4 commercial operation of video machines for games of  
5 skill, pursuant to the fact that after the analysis  
6 of the nature of our machines and the legal  
7 provisions, we have concluded they're not within  
8 the purview of application of the federal law on  
9 gambling and lotteries, and therefore are not  
10 governed by regulations of the Secretariat of  
11 Gobernacion.

12 So, you agreed with this view expressed in  
13 this application, didn't you?

14 A. Yes, sir.

15 Q. So, let me go to an earlier question I  
16 asked you. In your opinion, as the text says, if  
17 there is no chance and there is no betting with  
18 these machines, these machines were therefore  
19 outside the purview of Gobernacion. Did you feel  
20 that this procedure should have been a relatively  
21 simple one?



1 A. I don't know, but for my customer I needed  
2 the legal certainty about that for his business  
3 since there are still doubts as to whether these  
4 machines that are not predominantly machines of  
5 chance or luck, but rather are predominantly based  
6 on skills, whether they fall within the definition.

7 Q. Nevertheless, Mr. Ruiz de Velasco, if we  
8 may go back to page one of the application, and to  
9 the description provided to Gobernacion, if you  
10 turn to paragraph three, it says the video machines  
11 for games of skill which my client operates  
12 commercially are recreational machines whose  
13 objective is diversion and entertaining of  
14 individuals who have access to them. And these  
15 video games, there is neither chance nor betting  
16 involved, but rather, the skill of the operator.

17 So, you're advising Gobernacion that  
18 chance and betting is not involved; is that right?  
19 That's what you're informing Gobernacion?

20 A. Yes, that's what's in here.

21 Q. If you then turn to the next page, third

1 full complete paragraph, this starts with the  
2 nature of the video machines, et cetera. Can you  
3 see that?

4 A. Yes.

5 Q. The nature of the video machines for games  
6 of skill is not for games of chance, nor games with  
7 betting or lotteries, so you repeat here that  
8 chance and betting are not involved; is that true?

9 A. That's true.

10 Q. At the end of the application, last  
11 paragraph on page three, you will see that once  
12 again, there is a repetition, third line from the  
13 bottom that says, that does not involve concept of  
14 chance or betting; is that true?

15 A. It's true.

16 Q. So, the conclusion, I think, and I want to  
17 see if you agree with me is that when you say that  
18 you reached the conclusion that this did not fall  
19 within the application of the law, they were not  
20 subject to competition, that conclusion was the  
21 result of your view that chance and betting were

1 not involved; is that true?

2 A. That's true.

3 PRESIDENT VAN DEN BERG: Let me ask a  
4 question at this point, Mr. Velasco. The  
5 representation you made in this letter of 3 August  
6 was that no chance or betting was involved at all  
7 for hundred percent excluded?

8 THE WITNESS: I guess, yes.

9 PRESIDENT VAN DEN BERG: Thank you.

10 BY MR. PEREZCANO:

11 Q. So, let me go back to my question,  
12 Mr. De Velasco. If that was the case, should there  
13 have been a relatively simple process at  
14 Gobernacion to handle this application?

15 A. Yes. Well, it should have been simple,  
16 but--

17 Q. Please, go ahead.

18 A. In view of the doubt that existed, one  
19 would have to take into account that the view of  
20 Gobernacion would take some time and some  
21 explanations which is, in fact, what happened.

1 Q. But it still didn't take very long, didn't  
2 it?

3 A. No. In fact, two months.

4 Q. Well, the application was submitted on  
5 August 3; right?

6 A. Yes.

7 Q. And the letter of reply, if you may want  
8 to turn to the next tab, Tab 3, this is Exhibit  
9 C-18 of claimant, and that's the official letter of  
10 response issued by Gobernacion to EDM?

11 A. That's right.

12 Q. Can you tell me the date?

13 A. 15 August.

14 Q. So, it took not two months, but  
15 approximately two weeks; is that right?

16 A. That's right.

17 Q. If we go back to page two of your  
18 testimony, paragraph seven, when you point out that  
19 after approximately two months of discussions, this  
20 would seem to be a mistake. It would be after  
21 about two weeks.

1 A. Well, here I think I was referring to the  
2 whole process of drafting the application on our  
3 part, the application that was then submitted. It  
4 was then submitted on August 3rd.

5 Q. And the answer was issued on August 15?

6 A. Yes.

7 But I should also clarify that in the  
8 preparation of the application, Messrs. Aspe and  
9 Arroyo held meetings with officials of Gobernacion,  
10 which I did not attend, to ask about the content of  
11 the application. In other words, they went,  
12 exchanged views with the officials and came back  
13 and met with me to continue drafting the  
14 application.

15 There is nothing in writing, but that's  
16 what happened.

17 Q. Approximately when this process, in fact,  
18 began, when did Aspe and Arroyo get involved?

19 A. I think in April. Early April, maybe.

20 Q. Don't you recall?

21 A. I don't remember.

1 Q. You did not take part in those meetings?

2 A. No, I didn't.

3 Q. You have also stated in your written  
4 testimony that Messrs. Aspe and Arroyo charged  
5 honoraria for the help they provided; is that true?

6 A. Yes.

7 Q. Do you know how much they were paid?

8 A. I understand \$300,000.

9 Q. Could you give us an indication as to what  
10 your hourly rate at Baker & McKenzie would be?

11 A. \$350 an hour.

12 Q. How much would the office charge for your  
13 role in this operation?

14 A. I don't remember.

15 Q. The time devoted at \$350 an hour, wouldn't  
16 that have been the rate?

17 A. Yes.

18 Q. Mr. Mitchell was here yesterday, and he  
19 declared yesterday that he instructed the lawyers  
20 to fully report to Gobernacion about the nature of  
21 the machines. You received those instructions?

1 A. Not directly, no.  
2 Q. You did not receive those instructions?  
3 A. No.  
4 Q. Baker & McKenzie lawyers would have  
5 received those instructions to Mr. Mitchell?  
6 A. Let me recall that those who were working  
7 on the application were Messrs. Arroyo and Aspe.  
8 And we helped with the drafting. We helped, but we  
9 didn't draft it ourselves.  
10 Q. The understanding is that Gobernacion was  
11 fully informed about the nature and the operation  
12 of these machines in the application submitted?  
13 A. Yes, sir.  
14 Q. In fact, you point out--  
15 A. No, I didn't point out.  
16 Q. No, but you in your testimony point  
17 out--in your testimony you indicate that  
18 Gobernacion was provided--  
19 A. What paragraph number?  
20 Q. I'm looking for it.  
21 A. Six.

1 Q. Yes, thank you, sir. Six, line 10. That  
2 the application included a detailed description of  
3 the machines, including the makes and models, the  
4 specific makes and models, the way of prizes, form  
5 of operation, as well as trademarks and serial  
6 numbers, et cetera; is that right?  
7 A. Yes, yes.  
8 Q. And if we turn to the request, for  
9 example, or the application, again at Tab 2, the  
10 first page, the paragraph number 4, there is where  
11 you provide details of the makes and models?  
12 A. Yes.  
13 Q. And you note that the make is Bestco,  
14 model MTL 19 U-8L, and SCI model 17 UR; correct?  
15 A. Correct.  
16 Q. Could you please indicate what these  
17 models mean?  
18 A. At this time, I don't know, because I  
19 don't have them.  
20 Q. You also point out, for example, in the  
21 previous paragraph, paragraph three, the last three

1 lines after explaining that it's a question of the  
2 operation of skill machines, you say all of this so  
3 that the operator could order signals or signs in  
4 an optimal combination that would emit a ticket  
5 with the points that could be traded in for goods  
6 or services, and this was used to provide complete  
7 information to Gobernacion about the operations?

8 Mr. de Velasco, yesterday Mr. Mitchell  
9 also testified here that one fundamental aspect of  
10 the equipment, the machines, is that they take in  
11 money, and that in effect, they pay out money.  
12 That's how he described it.

13 MR. PEREZCANO: This is in the transcript  
14 for the record, Mr. President, this is at the  
15 transcript page 299 from line 7.

16 BY MR. PEREZCANO:

17 Q. Nonetheless, in the application there is  
18 no reference made to the machines accept money, so  
19 that one can attain an optimal combination and that  
20 it would emit a ticket with points redeemable for  
21 money; is that right?

1 A. Correct.

2 Q. It's correct that it doesn't say so?

3 A. It's correct, that it doesn't say so.

4 Q. In fact, it just says the points could be  
5 redeemed for goods or services in general; correct?

6 A. Yes, that is correct.

7 Q. Indeed, on the next page, the third  
8 complete paragraph beginning--explaining the nature  
9 of the machines, at the end it says, from the next  
10 to last line, and one would be able to obtain  
11 certain points redeemable for a prize as an award  
12 for the skill attained but not in any way as a  
13 matter of chance, but it's not noted that this was  
14 actually money prize; right?

15 A. Right.

16 Q. And the same thing is reiterated in the  
17 last paragraph of the application; correct?

18 A. Correct.

19 Q. And have you told us that at least you did  
20 not receive the instruction directly from  
21 Mr. Mitchell to fully inform Gobernacion, and that

1 this document was prepared initially by  
2 Messrs. Aspe and Arroyo?

3 A. Could you repeat the question?

4 Q. Yes.

5 You indicated to us that the direct  
6 instructions on what to report to Gobernacion were  
7 given to Messrs. Aspe and Arroyo, and that this  
8 document was drawn up essentially by Messrs. Aspe  
9 and Arroyo and reviewed by you?

10 A. Yes, that is so.

11 PRESIDENT VAN DEN BERG: Mr. Perezcano,  
12 may I ask a question?

13 MR. PEREZCANO: Yes, Mr. President.

14 PRESIDENT VAN DEN BERG: You testified a  
15 couple of minutes ago that with respect to  
16 paragraph 4 of the application, Exhibit C-17.

17 THE WITNESS: Yes.

18 PRESIDENT VAN DEN BERG: That you did not  
19 know what the model MTL 19 U-8L of Bestco meant,  
20 and what SCI model 17-inch UR meant.

21 THE WITNESS: That's correct.

1 PRESIDENT VAN DEN BERG: Could you explain  
2 to me how the Gobernacion would know it.

3 THE WITNESS: Well, as it is the authority  
4 in charge of gaming and lotteries, one would assume  
5 that they should have known it. And if they didn't  
6 know, they should have asked us so that we could  
7 have provided them that information, which we would  
8 have been most pleased to have provided to them.

9 PRESIDENT VAN DEN BERG: But is it, then,  
10 your testimony that they have not asked it?

11 THE WITNESS: They didn't ask us for it,  
12 no. The Gobernacion.

13 PRESIDENT VAN DEN BERG: But you know the  
14 difference, of course, as a lawyer, between deem to  
15 know and have actually known?

16 THE WITNESS: Yes.

17 PRESIDENT VAN DEN BERG: In your what you  
18 know now is--did they actually know or didn't they  
19 know what the model numbers stood for?

20 THE WITNESS: I assume that they knew  
21 because otherwise, they would have asked me or they

1 would have asked for the one who sought the  
2 opinion.

3 PRESIDENT VAN DEN BERG: I see. It's your  
4 testimony that the Gobernacion knew more than you  
5 knew?

6 THE WITNESS: Yes, sir, I presume so.

7 PRESIDENT VAN DEN BERG: Thank you.

8 Please proceed.

9 MR. PEREZCANO: Thank you, Mr. President.

10 BY MR. PEREZCANO:

11 Q. Now, do you know what Bestco and SCI are?

12 A. Excuse me, I told you that I didn't know.

13 Q. So, it's not just that you didn't know

14 what the models were.

15 A. Bestco is a make.

16 Q. And SCI?

17 A. Also, it's also a make.

18 Q. Now, Mr. Mitchell yesterday also testified  
19 that to fully inform Gobernacion, he had instructed  
20 the lawyers to inform Gobernacion that the machines  
21 that would know used by EDM were the same or very

1 similar to those that were used by Mr. Guardia in  
2 Ciudad Juarez. I suppose that you didn't receive  
3 these instructions either; is that correct?

4 A. Yes, that is correct.

5 Q. In essence, you, as regards the  
6 descriptions of the machines, how they worked and  
7 so for example, relied on what Messrs. Aspe and  
8 Arroyo had been told by the client?

9 A. Yes, that is so, together with the fact  
10 that Messrs. Aspe and Arroyo already had more  
11 in-depth knowledge of these machines as they had  
12 assisted Guardia.

13 Q. And in fact, they were litigating against  
14 Gobernacion in relation to their operations in  
15 Ciudad Juarez?

16 A. I think so.

17 Q. You think so or--

18 A. Yes, yes, they were. And we should also  
19 presume that given their knowledge, that's why they  
20 put it like this, because they knew their modus  
21 operandi. They knew how those machines were

1 operated.

2 Q. Now, let's turn to the official letter of  
3 15 August 2000. After having informed--excuse me.  
4 After EDM informed Gobernacion--we already saw  
5 this--that--well, to put it in terms of the  
6 paragraph of the request, that the concepts of  
7 chance or betting do not come into play, and having  
8 said this repeatedly, the aim of the game was to  
9 obtain a ticket that was redeemable for goods or  
10 services or a prize in relation to the machines  
11 that were already operating. In fact, that is what  
12 Gobernacion understood; correct?

13 A. Yes, sir.

14 Q. And if you look once again at Tab 3, the  
15 official letter from Gobernacion, we referred to a  
16 moment ago Exhibit C-18, the first paragraph refers  
17 precisely to the request, their application by EDM,  
18 and the description rendered by EDM in the  
19 application; correct?

20 A. Yes, that is so.

21 Q. And having referred to the application, it

1 proceeds to make the following comment, you see it  
2 in the first paragraph, first it refers to the  
3 regulations in the federal law on gaming and  
4 lotteries where it is specifically established  
5 various provisions which rigorously prohibit in the  
6 national territory games of chance and games of  
7 betting?

8 A. Yes, that's what it says.

9 Q. And it quotes Article 1 of the law;  
10 correct?

11 A. Correct.

12 Q. And it continues with Article 3, a  
13 reference to Article 3, indeed, a quote of  
14 Article 3 which affirms that it is up to the  
15 Federal Executive through the Secretaria de  
16 Gobernacion to regulate, authorize, oversee gaming  
17 when betting of any sort is involved.

18 A. It says any, and then there is a blank  
19 space.

20 Q. Well, it must be a photocopy. It says in  
21 my copy when there are--there is betting of any



1 type involved.

2 A. Well, I will take your version, that's  
3 fine.

4 Q. And the next paragraph indicates that  
5 along the same lines, Article 4 of the same law is  
6 clear on warning that no house or open or closed  
7 place in which there is gaming with games with  
8 betting or lotteries of any sort may be established  
9 or operate.

10 A. Yes, that is right.

11 Q. And then it continues with similarly clear  
12 language; do you agree with me?

13 A. Yes.

14 Q. And the letter or official note concludes,  
15 if we turn to the next page, on the second  
16 paragraph, the next to the last line, it says--it  
17 warns EDM that chance and betting should not be  
18 involved in any machines that it operates; is that  
19 right?

20 A. Yes, it is right.

21 Q. After this, Mr. Ruiz de Velasco, you

1 issued an opinion for Thunderbird; is that right?

2 A. Yes, it is.

3 Q. Having reviewed the content of the  
4 official letter, if we turn to Tab 6 of the binder,  
5 do you recognize that document?

6 A. Yes.

7 Q. Can you identify it, please.

8 A. Well, it's a letter on Baker & McKenzie  
9 letterhead, dated August 25th, 2000, signed by me.

10 Q. This is the opinion that you gave  
11 Thunderbird in relation to the official note of  
12 Gobernacion dated 15 August; is that right?

13 A. Yes, sir.

14 Q. Now, could you please read, there is no  
15 need to translate it. The original is in English.  
16 Could you read the second paragraph of the opinion  
17 you gave.

18 A. "Based on the principal terms of the  
19 official letter, the Minister of Interior states  
20 that it does not have any jurisdiction over the  
21 operation of said machines since, in accordance

1 with the representations made by EDM in its  
2 application, the video games, skill machines to be  
3 operated by EDM, do not fall into the  
4 classification of a slot machines which are  
5 forbidden in Mexico pursuant to the applicable loss  
6 in view of the fact that they are considered to be  
7 as gaming and/or betting machines."

8 Q. And could you read the next paragraph,  
9 please.

10 A. "By official letter, the Minister of  
11 Interior emphasizes that EDM can operate the video  
12 games, skill machines as long as they do not become  
13 in any manner whatsoever as gaming or betting  
14 machines, provided, however, that EDM complies with  
15 the state's and/or municipal laws or regulations in  
16 Mexico."

17 Q. So, you took the terms of the official  
18 letter, and your opinion was that slot machines  
19 were prohibited because they were considered as  
20 machines of chance and/or betting; is that right?

21 A. Yes, sir.

1 Q. And you indicated to your client that  
2 according to the official letter itself, the video  
3 game skill machines could be operated, and I quote  
4 from the official letter, from your note betting  
5 machines; is that right?

6 A. Yes, sir.

7 Q. You, Ruiz de Velasco, who are a lawyer,  
8 partner in a major firm, you chose the terms of  
9 your opinion carefully so that there not be any  
10 doubt in your mind; is that right?

11 A. Yes, that is right.

12 Q. And indeed, on the second page of your  
13 opinion, you also warned your client that  
14 nonetheless, the Ministry of Interior or  
15 Gobernacion could shut down the establishments; is  
16 that right?

17 A. Yes.

18 Q. And you indicated that if it was to do so,  
19 it would have means of defense?

20 A. Yes.

21 Q. Now, Gobernacion, in effect, did shut down

1 the EDM facilities; is that right?

2 A. Yes, it is.

3 Q. The first of these on 25 February of the  
4 next year, 2001; is that right?

5 A. I don't recall the exact date, but  
6 something like that.

7 Q. Now, if we could turn to Tab 9 of the  
8 binder, this document is identified as Exhibit C-44  
9 in this proceeding. Could you identify this  
10 document, please.

11 A. Yes. It is an act of verification and  
12 closing of date 25 February 2001.

13 Q. In the City of Nuevo Laredo; is that  
14 right?

15 A. Yes, in Nuevo Laredo.

16 Q. And the locale indicated where it is  
17 described in handwriting is a locale called on the  
18 outside La Mina de Oro?

19 A. Yes.

20 Q. This was the EDM facility in Nuevo Laredo?

21 A. Yes, sir.

1 Q. And this closing was done by the inspector  
2 or verifier who was responsible. This was Jose  
3 Guadalupe Vargas; is that correct?

4 A. Correct.

5 Q. Now, after this first shutdown, several  
6 meetings and discussions were held with officials  
7 of Gobernacion?

8 A. Yes, that is so.

9 Q. On various occasions; right?

10 A. Yes, on several occasions.

11 Q. And as a result of these discussions,  
12 there was agreement between Gobernacion and EDM  
13 that Gobernacion would lift the shutdown?

14 A. So long as--yes, there were conditions, so  
15 long as we were to abandon our appeal on the  
16 amparo.

17 If you will, I can explain. Given  
18 precisely the dispute about the machines in this  
19 locale, and without getting into the procedure for  
20 shutting it down, after having gone to see several  
21 officials of Gobernacion in a meeting with the

1 attorneys of Gobernacion, and if my memory serves  
2 me well, Mr. Cabeza de Vaca and somebody else, it  
3 was proposed that the seals be removed so long as  
4 we abandoned the proceedings in relation to the  
5 amparo.

6 Q. Correct. And in effect, EDM did abandon  
7 the amparo proceeding, and Gobernacion lifted the  
8 closing?

9 A. Yes, excuse me, but I need to expand a bit  
10 more on what I was saying. In that same meeting,  
11 it was also agreed that both parties, we were going  
12 to review with our technical personnel and experts  
13 meticulously and during a proceeding and time to be  
14 determined the very operation of the machines and  
15 their scope. That was the conclusion of that  
16 meeting. And, indeed, the seals were removed, and  
17 my client abandoned the amparo actions.

18 Q. And the administrative proceeding began?

19 A. Yes, it began months later, but I think  
20 that here there is something to be clarified. In  
21 effect, an administrative proceeding began, but not

1 in the manner we had established. We offered the  
2 Director General to bring the machines to him and  
3 the technical staff and experts for them to see  
4 them. Indeed, it was offered--we offered to bring  
5 them to the locales themselves, if necessary, and  
6 we were then told that there was a hearing.

7 Q. Now, when you say from the outset--

8 PRESIDENT VAN DEN BERG: One at a time.

9 THE WITNESS: From the day that we reached  
10 the agreement that the seals were going to be  
11 removed, and we were going to abandon, it was  
12 offered from that moment, the next day, the  
13 experts, the machines, the visits, to show  
14 Gobernacion how the machines were going to operate.

15 Nonetheless, days later or I don't know  
16 how much later, I don't remember, we were summoned  
17 to a hearing. Nothing was reviewed in the process,  
18 despite the good faith with which my client acted,  
19 offering the evidence.

20 MR. PEREZCANO: Mr. President, could we  
21 take a five-minute break?

1 PRESIDENT VAN DEN BERG: By all means.

2 THE WITNESS: Thank you, Mr. President.

3 PRESIDENT VAN DEN BERG: You are under  
4 testimony. It means you are not to discuss the  
5 case.

6 (Brief recess.)

7 BY MR. PEREZCANO:

8 Q. Mr. President, to be in a better position  
9 to help Mr. de Velasco, I talked to him a minute  
10 ago, and he told me that perhaps we could expedite  
11 proceedings if we do everything in English. I  
12 think that's what we could do. I'm read and  
13 willing to do that. Whatever the Tribunal decides  
14 is fine with me.

15 PRESIDENT VAN DEN BERG: It's fine with me  
16 as well, but I have to tell you that you have the  
17 right to testify in Spanish, if you feel more  
18 comfortable and to better express. What I suggest  
19 what we do is that you testify in English, but if  
20 you find something difficult, the interpreters or  
21 we have enough Spanish language capability in this

1 room to help you out.

2 THE WITNESS: Thank you very much.

3 PRESIDENT VAN DEN BERG: We call that hand  
4 holding interpretation.

5 THE WITNESS: Thank you very much.

6 BY MR. PEREZCANO:

7 Q. Mr. de Velasco, before we broke, before we  
8 took the break, we were discussing the  
9 administrative proceeding that was, in fact,  
10 initiated by Gobernacion; is that correct?

11 A. That's correct.

12 Q. And you testified that you, in fact, were  
13 summoned to a hearing; right?

14 A. That's right.

15 Q. And that was in a letter from Gobernacion  
16 sent to you as a legal representative of EDM on 21  
17 June of the year 2001?

18 A. Yes.

19 Q. Now, you were summoned to a hearing to  
20 appear before Gobernacion at an administrative  
21 hearing on July 10 of that same year; is that

1 correct?

2 A. That's correct.

3 Q. And the hearing actually took place on  
4 that date; correct?

5 A. That's correct.

6 Q. Now, on that very same day, you submitted  
7 what one of the witnesses testified yesterday, a  
8 book con taking documentary evidence and expert  
9 reports that was prepared for Gobernacion to  
10 review, and you submitted that on the same day of  
11 the hearing; is that right?

12 A. That's right.

13 Q. And if you turn to Tab 10, that is  
14 Respondent Exhibit Number 47, are you familiar with  
15 that document, sir?

16 A. I read it while we were there at the end  
17 of the hearing. I did request for a copy. It was  
18 agreed to give me a copy. I submitted an  
19 application the next day to have a copy. I never  
20 got it.

21 Q. Well--

1 A. It's this is the first time I see it after  
2 the hearing. I review it at the hearing.

3 Q. Okay. You did review it?

4 A. Yeah, but I wanted it to have another  
5 copy, which I never got.

6 Q. And this is the record of the hearing; is  
7 that correct?

8 A. It must be, yes, sir.

9 Q. And, in fact, can you identify your  
10 signature there on every page?

11 A. Yes.

12 Q. Now, if you turn to page two of that  
13 document, sir, paragraph 25, about a third up.

14 A. Which page, I'm sorry?

15 Q. Page two of that document, about a third  
16 up from the bottom, number 25, it refers to the  
17 document, that escrito that you submitted that very  
18 day attaching the documentary evidence and expert  
19 report; is that correct?

20 A. That's correct.

21 Q. And it goes on to identify the documents

1 that were contained in that book, which was  
2 entitled--

3 A. Report Para Secretaria de Gobernacion.

4 Q. Correct. So, it was a report prepared for  
5 the Secretaria de Gobernacion; correct?

6 A. That's correct.

7 Q. And those were all the documents and  
8 reports EDM had to submit; is that right?

9 A. Right, yes.

10 Q. Now, those documents were admitted into  
11 evidence; is that correct?

12 A. Yes.

13 Q. In fact, it says later on that, with the  
14 exception of two--it says, if I may, but with the  
15 exception of the oficio of the Secretaria de  
16 Gobernacion; is that right?

17 A. Official letter from Secretaria de  
18 Gobernacion of August 10.

19 Q. And that was just a mistake. It was  
20 actually the oficio of August 15th; is that  
21 correct?

1 A. You mean the date?

2 Q. The date. It was a mistake?

3 A. There is no other oficio.

4 Q. Okay. Thank you.

5 Now, in the--among those documents, if you  
6 see there back on page two, paragraph--not

7 paragraph, but number 25, sub or letter A, it

8 refers to a dictum (speaking in Spanish). Are you  
9 familiar with that expert report?

10 A. I'm familiar about it. I never read it,  
11 though.

12 Q. You never read it?

13 A. No.

14 Q. So, I take it you don't know how it came  
15 about to be prepared; is that right?

16 A. I'm aware of how it was prepared by an  
17 expert designed by the proculia for the general de  
18 la republica.

19 Q. We heard testimony here yesterday,  
20 Mr. de Velasco, that Mr. Atallah had, in fact, made  
21 comments on a draft of that report. Were you aware

1 of that?

2 A. No.

3 MR. CROSBY: Mr. President, I have not  
4 objected, but I would like to object and indicate  
5 that Mr. Atallah said it had more complete  
6 testimony on his understanding of that document  
7 than as Mr. Perezcano just said. I guess I could  
8 point that out in redirect.

9 PRESIDENT VAN DEN BERG: You could point  
10 it out in redirect, but one other thing is, what I  
11 do recall is Mr. Atallah did confirm that it was  
12 his handwriting on the draft of the report.

13 MR. CROSBY: That's correct. I agree.

14 PRESIDENT VAN DEN BERG: So, if we could  
15 limit ourselves to that testimony, then you can  
16 pursue your questioning.

17 MR. PEREZCANO: Thank you, Mr. President.

18 BY MR. PEREZCANO:

19 Q. And you were not aware of that; is that  
20 correct?

21 A. His involvement?

1 Q. Yes.

2 A. I don't recall. I guess I did.

3 Q. Because you did not?

4 A. I did. I guess I did.

5 Q. You did know that Mr. Atallah was involved  
6 in preparing--

7 A. I do not remember completely.

8 Q. Now, once the evidence was admitted, and  
9 the expert reports were given and pictures were  
10 taken, you were given the opportunity to make  
11 arguments; is that correct?

12 A. At the hearing?

13 Q. At the hearing.

14 A. Some, yes, because even the machine was  
15 presented, the way it was today.

16 Q. When all that, when all the evidence was  
17 tendered, you were given the opportunity to make  
18 arguments; is that correct?

19 A. That's correct.

20 Q. And you did make those arguments; right?

21 A. Some.



1 Q. And they concerned only Gobernacion's not  
2 admitting the oficio of 10 August, and a document  
3 that had been submitted in English?

4 A. I don't remember this--these minutes,  
5 though.

6 Q. If you turn to page five of the document,  
7 sir, actually, page four, the last sentence that  
8 goes on to page five, it says, I will do it have we  
9 have free translation. Now, with no more evidence  
10 pending or to be added, we received the arguments,  
11 and then it goes on to say, (speaking in Spanish);  
12 is that right?

13 A. Um-hmm.

14 Q. Is that correct, sir?

15 A. Yes.

16 Q. States that Annex C contains an error in  
17 referring to Gobernacion's oficio, because it  
18 should be not an August 10 oficio but rather an  
19 August 15 oficio; is that correct?

20 A. That's correct.

21 Q. And then it just goes on to say, you

1 stated, you were making these arguments for EDM; is  
2 that right?

3 A. That's correct.

4 Q. And you go on to say that in relation to  
5 subparagraph B, and that it was a document, a  
6 document that was submitted only in English without  
7 a translation. Do you recall that?

8 A. Yes.

9 Q. And you stated that it should be admitted  
10 into evidence in any event because it did contain a  
11 paragraph that summarized its contents and that  
12 paragraph was in Spanish; is that right?

13 A. That's right.

14 Q. And those were the extent of your  
15 arguments at the hearing; is that correct?

16 A. At that time, yes, they were.

17 Q. Now, are you aware that the federal law on  
18 the administrative procedure grants the ability to  
19 submit arguments in writing within five days?

20 A. When you have a copy, yes.

21 Q. And you did not submit--

1 A. I did request for a copy of the minutes in  
2 order to make my comments and claims, but I did not  
3 get a copy from the Minister of Gobernacion, even  
4 though at the next day I submitted in writing my  
5 application to receive a copy so I could make my  
6 argument. I never got it.

7 Q. And did you challenge that of the  
8 Secretaria de Gobernacion?

9 A. I requested it in writing.

10 Q. And when they did not provide it, did you  
11 object to that?

12 A. We went several times to try to get it,  
13 and we had no response whatsoever.

14 Q. Did you initiate any kind of proceeding in  
15 that respect?

16 A. No, only submitting my application to  
17 receive the copy.

18 Q. Okay. Now, Gobernacion issued an  
19 administrative decision on a resolution  
20 administrativa on October 10th of that same year;  
21 is that right?

1 A. That's correct.

2 Q. And can you turn, please, to Tab 11 of the  
3 binder. This is Claimant's Exhibit 70 and  
4 Claimant's Exhibit 93.

5 Do you recognize that document, sir?

6 A. Yes.

7 Q. Can you identify it, please.

8 A. Yes, is resolution administrative  
9 (speaking in Spanish). Administrative resolution  
10 general government.

11 Q. In the administrative proceeding; is that  
12 right?

13 A. That's correct.

14 Q. Now, you see there where it says  
15 "recitandos," this is sort of where Gobernacion  
16 refers the background of the proceeding. Would  
17 that be a fair statement, sir?

18 A. Yes, sir.

19 Q. And it says, first, it refers to the  
20 February 25 closure order by Mr. Vargas; right?

21 A. Which page are you on?

1 Q. Page one, where it says the first  
2 recitando. Page one of the administrativa?  
3 A. Okay.  
4 Q. First refers to the closure order by  
5 Mr. Vargas?  
6 A. Um-hmm.  
7 Q. I'm sorry, sir?  
8 A. Yes, sir.  
9 Q. And then it goes on to refer the amparo  
10 proceedings initiated by EDM; is that right?  
11 A. That's correct.  
12 Q. And it refers to the agreement between EDM  
13 and Gobernacion; correct?  
14 A. That's correct.  
15 Q. And I would also refer in the fifth  
16 recitando to the document that you submitted to  
17 Gobernacion that negotiated the whole process; is  
18 that right?  
19 A. That's right.  
20 Q. And it also over the page it refers to the  
21 21 June letter initiating the proceeding and the

1 administrative hearing; is that correct?  
2 A. That's correct.  
3 Q. Now, in the considerandos there on the  
4 same page, these are the things that the Secretaria  
5 de Gobernacion considered?  
6 A. Yes.  
7 Q. Thank you.  
8 And you will see first that--well, it  
9 first states that Gobernacion is a competent  
10 authority; is that right?  
11 A. That's correct.  
12 Q. And it refers to the administrative  
13 proceeding--actually to your powers to represent  
14 EDM; is that right?  
15 A. That's right.  
16 Q. You will see on the fifth one, I'm not  
17 going to go over every paragraph, but you see that  
18 it refers to the August 3, 2000, solicitud? Do you  
19 see that on the fifth subparagraph A?  
20 A. Yes.  
21 Q. And over the page, subparagraph D, it

1 refers to the response by Gobernacion on  
2 August 15th; is that correct? That subparagraph D.  
3 A. Yes, sir.  
4 Q. Now, over the page, you see an item  
5 seventh, the seventh considerando. It refers to  
6 the documentary evidence submitted by you with your  
7 July 10th submission; is that correct?  
8 A. That's correct.  
9 Q. And then it goes through a lengthy  
10 consideration on the nature of the evidence that  
11 you had submitted; is that right?  
12 A. Saying that, yes, it's right, saying that  
13 they do not proceed.  
14 Q. Well, they actually--  
15 A. (Speaking in Spanish).  
16 Q. Well, it says--  
17 A. It's they're not accepted.  
18 Q. It says it's--  
19 A. It's (speaking in Spanish).  
20 Q. They lack full probatory value, and  
21 therefore they should be rejected as evidence with

1 full probatory value; is that correct?  
2 A. That's correct.  
3 Q. But Gobernacion did take them as indicia;  
4 is that right?  
5 A. Um-hmm.  
6 Q. Is that a yes?  
7 A. Yes, yes.  
8 Q. So, they did consider the evidence, just  
9 not with full probatory value; is that correct?  
10 A. That's correct.  
11 Well, yes, yes.  
12 Q. We can go to the specific places, if you  
13 want, where they actually say that they considered  
14 them as indicia, and that they--  
15 A. Page five, paragraph eight.  
16 Q. Where they do say that; is that correct?  
17 A. That's correct.  
18 Q. And if you go to page eight, they consider  
19 the expert report, the (speaking in Spanish),  
20 that's between quotes. Do you see that, sir?  
21 A. Yes.

1 Q. And also the declaration of Kevin  
2 McDonald; right?

3 A. Correct.

4 Q. And they also say that they lack full  
5 probatory value, and they go on to say that they  
6 cannot even be considered as indicia, these two; is  
7 that right?

8 A. That's right.

9 Q. And if you turn the page over, sir,  
10 please, they actually analyze; Gobernacion does a  
11 side-by-side analyses of the PGR report and the  
12 Kevin McDonald report in making the point that they  
13 are, in fact, identical, except for certain  
14 differences in form; is that right?

15 A. Yes.

16 Q. And that is why they decided to reject the  
17 evidence; is that correct?

18 A. I guess that's the reason, yes.

19 Q. And you see that the PGR report is, in  
20 fact, in that left-hand side column. It is  
21 described as having been elaborated by staff of a

1 private enterprise called Netcomm, (speaking in  
2 Spanish); is that right?

3 A. That's correct.

4 Q. Then they go on to express their reasons  
5 for rejection; is that right?

6 A. That's right.

7 Q. And over at page 11 of that document, sir,  
8 on the 12th considerando, they go on to analyze the  
9 rest of the documentary evidence; correct?

10 A. That's correct.

11 Q. Now, this goes on for several pages, and  
12 they also analyze at page 15 in the 13th  
13 considerando, Gobernacion also analyzes in the way  
14 and weighs the evidence of Francisco Ortiz, the  
15 expert tendered; is that correct? That's the third  
16 page on considerano 13.

17 A. Okay, yes.

18 Q. So, they conclude their analyses, and they  
19 go on for several pages, and we don't need to go  
20 into detail on this, but on page 19 in the 14th  
21 considerano, they go into the analyses of the

1 applicable law. This is the Ley Federal de Juegos  
2 y Sorteros; is that correct?

3 A. I don't have page 19.

4 Q. Page 19 you don't?

5 A. I don't.

6 Q. I apologize. That may have been a  
7 photocopying error.

8 A. The same as Mr. Walde.

9 MR. PEREZCANO: I apologize,  
10 Mr. President, for that. The witness has been  
11 given a full copy of the document.

12 BY MR. PEREZCANO:

13 Q. Page 19 it goes on to--it begins its  
14 analyses of the law; is that correct?

15 A. That's correct.

16 Q. And that goes on for several pages as  
17 well.

18 It just goes on with their reasoning for  
19 their final decision; is that right?

20 A. That's correct, yes.

21 Q. And they ended up disagreeing with the

1 arguments and evidence presented that these were  
2 skill machines and Gobernacion, in fact, concluded  
3 that they were games of chance and games where  
4 betting was involved; is that right? That was  
5 their conclusion.

6 A. That's their conclusion, yes.

7 Q. And therefore, they ordered that the Nuevo  
8 Laredo and Matamoros sites be closed; is that  
9 correct?

10 A. Yes. Yes, it is correct.

11 Q. And they were, in fact, closed down by  
12 Gobernacion the day after the resolution was  
13 issued, but the same day that the resolution, the  
14 administrative decision was notified to you; is  
15 that right?

16 A. 15 minutes later.

17 Q. On the same day?

18 A. On the same day.

19 Q. On the same day--

20 A. At 6:30, as I recall, it was presented to  
21 me, and at 6:45 they were closed down.

1 Q. And this document was presented to you; is  
2 that right?--the full document.

3 A. Yes.

4 Q. Now, you, of course, were not present at  
5 either of the sites when they was closed down;  
6 correct?

7 A. I was in Mexico City.

8 Q. So, you were not present there?

9 A. I was not present.

10 Q. Now, Mr. Guadalupe Vargas did not conduct  
11 the closing down of these sites; is that right?

12 A. I don't know.

13 Q. Well, if we turn to Tab 13, sir, if you  
14 will, on the binder.

15 A. Yes, I have.

16 Q. Now, this is Exhibit--Respondent's Exhibit  
17 009-I. And can you identify the document for us,  
18 sir, please.

19 A. (Speaking in Spanish), yes.

20 Q. So, this is record of the closure of the  
21 Matamoros site; is that right?

1 A. That's correct.

2 Q. And you see that the people carrying out  
3 the persons carrying out the closure on behalf of  
4 Gobernacion, neither of them is Guadalupe Vargas;  
5 is that correct?

6 A. That's correct.

7 Q. And turn the page over, handwriting is a  
8 little bit hard to read, but towards, I guess about  
9 a third down of the page, begins by saying that  
10 approximately 25 clients were going to the cagas.  
11 I assume that that is what here has been called the  
12 cage of the facility, within the establishment in  
13 order to collect or to cash in the amount of money  
14 that they had one in accordance with the points  
15 obtained in the machines; is that what it says?

16 A. That's what it says, yes.

17 Q. And so, the inspectors ended up finding  
18 that there was gambling going on in the premises;  
19 is that correct? I mean, that is what they  
20 determined, the inspectors?

21 A. They determined that their clients

1 approached the cashier to collect some amount of  
2 money that corresponded to them in accordance with  
3 their points achieved at the machines, that's all  
4 it says.

5 Q. Okay. If you turn the page over, that's  
6 page two B, and if you flip over that page to--

7 A. What page?

8 Q. On that same document. Flip over a couple  
9 of pages.

10 PRESIDENT VAN DEN BERG: 2-B is one page.

11 MR. PEREZCANO: 2-B is one page, and then  
12 we have three.

13 THE WITNESS: It's three.

14 MR. PEREZCANO: Then we have after 2-B, 3.

15 BY MR. PEREZCANO:

16 Q. Then it says the reasons why the objects  
17 were actually seized was that--and it describes  
18 those objects as being (speaking in Spanish), and  
19 it goes on to say, that a permit issued by  
20 Gobernacion was not shown; is that right?

21 A. To these machines they describe here, yes.

1 Q. Now, I'm not going to take you through the  
2 acta of the closure, but if you turn to Tab 14,  
3 sir, and this is Exhibit--Respondent's Exhibit 9 J,  
4 you will see this is the acta (speaking in Spanish)  
5 of the Nuevo Laredo facility; is that right?

6 A. That's right.

7 Q. And you see that the people conducting the  
8 inspection, none of them is Guadalupe Vargas; is  
9 that correct?

10 A. That's correct.

11 Q. Now, EDM then filed for an amparo  
12 concerning the closure of the two facilities; is  
13 that right?

14 A. That's right.

15 Q. And it also later on, a few months later,  
16 EDM also filed, in fact, you on behalf of EDM also  
17 filed or initiated a proceeding before the  
18 administrative--the fiscal and administrative  
19 Tribunal; is that correct?

20 A. That's correct.

21 Q. Now, nowhere in EDM's complaints either in



1 the administrative proceeding or in the proceeding  
2 before the administrative court, nor before the  
3 federal courts did EDM express any concern about  
4 the conduct of the hearing of July 10th; is that  
5 right? And we could go through the documents if  
6 you want.

7 A. I guess that's right.

8 Q. Well, is it--do you want--we can go  
9 through the documents. That's all right.

10 If you turn over to tab--actually, let me  
11 go the following. If you turn to Tab 16, sir,  
12 please, and this is Exhibit, Respondent's  
13 Exhibit 29.

14 A. Yes.

15 Q. Can you identify the document, sir.

16 A. Yes, it's (speaking in Spanish).

17 Q. This is the complaint that you filed  
18 before the administrative court; is that correct?

19 A. That's correct.

20 Q. If you want to take a moment to look  
21 through it and just--

1 A. It doesn't refer to what you mentioned  
2 before.

3 Q. It doesn't refer to any misconduct or any  
4 complaints about the conduct of the administrative  
5 hearing; is that correct?

6 A. That's correct.

7 Q. And do you recall the amparos, if EDM made  
8 that reference in the amparos?

9 A. I didn't write this amparos. This is  
10 Javier Navarro.

11 Q. Were you advised--well--

12 A. I was informed, yes.

13 Q. And were you informed that any complaint  
14 was made on the administrative hearing by EDM?

15 A. No.

16 Q. Is that a no?

17 A. That's a no.

18 Q. Thank you, sir.

19 Now, there has been some discussion here  
20 about what amparos and whether EDM prevailed in any  
21 amparos or not. Let's see if we could do this

1 quickly.

2           In the case of the amparo filed  
3 against--the closure of the Nuevo Laredo facility,  
4 that amparo was decided by the judge--the district  
5 judge which is the judge of first instance; is that  
6 correct?

7       A.    Yes.  But let me save you some time.

8       Q.    Yes.

9       A.    We were instructed by the client to  
10 withdraw or dismiss each and every one of the  
11 amparos.

12      Q.    But before we get to that--

13      A.    Wait.  The end result is the same.

14            May I ask you something?

15            PRESIDENT VAN DEN BERG:  Mr. Velasco, the  
16 rules of the engagement is that Mr. Perezcano asks  
17 questions and you, as the witness, will answer.

18            THE WITNESS:  Yes, sir.

19            PRESIDENT VAN DEN BERG:  Although,  
20 especially if it's your lawyer, you also want to  
21 ask a question.  But if you would like to seek a

1 clarification, by all means.

2            MR. PEREZCANO:  Thank you, Mr. President.

3            BY MR. PEREZCANO:

4       Q.    Thank you, Mr. Velasco.

5            But that case, before it was dismissed,  
6 that case was decided by the district judge who was  
7 a judge of first instance; is that right?

8       A.    I don't remember.

9       Q.    If we could turn to tab 18, please.  This  
10 is Respondent's Exhibit 28, and it contains several  
11 documents, but about half of the document in, I  
12 apologize, I didn't have other tabs, there is a  
13 document, which is Annex Three to that exhibit, and  
14 it contains the decision by the district judge, if  
15 you want to just flip over to pages until you find  
16 it.

17      A.    Yes.

18      Q.    Do you have it?

19      A.    Yes.

20      Q.    So, this is the district judge's decision  
21 on the amparo; is that right?  If you see on page

1 one it says (speaking in Spanish).

2 A. That's correct.

3 Q. So, this is the decision on the case;  
4 right?

5 A. Yes.

6 Q. And if you just go towards the end of that  
7 document, the second to last page, it's actually  
8 page 20 at the bottom, there is the decision where  
9 we are not going to take you through it all, but it  
10 says (speaking in Spanish), so the judge decided  
11 the case and rejected the case filed by EDM; is  
12 that correct?

13 A. That's correct.

14 Q. Now, do you recall if this is the amparo  
15 that was taken, that was appealed, the recurso do  
16 revision was enstated? Do you recall that, sir?

17 A. Yes.

18 Q. And the higher court also dismissed--they  
19 confirmed the decision of the district judge; is  
20 that right?

21 A. That's right.

1 Q. Now, in the Matamoros--in the case of the  
2 amparo of Matamoros, that case was also decided in  
3 the first instance; is that correct?

4 A. I don't know. It's the first time I see  
5 it.

6 Q. You haven't--you have never seen these  
7 documents?

8 A. No.

9 Q. Well, let me tell you what, rather than  
10 going through it, we could show the Tribunal those  
11 documents.

12 MR. CROSBY: If I may interrupt, you know,  
13 the documents say what they say.

14 MR. PEREZCANO: You're right, Mr. Crosby,  
15 they do. Thank you.

16 PRESIDENT VAN DEN BERG: In the interest  
17 of time, I suggest you move on.

18 MR. PEREZCANO: That was my point. I will  
19 move on, sir.

20 BY MR. PEREZCANO:

21 Q. You do recall the proceeding before the

1 administrative court that you, yourself, conducted;

2 is that correct?

3 A. Yes.

4 Q. And that case was rejected in first

5 instance by the court; is that correct?

6 A. I think so, yes.

7 Q. So, in fact, EDM did not prevail on any of

8 the remedies that were initiated; is that correct?

9 A. No.

10 Q. Thank you, sir.

11 A. No, it's not correct.

12 PRESIDENT VAN DEN BERG: Could you please  
13 explain that answer.

14 THE WITNESS: I need--would you please  
15 rephrase your question.

16 BY MR. PEREZCANO:

17 Q. EDM, none of the courts found in favor of

18 EDM on the remedies that it initiated concerning

19 the closure order of any of the three EDM

20 facilities; is that correct?

21 A. Yes, that's correct.

1 Q. Thank you, sir.

2 MR. PEREZCANO: Mr. President, those are

3 all my questions. Thank you. Thank you,

4 Mr. de Velasco.

5 PRESIDENT VAN DEN BERG: Mr. Crosby?

6 MR. CROSBY: Thank you, Mr. President.

7 REDIRECT EXAMINATION

8 BY MR. CROSBY:

9 Q. I would like you to take a look at Tab 10,

10 please. Which are the, as counsel has referred to

11 them, the minutes of the July 10 administrative

12 hearing; is that correct?

13 A. That's correct.

14 Q. There are signatures along the left-hand

15 column of that document.

16 Do you see that?

17 A. Yes.

18 Q. What are those signatures for?

19 A. To certify that these are the original.

20 Q. So, am I correct that the individuals who

21 signed these signatures are indicating that they

1 were present, and these are the minutes; correct?

2 A. That's correct.

3 Q. Can you identify the signatures there?

4 A. Mine only.

5 Q. Yours only?

6 A. Yes.

7 Q. Okay. I would like you to take a look at  
8 exhibit in this book, Exhibit 11, which is the  
9 administrative resolution as we have called them,  
10 the administrative findings in order of October 10.

11 Do you have that in front of you?

12 A. Yes.

13 Q. Who issued these--this

14 administrative--these administrative findings and  
15 order?

16 A. Mr. Umberto Coronado.

17 Q. And is that his signature at the last  
18 page?

19 A. Yes, I guess.

20 Q. I would like you to take a look at that  
21 signature because I'm going to refer back.

1 Then I would like you to take a look back  
2 at the minutes. And on the first page I'm correct;  
3 there are four signatures; correct?

4 A. Yes.

5 Q. And the same on the next page; correct?

6 A. Correct.

7 Q. And the same on the next page?

8 A. Correct.

9 Q. And the same until we get to the end, the  
10 fifth page; correct?

11 A. That's correct, sir.

12 Q. And isn't it correct there is an  
13 additional signature there, right there?

14 A. Yes.

15 Q. And is that Mr. Umberto Aguilar's  
16 signature?

17 A. Yes, it is.

18 Q. Was he present at that?

19 A. No, he wasn't.

20 Q. Do you have an explanation as to why his  
21 signature are on these minutes if he was not

1 present?

2 A. No, sir.

3 Q. Was Mr. Aguilar Coronado, was he present  
4 at that meeting, at that hearing?

5 A. At the hear, no.

6 Q. Did he see the demonstration of the  
7 machine?

8 A. No.

9 Q. Do you know if he saw any of the evidence  
10 at the time he drafted and signed this order?

11 A. I don't know.

12 Q. I'd like to take you back to the paragraph  
13 again that Mr. Perezcano did not have you read into  
14 the record and how it relates to your opinions  
15 concerning issued in your August 25th letter. I  
16 would like you to take a look at Tab 3, which is  
17 the August 15th letter, and specifically the second  
18 page, and the top of the sentence, or the top of  
19 the page, second page, and read the paragraph  
20 starting "In este."

21 A. In this sort of idea it's important--to

1 clarify whether the machines operated commercially  
2 by your client, operated in the way and terms  
3 expressed by you, this administrative authority  
4 does not have jurisdiction to forbid them. In the  
5 understanding that if they are machines known as  
6 slot machines, where the preponderant operating  
7 factor is chance and betting and not skill, as  
8 stated, you might fall into some of the regulatory  
9 assumptions set forth in federal law with the legal  
10 consequences that may come therefrom, pursuant to  
11 the provisions of Article 8 of that law.

12 Q. How did that paragraph factor into the  
13 opinion you gave in your August 25th letter,  
14 specifically the paragraph at the top of page two?

15 A. What tab is this?

16 Q. Tab 6. How did the paragraph you just  
17 read into the record from the August 15th letter  
18 factor into the opinion you gave in this letter as  
19 a whole and specifically the opinion you gave in  
20 the first paragraph of page two?

21 A. Where does it prohibit it? The skill

1 machines.

2 Q. And why did you come to that conclusion  
3 based upon the August 15th letter and again  
4 focusing on the entire letter, including that  
5 portion that you just read into the record?

6 A. Because the video game skill machines are  
7 not, how do you call it, tragamonedas, slot  
8 machines or tragofichas in which primarily, the  
9 acuesta is an element.

10 MR. CROSBY: Thank you. No further  
11 questions.

12 QUESTIONS BY THE TRIBUNAL

13 PRESIDENT VAN DEN BERG: We will do it  
14 quickly. About the 15 August 2002 letter from the  
15 Gobernacion, was your firm involved in the drafting  
16 of that letter?

17 THE WITNESS: In the August 15 to  
18 Gobernacion, no.

19 PRESIDENT VAN DEN BERG: In the process of  
20 what should be the final text of the 15 August  
21 letter.

1 THE WITNESS: No.

2 PRESIDENT VAN DEN BERG: And your  
3 colleague from the other firm, Aspe and Arroyo,  
4 were they involved in any way with the drafting?

5 THE WITNESS: I guess they were with  
6 dialogues with the offices of Gobernacion for the  
7 issuance of that letter, yes.

8 PRESIDENT VAN DEN BERG: So, were drafts  
9 being discussed with them?

10 THE WITNESS: I would suppose, yes.

11 PRESIDENT VAN DEN BERG: Were you involved  
12 in the process?

13 THE WITNESS: No.

14 PRESIDENT VAN DEN BERG: Okay.

15 THE WITNESS: I was consulted, though, but  
16 I never saw the draft or anything alike before.

17 PRESIDENT VAN DEN BERG: In what way were  
18 you consulted?

19 THE WITNESS: You know, as to what  
20 time--what time--if this was coming soon, should we  
21 apply again, but never in the drafting of the

1 official letter.

2           PRESIDENT VAN DEN BERG: You see, I have a  
3 question, and a problem here which is this.

4 Earlier, you testified, and I specifically asked  
5 you that question again, whether your letter of 3  
6 August 2000--

7           THE WITNESS: You're talking--I'm sorry,  
8 I'm talking 5th.

9           PRESIDENT VAN DEN BERG: I'm going back  
10 now one letter.

11          THE WITNESS: Oh.

12          PRESIDENT VAN DEN BERG: You testified  
13 earlier that the representations made in the letter  
14 of 3 August to the Gobernacion were to the effect  
15 that the machines in question did not involve  
16 betting or chance at all; do you remember that?

17          THE WITNESS: Correct.

18          PRESIDENT VAN DEN BERG: That's what you  
19 said.

20          If you turn now to the letter, and again I  
21 pick up what Mr. Crosby pointed out to you, read

1 the same paragraph, please, in the 15 August  
2 letter. Because there you see a difference. It is  
3 not so absolute for the hundred percent no. It  
4 uses the words preparando.

5           THE WITNESS: That's correct.

6           PRESIDENT VAN DEN BERG: Can you explain  
7 how it is possible that you get more than you asked  
8 for?

9           THE WITNESS: No.

10          PRESIDENT VAN DEN BERG: I, as a lawyer,  
11 when I make application to the court, I'm very  
12 happy that I get 100 percent. I've never  
13 experienced in my life 110 percent. Could you  
14 explain how this word came in.

15          THE WITNESS: No.

16          PRESIDENT VAN DEN BERG: Has that been  
17 discussed at that period of time?

18          THE WITNESS: No.

19          PRESIDENT VAN DEN BERG: The other  
20 question I have is the amparo process, very  
21 briefly. Is my understanding correct that the



1 amparo is injunctive relief? Is that--

2 THE WITNESS: Mas o menos, it's more or  
3 less, yes.

4 PRESIDENT VAN DEN BERG: It means that  
5 this was of a temporary nature.

6 THE WITNESS: Yes.

7 PRESIDENT VAN DEN BERG: Although some  
8 philosophers have said (speaking in Spanish).

9 THE WITNESS: Yes.

10 PRESIDENT VAN DEN BERG: It's only the  
11 provisional thing that lasts forever.

12 So you never go through the amparo  
13 process. You never get a position a the merits?  
14 What you could get was gaining time; correct?

15 THE WITNESS: Correct.

16 PRESIDENT VAN DEN BERG: When you hear  
17 this wonderful plan of the gentlemen, Aspe and  
18 Arroyo, about the victory they claimed in the  
19 La Guardia case, and you heard an amparo was  
20 involved, did you not ask yourselves the question,  
21 wait a moment, but this is only injunctive relief

1 and where is my certainty on the merits?

2 THE WITNESS: That's why I mentioned  
3 before we advise our client to have the (speaking  
4 in Spanish) rather than a temporary basis document.

5 PRESIDENT VAN DEN BERG: Then the acts of  
6 1947, Article four, that you can get the permits  
7 from Gobernacion; correct?

8 THE WITNESS: The Gobernacion had the  
9 discretion of power to grant it.

10 PRESIDENT VAN DEN BERG: You had two  
11 options: One is to seek a statement from the  
12 Gobernacion you don't have jurisdiction, or you  
13 don't apply for the premises.

14 THE WITNESS: Um-hmm.

15 PRESIDENT VAN DEN BERG: So, you choose  
16 the former; is that correct?

17 THE WITNESS: I choose to ask if I need  
18 it, if I was within the law. In my opinion, or in  
19 our opinion, we wanted to confirm whether--we  
20 wanted to know from the authority if these skill  
21 machines were prohibited or not by the law.

1           PRESIDENT VAN DEN BERG: So, what you  
2 actually were looking for was a negative clearance?

3           THE WITNESS: If you qualify it that way,  
4 yes, negative clearance.

5           PRESIDENT VAN DEN BERG: There is one  
6 further question I have to ask you, and this is a  
7 different question that came up with yesterday, and  
8 that concerns, now, again you have to help me the  
9 famous Mr. Rafael. In the binder of the Jack  
10 Mitchell cross-examination, Tab 13, that could be  
11 shown to Mr. Velasco.

12           First page, you see a letter of Mr. Aspe  
13 apparently addressed to Thunderbird, (reading) I  
14 close herewith, please find instructions regarding  
15 payment of success fee referred to herein.

16           Do you recall a discussion of success fee  
17 of these two gentlemen?

18           THE WITNESS: Yes, I do. Do I recall  
19 about this?

20           PRESIDENT VAN DEN BERG: Do you recall the  
21 \$300,000 arrangement?

1           THE WITNESS: Yes.

2           PRESIDENT VAN DEN BERG: You were involved  
3 in arranging for that?

4           THE WITNESS: Arranging for payment.

5           PRESIDENT VAN DEN BERG: Did you have your  
6 own success fee arrangement?

7           THE WITNESS: No.

8           PRESIDENT VAN DEN BERG: Why did they, and  
9 you didn't, because you were in the same train,  
10 weren't you?

11           THE WITNESS: Because they offered to  
12 obtain the letter on a shorter time.

13           PRESIDENT VAN DEN BERG: Let me ask you  
14 this--

15           THE WITNESS: It's an agreement between  
16 the client and the lawyers and which I was not  
17 involved in.

18           PRESIDENT VAN DEN BERG: This is a  
19 delicate question, but perhaps you can answer it.  
20 In what were these two gentlemen better as lawyers  
21 than you were?

1 THE WITNESS: I don't know. I cannot  
2 answer that.

3 PRESIDENT VAN DEN BERG: Were you not  
4 surprised they asked for a success fee?

5 THE WITNESS: That was a success fee that  
6 was arranged between the client and the lawyers. I  
7 was not involved in the discussions or negotiations  
8 of these success fee whatsoever.

9 PRESIDENT VAN DEN BERG: Let's go back.  
10 But here you see the payment mechanism. And if you  
11 flip the page, if you go to the third page, there  
12 the name of your firm appears; is that correct?

13 THE WITNESS: Yes.

14 PRESIDENT VAN DEN BERG: And on the second  
15 page, you see it has to be paid to Bank of America  
16 in Concord, California?

17 THE WITNESS: Uh-huh.

18 PRESIDENT VAN DEN BERG: And there you see  
19 the name of the beneficiary, at least the first  
20 beneficiary is consultoria, and Casa de Cambio.

21 THE WITNESS: Yes.

1 PRESIDENT VAN DEN BERG: What is that?

2 THE WITNESS: Exchange house, a very large  
3 one.

4 PRESIDENT VAN DEN BERG: And who is  
5 Mr. Rafael Ramos Velasco?

6 THE WITNESS: I don't know. I don't  
7 remember.

8 PRESIDENT VAN DEN BERG: He used to be the  
9 beneficiary for 300,000.

10 THE WITNESS: Yes.

11 PRESIDENT VAN DEN BERG: And is it correct  
12 that this payment was processed through your firm?

13 THE WITNESS: No, not my firm, no. It was  
14 sent directly to Casa de Cambio.

15 PRESIDENT VAN DEN BERG: What is the  
16 meaning of what the indication of your firm on the  
17 next page?

18 THE WITNESS: Probably we discussed it,  
19 myself, if it could be sent through our account in  
20 Baker & McKenzie, and we decided not to go directly  
21 to this account.

1           PRESIDENT VAN DEN BERG: So, the payment  
2 was made or not made through your firm?

3           THE WITNESS: It was not made through my  
4 firm.

5           PRESIDENT VAN DEN BERG: What was the  
6 involvement of your firm with the payment?

7           THE WITNESS: We went to assist--not  
8 assist. We went to this Casa de Cambio to verify  
9 the wire transfer to these guys.

10          PRESIDENT VAN DEN BERG: Could it be that  
11 the Casa de Cambio simply be that somebody could go  
12 there and go to the cash withdrawal? Is that what  
13 happened here?

14          THE WITNESS: It was a wire transfer, sir.

15          PRESIDENT VAN DEN BERG: You transferred  
16 \$300,000 from where to where, from Mexico to  
17 California?

18          THE WITNESS: No, this is in Mexico.

19          PRESIDENT VAN DEN BERG: This is in  
20 Mexico. Is there a Bank of America in Mexico?

21          THE WITNESS: No. Let me explain to you.

1 (Speaking in Spanish) is in Mexico City, and he has  
2 an account in Bank of America. This is the way  
3 this Casa de Cambio work. They deposit the money  
4 in their account in Bank of America, California,  
5 and they withdraw and--draw the check in Mexico  
6 City against it for verification.

7           PRESIDENT VAN DEN BERG: Mr. Portal will  
8 ask a question.

9           ARBITRATOR PORTAL-ARIOSA: I have several  
10 questions. First, you mentioned before that you  
11 had seen the machines before August 25. Did you  
12 have access to those machines?

13          THE WITNESS: I saw the machines before  
14 August 3rd, yes.

15          ARBITRATOR PORTAL-ARIOSA: Where?

16          THE WITNESS: At the offices of Mauricio  
17 Girault.

18          ARBITRATOR PORTAL-ARIOSA: Did you use  
19 them?

20          THE WITNESS: No.

21          ARBITRATOR PORTAL-ARIOSA: Were you aware

1 that the machines had a fitting to accept money?

2 THE WITNESS: Yes. In order to start  
3 operating, then you have to put some money, yes.

4 ARBITRATOR PORTAL-ARIOSA: Did you review  
5 any manuals of the machines before August 25th?

6 THE WITNESS: No, sir.

7 ARBITRATOR PORTAL-ARIOSA: Did your client  
8 explain to you, or did you get any information on  
9 how these machines operated?

10 THE WITNESS: Personally, no.

11 ARBITRATOR PORTAL-ARIOSA: Okay. Do you  
12 know if there is a definition of skill or chance in  
13 the Mexican law for Juegos y Sorteros?

14 THE WITNESS: No, there isn't.

15 ARBITRATOR PORTAL-ARIOSA: Do you know if  
16 there is a difference in the oficio of August 15th  
17 and the Mexican law of Juegos y Sorteros?

18 THE WITNESS: What do you mean?

19 ARBITRATOR PORTAL-ARIOSA: I want you to  
20 let me know if that oficio is a restatement of what  
21 is provided under Mexican law.

1 THE WITNESS: As I recall in the first  
2 three paragraphs, yes, there is restatement of what  
3 the law or how the law reads, no? Regarding Juegos  
4 y Sorteros.

5 ARBITRATOR PORTAL-ARIOSA: Do you not see  
6 any other definitive aspects of what gambling,  
7 betting could be?

8 THE WITNESS: No.

9 ARBITRATOR PORTAL-ARIOSA: Slot machines?

10 THE WITNESS: I don't see any definition  
11 of what is a slot machines, tragamonedas. Those  
12 are not in the law, as I recall.

13 ARBITRATOR PORTAL-ARIOSA: Okay. I'm  
14 directing your attention to the same paragraph, the  
15 first one and the second, where it says--and I'm  
16 starting at the middle, (reading) Provided that it  
17 is machines as such as those known as slot  
18 machines, tragamonedas, or tragafichas in which the  
19 preponderant factor of operation is chance.

20 Do you consider a definition of what  
21 gaming with these machines is?

1 THE WITNESS: Yes. It's related to these  
2 machines.

3 ARBITRATOR PORTAL-ARIOSIA: Is there any  
4 provision that has this definition anywhere in the  
5 Mexican law?

6 THE WITNESS: I don't think so, sir.

7 ARBITRATOR PORTAL-ARIOSIA: Do you know  
8 that there is legislation in other places that  
9 specifically discuss the issue of skill versus luck  
10 or chance as a key element in the approvals for  
11 this type of activities with these machines?

12 THE WITNESS: Yes, I'm aware of that, yes.

13 ARBITRATOR PORTAL-ARIOSIA: Did your client  
14 make you aware of the critical importance of this?

15 THE WITNESS: Yes.

16 ARBITRATOR PORTAL-ARIOSIA: Did your client  
17 ask you, or did you seek this definition from the  
18 Mexican Ministry of Gobernacion?

19 THE WITNESS: What do you mean?

20 ARBITRATOR PORTAL-ARIOSIA: Mexican law  
21 didn't clearly state this definition, and I was

1 seeing a definition in this oficio.

2 THE WITNESS: Yes.

3 ARBITRATOR PORTAL-ARIOSIA: So, you were  
4 seeking this definition?

5 THE WITNESS: No, I was seeking a  
6 confirmation of an opinion, whether or not the  
7 skill machines were considered, as defined--well,  
8 at the end, the Secretaria de Gobernacion defined  
9 skill machines and tragamonedas and whatever as the  
10 preponderant mechanism. The Ministry of  
11 Gobernacion defines it. I did not ask for a  
12 definition, skill machines or tragamonedas.

13 ARBITRATOR PORTAL-ARIOSIA: Do you think  
14 that was the role of Messrs. Arroyo and Aspe?

15 THE WITNESS: I don't know. I wouldn't  
16 know.

17 ARBITRATOR PORTAL-ARIOSIA: Would, under  
18 the Mexican legal system, this create a right in  
19 favor of the recipient of this opinion or oficio  
20 without any qualification?

21 THE WITNESS: Yes.

1 ARBITRATOR PORTAL-ARIOSA: So, do you  
2 think, then, that the Ministry of Gobernacion acted  
3 granting rights to EDM?

4 THE WITNESS: Well, in a way, because  
5 Gobernacion said that it did not have jurisdiction  
6 over the so-called skill machines. Yes, that's  
7 fine.

8 ARBITRATOR PORTAL-ARIOSA: So, why didn't  
9 you request a permit?

10 THE WITNESS: Because, according to this  
11 oficio, official letter, Gobernacion states that  
12 the skill machines are not over its jurisdiction,  
13 the jurisdiction of Gobernacion.

14 ARBITRATOR PORTAL-ARIOSA: Did you know  
15 that these machines were going to print out cash  
16 that was going to be exchanged for the winners for  
17 cash? I'm sorry, printed tickets and then  
18 exchange, not printing cash.

19 THE WITNESS: I didn't, no.

20 ARBITRATOR PORTAL-ARIOSA: Had you known,  
21 would have you changed your August 25th legal

1 opinion?

2 THE WITNESS: Probably.

3 ARBITRATOR PORTAL-ARIOSA: In what sense?

4 THE WITNESS: Because it probably could  
5 have bid in as gambling or betting.

6 ARBITRATOR PORTAL-ARIOSA: Did you know  
7 how your clients or business operate in--

8 THE WITNESS: No, no, in other parts, no.

9 ARBITRATOR PORTAL-ARIOSA: They never  
10 disclosed that information on their activities?

11 THE WITNESS: Oh, well, I know they have  
12 casinos, but, you know, as regarded skill machines,  
13 I understood it was--they were operated the same  
14 way as we requested.

15 ARBITRATOR PORTAL-ARIOSA: Then a couple  
16 of questions in the administrative procedures  
17 before the Secretaria de Gobernacion.

18 THE WITNESS: Yes.

19 ARBITRATOR PORTAL-ARIOSA: Was there any  
20 indication by anyone at the Ministry of Gobernacion  
21 regarding the nationality of your clients?

1 THE WITNESS: No.

2 ARBITRATOR PORTAL-ARIOSIA: Is there  
3 anything in that administrative procedure that you  
4 participated in that made you believe that there  
5 would be a different treatment because of their  
6 nationality?

7 THE WITNESS: No, I don't. No, sir.

8 ARBITRATOR PORTAL-ARIOSIA: At the judicial  
9 proceedings, were you ever aware--

10 THE WITNESS: I was not involved in the  
11 judicial proceedings, sir.

12 ARBITRATOR PORTAL-ARIOSIA: Except for  
13 the--

14 THE WITNESS: Administrative proceeding.

15 ARBITRATOR PORTAL-ARIOSIA: The Tribunal--

16 THE WITNESS: Yeah, but we commented this  
17 with some officers of the court, and it was too  
18 political, not because it was Thunderbird involved.  
19 It was a very difficult issue at the time. That's  
20 what we were told.

21 ARBITRATOR PORTAL-ARIOSIA: And one last

1 question: Do you know if it's illegal in Mexico to  
2 speak to the judges without the presence of the  
3 counterpart?

4 THE WITNESS: No.

5 ARBITRATOR PORTAL-ARIOSIA: Would you say  
6 that that's a practice by litigation attorneys?

7 THE WITNESS: Some attorneys do so, yes.

8 PRESIDENT VAN DEN BERG: Would you  
9 consider it to be improper in the Mexican practice?

10 THE WITNESS: It's unusual to spend more  
11 than once with a judge. How often do you have to  
12 have a meeting with the judge? How long do you  
13 have to have it? I would ask that to myself--I'm  
14 not asking you, of course--in order to say, if it's  
15 illegal, improper, unusual. I know that I'm not a  
16 litigator myself, so I don't practice that type of  
17 law.

18 ARBITRATOR PORTAL-ARIOSIA: Thank you.

19 ARBITRATOR WALDE: The difference between  
20 your role and the role of Aspe and Arroyo, can I  
21 describe it you were a formal legal advisor whereas



1 they were the promoters?

2 THE WITNESS: You may say so, yes.

3 ARBITRATOR WALDE: Were they not also the  
4 lawyers or the promoters of Mr. Guardia?

5 THE WITNESS: They were the lawyers for  
6 Mr. Guardia at the amparo proceedings.

7 ARBITRATOR WALDE: Isn't it a kind of  
8 relation of competition between working for  
9 Mr. Guardia and Thunderbird?

10 THE WITNESS: Unless the client waives  
11 that right, it would be. Unless the client accepts  
12 that it could work for the other one, yes, there is  
13 no conflict of issue.

14 ARBITRATOR WALDE: Is there any court  
15 decision or previous authoritative decision in  
16 Mexico which defines what a game of chance is?  
17 Maybe not in common law system, but is there any  
18 authority--

19 THE WITNESS: Jurisprudence? I don't  
20 know, sir.

21 ARBITRATOR WALDE: So, the jurisprudence

1 is really this August 15 letter which says  
2 preparando "preparando," that's the first, if you  
3 would, investigate gambling law in Mexico, this is  
4 the first time that the word "preparando"  
5 predominantly skill has been used?

6 THE WITNESS: I guess so. I haven't seen  
7 anything in the dictionary or any legal antecedents  
8 in Mexico.

9 MR. CROSBY: Nothing further.

10 PRESIDENT VAN DEN BERG: Any follow-up  
11 questions, Mr. Perezcano?

12 MR. PEREZCANO: Just a few, and I will ask  
13 them in English, if you allow me to.

14 RE-CROSS-EXAMINATION

15 BY MR. PEREZCANO:

16 Q. If you turn to Tab 3 in the first binder,  
17 this is in the oficio, page two, the paragraph that  
18 Mr. Crosby had you read, and where the term  
19 "preparando" appears. Do you see that?

20 A. Yes, I do.

21 Q. Even though Gobernacion said that even if

1 these machines were tragamonedas, tragafichas, or  
2 slot machines were the predominant factor is chance  
3 for betting, and then it goes on, but it talks  
4 about that predominant factor; is that correct?

5 A. That's correct.

6 Q. Now, your opinion back then to Baker &  
7 McKenzie did not refer to this predominant factor  
8 now, did it?

9 A. No, it did not.

10 Q. In fact, your opinion to Thunderbird--and  
11 I apologize, my question, I said your opinion back  
12 to Baker & McKenzie. I meant to say back to  
13 Thunderbird. You did not refer to this predominant  
14 factor; is that correct?

15 A. That's correct.

16 Q. In fact, your opinion went even further,  
17 and as you testified earlier that these were  
18 carefully chosen terms, carefully chosen words from  
19 an experienced lawyer, where you said, your opinion  
20 was that EDM cannot operate a video skill machines  
21 as long as they do not become in any manner

1 whatsoever as gaming or betting machines.

2 So, that was your opinion at the time; is  
3 that correct?

4 A. I guess the opinion is based on the  
5 antecedents given on the first page, which is--does  
6 not have any jurisdiction--second paragraph, sir,  
7 over the operation of said machines since coincides  
8 with representations made by EDM, the video games  
9 still to be operated do not fall into the  
10 classification of a slot machines, which are  
11 forbidden.

12 So, based on the foregoing, and that's why  
13 the first paragraph of page second is based not  
14 only on the third paragraph of page first, but on  
15 three paragraph on the same letter.

16 Q. Now, the oficio talks about slot machines;  
17 is that correct?

18 A. That's correct.

19 Q. And you, in fact, provide a definition of  
20 slot machines in your August 25th opinion; is that  
21 right?

1 A. Slot machines, yes.  
2 Q. You provide that definition. And you  
3 define them as machines--  
4 A. That are forbidden.  
5 Q. Forbidden machines because (speaking in  
6 Spanish) and/or betting, they are machines of  
7 chance and/or betting?  
8 A. That's correct.  
9 Q. You then go on to say you don't refer to  
10 the factor preparando, but you say pretty  
11 categorically, in my view, as long as they do not  
12 become in any manner whatsoever gaming or betting  
13 machines. That was your opinion; is that correct?  
14 A. That's correct.  
15 Q. Now, the oficio from Gobernacion, now, it  
16 does not say that EDM--it does not provide an  
17 unqualified statement that EDM can operate skill  
18 machines. It says, again consistent with your  
19 opinion, that if the machines are as described--  
20 A. As represented by EDM.  
21 Q. And we spent some time, you and I spent

1 some time on the solicitud, and EDM represented  
2 repeatedly that there was no chance and no gambling  
3 involved; is that correct?  
4 A. Yeah.  
5 Q. And that is how EDM represented the  
6 operation to Gobernacion; right?  
7 A. Yeah.  
8 Q. Now, you also said that you did not know  
9 that printed tickets, that the machines actually  
10 printed tickets that could be exchanged for money--  
11 A. For cash.  
12 Q. For cash; is that right?  
13 A. That's correct.  
14 Q. And so, wouldn't you agree, Mr. Ruiz de  
15 Velasco, that the client probably didn't even make  
16 full disclosure to its own lawyers?  
17 A. I don't know.  
18 Q. Did they disclose that to you?  
19 A. They disclosed that they were giving  
20 prices.  
21 Q. They did not--

1 A. At the time they operated. I don't know  
2 if they did disclose or not.

3 Q. But they did not disclose it to you?

4 A. At the time we talk about, it they were  
5 giving prices.

6 Q. They did not disclose to you?

7 A. They were giving cash, no, at that time,  
8 no.

9 Q. Thank you, sir.

10 Licencio Portal referred to--he asked you  
11 whether it was a practice or it was common for  
12 litigators to talk to judges in Mexico, and I just  
13 want to ask you, I will question if you know that  
14 whether Baker & McKenzie or you or any other lawyer  
15 at Baker & McKenzie filed a complaint saying that  
16 had that happened, it was inappropriate? Are you  
17 aware of any complaint of that sort?

18 A. No.

19 MR. PEREZCANO: Thank you, Mr. President.

20 No further questions.

21 PRESIDENT VAN DEN BERG: Thank you.

1 Mr. Velasco, I have to thank you, and I will excuse  
2 you as a witness as quickly as I can. We know you  
3 have to catch a flight.

4 MR. CROSBY: I have no further questions.

5 PRESIDENT VAN DEN BERG: Your time is  
6 already up.

7 (Witness steps down.)

8 (Discussion off the record.)

9 PRESIDENT VAN DEN BERG: Your side ready,  
10 Mr. Crosby?

11 MR. CROSBY: Yes.

12 PRESIDENT VAN DEN BERG: Your side?

13 MR. PEREZCANO: Yes, Mr. President.

14 MR. MOWATT: Mr. President, I would like  
15 Mr. Crosby to inform the Tribunal what portions of  
16 the statement of rejoinder and/or the second  
17 innovation report he intends to address through  
18 this witness because you will recall at the  
19 telephone conference prehearing which resulted in  
20 procedural Order Number seven and under paragraph  
21 7-B the claimant was granted leave to conduct the

1 direct examination of Mr. Rittvo to address  
2 criticisms in the new matters raised by respondent  
3 in its statement of rejoinder, including the  
4 FinBridge Consulting Report of 29 March 2004 in  
5 respect of his valuation analysis of The Innovation  
6 Group. I personally have been through the  
7 rejoinder and the Innovation report and don't find  
8 any reference to him except to say that here is  
9 what we said about his report and statement of  
10 defense, and it's not responded to, so...

11 PRESIDENT VAN DEN BERG: May I suggest we  
12 reverse the order for once? Let's first taste the  
13 pudding and see what comes out of it. I will hear  
14 you whenever you say is out of scope. Otherwise,  
15 if you have a whole discussion whether this is in  
16 or out, I think we will not end before midnight.

17 STEVEN M. RITTVO, CLAIMANT'S WITNESS, SWORN

18 PRESIDENT VAN DEN BERG: Mr. Rittvo, you  
19 are called as a witness by the claimant. Could you  
20 please state your full name for the record.

21 THE WITNESS: My name is Steven Mark

1 Rittvo, R-I-T-T-V-O.

2 PRESIDENT VAN DEN BERG: And date and  
3 place of birth.

4 THE WITNESS: February 2nd, 1949, New York  
5 City, New York.

6 PRESIDENT VAN DEN BERG: And you are a  
7 national of which country?

8 THE WITNESS: The United States, sir.

9 PRESIDENT VAN DEN BERG: You are familiar  
10 with the procedure for examining witnesses in this  
11 case?

12 THE WITNESS: Candidly, I'm not, sir.

13 PRESIDENT VAN DEN BERG: Very briefly, you  
14 will first be asked questions by counsel for the  
15 claimant, which is called direct examination, in  
16 this case limited to sort of subject matters which  
17 was already alluded to by the counsel, Mr. Mowatt,  
18 for respondents, who I understand will ask  
19 questions of cross-examination to you. And then  
20 there will be questions called redirect examination  
21 by Mr. Crosby for claimant, in which the matters

1 have arisen out of cross-examination. That may be  
2 aided by questions from the Tribunal, which each  
3 side has the possibility for follow-up questions.

4 Is that understood?

5 THE WITNESS: Sure.

6 PRESIDENT VAN DEN BERG: In case any  
7 question is unclear for language or any other  
8 reason, do seek a clarification.

9 THE WITNESS: Absolutely.

10 PRESIDENT VAN DEN BERG: Bearing in mind  
11 that the Tribunal fully assumes you understood the  
12 question.

13 THE WITNESS: I understand, sir.

14 PRESIDENT VAN DEN BERG: And that your  
15 answer corresponds to the question.

16 THE WITNESS: I understand.

17 PRESIDENT VAN DEN BERG: Now, you will  
18 appreciate that appearing as an expert witness is  
19 very serious business before the Tribunal or court.

20 THE WITNESS: Yes, I have appeared and  
21 accepted as an expert previously.

1 PRESIDENT VAN DEN BERG: And in that  
2 connection, the Tribunal requires you to make a  
3 statement, and I think it's in front of you.

4 THE WITNESS: I solemnly declare upon my  
5 honor and conscience that my statement will be in  
6 accord with my sincere belief.

7 PRESIDENT VAN DEN BERG: Thank you.

8 Then you have in front of you your  
9 statement, if you could go to the last page. It is  
10 page four, I think. Your statement is executed on  
11 13th of August 2003.

12 THE WITNESS: Yes, sir.

13 PRESIDENT VAN DEN BERG: Can you verify  
14 for the record that that is your signature.

15 THE WITNESS: That is my signature, sir.

16 PRESIDENT VAN DEN BERG: Attached to this  
17 is a FinBridge report which I asked Mr. Flores to  
18 find. I assume that also questions will arise in  
19 this one.

20 Does anyone have a spare copy of the  
21 report?

1 Depending, Mr. Crosby, go you're asking to  
2 ask questions on the basis of that report.

3 MR. CROSBY: I'm going to ask three  
4 questions that address issues that have arisen in  
5 the rejoinder and the supplemental FinBridge  
6 report, and ask him how those issues affected his  
7 valuation of the EDM entities. Three questions.

8 PRESIDENT VAN DEN BERG: I think for the  
9 time being we don't need his report available.

10 First of all, the question is, is the  
11 FinBridge expert around?

12 MR. MOWATT: He's here.

13 MR. PEREZCANO: Yes, Mr. President, I'm  
14 sorry, I forgot to introduce him, but Mr. Luis  
15 Martinez is here with us as of today, and he is the  
16 expert witness presented by claimant.

17 PRESIDENT VAN DEN BERG: Please proceed.

18 DIRECT EXAMINATION

19 BY MR. CROSBY:

20 Q. You have given detailed testimony in a  
21 very lengthy report, so I will ask a few straight

1 questions without the foundational work. First, in  
2 the supplemental report filed in support of the  
3 rejoinder by Mexico, FinBridge addresses the issue  
4 of nonrecurrent expenses or startup expenses and  
5 their treatment or nontreatment in the EDM  
6 valuations. How did nonrecurrent expenses or  
7 startup expenses factor into your valuation of the  
8 EDM entities?

9 MR. MOWATT: I will object now to the  
10 question.

11 PRESIDENT VAN DEN BERG: Overruled.

12 THE WITNESS: I think they played very  
13 little or inconsequential role.

14 BY MR. CROSBY:

15 Q. And why is that?

16 A. The valuations that I undertook were  
17 developed based upon models that we developed, that  
18 were really independent of what the existing  
19 operation was doing. We developed both revenue and  
20 expense forecasts as we have done literally  
21 thousands of times in comparable type of

1 operations. The valuations that we undertook were  
2 based upon our own revenue forecasts based upon our  
3 model, and expense estimates, again yielding  
4 essentially cash flow and the creation of a  
5 discounted cash flow analysis.

6         The implications of the startup costs are  
7 relatively small, if at all, in the type of  
8 activity that EDM was initiating. There are very  
9 often significant startup costs for very short-term  
10 period. There is a tendency to overstaff these  
11 projects, to have more staff than you need to be  
12 able to meet the requirements of patrons to make  
13 them feel very comfortable.

14         There is significant startup costs as it  
15 relates to marketing. There are significant  
16 startup costs as it relates to training. Those  
17 really dissipate at the end of a very short period.  
18 Revenues have a tendency to ramp up over time.  
19 They grow over time as people become more familiar  
20 with the operation, and there is a greater  
21 percentage of the people who participate.

1         Most of the costs are relatively fixed,  
2 and as such, the startup costs, when I look at a  
3 period of minimum of seven years, as much as 15  
4 years within the life of the project, have a very  
5 minimal impact. But again, it was not the actual  
6 operations that we evaluated. It was the market  
7 assessment in both revenues and expenses that we  
8 created.

9         Q. In their supplementary report, FinBridge  
10 addresses the discrepancy between audited  
11 financials--

12         PRESIDENT VAN DEN BERG: Can you please  
13 refer us to the page.

14         MR. CROSBY: I have to get it, then. I  
15 could tell you it's Section 4 of the report.

16         PRESIDENT VAN DEN BERG: I have it. It  
17 reads "Casa Nova de Corrautes." Page four.

18         MR. CROSBY: Your Honor, I believe we only  
19 have the PDF version of it, but I must have left it  
20 in my office. I apologize. There are five major  
21 sections in the FinBridge report. One deals with



1 the discrepancy between audited financial and  
2 actual financials as reported by Mr. Copeland in  
3 the financial records that he--that we filed in  
4 support of our damage analysis.

5           PRESIDENT VAN DEN BERG: The point is  
6 this: Where is the criticism voiced in that  
7 section to Mr. Rittvo's findings?

8           MR. CROSBY: I'm not asserting that there  
9 is. What I'm asking Mr. Rittvo is how he dealt  
10 with that discrepancy--Mr. Rittvo is our expert.  
11 He provided our valuation. What I'm asking him is  
12 how that discrepancy factored into his analysis, if  
13 it did.

14           PRESIDENT VAN DEN BERG: I will allow the  
15 question, then.

16           MR. CROSBY: Thank you.

17           THE WITNESS: Can you repeat the question,  
18 please.

19           BY MR. CROSBY:

20           Q. Briefly, how did an apparent discrepancy  
21 between the audited financials and the actual

1 financials applied by Thunderbird factor into your  
2 valuation of the EDM entities.

3           A. I would say in this instance they did not  
4 at all. Again, as I stated previously, we  
5 developed independent models of revenues and  
6 expenses. Our valuation is based upon not the  
7 experience that the company actually had during its  
8 short term of operation, with the significant  
9 amount of perturbations, but it really is based  
10 upon our market assessment and our expense  
11 estimates.

12           We did use the existing operation to  
13 determine if we could validate if we came close.  
14 We used it as a check. And if you read our  
15 analysis, we came back and forecast revenues of  
16 approximately 140 to \$160 a day per machine. In  
17 that, we said we went back and checked the trend  
18 analysis against that, and did it seem reasonable,  
19 and it did appear reasonable to us as we trended  
20 out what their existing operation was. But our  
21 forecasts and our revenue forecasts were based upon

1 our model. We used the trend as a validation or a  
2 check.

3 Q. And in the final paragraph or two of the  
4 FinBridge supplemental report, FinBridge states the  
5 following opinion: We can conclude that the lack  
6 of detailed information, together with the  
7 differences between management and audited  
8 information, and in the absence of tax returns,  
9 does not allow the DCF method to provide a fair  
10 market value as used in the pleading.

11 What is your response to the assertion  
12 that a discounted cash flow analysis is not viable  
13 in respect of valuing the EDM entities?

14 A. Again, I want to clarify. It's a  
15 discounted cash flow, not a discounted flow, and I  
16 disagree totally.

17 Again, we have literally done thousands of  
18 analyses on operations of this type. The  
19 valuations that we do almost exclusively rely upon  
20 discounted cash flow analyses. Very often, the  
21 work we do, and the models that we developed, and

1 the analyses that are parallel to this, are for  
2 facilities that have not been built yet. They are  
3 done in anticipation of what will be built. That's  
4 how they are basically funded. The loans that are  
5 made to build these facilities, and I would say we  
6 have been responsible probably for in excess of  
7 \$18 billion of loans made for entertainment type  
8 facilities, are done on proscriptive analysis, that  
9 are done on the basis of our market assessment, our  
10 revenue estimates, our expense estimates, and then  
11 the cash flow that that would generate, placing a  
12 value on that so the entities, the investment  
13 banks, the private investors that would make those  
14 loans, are comfortable that that is the value of  
15 the company.

16 It's the same methodology. As I stated  
17 previously, I have been an expert witness, I think,  
18 on three occasions now on entertainment activities  
19 similar to EDM in the United States courts, and  
20 that was the same methodology that I used under  
21 those instances.

1           The ability to use either a replacement  
2 value or a salvage value I'm not sure has any  
3 validity. A facility that is in one location that  
4 has a limited market potential might have 112  
5 devices in it that have a certain salvage value,  
6 another one that might be in a location that is  
7 much greater density, greater population with a  
8 propensity to participate in that activity could  
9 have the same 112 machines. The salvage values  
10 bears no resemblance and no reality to what the  
11 value of what the business is. And replacement  
12 value is again the same because the machines really  
13 are the same cost to place independent of the  
14 location.

15           The variation, I believe, in value--and it  
16 came up in our analyses--is a function of the  
17 markets the activities operate within and the  
18 significance.

19           I'm sorry? If you have something, I will  
20 be happy to answer.

21           I think there is a difference in the

1 markets, and the salvage value and actually  
2 replacement value, I think, bear no reality to what  
3 the activity is. It doesn't give any credit for  
4 the longevity of operation that potentially comes  
5 forward.

6           It is just a pure mechanical replacement.  
7 I'm sorry, I disagreed with that significantly.

8           MR. CROSBY: No further questions.

9           PRESIDENT VAN DEN BERG: Thank you.

10           Mr. Mowatt, please?

11                           CROSS-EXAMINATION

12           BY MR. MOWATT:

13           Q. Mr. Rittvo, your business is located in  
14 New Orleans; is that right?

15           A. Yes, sir.

16           Q. Have you conducted a valuation of gaming  
17 facilities in Mexico other than these?

18           A. I did proscriptive analyses in Mexico.

19           Q. Of actual gaming facilities in Mexico?

20           A. As I said, "proscriptive" meaning in  
21 anticipation.

1 Q. Have you been to Mexico?

2 A. Yes, sir, I have.

3 Q. Whereabouts have you been in Mexico?

4 A. I have been to Mexico City. I mean, I

5 have been to Laredo, actually Nuevo Laredo. I

6 would have to say I probably been to Mexico maybe

7 eight or ten times.

8 Q. Do you speak Spanish?

9 A. No, sir, I do not speak Spanish.

10 Q. Are you familiar with Mexican society and

11 economy?

12 A. I believe to a certain degree I have

13 researched it. To say I'm familiar is a

14 qualitative term that I'm not certain I could

15 respond to.

16 Q. Do you know who Benito Juarez is?

17 A. I believe he was the liberator of Mexico.

18 Q. How about Carlos Saline? Do you know who

19 that is?

20 A. Again, he was, I believe, one of the most

21 affluent people, is--still may be one of the most

1 affluent people in Mexico.

2 Q. When you say have done a proscriptive, I

3 think, valuation of Mexico, could you be more

4 specific.

5 A. In anticipation on the previous sets of

6 time.

7 Q. Of these companies?

8 A. Of these--I'm sorry?

9 Q. Of these various EDM operations?

10 A. No, sir.

11 Q. Are you talking about something else?

12 A. No, it was not EDM.

13 Q. Another investor or prospective investor?

14 A. Yes.

15 Q. And it didn't proceed; is that right?

16 A. I believe at that point there legislation

17 was anticipated to be authored in Mexico, did not

18 proceed.

19 Q. So, this was going to be for a regulated

20 casino, if there was gambling--had been legalized

21 in Mexico?

1 A. Yes, sir.

2 Q. Thank you, sir.

3 QUESTIONS FROM THE TRIBUNAL

4 MR. MOWATT: That's all my questions.

5 PRESIDENT VAN DEN BERG: Redirect?

6 MR. CROSBY: No redirect.

7 PRESIDENT VAN DEN BERG: Thank you.

8 ARBITRATOR WALDE: Your specialty is  
9 financial analysis for the purpose of giving loans.

10 It's really for--the focus is either you do this  
11 for banks or do you it to prepare for financing  
12 proposals for banks; right?

13 THE WITNESS: Or I do it for mergers and  
14 acquisitions or I do it for entities that are  
15 looking to expand or for entities that are  
16 considering new projects.

17 I mean, I would have to say it's the full  
18 range of investigating the financial viability or  
19 value of a project.

20 ARBITRATOR WALDE: How do you factor into  
21 your calculation the uncertainty, kind of

1 competition certainly coming up, regulatory changes  
2 or friendships breaking down? How do you do this?

3 THE WITNESS: Let me take this again in  
4 the sense of competition. Participation in  
5 activities like this is nonlinear. When there is a  
6 single facility, only a certain segment of the  
7 market participates. As more facilities come on,  
8 greater percentages of the population participate.  
9 They participate with greater levels of frequency.

10 So, we build the ability to respond to  
11 competition in that model, and again, in using the  
12 propensities and the frequencies that we developed  
13 for the model--the markets that we considered, we  
14 looked at those as single operator markets. If I  
15 had had multiple operators in those markets, the  
16 model would have been changed to increase the  
17 percentage of the people or the propensity that  
18 participate. It would have been changed to  
19 increase the absolute number of times per year  
20 somebody participated, and then we would have to  
21 build a market share ratio that existed.

1           When you're in the early stages of a  
2 market, essentially there is a linear relationship.  
3 Every time you add a new device, people come,  
4 because you're really at capacity. So, at the  
5 early stages of competition, there is essentially a  
6 one-to-one ratio. If I increase the number of  
7 opportunities or devices, the revenues will go up  
8 semilinearly. When I came later on and there is  
9 greater levels of competition, it becomes a number  
10 that asymptotically approaches. It's a curve that  
11 never hits a number but gets as close to it as you  
12 can.

13           ARBITRATOR WALDE: I'm trying to make sure  
14 the terms is properly used.

15           THE WITNESS: Asymptotically.

16           If I could draw a picture, as you come to  
17 a curve, it goes on a 45-degree angle and  
18 begins--the curb begins to flatten out. As more  
19 competition comes on, at some point the additional  
20 competition brings no additional value to the  
21 market.

1           ARBITRATOR WALDE: How do you deal with  
2 legal risk, say the 45 percent risk that may be a  
3 prohibition?

4           THE WITNESS: Again, in this instance, I  
5 have to be frank. I assume that the operation was  
6 legal. And in the venues that we work in, that is  
7 the assumption that I would put in. In this  
8 instance, I was saying that it was in operation,  
9 the caveat or the input that I was given was that  
10 this was--I was not to determine, and I'm not an  
11 attorney, to determine the validity of the legality  
12 of it. The parameters I work with were, this was  
13 the operation, these were the machines or devices.  
14 This is the market or location that it was working  
15 in. Legality is not.

16           ARBITRATOR PORTAL-ARIOSIA: I have a  
17 question. Is the model that you use a model that  
18 you can cull off the shelf, or is that a specific  
19 design?

20           THE WITNESS: It is developed--the basic  
21 premise of the model is developed, and I want to

1 say has been developed, and we used it, it's an  
2 industry standard for the last 10 or 11 years.

3           Each one is refined on a  
4 location-by-location basis. It's an understanding  
5 to the greatest degree possible the demographics of  
6 the market that we are in, the country that we are  
7 dealing with when it's international, the impacts  
8 and the opportunities of border crossings.

9           So, each one is refined unto itself, but  
10 it's based upon a very core modeling process.

11           ARBITRATOR PORTAL-ARIOSIA: Thank you.

12           Is this a model that's used for the gaming  
13 industry in general, or is that specific for  
14 operation and shops with machines only?

15           THE WITNESS: I think it is generally in  
16 the location-based entertainment industry, which to  
17 me would be gaming, it would be--which would be  
18 these games of skill, but actually, I'm not sure  
19 that the model would not be used because we have  
20 applied it in a similar vein to things like skiing.  
21 It is location-based entertainment. Anything where

1 you have a location that people come to to  
2 participate and entertain themselves.

3           Again, the theory of the model--and again,  
4 it's one that's been applied very widely--is that  
5 there is a percentage of the population, there is a  
6 percentage--a frequency with which they come,  
7 competition changes that provides more opportunity.  
8 Each one has to be built by itself, but the model  
9 is really one that applies to location-based  
10 entertainment.

11           ARBITRATOR PORTAL-ARIOSIA: Thank you.

12           Do you know if this is a standard, as you  
13 mentioned, also in other countries? I'm not  
14 referring to Mexico. Is this something like an  
15 international standard?

16           THE WITNESS: Again, we have worked for  
17 individual governments. I mean, we worked for the  
18 Government of Panama when they considered  
19 privatizing their casinos. My company was retained  
20 by them. This was the model that we used in  
21 building their anticipated revenue forecasts.

1 I worked for the Government of Israel. We  
2 used the same model as we were considering Israel.

3 We worked for the People's Republic of  
4 China, and we used the same model.

5 So, I don't know there is a standard.  
6 It's been accepted in other places for governments.  
7 I know that right now we are working for a private  
8 entity in Macao doing this similar analysis for  
9 \$1.5 billion entertainment casino-type activity,  
10 and this analysis is what's being used to fund that  
11 facility in Macao.

12 We have worked in Spain.

13 We have worked in France.

14 I'm now engaged in the U.K. on a number of  
15 projects.

16 I'm trying to think. I probably worked,  
17 my guess is I or my firm because--I don't want to  
18 say--

19 ARBITRATOR PORTAL-ARIOSIA: I'm referring  
20 to the model.

21 THE WITNESS: The model has been applied

1 in all those places.

2 ARBITRATOR PORTAL-ARIOSIA: But generally  
3 by the valuers of the gaming industry?

4 THE WITNESS: I would say by the  
5 governments that reviewed our analyses, yes. I  
6 want to be as specific as I can in your response,  
7 so maybe if you can rephrase the question I can  
8 try.

9 ARBITRATOR PORTAL-ARIOSIA: If this model  
10 that you're working on, has it been generally  
11 applied internationally?

12 THE WITNESS: Yes, sir, it has.

13 ARBITRATOR PORTAL-ARIOSIA: Last--almost  
14 last. Do you get financing using this model by  
15 financial institutions?

16 THE WITNESS: Yes, sir.

17 ARBITRATOR PORTAL-ARIOSIA: So, banks do  
18 lend money to entities in this activity using these  
19 model of future--

20 THE WITNESS: Yes, sir. As I said, I  
21 would venture to say that we have probably assisted



1 in over \$18 billion worth of financing, utilizing  
2 this model. The model in Macao is an example. The  
3 actual recipients of that were Deutsche Bank  
4 Deutsche Bank in Sogen, the French bank. They are  
5 raising \$1.5 billion for this project. Our  
6 analysis was done on the basis of their  
7 requirements and their specifications. That's the  
8 most recent one that I can speak of, but we have  
9 raised money through--and our analyses have been  
10 incorporated in prospectuses for Merrill Lynch, for  
11 Bear Stearns, for Deutsche Bank, for Jeffreys. We  
12 have done consulting work to Solomon Smith Barney.  
13 I would say most of the major investment banks.  
14 And again, these are for larger scale projects.  
15 For the smaller scale projects, it is often done by  
16 consortium of banks. Again, we have submitted  
17 innumerable reports.

18 ARBITRATOR PORTAL-ARIOSA: I'm sorry, I  
19 was looking for loans.

20 THE WITNESS: These are loans.

21 ARBITRATOR PORTAL-ARIOSA: You mentioned

1 capital raising.

2 THE WITNESS: These are debt.

3 ARBITRATOR PORTAL-ARIOSA: By financial  
4 institutions to accept this model?

5 THE WITNESS: Yes.

6 ARBITRATOR PORTAL-ARIOSA: Then the last  
7 one, when you make an analysis for an acquisition  
8 of a company, you also accept this model to set the  
9 price?

10 THE WITNESS: Yes, because again--

11 ARBITRATOR PORTAL-ARIOSA: It's a  
12 standard?

13 THE WITNESS: Yes, sir.

14 ARBITRATOR PORTAL-ARIOSA: Thank you.

15 PRESIDENT VAN DEN BERG: There is one  
16 further question by Mr. Walde.

17 ARBITRATOR WALDE: Your work in Panama,  
18 were you helping the Government of Panama to  
19 establish a price, a value or at least value for  
20 privatization that means for selling the assets?

21 THE WITNESS: For allowing it to be

1 contracted out, yes, sir.

2 ARBITRATOR WALDE: So, you were trying to  
3 establish the market value so it wouldn't--it would  
4 get the market value in the bidding or sale  
5 process?

6 THE WITNESS: Yes, sir.

7 ARBITRATOR WALDE: As minimum threshold?

8 THE WITNESS: Exactly.

9 PRESIDENT VAN DEN BERG: One last  
10 question, Mr. Rittvo. Are you aware that some  
11 Arbitral Tribunals have held with respect to the  
12 fair market valuation on the basis of the DCF  
13 method that a company needs to have a track record  
14 of two to three years?

15 THE WITNESS: No, sir, I'm not.

16 PRESIDENT VAN DEN BERG: Did you apply  
17 that in this case?

18 THE WITNESS: No, sir, I was not aware of  
19 it, sir.

20 PRESIDENT VAN DEN BERG: Okay. Thank you.

21 MR. CROSBY: Nothing further.

1 MR. MOWATT: Nothing further, other than  
2 to add my comment that we have gone beyond the  
3 scope of Ruling 7-B in the Order 7, and I would  
4 express that for the record.

5 PRESIDENT VAN DEN BERG: Do we have any  
6 formal objection to considering what has happened?

7 MR. MOWATT: Upon reflecting upon the  
8 evidence, if it takes it into consideration, that  
9 it considers what was properly adducible under Rule  
10 7-B and what came out of the witness's mouth today.

11 PRESIDENT VAN DEN BERG: We have to be  
12 slightly flexible.

13 MR. MOWATT: I understand that, and I  
14 appreciate that the hour is late. There are  
15 circumstances.

16 PRESIDENT VAN DEN BERG: Thank you very  
17 much, and you are excused as a witness.

18 (Witness steps down.)

19 PRESIDENT VAN DEN BERG: Resume tomorrow  
20 at 9:00. And who will be first tomorrow,  
21 Mr. Crosby?

1 MR. CROSBY: We have two witnesses.  
2 They're both very short witnesses, probably Carlos  
3 Gomez and Booker Copeland. Very, very short  
4 witnesses, and then we are done.

5 PRESIDENT VAN DEN BERG: And the witnesses  
6 outside of the respondent, if we finished tomorrow,  
7 we run into Thursday?

8 MR. PEREZCANO: Well, first, we have  
9 Mr. Alcantara. Professor Rose will be here  
10 tomorrow. And, of course, it will depend, maybe--

11 PRESIDENT VAN DEN BERG: I would like to  
12 give both sides some time off for preparing closing  
13 statement. Maybe hour or two or something like  
14 that, three hours, so you could prepare for your  
15 closing statements so we could finish comfortably  
16 at the end of Thursday.

17 MR. PEREZCANO: Thank you very much.

18 MR. CROSBY: That would be fine.

19 I missed the first part of Mr. Perezcano's  
20 comments about the length of examination. I was  
21 fumbling with the machine here.

1 PRESIDENT VAN DEN BERG: There was no  
2 specific statement about the length of the  
3 statement. It was simply which was the running  
4 order.

5 MR. CROSBY: Thank you.

6 PRESIDENT VAN DEN BERG: Thank you. We  
7 are adjourned.

8 (Whereupon, at 6:10 p.m., the hearing was  
9 adjourned until 9:00 a.m. the following day.)

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1 CERTIFICATE OF REPORTER

2

3 I, David A. Kasdan, RDR-CRR, Court

4 Reporter, do hereby testify that the foregoing

5 proceedings were stenographically recorded by me

6 and thereafter reduced to typewritten form by

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8 and supervision; and that the foregoing transcript

9 is a true record and accurate record of the

10 proceedings.

11 I further certify that I am neither

12 counsel for, related to, nor employed by any of the

13 parties to this action in this proceeding, nor

14 financially or otherwise interested in the outcome

15 of this litigation.

16

17 DAVID A. KASDAN, RDR-CRR

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