

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE NO. ARB/16/42

OMEGA ENGINEERING LLC

and

OSCAR RIVERA

Claimants

v.

REPUBLIC OF PANAMA

Respondent

SECOND WITNESS STATEMENT OF JORGE ENRIQUE VILLALBA

14 November 2019

I, **JORGE ENRIQUE VILLALBA**, state:

I. INTRODUCTION

1. I make this statement in response to the Reply on the Merits and Counter-Memorial on Preliminary Objections submitted by Omega Engineering LLC and Mr. Oscar Rivera (collectively, the “**Claimants**”) on May 30, 2019. I previously submitted a statement on January 7, 2019 (“**First Statement**”).
2. Except as otherwise stated, I make this statement on the basis of my personal knowledge or from documents that I have reviewed. All of the matters discussed in this statement are true to the best of my knowledge.
3. I address two main points in this statement. *First*, the evidence uncovered in the investigation of Justice Moncada Luna by the National Assembly and in the subsequent investigation of the Claimants conclusively proved that a portion of the money given to Claimants by the Judicial Authority was transferred by Omega Engineering, through an intermediary, into an account controlled or used for the benefit of Justice Moncada Luna and that such money was then transferred through a series of intermediaries and was ultimately used by Justice Moncada Luna to pay, in part, for two luxury condominiums.¹ *Second*, the Claimants were never exculpated of guilt by the National Assembly or any other Panamanian authority.²

II. PAYMENTS WERE MADE FROM OMEGA ENGINEERING TO JUSTICE MONCADA LUNA

4. The Claimants suggest that Panama’s investigation into Justice Moncada Luna did not prove that money passed from Omega Engineering to Justice Moncada Luna.³ That is

¹ *Preliminary Financial Analysis Report in Case No. 049-15* to the Specialized Audit Office against Organized Crime on June 5, 2015 (“**Villalba Report**”) (R-0062).

² In 2016, the appellate court suspended the investigation into Claimants on a procedural issue but never ruled on the guilt or innocence of Claimants. That decision is still on appeal. *See* First Witness Statement of Jorge Villalba dated Jan. 7, 2019 (“**Villalba I**”) ¶ 36.

³ *See generally* Claimants’ Reply on the Merits and Counter-Memorial on Preliminary Objections (“**Reply**”) ¶¶ 7-9, 14-19, 26, 236.

wrong. I personally carried out the investigation of Justice Moncada Luna under the direction of National Assembly. As demonstrated in my Preliminary Financial Analysis Report to the Office of the Special Prosecutor Against Organized Crime of the Public Prosecutor's Office and as explained in my First Statement, the investigation proved that money paid to Omega Engineering by the Judicial Authority was transferred through an intermediary into an account controlled by Justice Moncada Luna and that this money was used by Justice Moncada Luna to pay, in part, for two luxury condominiums.⁴ These conclusions are supported by bank and financial records; interviews with contractors and employees of the Judicial Authority and individuals linked to Moncada Luna conducted by the National Assembly; and documentary and video evidence showing Justice Moncada Luna's control and use of the funds he illegally obtained.⁵

5. As a result of the National Assembly investigation, Justice Moncada Luna pled guilty to the criminal charges of unjust enrichment and perjury, and was incarcerated. The document sentencing Justice Moncada Luna to prison states that the source of his unjust enrichment was the purchase of the two luxury condominiums, which were partially paid for with funds from the Claimants, and that the perjury charge was based on Justice Moncada Luna's failure to declare the purchase of these apartments in his Financial Disclosure Affidavit for Public Officials.⁶
6. Evidence collected by the National Assembly and the Public Prosecutor's office clearly shows that Justice Moncada Luna was the beneficiary of at least US\$ 275,000 in payments from Omega Engineering.⁷ To begin, there is overwhelming evidence that Moncada Luna

⁴ See generally Villalba Report (**R-0062**); Villalba I.

⁵ See Compilation of Bank Account Statements and Documentation of Transfers from Oscar Rivera to Justice Moncada Luna (**R-0114**); Villalba Report (**R-0062**) at pp. 17-25; Inquiry Resolution No. 4015 dated June 15, 2015 (**R-0113**) pp. 1-2, 7-17, 34-75; National Assembly Testimony of Ana Bouche dated Nov. 28, 2014 (**R-0128**) at minutes 2:00 - 17:30; National Assembly Interview with Maria Gabriela Reyna López dated January 27, 2015 (**R-0133**).

⁶ Plea Bargain of Justice Alejandro Moncada Luna dated Feb. 23, 2015 (**R-0064**); National Assembly Guilty Verdict No. 1 dated Mar. 5, 2015 (**R-0083**).

⁷ See Compilation of Bank Account Statements and Documentation of Transfers from Oscar Rivera to Justice Moncada Luna (**R-0114**)

controlled Sarelan Corporation, S.A. The Designated Prosecutor conducted a series of interviews with contractors and employees of the Judicial Authority as well as individuals connected with Judge Moncada Luna throughout the National Assembly's investigation, in which the interviewees confirmed that Moncada Luna was the real beneficiary of Sarelan Corporation, S.A.⁸

7. For example, in November of 2014, Moncada Luna's lawyer Ana Beatriz Bouche González testified before the National Assembly that Moncada Luna instructed her to create Sarelan Corporation, S.A.⁹ She explained that she prepared all the corporate documentation and Moncada Luna appointed close friends and colleagues to be officers in the corporation.¹⁰ For example, Moncada Luna asked Ana Bouche to appoint one of her family members as an officer of the corporation, so she selected her aunt, Xenia del Carmen González, as the President of the company. Moncada Luna selected Humberto Elías Juárez Barahona, his close friend of over 20 years and an individual who Moncada Luna had used as an officer of many of his other companies, as the Secretary of the corporation. Moncada Luna then selected Tatiana Cristel Marín – the mother of Moncada Luna's youngest son – as the treasurer.¹¹ Ana Bouche testified that in January 24, 2013 Moncada Luna requested that she have share certificates prepared granting 100% of the shares of Sarelan Corporation, S.A. to Moncada Luna.¹² Ana Bouche personally delivered these certificates to the president of the corporation to be signed and then Ana Bouche hand-delivered the executed certificates to Moncada Luna.¹³

⁸ See e.g., National Assembly Testimony of Ana Bouche dated Nov. 18, 2014 (**R-0128**) at minutes 1:45 - 18:00 (describing how Moncada Luna directed her to create Sarelan Corporation, S.A., appointed close friends and colleagues as officers of the corporation, requested 100% of the share certificates to be issued in his name, and drafted the forms to open the Sarelan Corporation, S.A. bank account); Inquiry Resolution No. 40-15 dated June 15, 2015 (**R-0113**), pp. 2, 59-60, 63, 66, 68-74 (relying on, *inter alia*, information obtained through the interviews conducted by the National Assembly).

⁹ National Assembly Testimony of Ana Bouche dated Nov. 18, 2014 (**R-0128**) at minutes 1:45 - 2:31.

¹⁰ National Assembly Testimony of Ana Bouche dated Nov. 18, 2014 (**R-0128**) at minutes 3:00 - 7:00.

¹¹ National Assembly Testimony of Ana Bouche dated Nov. 18, 2014 (**R-0128**) at minutes 3:00 - 7:00.

¹² National Assembly Testimony of Ana Bouche dated Nov. 18, 2014 (**R-0128**) at minutes 7:00 – 7:49.

¹³ National Assembly Testimony of Ana Bouche dated Nov. 18, 2014 (**R-0128**) at minutes 7:49 - 8:44.

8. When the Designated Prosecutor asked Ana Bouche to review the forms filed to open a bank account for Sarelan Corporation, S.A., she noted that it was Moncada Luna's handwriting on the forms.¹⁴ The Public Prosecutor's office also found that Moncada Luna had a debit card to Sarelan Corporation, S.A.'s account and had been periodically making withdrawals.¹⁵
9. The National Assembly also found corroborating documentary and video evidence that Moncada Luna controlled Sarelan Corporation, S.A. During the investigation, the Designated Prosecutor obtained a warrant to search Justice Moncada Luna's office. After that search, I spoke with the lawyers who were involved and they told me that they found, among other evidence, certificates stating that Moncada Luna was the legal agent of multiple companies, including Sarelan Corporation, S.A.¹⁶ Additionally, after an analysis of the bank statements of the companies involved in the scheme, the investigators requested videos from ATMs that were used to withdraw cash from debit cards acquired at Banco Universal to Sarelan Corporation, S.A.'s bank account, that corresponded to the timing of withdrawals from the account and corresponded to the route from the Supreme Court to Justice Moncada Luna's residence. These videos show Moncada Luna making these withdrawals.¹⁷
10. Based on this evidence, we concluded that Moncada Luna had control over the funds in Sarelan Corporation S.A.'s account.¹⁸ The Designated Prosecutor confirmed this finding

¹⁴ National Assembly Testimony of Ana Bouche dated (Nov. 18, 2014 (**R-0128**) at minutes 16:00 - 17:22.

¹⁵ Inquiry Resolution No. 4015 dated June 15, 2015 (**R-0113**), pp. 59-60, 63, 66, 68-70 ("It is established that using the transactional analysis of the aforementioned accounts that they, directly or indirectly, served as means to provide capital to accounts related to former [Judge] Alejandro Moncada Luna, as are those of . . . Sarelan Corporation, S.A. . . . [including], funds that he continuously disposed of , through withdrawals from ATMs from local banks").

¹⁶ See Inquiry Resolution 40-15 dated June 15, 2015 (**R-0113**) at pp. 60, 65-68 (explaining that Moncada Luna used the Sarelan Corporation, S.A. debit card to make withdrawals through ATMs from Sarelan Corporation, S.A.'s account); National Assembly Testimony of Ana Bouche dated Nov. 18, 2014) (**R-0128**) at minutes 7:00 – 7:49 (share certificates were issued in Moncada Luna's name).

¹⁷ See Inquiry Resolution 40-15 dated June 5, 2015 (**R-0113**) at p. 60 (stating that video evidence from Banco Universal's ATM shows Moncada Luna making withdrawals from a Sarelan Corporation, S.A. account).

¹⁸ See e.g., Inquiry Resolution 40-15 dated June 5, 2015 (**R-0113**) at pp. 63, 66, 68, 71; National Assembly Interview with María Gabriela Reyna López dated Jan. 27, 2015 (**R-0129**), at p. 7 ("SARELAN CORPORATION, S.A. in Banco Universal, which according to the investigations, was founded by

and stated that Justice Moncada Luna was the real beneficiary of the bank accounts of Sarelan Corporation, S.A., Corporation Luxol, and Corporation Cubemu during multiple witness interviews and during Moncada Luna's sentencing hearing.¹⁹ The Public Prosecutor's Office further confirmed this finding and stated that Moncada Luna was the "real beneficiary" of Sarelan Corporation, S.A.'s accounts.²⁰

11. This is important because Sarelan Corporation, S.A. is a central link in Omega Engineering's payments to Moncada Luna. As described in detail in my First Statement, we discovered two payments from Omega Engineering that were connected to payments made on the apartments purchased by Mrs. Moncada Luna and registered to Corporación Celestial, S.A. and Corporación Alpil, S.A. In each transaction, the Judicial Authority first makes a payment to Omega Engineering. Omega Engineering then transfers part of those funds to PR Solutions, S.A., a wholly owned company of Mr. Rivera. Next, PR Solutions S.A. transfers those funds to Reyna y Asociados, and then, Reyna y Asociados transfers part of those funds to Sarelan Corporation, S.A.
12. The first transaction began on April 3, 2013 when Omega Engineering received an advance payment from the Judiciary of US\$ [REDACTED] for the La Chorrera Project.²¹ We traced US\$ 125,000.00 of that advance payment to Sarelan Corporation, S.A. The funds then travelled from Sarelan Corporation, S.A. through a series of companies to ultimately make a payment on a mortgage-backed loan extended to Corporación Celestial, S.A. to pay the

Alejandro Moncada Luna and [its] final beneficiary is Alejandro Moncada Luna"); *see also* Sentencing Hearing of Justice Moncada Luna dated March 5, 2015 (C-0085) at minutes 25:40-28:38, available at https://www.youtube.com/watch?v=6bMNm_IDJ6Q.

¹⁹ *See* National Assembly Interview with Maria Gabriela Reyna López dated Jan. 27, 2015 (R-0129) at p. 7 ("SARELAN CORPORATION, S.A. at Banco Universal, which according to the investigations of this office, was created by Alejandro Moncada Luna and [its] final beneficiary is Alejandro Moncada Luna."). *See also* Sentencing Hearing of Justice Moncada Luna dated March 5, 2015 (C-0085) at minutes 25:40-28:38, available at https://www.youtube.com/watch?v=6bMNm_IDJ6Q.

²⁰ Inquiry Resolution 40-15 dated June 15, 2015 (R-0113) at pp. 63, 66, 68, 71 (determining that Moncada Luna was the individual who made transactions using the debit card corresponding to the account of Sarelan Corporation and concluding that Moncada Luna was "the real beneficiary of the aforementioned account[]").

²¹ Villalba Report (R-0062) at p. 22.

outstanding balance of the PH Ocean Sky apartment, which was owned by Justice Moncada Luna and his wife.²²

13. The second payment was initiated on July 10, 2013, when Omega Engineering received a US\$ [REDACTED] payment from the Judicial Authority for work on the La Chorrera project. We were able to trace US\$ 150,000 to Sarelan Corporation, S.A. of which US\$ 130,000 was then used to make payments on the PH Santorini apartment, which was owned by Justice Moncada Luna and his wife.²³ In both transactions, the bank accounts and financial documents unequivocally show that money moved from the Judicial Authority to Omega Engineering and then from Omega Engineering through intermediaries to the benefit of Justice Moncada Luna.²⁴

²² A summary of the first transaction is as follows: On April 3, 2013, Omega received an advanced payment of over [REDACTED] from the Judicial Authority. Omega transferred US\$ 250,000 of this payment to the account of PR Solutions, S.A. (company owned by Mr. Rivera). P.R. Solutions transferred US\$ 250,000 that day to Reyna y Asociados. Reyna y Asociados purchased a cashier's check in the amount of US\$ 125,000 made payable to Sarelan Corporation, S.A. on May 3, 2013. That check was deposited in Sarelan Corporation S.A.'s account on May 4, 2013. As described in detail below, at this point the money became the property of Moncada Luna. On May 23, 2013, Sarelan Corporation S.A transferred US\$ 148,000.00 from its account at Banco Universal to an account held by Fundación Ricala who purchased a cashiers' check for US\$ 147,936.74, which was used to cancel the mortgage held by Corporación Celestial, S.A on the PH Ocean Sky apartment owned by Moncada Luna and his wife. See Villalba Report (**R-0062**) at pp. 17-24; see also *id.* at 24 (Figure No. 1); see also Compilation of Bank Account Statements and Documentation of Transfers from Oscar Rivera to Justice Moncada Luna (**R-0114**) at pp. 1-11 (transaction I dated April 3, 2013).

²³ A summary of the second transaction is as follows: On July 10, 2013, Omega received US\$ [REDACTED] from the Judicial Authority for work on the La Chorrera project. This payment was deposited on July 11, 2013 into Omega Engineering's bank account. On July 12, 2013, Omega Engineering transferred US\$ 250,000 of this payment to PR Solutions, S.A. (a company owned by Mr. Rivera). On July 16, 2013, PR Solutions, S.A. transferred the US\$ 250,000 to Reyna y Asociados. On July 17, 2013 and July 18, 2013, Reyna y Asociados issued two cashier's checks, each for US\$ 75,000 to Sarelan Corporation S.A. They were deposited in Sarelan Corporation S.A.'s account. As described in detail below, at this point the money became the property of Moncada Luna. On July 18, 2013, Sarelan Corporation S.A transferred US\$ 130,000 to an account held by Summer Venture Inc. That same day, Summer Venture Inc. purchased a cashiers' check in the amount of US\$ 130,000 in favor of Desarrollo Coco del Mar, S.A. The funds were then used as payment on the apartment PH Santorini owned by Justice Moncada Luna through Corporacion Alpil, S.A. See Julio Aguirre's Money Laundering Report for the National Assembly (**R-0063**) at pp. 16-17; Villalba Report (**R-0062**) at p. 39 (Figure No. 2); see also Compilation of Bank Account Statements and Documentation of Transfers from Oscar Rivera to Justice Moncada Luna (**R-0114**) at pp. 12-23 (transaction II dated July 10, 2013).

²⁴ Villalba Report (**R-0062**) at pp. 31-35.

14. Based on Moncada Luna’s control of Sarelan Corporation, S.A. and access to its funds, once Omega Engineering’s payments reached Sarelan Corporation, S.A., they became available to and the property of Moncada Luna.²⁵ Although in each transaction, the funds then travel through a few intermediaries before paying part of the mortgages on the two condominiums owned by Moncada Luna and his wife, the funds from Mr. Rivera and Omega only passed through one company – Reyna y Asociados – before becoming property of and accessible to Moncada Luna. Of the US\$ 500,000 transferred from Omega Engineering through P.R. Solutions into Reyna y Asociados’ account, a total of at least US\$ 275,000 was deposited into Sarelan Corporation, S.A.’s account, or in other words, the hands of Moncada Luna.²⁶
15. As I have said, the evidence collected during the investigation conclusively proved that funds from the La Chorrera Project were paid to Omega Engineering and transferred through intermediaries into accounts controlled by or used for the benefit of Justice Moncada Luna.

III. CLAIMANTS NEVER WERE EXCULPATED OF GUILT BY THE NATIONAL ASSEMBLY OR ANY OTHER PANAMANIAN INSTITUTION

16. The Claimants continue to mischaracterize the nature of the criminal investigations conducted by Panama. They repeat their claim that Claimants were “expressly exculpated” of any guilt by the National Assembly.²⁷ That is not true. As I explained in my First Statement, the initial investigation was conducted by the National Assembly, which only had jurisdiction over Justice Moncada Luna. During the course of that investigation, certain individuals and companies – including Mr. Rivera and Omega – were identified as

²⁵ Inquiry Resolution 40-15 dated June 15, 2015 (**R-0113**) at p. 63 (“[g]iven the above and after making a reasoned analysis of each of the procedural pieces that are part of the present investigation, we can affirm that the investigated facts are adapted to the [crime of money laundering], since it is evident that the money that was deposited in the bank accounts corresponding to ... Sarelan Corporation, S.A. ... (Companies closely linked to the former-Minister Alejandro Moncada Luna Carvajal ...), came from the transactions made in a structured manner between bank accounts, but which had their origin in financial services instruments linked to service providers of the Judicial Branch, such as accounts registered in the name of Omega Engineering, Inc. ...”).

²⁶ See Compilation of Bank Account Statements and Documentation of Transfers from Oscar Rivera to Justice Moncada Luna (**R-0114**).

²⁷ Reply ¶ 7.

having made illicit payments to Justice Moncada Luna through an intermediary. The National Assembly, however, had no jurisdiction to investigate private companies and individuals and did not – and could not – have exculpated Mr. Rivera or Omega of guilt.

17. Moreover, Claimants mischaracterize the statements of the Designated Prosecutor when they say, “the Prosecutor responsible for Panama’s first investigation into Moncada Luna publicly announced that Mr. Rivera and his companies were not involved in any crimes.”²⁸ This is a wild distortion of the Designated Prosecutor’s statement. The Designated Prosecutor did not opine in anyway on Mr. Rivera or Omega’s guilt or innocence.²⁹ Instead, at the end of Justice Moncada Luna’s sentencing hearing, the lawyer for Mr. Rivera and Omega asked that their bank accounts be unfrozen because none of the funds in their accounts were the property of or from Moncada Luna. The Designated Prosecutor replied that during the investigation, bank accounts connected to Moncada Luna were frozen. However, there were two categories of frozen accounts: (1) those connected to Justice Moncada Luna, which included Sarelan Corporation, and (2) those that were not under the control of Moncada Luna, which included PR Solutions and Omega Engineering.³⁰ The Designated Prosecutor concluded that since the second category of accounts were not the property of Justice Moncada Luna, they were not linked to the unjust enrichment theory of the case but rather were a part of the corruption and money laundering case theory. The Designated Prosecutor continued to explain that since the investigation into Justice Moncada Luna had concluded and the mandate of the Designated Prosecutor was finished, the Designated Prosecutor “d[id] not oppose” the petitioners’ request that the bank accounts that were not the property of Justice Moncada Luna or controlled by him be unfrozen, while at the same time recognizing that “other entities of the Panamanian State

²⁸ Reply ¶ 7.

²⁹ Sentencing Hearing of Justice Moncada Luna dated March 5, 2015 (C-0085) at minutes 25:40-28:38, available at https://www.youtube.com/watch?v=6bMNm_IDJ6Q.

³⁰ Sentencing Hearing of Justice Moncada Luna dated March 5, 2015 (C-0085) at minutes 25:40-28:38, available at https://www.youtube.com/watch?v=6bMNm_IDJ6Q. See National Assembly Interview with Maria Gabriela Reyna Lopez dated Jan. 27, 2015 at p. 7 (R-0129) (“SARELAN CORPORATION, S.A. at Banco Universal, which according to the investigations of this office, was created by Alejandro Moncada Luna and [its] final beneficiary is Alejandro Moncada Luna.”); Inquiry Resolution No. 4015 dated June 15, 2015 (R-0113) at pp. 59-60, 63, 66, 68-70.

have jurisdiction to make judicial decisions [with respect to those bank accounts].” Contrary to Claimants’ characterization, the Designated Prosecutor made no statement about Omega or Mr. Rivera’s guilt or innocence.

18. As I explained in my First Statement, once the National Assembly’s investigation of Justice Moncada Luna ended, the Public Prosecutor’s office began an investigation of those individuals and corporations identified as involved in Moncada Luna’s illegal activity, including Omega and Mr. Rivera. Two branches of the Public Prosecutor’s office – the Organized Crime Division and the Anti-Corruption Division – opened parallel investigations into the Claimants. In those investigations, the Public Prosecutor’s office issued a resolution determining that it was “facing the commission of [the] crime ... of Money Laundering.”³¹ The Resolution additionally included a list of individuals for which it found that evidence existed that allowed the public prosecutor’s office “to establish their link to the punishable act” of money laundering, which included Mr. Rivera.³² The Public Prosecutor’s office therefore, subpoenaed Mr. Rivera and Omega employee Francisco Feliu Nigaglioni, among others involved in Moncada Luna’s scheme, to submit to interviews.³³ The Public Prosecutor’s office was in the midst of investigating the corporations and individuals involved in the scheme when the courts suspended the investigations.³⁴ The matter is currently on appeal with the Court of Cassation.
19. At no time did the National Assembly, the Public Prosecutor’s office, or a court find that Mr. Rivera and Omega Engineering were not guilty of the charges being investigated.

³¹ Inquiry Resolution No. 4015 dated June 15, 2015 (**R-0113**) at 61.

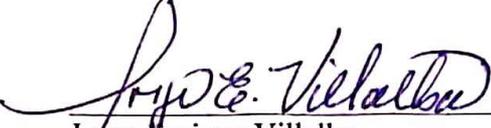
³² Inquiry Resolution No. 4015 dated June 15, 2015 (**R-0113**) at 64, 70-71.

³³ Inquiry Resolution No. 4015 dated June 15, 2015 (**R-0086**) at p. 74 (issuing a “declaración indigatoria” to Mr. Rivera and Francisco Feliu Nigaglioni, an employee of Omega Engineering).

³⁴ *See generally* 2nd Ruling Instr. No. 140, Second Superior Court of the First Judicial District dated Sept. 23, 2016 (**C-0008**).

Dated: November 14, 2019

Panama City, Panama



Jorge Enrique Villalba