



Republic of the Philippines

Sandiganbayan

Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIMINAL CASES NOS.
17287 to 17291, 19225 and
22867 to 22870

For: Violation of Section 3(h)
of Republic Act No. 3019,
as Amended

- versus -

IMELDA ROMUALDEZ MARCOS,
Accused.

Present:
Lagos, J., Chairperson,
Mendoza – Arcega and
Corpus - Mañalac, JJ.

Promulgated:

November 09, 2018 *leal*

x ----- x

DECISION

CORPUS - MAÑALAC, J.:

Upon the return of the Marcos family from exile following the *EDSA Revolution* in February 1986, a string of cases was filed against **IMELDA ROMUALDEZ MARCOS** related to the billions of dollars allegedly amassed by her family during her husband's twenty years in public office. While her husband, Ferdinand E. Marcos, was the President of the Philippine Republic, Imelda R. Marcos was the Minister of Human Settlements from June 1976 to February 1986 and as such a Cabinet Member.¹ She was also Metro Manila Governor, which post she held in concurrent capacity as Minister of Human Settlements while at the same time serving as a member of the *Interim Batasang Pambansa* from 1978 to 1984.²

¹ Admitted by Ms. Marcos in her Motion for Reconsideration dated 18 February 2002, paragraph 14 thereof, Records, Vol. 6-B, p. 12

² TSN, Chavez, November 27, 2000, pp. 36-38; Sandiganbayan Decision in Civil Case No. 0140 as Exhibit "DD" & "DD-6"; Answer of Ms. Marcos in Civil Case No. 0141, paragraph 11 as Exhibit "Y-4-a"

Among the charges ascribed against Ms. Marcos are the instant *Informations* for graft, which were lodged before this Court by the Office of the Special Prosecutor, Office of the Ombudsman, on various dates, *viz*:

- (1) Criminal Cases Nos. 17287 ("Maler Foundation"), 17288 ("Trinidad Foundation"), 17289 ("Rayby Foundation"), 172890 ("Palmy Foundation,"), and 17291 ("Asian Reliability Corporation, Inc. Loan"), **all filed on December 16, 1991;**
- (2) Criminal Case No. 19225 ("Asian Reliability Company, Inc.") **filed on December 21, 1993;** and
- (3) Criminal Cases Nos. 22867 ("Azio-Verzo-Vibur Foundation"), 22868 ("Rosaly's-Aguamina Foundations"), 22869 (Avertina-Xandy/Wintrop-Charis/Scolari/Valamo/Spinus Foundations"), and 22870 ("Pretorien-Gladiator- Cesar-ESG Foundations"), **all filed on August 17, 1995.**

Criminal Cases Nos. 17287 to 17291 and Criminal Case No. 19225 were originally raffled to the *Third Division* of this Court and trial thereof was consolidated on June 14, 2002.³

On January 2, 2003, Criminal Cases Nos. 22867 to 22870 originally assigned to the *Fourth Division* were consolidated with Criminal Cases Nos. 17287 to 17291 and 19225 then pending with the *Third Division*.⁴ Due to the inhibition of Justice Godofredo L. Legaspi, Chairman of the *Third Division*, however, all these consolidated cases were again re-raffled and assigned to the *Fourth Division*.⁵ When Justice Gregory Ong, Chair of the *Fourth Division*, recused himself from participating in these cases following the directive of the Supreme Court,⁶ these consolidated cases altogether ended up with the *Fifth Division*.

In the intervening time, and prior to the consolidation of Criminal Cases Nos. 22867 to 22870 with Criminal Cases Nos. 17287 to 17291 and Criminal Case No. 19225, the prosecution filed *Amended Informations*⁷ in Criminal Cases Nos. 22867 to 22870 all dated August 2, 1999, which were admitted on October 8, 2001.⁸

³ Third Division Minutes of the Proceedings held on June 14, 2002. Records, Vol. 5-A, p. 112

⁴ Third Division Resolution dated January 30, 2003, Records, Vol. 6-B, p. 221

⁵ Fourth Division Minutes of the Proceedings held on March 25, 2003, Records, Vol. 6-B, p. 239

⁶ People vs. Justice Gregory Ong, G.R. No. 162130, May 5, 2006, Records, Vol. 6-B, p. 402

⁷ Records, Vol. 6-A, pp. 135-153 [Crim. Case No. 22867, p. 142; Crim. Case No. 22868, p. 145; Crim. Case No. 22869, p. 148; Crim. Case No. 22870, p. 151]

⁸ Records, Vol. 6-A, p. 189

Thus, accused **IMELDA R. MARCOS** stands indicted in ten (10) separate *Informations* filed by the Office of the Special Prosecutor, respectively docketed as Criminal Cases Nos. 17287 to 17291, 19225 and 22867 to 22870, herein quoted as follows:

Criminal Case No. 17287

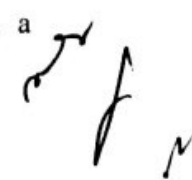
*(For violation of Section 3(h) of RA No. 3019, as amended
in relation to Article IX, Section 8 of the 1973 Constitution)*

That on or about the 19th day of October, 1968, and for sometime thereafter, until June 6, 1991, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Interim Batasang Pambansa, while in the performance of her official functions, taking advantage of her position, and committing the offense in relation to her office, did then and there willfully, unlawfully and criminally have direct and indirect financial or pecuniary interest in and participated in the management of the Maler Establishment, a company which she and her spouse Ferdinand E. Marcos purchased from the Swiss Bank Corporation and in which she was prohibited by the Constitution from having an interest, by having the sole and full right of disposal of 50% of the assets of said company during their lifetime; by appointing one Dr. Andre Barbey and Jean Louis Sunier as attorneys of the said company and as administrator and manager of all the assets held by it and ratifying all the decisions and circumstances the aforementioned persons have induced to protect the interest of the accused and her spouse; by transmitting instructions to the company under the name and signature "John Lewis"; by opening and maintaining bank accounts with the Swiss Bank Corporation; and by subsequently transforming the company into the Maler Foundation, changing its attorneys to Michael Amaudruz, et. al. and by causing the registration of its articles of incorporation; and by transferring the management of the assets of Maler Foundation to Suntrust Investment Co., S.A.

Criminal Case No. 17288

*(For violation of Section 3(h) of RA No. 3019, as amended
in relation to Article IX, Section 8 of the 1973 Constitution)*

That on or about the 26th day of August, 1970, and thereafter until August 3, 1981, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Interim Batasang Pambansa, while in the performance of her official functions, taking advantage of her position, and committing the offense in relation to her office, did then and there willfully, unlawfully and criminally have a direct and indirect financial or pecuniary interest in, and participated in the management of the Trinidad Foundation, a





company created in Liechtenstein and with domicile in Triesenberg, Switzerland, in which she was prohibited by the Constitution from having any interest during her term of office, by, among others, performing the following acts: providing the capital of Sw Fr 100'000 for said Foundation which had the object of investment and the administration of its assets and the utilization of its capital and interest; designating herself as its first beneficiary during her lifetime and her children after her death; executing a Mandator-Mandatory Agreement between her and one Markus Geel, C. Walter Fessler and Ernst Scheller; by subsequently ordering the Board of Trustees of said Foundation to remit to Bank Hofman AG, Zurich in favor of Fides Trust Company, for the account "Reference Dido" all the assets, securities, time deposits, balances held by the aforesaid Foundation as a final distribution thereof preparatory to its liquidation; and finally causing the dissolution and liquidation of said Foundation.

Criminal Case No. 17289

*(For violation of Section 3(h) of RA No. 3019, as amended
in relation to Article IX, Section 8 of the 1973 Constitution)*

That on or about the 22nd day of June 1971, and thereafter until April 6, 1981, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Interim Batasang Pambansa, while in the performance of her official functions, taking advantage of her position, and committing the offense in relation to her office, did then and there willfully, unlawfully and criminally have a direct and indirect financial or pecuniary interest in, and participated in the management of the Rayby Foundation, Vaduz, a company created in Vaduz, Switzerland and in which she was prohibited by the Constitution from having any interest during her term of office, by, among others, performing the following acts: ordering that the capitalization of the aforesaid Foundation and the cost of establishing it be debited against the account of Trinidad Foundation, a company which the accused herself established and of which she is the first beneficiary; designating herself as the first and only beneficiary of said Rayby Foundation; ordering the Board of Trustees of said Foundation, including Walter Fessler, Peter Ritter, Ernst Scheller as members, to transfer to the Trinidad Foundation, for their account with Credit Suisse, Zurich, any assets, balance, etc. presently held by the Rayby Foundation, which was to be liquidated after effecting said transfer; by further approving the accounts and all additional statements and releasing the executives and officers thereof from responsibility in the management of said company; and finally by causing the dissolution of aforesaid Foundation.



Criminal Case No. 17290



*(For violation of Section 3(h) of RA No. 3019, as amended
in relation to Article IX, Section 8 of the 1973 Constitution)*

That on or about the 13th day of May 1981, and for sometime thereafter, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Interim Batasang Pambansa, while in the performance of her official functions, taking advantage of her position, and committing the offense in relation to her office, did then and there willfully, unlawfully and criminally have a direct and indirect financial or pecuniary interest in and participated in the management of the Palmy Foundation, a company created in Vaduz, and in which she was prohibited by the Constitution from having any interest during her term of office, by, among others, causing the deposit/registration of the deed of foundation and statutes/articles pursuant to the legal regulations; appointing one Dr. Ivo Beck & Limag Management & Administration Stock Corporation as members of the Board of Trustees of aforesaid Foundation with authority to sign in twos and being the beneficial owner of the assets of said Foundation deposited under Account No. 391528.

Criminal Case No. 17291

*(For violation of Section 3(h) of RA No. 3019, as amended
in relation to Article IX, Section 8 of the 1973 Constitution)*

That on or about the 3rd day of August 1982, and for sometime thereafter, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Interim Batasang Pambansa, while in the performance of her official functions, taking advantage of her position, and committing the offense in relation to her office, did then and there willfully, unlawfully and criminally intervene directly and indirectly in opening, managing, and/or administering business ventures using government resources, in which she was prohibited by the Constitution during her term of office from having an interest or participating in their management, by securing and heavily recommending the approval by then Central Bank Governor Jaime Laya of the \$25 Million loan being applied for by the Asian Reliability Corporation, a private Corporation with offices at Taguig, Metro Manila, for its semiconductor related projects, which loan was guaranteed by the Philippine Export and Foreign Loan Guarantee Corporation.



Criminal Case No. 19225

(For violation of Section 3(h) of RA No. 3019, as amended)

That in or about the year 1980, or immediately prior and subsequent thereto, in Manila, and within the jurisdiction of this Honorable Court, accused, a public officer, being then the Minister of then Ministry of Human Settlement and Environmental Management, and a member of the Batasang Pambansa, did then and there, wilfully and unlawfully, acquire financial pecuniary interest in Asian Reliability Company, Inc., and Dynetics, private entities, then headed by Vicente B. Chuidian by becoming part owners thereof wherein she is prohibited by law and the Constitution from having any interest.

Criminal Case No. 22867⁹

*(For violation of Section 3(h) of RA No. 3019, as amended
in relation to Section 8, Article IX and Section 11, Article VIII
of the 1973 Constitution)*

That on about the period 11 June 1971 to 1991, or sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, IMELDA ROMUALDEZ MARCOS, a high-ranking public officer, being then the Minister of Human Settlements and, as such Cabinet Member, constitutionally prohibited from participating in the management of any business and from intervening in any matter before any office for her pecuniary interest, while in the performance and taking advantage of her official and administrative functions, did then and there willfully, unlawfully and criminally have a direct and/or indirect financial or pecuniary interest and participate in the management and administration of the Vibur Foundation, also previously known as the Azio Foundation and the Verso Foundation, which Foundation the accused and her late husband then President Ferdinand Marcos used or utilized as a conduit in the funnelling or transferring of ill-gotten wealth or monies, by opening and maintaining bank account or accounts with the Schweizerische Kreditanstalt (SKA), or Credit Swiss Bank or Swiss Bank Corporation (SBC), or in other banks outside of the Philippines, in the Foundation's name for the benefit of the accused and her late husband then President Ferdinand E. Marcos, and their children, which monies amounting to US\$3,597,544.00 as of 31 December 1991 in the account of the said Foundation, having been illegally, unlawfully, irregularly or illegitimately acquired or obtained by the accused and her late husband beyond their lawful income of US\$957,487.75 for the years 1965 to 1985 as reflected in their income tax returns, or some of said monies, were then ordered or

⁹ Amended Information dated August 2, 1999 which was admitted on October 8, 2001, Records, Vol. 6-A, p. 189

caused by the accused to be remitted to the Central Bank of the Philippines to be used to purchase or be invested in or caused to be converted to high-interest yielding private issues of Dollar Treasury Notes of the Central Bank, with accused intervening in the investment placements of the Central Bank for the pecuniary benefit of said Foundation, herself and her family, to the damage and prejudice of the Government service.

Criminal Case No. 22868¹⁰

*(For violation of Section 3(h) of RA No. 3019, as amended
in relation to Section 8, Article IX and Section 11, Article VIII
of the 1973 Constitution)*

That on about the period 1971 to August 1991, or sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, IMELDA ROMUALDEZ MARCOS, a high-ranking public officer, being then the Minister of Human Settlements and, as such Cabinet Member, constitutionally prohibited from participating in the management of any business and from intervening in any matter before any office for her pecuniary interest, while in the performance and taking advantage of her official and administrative functions, did then and there willfully, unlawfully and criminally have a direct and/or indirect financial or pecuniary interest and participate in the management and administration of the Aguamina Foundation, also previously known as the Rosalys Foundation, which Foundation the accused and her late husband then President Ferdinand Marcos used or utilized as a conduit in the funnelling or transferring of ill-gotten wealth or monies, by opening and maintaining bank account or accounts with the Schweizerische Kreditanstalt (SKA), or Credit Swiss Bank or Swiss Bank Corporation (SBC), or in other banks outside of the Philippines, in the Foundation's name for the benefit of the accused and her late husband then President Ferdinand E. Marcos, and their children, which monies amounting to US\$80,566,483.00 as of 30 August 1991 in the account of the said Foundation, having been illegally, unlawfully, irregularly or illegitimately acquired or obtained by the accused and her late husband beyond their lawful income of US\$957,487.75 for the years 1965 to 1985 as reflected in their income tax returns, of which US\$10.3 million was deposited to SBC General Account No. 51960 and received as bribes, facilitation fees, kickbacks or commissions from Japanese corporations or suppliers of roaders and graders for infrastructure projects, or some of said monies, were then ordered by accused to be remitted to the Central Bank of the Philippines to be used to purchase or be invested in or caused to be converted to high-interest yielding private issues of Dollar Treasury Notes of the Central Bank, with accused intervening in the investment placements of the Central Bank for the pecuniary benefit of said Foundation, herself and her family, to the damage and prejudice of the Government service.

¹⁰ Id.

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Criminal Case No. 22869¹¹

*(For violation of Section 3(h) of RA No. 3019, as amended
 in relation to Section 8, Article IX and Section 11, Article VIII
 of the 1973 Constitution)*

That on or about the period March 1968 to 1986, or sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, IMELDA ROMUALDEZ MARCOS, a high-ranking public officer, being then the Minister of Human Settlements and, as such Cabinet Member, constitutionally prohibited from participating in the management of any business and from intervening in any matter before any office for her pecuniary interest, while in the performance and taking advantage of her official and administrative functions, did then and there willfully, unlawfully and criminally have a direct and/or indirect financial or pecuniary interest and participate in the management and administration of the Avertina Foundation, basically comprising the consolidation of two (2) sets of Swiss bank accounts of two (2) groups of foundations the first of which was also previously known as the Xandy Foundation and the Wintrop Foundation and the second of which was previously known as the Charis Foundation, Scolari Foundation, Valamo Foundation and the Spinus Foundation, which Foundation the accused and her late husband then President Ferdinand E. Marcos used or utilized as a conduit in the funnelling or transferring of ill-gotten wealth or monies, by opening and maintaining bank account or accounts with the Schweizeresche Kreditanstalt (SKA), or Credit Swiss Bank, or Bank Hoffman or Swiss Bank Corporation (SBC) or in other banks outside the Philippines, in the Foundation's name for the benefit of the accused and her late husband then President Ferdinand E. Marcos, and their children, which monies amounting to US\$231,366,894.00 as of 31 December 1989 under account Category CAR and US\$8,647,190.00 under account Category NES in the account of the said Foundation, having been illegally, unlawfully, irregularly or illegitimately acquired or obtained by the accused and her late husband beyond their lawful income of US\$957,487.75 for the years 1965 to 1985 as reflected in their income tax returns, or some of said monies, were then ordered by accused to be remitted to the Central Bank of the Philippines to be used to purchase or be invested in or caused to be converted to high-interest yielding private issues of Dollar Treasury Notes of the Central Bank, with accused intervening in the investment placements of the Central Bank for the pecuniary benefit of said Foundation, herself and her family, and further, with the accused: using an alias, "Jane Ryan", to open a SKA bank account and conceal her identity; signing a Contract for the Opening of a Current Account and/or Safe Custody Account as a depositor with SKA on

¹¹ Id.

21 March 1968, with specific instructions to mail regularly all correspondence and statements pertaining to the said account to P.O. Box 4539, Manila; instructing Mr. Markus Geel the creation of a Foundation in Liechtenstein, approving the By-laws of the foundation and appointing Mr. C.W. Fessler, C. Souviron and E. Scheller as trustees; designating the beneficiaries of the said Foundation on 13 February 1970 in Manila; providing the capital of the Foundation amounting to Sw Fr 100'000; and issuing a written order to the board of Wintrop to liquidate the Foundation and transfer all its assets to Bank Hoffman, among others, for the benefit of the respondent and her late husband, to the damage and prejudice of the Government service.

Criminal Case No. 22870¹²

*(For violation of Section 3(h) of RA No. 3019, as amended
in relation to Section 8, Article IX and Section 11, Article VIII
of the 1973 Constitution)*

That on about the period 1976 to 1986, or sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, IMELDA ROMUALDEZ MARCOS, a high-ranking public officer, being then the Minister of Human Settlements and, as such Cabinet Member, constitutionally prohibited from participating in the management of any business and from intervening in any matter before any office for her pecuniary interest, while in the performance and taking advantage of her official and administrative functions, did then and there willfully, unlawfully and criminally have a direct and/or indirect financial or pecuniary interest and participate in the management and administration of various business establishments, which establishments the accused and her late husband then President Ferdinand E. Marcos used or utilized as conduits in the funnelling or transferring of ill-gotten wealth or monies, by opening and maintaining bank account or accounts with the Banque Paribas, formerly known as the Banque de Paris et des Pays-Bas, for the benefit of the accused and her late husband then President Ferdinand E. Marcos, and their children, which monies at said bank: US\$13,577,321.66 deposited for the account of Pretorien Establishment as of 10 November 1978; US\$9,201,240.91 deposited for the account of Gladiator Establishment, formerly known as Bullseye, as of 10 November 1978; US\$3,601,446.01 deposited for the account of Cesar Establishment, formerly known as Gardenia, as of 10 November 1978; US\$1,811,426.61 deposited for the account of ESG Establishment as of 10 November 1978, among other establishments, having been illegally unlawfully, irregularly or illegitimately acquired or obtained by the accused and her late husband beyond their lawful income of US\$957,487.75 for the years 1965 to 1985 as reflected in their income tax returns, or some of said

¹² Id.

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monies, were then ordered by accused to be remitted to the Central Bank of the Philippines to be used to purchase or be invested in or caused to be converted to high-interest yielding private issues of Dollar Treasury Notes of the Central Bank, with accused intervening in the investment placements of the Central Bank for the pecuniary benefit of said Foundation, herself and her family, and further, with the accused; utilizing the Establishments Bullseye, Mabari, Gladiator and Volubilis as fiduciary agents with respect to her and her late husband's accounts; applying to pen account No. 073 043 P with Banque de Paris et des Pays-Bas (Buisse) S.A. in Geneva and filed on 3 October 1980 through S. Cattai and Ph. Siegenthaler; and executing a Power of Attorney dated 29 September 1980 in favor of her deceased husband, showing that then President Ferdinand E. Marcos could also withdraw or do anything with respect to the accused's secret Swiss accounts, for the benefit of the respondent and her late husband, to the damage and prejudice of the Government service.

The Antecedents

The Proceedings Prior to Consolidation of

Criminal Cases Nos. 17287 to 17291, 19225 and 22867 to 22870

A. Criminal Cases Nos. 17287 to 17291

On December 23, 1991 or six (6) days after the filing of *Informations* in **Criminal Cases Nos. 17287 to 17291**, accused Ms. Marcos personally surrendered before the Court and posted bail to secure her temporary liberty during the pendency of these cases,¹³ thus, her arraignment was set on January 7, 1992.

On January 5, 1992, the accused filed a *Motion to Quash*,¹⁴ alleging that: (1) the criminal actions in Criminal Cases Nos. 17287 to 17289 have prescribed; (2) the offense allegedly committed in Criminal Cases Nos. 17287-17290 took place in Switzerland, thus, the court lacks jurisdiction under the territoriality principle; and (3) the *Information* in Criminal Case No. 17290 does not charge an offense.

Notwithstanding the filing of the *Motion to Quash*, the arraignment proceeded as scheduled, whereby Ms. Marcos pleaded **NOT GUILTY** to the

¹³ Records, Vol. 1, p. 21

¹⁴ Id., p. 23

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charges in Criminal Cases Nos. 17287 to 17291.¹⁵ The Pre-Trial Conference was accordingly set on March 9-11, 1992.

On March 1, 1992, the accused filed a *Waiver of Pre-trial and Appearance*,¹⁶ which the Court noted in a *Minute Resolution* dated April 1, 1992.¹⁷

On March 9, 1992, the prosecution filed a *Motion for Consolidation*¹⁸ of these cases with the forfeiture case against the accused entitled "Republic of the Philippines versus Ferdinand E. Marcos and Imelda R. Marcos," docketed as Civil Case No. 0141 pending before the *First Division*. Thus, the Pre-Trial Conference on said date was deferred. In a *Resolution* dated April 20, 1991,¹⁹ the prosecution's move for consolidation was denied. A *Motion for Reconsideration*²⁰ thereof was also denied in a *Resolution* dated June 22, 1992.²¹

During the hearing on July 5, 1993, Ms. Marcos pointed to an alleged defect of the *Informations*, thus, she was given a period of ten (10) days to file a motion to quash.²²

On July 12, 1993, the prosecution filed an *Omnibus Motion* (a) *To withdraw waiver of pre-trial*, (b) *To set the case for pre-trial*; (c) *To set aside the Order allowing accused to submit Motion to Quash*,²³ which was granted in the Order dated July 15, 1993,²⁴ setting the cases for Pre-Trial Conference on August 19, 1993. During the said Pre-trial Conference on August 19, 1993, the prosecution listed as its witnesses: (1) *Former Solicitor General Francisco Chavez*; (2) *Assistant Solicitor General Cesario del Rosario*; (3) *Peter Cosandey, District Attorney of Zurich*; (4) *Former Central Bank Governor Jaime Laya*; (5) *The Records Custodian of Malacañang Palace*; (6) *The Records Custodian of PCGG*. Considering the voluminous documents to be marked by the prosecution, and the accused's manifestation to file a motion for production of documents and photocopy of documents of the prosecution, the Pre-Trial Conference was set to continue on August 30, 1993.²⁵

¹⁵ Id., Certificate of Arraignment, p. 51; Order of the Third Division, p. 54

¹⁶ Id., p. 106

¹⁷ Id., p. 108

¹⁸ Id., p. 85

¹⁹ Id., p. 114

²⁰ Id., p. 130

²¹ Id., p. 161

²² Records, Vol. 2, p. 366

²³ Id., p. 370

²⁴ Id., p. 378

²⁵ Id., p. 405

Accordingly, on August 25, 1993, Ms. Marcos filed a *Motion for Production, Inspection and Photocopying of Documents*.²⁶ Said motion was set for hearing on August 27, 1993, where the prosecution committed that it would make the proper manifestation during the scheduled continuation of Pre-Trial Conference on August 30, 1993 its readiness to produce the subject documents. However, as jointly moved by the parties, the proceeding on said date did not push through and was reset to September 23, 1993.²⁷ On the latter date, the Court granted Ms. Marcos access to the documents or exhibits of the prosecution during office hours to examine and photocopy the same. It also manifested its intent to file a motion to quash.²⁸ However again, due to the voluminous records of the cases, Ms. Marcos filed an *Urgent Motion*²⁹ praying that the 30-day period given to her within which to file a *Motion to Quash* be held in abeyance until after the exhibits have been marked, which was granted in a *Minute Resolution* dated October 8, 1993.³⁰

Five (5) *Motions to Quash* were filed on January 12, 1994,³¹ to which the prosecution filed a *Consolidated Memorandum in Opposition to the Motion to Quash*,³² which drew from the accused a *Consolidated Reply*.³³ On October 16, 1995, the accused filed a *Motion for Leave to File Supplemental Motion to Quash*,³⁴ attaching thereto her *Supplemental Motion to Quash*.³⁵ In a Resolution dated August 9, 1996,³⁶ both the *Motion to Quash* as well as the *Supplemental Motion to Quash* were denied. A *Motion for Reconsideration*³⁷ thereto was filed by the accused. However, on February 25, 1999, the same was denied for lack of merit.³⁸ The accused went up to the Supreme Court on a Petition for Certiorari assailing the aforesaid denial of her motion which was dismissed per Supreme Court Resolution in GR No. 137687-91 promulgated on December 12, 2001. It became final on January 3, 2002.³⁹

Meanwhile, the Pre-Trial Conference continued on March 15, 1999, whereby the parties agreed to submit a Joint Stipulation of Facts upon which the Pre-Trial Order shall be based.⁴⁰ The parties, however, again failed to submit a Joint Stipulation of Facts despite the lapse of time given, thus, in a

²⁶ Id., p. 385 (17287); p. 389 (17288); p. 393 (17289); p. 397 (17290); p. 401 (17291)

²⁷ Id., p. 413

²⁸ Id., p. 422

²⁹ Id., p. 426

³⁰ Id., p. 431

³¹ Id., p. 484 (17287); p. 516 (17288); p. 546 (17289); p. 578 (17290); p. 605 (17291)

³² Id., p. 632

³³ Id., p. 658

³⁴ Records, Vol. 3, p. 689

³⁵ Id., p. 692

³⁶ Id., p. 731

³⁷ Id., p. 759

³⁸ Id., p. 873

³⁹ Records, Vol. 5, p. 1806

⁴⁰ Id., p. 893

Minute Resolution dated June 21, 1999,⁴¹ the Pre-Trial Conference was terminated. On even date, the case proceeded to initial trial. **Ms. Maria Lourdes Magno**, Records Officer III of the PCGG was called to the witness stand to identify documents, but her testimony was suspended for the calling of another witness, **Assistant Solicitor General Nestor J. Ballasillo** from the Office of the Solicitor General who completed his testimony.

Due to a series of postponements of hearing, as well as the numerous authorized travel abroad by the accused, trial of the cases resumed only on January 13, 2000.

The prosecution presented **Atty. Francisco I. Chavez** as its first witness who testified on the following dates, viz: January 13, 2000, January 20, 2000, January 21, 2000, March 15, 2000, March 17, 2000, July 17, 2000, September 5, 2000, September 13, 2000, September 15, 2000, November 27, 2000, February 12, 2001, August 27, 2001, August 31, 2001, March 5, 2002, March 14, 2002, May 7, 2002, June 6, 2002, June 14, 2002, October 2, 2002, and October 3, 2002.

On September 4, 2002, the prosecution filed a *Motion for Consolidation*⁴² of **Criminal Cases Nos. 22867 to 22870** then with the *Fourth Division* with **Criminal Cases Nos. 17287 to 17291 and 19225** originally assigned with the *Third Division*. The motion was denied in a *Resolution of the Third Division* dated September 19, 2002,⁴³ but the same was reconsidered on January 2, 2003,⁴⁴ thereby consolidating trial of Criminal Cases Nos. 17287 to 17291, 192252 and 22867 to 22870 at the *Third Division*.

B. Criminal Case No. 19225

Meanwhile, in **Criminal Case No. 19225** which was filed on December 21, 1993, the arraignment of Ms. Marcos was held in abeyance pending Reinvestigation by the Office of the Ombudsman.⁴⁵

Nothing was heard from the prosecution until more than five (5) years thereafter, on March 5, 1999, when the prosecution was ordered to show cause within ten (10) days from receipt why the case should not be dismissed for failure to prosecute.⁴⁶ The prosecution filed its *Compliance*⁴⁷ on April 27, 1999 stating that the Reinvestigation was completed and the

⁴¹ Id., p. 911

⁴² Records, Vol. 6-B, p. 135

⁴³ Id., p. 153

⁴⁴ Id., p. 209

⁴⁵ Records, Vol. 5-A, p. 56

⁴⁶ Id., p. 71

⁴⁷ Id., p. 77

Memorandum thereof was submitted for approval of the Ombudsman, which was noted on June 4, 1999.⁴⁸

On August 6, 1999, the prosecution filed a *Motion to Withdraw Information*⁴⁹ in Criminal Case No. 19225 on the ground that it is identical with Criminal Case No. 17291. However, it was denied in a *Resolution* of the *Third Division* dated June 14, 2002 directing its consolidation with Criminal Case No. 17291 and further setting the Pre-Trial Conference in Criminal Case No. 19225 to July 16, 2002.⁵⁰

During the said conference, the parties were enjoined to come up with a Joint Stipulation of Facts within thirty (30) days therefrom. The Pre-Trial Conference was reset to September 10, 2002.⁵¹ On September 9, 2002, the accused filed a *Manifestation and Motion*⁵² with the prosecution's conformity waiving the submission of a joint stipulation of facts, thus, terminating the Pre-Trial Conference.

Trial then ensued in Criminal Case No. 19225 to coincide with the hearing in Criminal Cases Nos. 17287 to 17291 to which it was consolidated at the *Third Division*.⁵³

C. Criminal Cases Nos. 22867 to 22870

These cases were filed on August 17, 1995, but four (4) years thereafter, the prosecution filed separate *Amended Informations*⁵⁴ in all these cases dated August 2, 1999, which were admitted on October 8, 2001.⁵⁵

Correspondingly, on October 16, 2001, Ms. Marcos posted bond to secure her temporary liberty during the pendency of these cases.

On August 14, 2002, she was arraigned and pleaded NOT GUILTY to all the charges.⁵⁶ On even date, Pre-Trial Conference ensued and was terminated. The parties failed to come up with any stipulation. The prosecution plainly manifested five (5) witnesses would be presented while the accused would present herself for the defense. It was at this juncture, on January 2, 2003,⁵⁷ that these cases were consolidated with Criminal Cases Nos. 17287 to 17291 and Criminal Case No. 19225 at the *Third Division*.

⁴⁸ Id., p. 79

⁴⁹ Id., p. 85

⁵⁰ Id., p. 112

⁵¹ Id., p. 120

⁵² Id., p. 136

⁵³ Id., p. 140

⁵⁴ Records, Vol. 6-A, pp. 135-153

⁵⁵ Id., p. 189

⁵⁶ Records, Vol. 6-B, p. 124.

⁵⁷ Id., p. 215

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The Proceedings After Consolidation of

Criminal Cases Nos. 17287 to 17291, 19225 and 22867 to 22870

As already stated, from the *Third Division* whose Chair inhibited, all these consolidated cases were transferred to the *Fourth Division*. The proceedings were stayed upon Order dated June 21, 2004 of the *Fourth Division*,⁵⁸ while awaiting the results of the prosecution's Petition for Certiorari before the Supreme Court assailing the denial by Justice Gregory Ong, Chair of the *Fourth Division*, of its Motion for Inhibition. On May 5, 2006, the Supreme Court directed Justice Ong to recuse himself from participating in the consolidated Criminal Cases Nos. 17287 to 17291, 19225 and 22867 to 22870.⁵⁹ Thus, upon re-raffle, these consolidated cases ended up with the *Fifth Division*, wherein trial was ordered to resume per *Minutes of the Proceedings of the Fifth Division* dated August 4, 2006.⁶⁰

Belatedly at this juncture it was realized that in Criminal Case No. 19225, Ms. Marcos had not been arraigned; hence, it was only on September 14, 2006 that she was arraigned in the said case, and she pleaded NOT GUILTY to the charge.⁶¹

On September 25, 2006, Ms. Marcos filed a *Waiver of Appearance*,⁶² which the Court approved in a Minute Resolution dated October 16, 2006.

In view of various moves for postponement filed by both parties, trial of the cases resumed only on December 6, 2006 where the prosecution continued with the direct examination of its witness, **Atty. Francisco Chavez**.⁶³ His testimony further proceeded on May 2, 2007, May 8, 2007, May 9, 2007, August 22, 2007, August 23, 2007, August 28, 2007, August 29, 2007, October 19, 2007, October 26, 2007, November 16, 2007, January 21, 2008, January 22, 2008, September 15, 2008, September 16, 2008, September 18, 2008, January 19, 2009, January 20, 2009, and January 26, 2009, yet at this point, the testimony of said witness had not been completed.

In the meantime, the prosecution recalled **Ma. Lourdes Oliveros-Magno, Records Custodian of the PCGG**, on March 16, 2009, March 17, 2009, and March 30, 2009. In view of the large volume of documents for identification of the witness, the name and signature of Ms. Magno appearing on the exhibits were directed⁶⁴ to be marked for

⁵⁸ Id., p. 370

⁵⁹ Id., p. 402

⁶⁰ Records, Vol. 7, p. 207

⁶¹ Records, Vol. 5-A, p. 255

⁶² Id., p. 257

⁶³ Records, Vol. 7, p. 288

⁶⁴ Records, Vol. 8, p. 402

stipulation which proceeded before the Division Clerk of Court on May 25, 2009, May 26, 2009, June 18, 2009, August 13, 2009, September 30, 2009, February 12, 2010, and March 12, 2010.

Atty. Francisco Chavez resumed with his direct testimony on April 19, 2010, April 26, 2010, September 1, 2010, October 18, 2010, June 1, 2011, and May 2, 2012. His cross-examination followed on July 3, 2012. During the continuation of his cross-examination on July 4, 2012, counsel for the accused manifested that he is no longer conducting any further cross-examination on **Atty. Chavez**.

On September 24, 2012, **Ambassador Luis Ascalon** was presented, which was followed by the testimony of witness **Jaime Laya** on December 5, 2013. On November 4 & 13, 2014 respectively, witnesses **Cesar Virata** and **Victor Macalincag** also testified for the prosecution. Their respective testimonies were completed. On January 22, 2015, witness **Guillermo Soliven** was called, however his testimony was dispensed with following the stipulation of the parties on the existence of the documents⁶⁵ that he was supposed to identify.

On December 3, 2015, the prosecution filed its **Consolidated Formal Offer of Documentary Evidence**,⁶⁶ which the Court resolved to admit, there being no opposition from the accused.⁶⁷

For the defense, Ms. Marcos did not testify. No other witness was also presented.

The parties plainly stipulated on July 14, 2016, the authenticity and existence of the *Transcript of Stenographic Notes*⁶⁸ marked as Exhibits "1"-TSN dated September 5, 2006, Exhibit "2"-TSN dated October 10, 2006, and Exhibit "3"-TSN dated November 28, 2006 in Criminal Cases Nos. 91-101732-39, 91-101879-92 & 91-101959-69, entitled "*People of the Philippines versus Imelda R. Marcos, et al.*" supposed to be identified by the intended witnesses **Jessallee C. Roque** and **Marites D. Gauran**, Stenographers of the Regional Trial Court of Manila, Branch 26.

Ms. Marcos did not present any further evidence and with the failure of her counsel to appear in subsequent hearings, further presentation was deemed waived in the Order dated February 28, 2017.

⁶⁵ Records, Vol. 11, p. 178; Memorandum for the Monetary Board dated May 9, 1984 and Memorandum addressed to the Management of External Debts and Investment Accounts Department of the Central Bank dated July 20, 1983

⁶⁶ Records, Vol. 11, p. 273

⁶⁷ Minutes of the Proceedings held on March 14, 2016, Records, Vol. 11, p. 389

⁶⁸ In Criminal Cases Nos. 91-101732-39, 91-101879-92 & 91-101959-69, entitled *People of the Philippines versus Imelda R. Marcos, et. al.* before the Regional Trial Court, Branch 26, Manila

On March 8, 2017, Ms. Marcos filed her **Formal Offer of Evidence**⁶⁹ consisting of Exhibits "1" to "3" which the Court admitted as part of the testimonies of defense witnesses Marites Gauran and Jessa Lee Roque,⁷⁰ over the objection of the prosecution.

The prosecution and the accused submitted their memoranda, respectively on August 29, 2017⁷¹ and September 19, 2017,⁷² thus these consolidated cases were deemed for Decision.

Evidence for the Prosecution

The prosecution presented as witnesses:

- (1) Ms. Lourdes Magno, *Records Officer III of the Presidential Commission on Good Government (PCGG)*,⁷³
- (2) Mr. Nestor J. Ballasillo, *Assistant Solicitor General of the Office of the Solicitor General*⁷⁴
- (3) Atty. Francisco I. Chavez, *former Solicitor General from March 16, 1987 to February 6, 1992*,⁷⁵
- (4) Ambassador Luis Ascalon, *former Charge d' Affaires and later Ambassador to Switzerland from March 16, 1987 up to April 21, 1992*,⁷⁶
- (5) Mr. Jaime Laya, *former Governor of the Central Bank of the Philippines*,⁷⁷
- (6) Mr. Cesar Virata, *former Chairman and member of the Board of Directors of the Philippine Export and Foreign Loan Guarantee Corporation (Philguarantee) from January 31, 1977 until February 26, 1986*,⁷⁸
- (7) Mr. Victor Macalincag, *Officer-in-charge from January 11, 1985 to February 28, 1991 and President/Chief Executive Officer & Board Member from March 1, 1991 until August 31, 2001 of Philguarantee and its successor, Trade and Investment Development Corporation of the Philippines (TIDCORP)*.⁷⁹
- (8) Guillermo Soliven, *former Special Assistant to the Governor of Central Bank*, whose testimony was dispensed with after counsel for the accused agreed to stipulate on the documents on January 22, 2015.⁸⁰

⁶⁹ Records, Vol. 12, p. 32

⁷⁰ Id., p. 110

⁷¹ Id., p. 147

⁷² Id., p. 183

⁷³ TSN, June 21, 1999; March 16, 2009, March 17 and 30, 2009

⁷⁴ TSN, June 21, 1999

⁷⁵ TSN, January 13, 2000

⁷⁶ TSN, September 24, 2012

⁷⁷ TSN, December 5, 2013

⁷⁸ TSN, November 4, 2014

⁷⁹ TSN, November 13, 2014, Judicial Affidavit, Records, Volume 11, p. 83

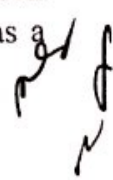
⁸⁰ Memorandum for the Monetary Board dated May 9, 1984 and Memorandum addressed to the Management of External Debts and Investment Accounts Department of the Central Bank dated July 20, 1983

Ms. Lourdes Magno, Records Officer III of the PCGG, testified that as records custodian, she was the over-all in-charge of the day to day function of its library and MIS Division; she had in her custody at the PCGG, the authenticated documents sent by the Swiss authorities respecting the Swiss assets and bank accounts of Marcos, which were marked by the prosecution as Exhibits "D" to "K" and series relative to Criminal Cases Nos. 17287-91, 19225, 22867-22870; and likewise identified her signature in the *certifications* of the photocopies thereof.

Mr. Nestor J. Ballasillo, Assistant Solicitor General, testified that he was a member of the panel created by Solicitor General Chavez called the *Task Force Humongous*, which was tasked to work closely with the PCGG for the purpose of studying the documents sent to the Philippine government by Peter Cosandey, Chief Magistrate of Canton, Zurich, Switzerland; Mr. Cosandey was the officer authorized by the Swiss government to address the Philippine's request for assistance in matters involving the freezing of assets of various Swiss bank accounts and assets of foundations alleged to be linked with the Marcoses; the said Swiss documents were coursed through Ambassador Luis Ascalon, the Philippine Ambassador to Switzerland. He also testified that: aside from the Swiss documents, the PCGG likewise gave the panel some documents recovered from Malacañang, the Central Bank of the Philippines and other sources, which were material to the filing of cases against the Marcoses; however, he did not have personal knowledge nor any participation in the preparation of any evidentiary documents used in the cases filed against the Marcoses; and after the complaints were filed, the records were turned over to the PCGG.

Atty. Francisco I. Chavez testified that he served as Solicitor General on March 16, 1987 to February 6, 1992. Sometime in July 1991 he received from PCGG a Letter marked as Exhibit "A" directing him to file the appropriate forfeiture proceedings under RA 1379 in relation to EO 1, 2, 14 and 14-A against the estate of the late Ferdinand Marcos, Imelda Marcos and other Marcos family members based on the documents turned over or to be turned over by the Swiss authorities, and if warranted, to file appropriate criminal charges.

Accordingly, he organized *Task Force Humongous* over which he had direct control and supervision, with the following members: Asst. Solicitor General and PCGG Chairman Cesario del Rosario, Asst. Solicitor General Nestor Ballasillo, Mr. Danilo Daniel of the PCGG and two (2) interpreters from the Department of Foreign Affairs specifically with respect to documents written in French and German languages. The team gathered all documents and information necessary in the filing of criminal and civil complaints against the Marcoses before December 21, 1991 which was a



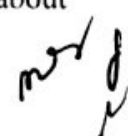
requirement of the Swiss Federal Supreme Court's twin decisions concerning the "legal assistance in favour of the Republic of the Philippines" and the "international judicial assistance proceeding in the Canton of Fribourgh," marked as Exhibit "F-1" to "F-18" in order that the "freeze orders" over the Swiss assets of the Marcoses and their cronies would not be lifted.

That he received from Ambassador Luis Ascalon, voluminous Swiss documents attached as annexes to the *Certificate of Authentication* by Ma. Fe Pangilinan-Klingert, Philippine Consul to Switzerland, marked as Exhibits "C" to "J" with sub-markings. These were transmitted to Ascalon via *diplomatic pouch* under various cover Letters dated December 12, 1991 marked as Exhibit "B", December 20, 1991 as Exhibit "B-2", October 16, 1991 as Exhibit "B-3" and series. These documents, as well as those marked as Exhibits "A" (PH-CH MLAT) to "E" (PH-CH MLAT) purport to show that the Philippines sought the assistance of the *Federal Office of Justice Swiss Central Authority* in connection with the prosecution of the Marcos family and the corresponding legal assistance it granted to the Philippine government in connection therewith.

Chavez testified that he conferred many times with Peter Cosandey, the only *District Attorney of Zurich* specifically and exclusively designated by the Swiss Federal Supreme Court to act as the sole *Investigating Magistrate* for the discovery, freezing and recovery of the Marcos assets in Switzerland. He was the Swiss official supposed to coordinate with the Office of the Solicitor General and the PCGG with respect to the Philippine Government's efforts to retrieve information, documents and eventually money from the Marcoses.

Chavez claimed he looked into the probative value of these documents and requested Peter Cosandey to issue a Certification attesting to the authenticity of the documents transferred to them. Peter Cosandey informed him, though, that in Switzerland they follow the procedure in the certification of documents as embodied in the Treaty between Switzerland and the USA dated May 25, 1973 and that it was not necessary for him to issue certified true copies of each and every document; the various *Certificate of Authenticity of Business Record* executed by Swiss banks and the accompanying *Certificate of the Swiss Authority Executing Request for Documents* marked as Exhibits "C" to "J" on the genuineness of the attached documents sent via *diplomatic pouch* were sufficient authentication for purposes of presentation in US Courts, as well as in European Courts, with the hope that this would be the same in Philippine Courts.

There were about thirty-eight (38) civil cases involving the Marcoses as principal defendants pending before the Sandiganbayan and about



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four hundred fifteen (415) co-defendants who were either cronies, dummies or associates of the Marcoses. He instituted sometime in 1991 about seventy-eight (78) criminal cases against herein accused Imelda Marcos plus one (1) forfeiture petition, which he filed on December 17, 1991 before the *Sandiganbayan*. Among the cases he filed are the instant cases. Criminal Case No. 17287 involves Maler Foundation. Criminal Case No. 17288 concerns Trinidad Foundation, Criminal Case No. 17289 centers on Rayby Foundation, while Criminal Case No. 17290 focuses on Palmy Foundation. On the other hand, Asian Reliability Company Inc. (ARCI), which was a local company, is the subject matter of Criminal Case No. 17291 and Criminal Case No. 19225. Meanwhile, Criminal Cases Nos. 22867 to 22870 involve Avertina, Xandy, Wintrop, Charis, Vibur-Avertina, Azio-Verso-Vibur Foundations, Scolari, Valamo, Spinus Foundations, and Aguamina Foundation.

The documents allegedly show that Trinidad, Rayby, Palmy, Maler, Avertina, Xandy, Wintrop, Charis, Vibur-Avertina, Azio-Verso-Vibur Foundations, Scolari, Valamo, Spinus Foundations, and Aguamina foundations had been established by the Marcoses in Switzerland, with a common design, scheme, procedure, and practice of administering, managing, promoting and participating in the operations thereof, used to conceal the real ownership of the same, which is that of the Marcoses. That the foundations were created one after the other, or at times, co-existed.

Specifically, Chavez adopted his allegations in the Petition for Forfeiture docketed as Civil Case No. 0141, marked as Exhibit "X to "XX-77," where he claimed to show how Ms. Marcos and her husband "clandestinely stashed away the country's wealth to Switzerland and had the same under layers upon layers of foundations and other corporate entities to prevent its detection" using dummies and agents, opened and maintained bank accounts.

Based on documents he gathered, he testified that **Trinidad Foundation** was established on August 26, 1970 in Vaduz with C.W Fessler and E. Sheller of Suisse Credit (SKA) and Dr. Otto Tondury as its directors. Ms. Marcos issued a written mandate to Markus Geel on said date to arrange with a Liechtenstein lawyer to establish Trinidad for the account of Ms. Marcos, shown in *Exhibit "D"-Trinidad*, while the Regulations and the Agreement dated August 28, 1970, marked as *Exhibit "F" to "F-3"-Trinidad* were signed by Ms. Marcos, who was named as the first beneficiary and her children, Imelda (Imee), Ferdinand Jr. (Bongbong) and Irene were named as equal second beneficiaries. Aside from these, the following documents allegedly show Ms. Marcos had direct and indirect financial interest and participated in the management of Trinidad, viz:




- (1) the Agreement between Ms. Marcos as mandatory, and Mr. Markus Geel, as mandatory for Trinidad Foundation, marked as *Exhibit "G" to "G-2"-Trinidad*;
- (2) the Agreement between Ms. Marcos as mandatory, and Mr. C Walter Fessler/Mr. Ernest Scheller as mandatory, dated August 28, 1970 marked as *Exhibit "H"-Trinidad*;
- (3) the Letter of Ms. Marcos to the Board of Trustees of Trinidad dated March 10, 1981 requesting them to remit to Bank Hofmann, Zurich, in favor of Fides Trust Company, Zurich, marked as *Exhibit "I"-Trinidad*, as well as
- (4) the various Credit and Debit Advices and Statements of Accounts pertaining to Trinidad in 1976, marked as *Exhibits "K" to "YY"-Trinidad*.

As for **Rayby Foundation**, Chavez claimed that the documents show it was established on June 22, 1973 in Vaduz with the same directors of Trinidad Foundation, viz: Fessler, Sheller and Ritter, as members of its Board of Directors, while FW Schweizer of Hong Kong appears as additional director. Ms. Marcos, thru an undated letter marked as *Exhibit "C"-Rayby*, issued and signed a Mandate to Dr. Theo Bertheau to establish Rayby with a note that its capitalization and costs be debited against the account of Trinidad. Ms. Marcos was named by Dr. Bertheau as its "first and only beneficiary." By virtue of the Agreement between Ms. Marcos and Dr. Bertheau, dated June 22, 1973, marked as *Exhibit "F"-Rayby*, Mr. Bertheau took the mandate as founder of Rayby. The further Agreement of June 22, 1973 between Ms. Marcos, as mandatory, and Ms. Fessler/Scheller and Schweizer, as mandataries for Rayby, dated June 22, 1973, marked as *Exhibit "G"-Rayby* and the By-laws of Rayby, marked as *Exhibit "H,"* were signed by Ms. Marcos. In the Regulations of Rayby dated June 22, 1973, marked as *Exhibit "I"-Rayby*, Dr. Bertheau named Ms. Marcos as the successor to the founder, and as the "first and only beneficiary" of Rayby. Allegedly, Ms. Marcos' reason for establishing Rayby was to transfer the assets of Trinidad to another foundation. The transfer, however, did not take place. On March 10, 1981, in Manila, Ms. Marcos issued a written order to the Board of Trustees of Rayby thru a Letter bearing such date, marked as *Exhibit "J"-Rayby* to transfer to Trinidad Foundation, for its account with Credit Suisse, Zurich (SKA) any assets and balances held by Rayby, and to subsequently liquidate Rayby. That she ordered the Board of Trinidad to dissolve Rayby and transfer all its assets to Bank of Hofmann in favor of Fides Trust Co. under the account "*Reference Dido.*" Rayby was dissolved on April 6, 1981 and Trinidad was liquidated on August 3, 1981. He also identified *Exhibits "K" to "L"-Rayby*, which pertain to various Credit and Debit Advice of Rayby, transfers of fund from Rayby to Trinidad, in



compliance with the Letter of Ms. Marcos to the Board of Trustees of Rayby dated March 10, 1981.

He also claimed based on documents that **Palmy Foundation** was established on May 13, 1981 in Vaduz with Dr. Ivo Beck and Limag Management, a wholly owned subsidiary of Fides Trust Co, as members of the Board of Directors. The account of Palmy was officially opened with Credit Suisse (SKA) on September 10, 1981 via a Contract between "Palmy Stiftung" as "Depositor" and Credit Suisse as "Bank," Vaduz, marked as *Exhibit "D"-Palmy*. The beneficial owner was not made known to the bank since Fides Trust Company acted as fiduciary, but the listings of securities in the safe deposit registered in the name of Trinidad Foundation as of December 31, 1980 were practically the same as the securities of Palmy as of December 31, 1981. Hence, Chavez concluded that Palmy was the beneficial successor or owner of Trinidad Foundation. He claimed that among the documents from the Swiss authorities is a "declaration" of Dr. Ivo Beck that the beneficial owner of Palmy Foundation was Ms. Marcos; that another document signed by Raber shows that Palmy was owned by "Marcos Familie." He further stated that Ferdinand Marcos gave an instruction to the Board of Trustees of Avertina Foundation to place US\$2M at the disposal of Imelda Marcos, who ordered that the said amount be credited to Palmy, as shown in *Exhibit "CC"-Palmy*. That Palmy Foundation, holder of Account No. 391528 was beneficially owned by Ms. Marcos with address at Malacañang, Manila, Philippines shown in the instruction for the opening of such account signed by Ivo Beck, marked as *Exhibits "DD"-Palmy*, while Account No. 391528-9 was owned by the Marcos family, which is shown in *Exhibit "EE"-Palmy*. Palmy Foundation is said to be "directly connected" to the *Petition for Legal Assistance* by the Philippine government filed on April 7, 1986 by its hired legal counsels - Fontanet and Salvioni. Palmy was also one of the subjects of the failed partial release of assets in the July 1986 Agreement between PCGG and Marcos where Ms. Marcos made admissions of ownership of Palmy. It was also subject of the Preliminary Report on Marcos Accounts in Switzerland submitted by the Financial Data Monitoring Team on May 23, 1988 where it was stated that Palmy was under the direct beneficial ownership of Ms. Marcos. The findings of the Decision of Zurich Magistrate Cosandey dated December 6, 1989, copy thereof was marked as *Exhibit "Z(t),"* is said to be relevant in the management of Ms. Marcos of Trinidad and Rayby, which were the predecessors of Palmy, also beneficially controlled by Ms. Marcos. The decision ruled in favor of the Philippine government and the appeal therefrom to Swiss Federal Supreme Court by the Marcoses was denied in a Decision dated December 21, 1990, marked as *Exhibit "F."*

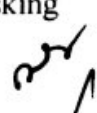


Chavez also referred to the Answer of Ms. Marcos in the Petition for Forfeiture particularly under paragraph 22 thereof, which he marked as *Exhibit "Y-4-a."* The same is allegedly an admission of Ms. Marcos as she stated that they "*deny x x x in so far as it alleges that [they] clandestinely stashed the country's wealth in Switzerland x x x the truth being that [their] aforesaid properties were lawfully acquired.*"

Chavez testified that as for **Maler Foundation**, the documents show that it was first created as an establishment on February 5, 1962, as shown in *Exhibit "P(t)"-Maler*, the Articles of which was amended on May 16, 1968. On November 17, 1981 it was converted to Maler Foundation, as shown in *Exhibit "N(t)"-Maler* and *"O(t)"-Maler*. That the direct intervention of Ms. Marcos in the management of Maler is shown by the following documents, viz:

- (1) Rules and Regulations of Maler Establishment signed by Ferdinand and Imelda Marcos dated October 19, 1968, marked as *Exhibit "J"-Maler*, which was found among the documents recovered from Malacañang.
- (2) The appointment of Dr. Andre Barbey and Jean Louis Sunier as attorneys of the company and as administrator and manager of all assets of Maler Foundation, which they claim to have bought from Swiss Bank Corporation (SBC), embodied in a Letter dated October 19, 1968 addressed to Messrs. Andre Barbey and Jean Louis Sunnier c/o Swiss Bank Corporation, Geneva, marked as *Exhibit "G"-Maler* signed by Ferdinand and Imelda Marcos, said document was among those recovered from Malacañang;
- (3) The opening document of Maler account with SBC, Geneva, signed by Dr. Barbey and Mr. Sunnier as authorized signatories. The Marcos couple also mentioned in a Letter dated October 19, 1968 to Maler Establishment informing it that all instructions to be transmitted with regards to Maler will be signed with the word "**John Lewis,**" which will have the same value as the couple's own personal signature as affixed therein, which was marked as *Exhibit "I"-Maler*;
- (4) Maler Establishment was transformed to Maler Foundation on November 17, 1981, with its attorneys changed to Michael Amaudruz et. al. but the administration of the assets was left to SBC, shown in *Exhibit "O"-Maler*;
- (5) The Articles of Incorporation of Maler Foundation was registered on November 17, 1981 as *Exhibit "P(t)"-Maler* which appear to be the same articles applied to Maler Establishment.

Chavez tried to link Ms. Marcos to Maler Foundation via Maler's alleged investment in US Dollar Treasury Notes issue of the Philippine Republic as a response of Ms. Marcos to Jaime Laya's Memorandum dated October 21, 1983, marked as *Exhibit "W-2"-Maler* and *"W-3"-Maler*, asking



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for help to look for investment in the US dollar treasury notes issue of the Philippines. This is allegedly shown by the Sales Report of the Central Bank of the Philippines dated October 4, 1983 with placements of Bank of Hofmann, SBC-Geneva, and Paribas-Geneva, all under the name of Roberto Benedicto, marked as Exhibit "W"-Maler." Maler's investment is said to be through its account with SBC, Geneva, shown in the series of Statements of Account or movement of capital in this account, marked as Exhibit "F"-Maler, which earned profits shown in the Memorandum crediting interests dated June 13, 1984, marked as Exhibit "W-5"-Maler. Chavez stated that while there is no record that SBC made the placement, it was in fact upon the instruction of Ms. Marcos. The Maler Trustees allegedly took it from Ms. Marcos' solicitation letter to various businessmen, marked as Exhibit "S"-Maler, as an instruction for them to likewise invest a portion of Maler monies in SBC to US dollar denominated notes issue of the Philippines. That as allegedly shown in Exhibits "U"-Maler and "W"-Maler, the progress of floating of Treasury Notes by the Central Bank and the National Treasury was directly monitored by Ms. Marcos. On February 28, 1984, Maler Foundation transferred the power of attorney for the management of its assets maintained in SBC to Suntrust Investment Co., S.A. shown in Exhibit "R"-Maler. Maler allegedly put up foundations for profit, and for allegedly stashing ill-gotten wealth of Ms. Marcos. Documents show that these foundations of Maler were recipient of instructions from the Marcoses to invest in precious metals, securities, government bonds and corporate stocks of other international corporations. That these investments belong to Maler Foundation is explained in paragraph 35 of Chavez's 5th Supplemental Affidavit.



In all these testimonies of Chavez, there has been a consistent objection of the defense because Chavez allegedly had no personal knowledge of the content of the documents used as basis of his statements. But Chavez insisted that these were based on documents, which he and Mr. Cosandey examined, showing the different personalities commissioned by Mr. and Ms. Marcos to open these accounts for them. That the admissibility of these documents was explained by Mr. Cosandey in his Letter to Chavez previously identified as Exhibit "D" series.

In **Vibur-Avertina Foundations**, Chavez presented documents marked as Exhibits "F"-Vibur-Avertina to "NNNNN-1"-Vibur Avertina.

Ms. Marcos' interest in these Foundations is allegedly shown by the following:

- (1) Mr. Marcos requested Dr. Theo Bertheau for the creation of **Azio Foundation** in Vaduz and appointed Roberto S. Benedicto as his attorney-in-fact with respect to Azio Foundation shown in

Mr. Marcos' Letter dated June 11, 1971, marked as *Exhibit "F"-Vibur-Avertina* and Power of Attorney, marked as *Exhibit "G"-Vibur-Avertina*;

- (2) Mr. Marcos named himself as the first beneficiary of Azio and the "Marcos Foundation" as the second beneficiary after the passing away of the former in the Regulations of Azio dated June 11, 1971, marked as *Exhibit "I"-Vibur-Avertina*.
 - (3) Later in his handwritten Letter dated November 12, 1971, marked as *Exhibit "K"-Vibur-Avertina*, Mr. Marcos ordered to name Austraphil PTY Ltd. Co. as the first and only beneficiary of Azio Foundation.
 - (4) Further, in Mr. Marcos' handwritten Letter dated December 14, 1971, marked as *Exhibit "M"-Vibur-Avertina*, he canceled the existing regulations of Azio and named **Charis Foundation** as first and only beneficiary, also shown in Azio's Regulations dated December 4, 1972, marked as *Exhibit "N"-Vibur-Avertina*.
 - (5) That **Azio Foundation** was change to company name **Verzo Foundation** as shown in the Resolution of the Legal Founder of Azio dated August 29, 1978, marked as *Exhibit "O(t)"-Vibur-Avertina*, while Dr. Helmuth M. Merlin and Ernst Sheller were authorized to sign and issue orders for Verzo Foundation, marked as *Exhibit "P(t)"-Vibur-Avertina*.
 - (6) In a Letter of Mr. Marcos to Verzo's Board dated March 11, 1981, he requested to remit all assets, securities, time deposits and balances of Verzo to Bank Hofmann AG Zurich in favor of Fides Trust Company Zurich, which is marked as *Exhibit "Q"-Vibur-Avertina*.
 - (7) *Exhibits "R(t)"-Vibur-Avertina* shows Dr. Ivo Beck and Limag Management as **Vibur Foundation's** Board members, which opened an account in Credit Suisse Bank via a Contract dated September 10, 1981, marked as *Exhibit "S"-Vibur-Avertina* and supplemental contract for special arrangements, marked as *Exhibit "S-7"-Vibur-Avertina*. Fiduciary time deposits and deposit of securities of Vibur were respectively arranged on September 10, 1981 and September 12, 1981, as shown in *Exhibits "S-9" and "T"-Vibur-Avertina*.
 - (8) Chavez stated that on March 18, 1986, Vibur Foundation was dissolved in a Resolution of its Board, marked as *Exhibit "W-(t)"-Vibur-Avertina*. In the "Declaration" for opening of account or securities account no. 467857 of Vibur Foundation dated April 11, 1989 signed by Dr. Ivo Beck, marked as *Exhibit "Z"-Vibur-Avertina*, Ferdinand Marcos was named as beneficial owner, while the "Classification Note" sent by G. Raber dated September 30, 1988 re: Vibur, marked as *Exhibit "AA(t)"-Vibur-Avertina*, reference to said account named Marcos Family as the owner thereof.
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Chavez also testified that a Contract for the opening of current account/safe custody with Credit Suisse between Mr. Marcos, as depositor, and Swiss Credit Bank dated March 20, 1968, as depositary, marked as *Exhibit "CC"-Vibur-Avertina*, shows Mr. Marcos used the pseudonym "**William Saunder**," while Ms. Marcos used "**Jane Ryan**" as pseudonym. In a Contract dated March 21, 1968, marked as *Exhibit "DD"-Vibur-Avertina*, a special arrangement to the contract dated March 21, 1968 also bears the handwritten name of "**Jane Ryan**," as pseudonym, and "Imelda Marcos," as true name, marked as *Exhibit "EE"-Vibur-Avertina*. The Swiss Credit Bank's Declaration/ Specimen signature of Imelda Marcos (true name) and "**Jane Ryan**" (pseudonym) dated March 21, 1968 marked as *Exhibit "FF"-Vibur-Avertina* and the specimen signature of Ferdinand Marcos/William Saunders marked as *Exhibit "GG-6"-Vibur-Avertina* also show the same use of pseudonyms. Ms. Marcos constituted Mr. Marcos as her lawful attorney to represent her in Swiss Credit Bank as per Power of Attorney dated March 21, 1968, marked as *Exhibit "GG" Vibur-Avertina*.

Chavez claimed that based on the records, Mr. and Ms. Marcos ordered the closure of accounts of Vibur with Suisse Credit Bank and transferred them to **Xandy Foundation**, where the Marcos spouses were named as the first beneficiaries, the surviving spouse as the second beneficiary and the Marcos children as the third beneficiaries, shown in *Exhibits "HH-Vibur-Avertina*." A Letter of Mr. Marcos to Mr. Markus Geel dated March 3, 1970, marked as *Exhibit "JJ"-Vibur-Avertina* instructed the creation of **Xandy Foundation**. *Exhibit KK*," shows the hand-printed regulations of Xandy Foundation dated February 13, 1970 signed by Mr. and Ms. Marcos naming their three children as beneficiaries, and in case of death, Ferdinand and Imelda as next beneficiaries, while the typewritten version thereof issued by Mr. Markus Geel was marked as *Exhibit "LL"-Vibur-Avertina*.

Chavez further stated that later, the company name of Xandy Foundation Vaduz was changed to **Wintrop Foundation**, Vaduz, shown in the Certification by the Office of Public Record Vaduz dated September 7, 1978, marked as *Exhibit MM(t)-Vibur-Avertina*. C.W. Fessler, Dr. Helmuth Merlin, C. Souviron and E. Scheller were the authorized signatories of Wintrop, shown in *Exhibit "NN"-Vibur-Avertina*.

Chavez likewise alleged that: **Avertina Foundation** was registered in the records of Vaduz Public Register dated May 13, 1981 with Dr. Ivo Beck in Vaduz and Limag Management as members of the Board, shown in *Exhibit "PP(t)-Vibur-Avertina*. It opened the Avertina account, safekeeping accounts, deposit of securities or renting of safety deposit box with Suisse Bank shown in Exhibits "*QQ*," "*RR*," "*SS*" "*TT*," "*UU*," "*VV*," "*WW*,"

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"XX", "YY", "ZZ" and "AAA"-*Vibur-Avertina*. Ferdinand Marcos was named as the beneficial owner of Avertina account in Dr. Ivo Beck's Declaration on opening account 211925 dated April 11, 1989 marked as *Exhibit "HHH"-Vibur-Avertina*.

In a Letter of Ferdinand Marcos to Dr. Theo Bertheau marked as *Exhibit "KKK"-Vibur-Avertina*, he requested to arrange for the creation of **Charis Foundation** and to name C.W. Fessler, E. Scheller and Peter Ritter as members of the Board. Mr. Marcos as mandator, constituted C.W. Fessler and E. Scheller, as mandataries of **Charis Foundation Zurich** in the Agreement dated November 12, 1971 marked as *Exhibit "MMM"-Vibur-Avertina*. A special power of attorney was in favor of Roberto Benedicto as Mr. Marcos' representative in the Council of Charis, marked as *Exhibit "PPP."* In the hand printed regulation of Charis dated November 12, 1971 signed by Mr. Marcos marked *Exhibit "NNN"-Vibur-Avertina*, he named himself as first beneficiary, and Xandy Foundation, as second beneficiary. The Regulations of Charis issued by Dr. Bertheau on December 30, 1971, marked as *Exhibit "OOO"-Vibur-Avertina* named Mr. Marcos as first beneficiary, and Xandy Foundation as second beneficiary.

He continued to testify as follows: the company name of Charis Foundation was changed to **Scolari Foundation**, shown in the Certification of Liechtenstein, District Court Chancery marked as *Exhibit "QQQ"-Vibur-Avertina*, and another Certification by Public Register of Vaduz, dated September 7, 1978, marked as *Exhibit "SSS."* C.W. Fessler, Peter Ritter and E. Scheller were members of its Board, shown in *Exhibit "RRR(t)"-Vibur-Avertina*. That **Scolari Foundation** was renamed to **Velamo Foundation**. Ferdinand Marcos allegedly ordered on March 11, 1981 the latter's Board of Trustees for the remittance of all assets, securities, time deposits, balances held by Velamo to Bank Hofmann AG, Zurich in favor of Fides Trust Company, Zurich under account "Reference Omal" shown in *Exhibits "SSS" and "UUU"-Vibur-Avertina*.

On the other hand, Chavez claimed that **Spinus Foundation** was registered per Certification dated May 13, 1981 of the Office of Public Register Vaduz, with Dr. Ivo Beck and Limag Management as Board members authorized to sign, marked as *Exhibit "VVV"-Vibur-Avertina*. Documents show it opened an account or safekeeping account in Credit Suisse in a Contract dated September 10, 1981, supplemented by a contract for special arrangements also dated September 10, 1981, and a Letter of Special Instruction of Spinus to Credit Suisse for arrangement of fiduciary deposits, respectively marked as *Exhibit "WWW", "YYY."* And *"ZZZ,"-Vibur-Avertina*. **Spinus Foundation** closed its account from Credit Suisse and remitted the same to **Avertina Foundation** shown in *Exhibits "DDDD" to*

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"GGGG" -Vibur-Avertina, while various placements were made under Avertina account of securities listed, as shown in Exhibits "RRRR" to "TTTT"-Vibur-Avertina.

Allegedly, the **flow chart** identified and marked by Chavez as *Exhibit "EE"* graphically demonstrates the creation, collapse and merging of these foundations towards the design of the Marcos couple to hide their true ownership of these accounts.

That in 1983, Ms. Marcos assisted the Central Bank of the Philippines to access US\$ through investments in Treasury Notes denominated in US dollars issued by the Philippine Republic. Mr. Marcos advised then CB Governor Jaime Laya to expect inward remittances from two (2) Swiss Banks which were actually received by BSP in the amount of US\$200,000,000.00 without any indication as to who the principals were. These remittances were left unclaimed even after the maturity of the Treasury Notes, referenced by *Exhibit "VVVV"-Vibur-Avertina*. This, allegedly, is a circumstantial evidence of Ms. Marcos' intervention.

Chavez also endeavored to show the involvement of Ms. Marcos in the management and administration of **Aguamina Foundation**. The pertinent documents showing the same consist of *Exhibits "B"-CC#22868 & 22870 to Exhibit "X-1" and series- CC#22868 & 22870*. These documents show allegedly the conspiracy, when Mr. and Ms. Marcos jointly decided to enter into a contract with Swiss Credit Bank Zurich in March 1968 for the opening of a current account and/or safe custody account using pseudonyms "*William Saunders*" and "*Jane Ryan*" to conceal their identities. That the Marcoses opened, maintained, expanded and multiplied numerous bank accounts in Switzerland. Through Banque de Paribas, Stephen Cattai was able to create several establishments, viz: **Pretorien, Gladiator, Bullseye, Mabari, Cesar, Gardenia, ESG, Azio and Charis**, to administer, invest and facilitate transfers and disbursements of funds for the benefit of the Marcoses. Mr. and Ms. Marcos allegedly conspired to utilize the services of Michael de Guzman to try to withdraw their dollar deposits in Swiss Banks shortly after the 1986 EDSA Revolution. Through their alleged joint effort, the Marcos couple tried to block the transmittal to the Philippines of bank documents involving **Aguamina Foundation** by appealing to the Federal Swiss Supreme Court the Decision of the Cantonal Magistrate of Fribourg granting the request of the Philippines for mutual assistance on legal matters.

Chavez claimed to have personally examined all the documents pertaining to the Marcos Swiss accounts gathered from the Swiss authorities, as well as those retrieved from Malacañang immediately after the People Power Revolution in February 1986, which he described as "*smoking gun*"

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documents." To supplement his testimony in all of these cases, Chavez executed the following affidavits with corresponding annexes marked as exhibits, to wit:

1. Affidavit dated October 6, 1999⁸¹
2. 1st Supplemental Affidavit dated February 15, 2001 as Exhibit "CC"⁸²
3. 2nd Supplemental Affidavit dated February 16, 2001 as Exhibit "A-Trinidad"⁸³
4. 3rd Supplemental Affidavit dated August 15, 2001 as Exhibit "A-Rayby"⁸⁴
5. 4th Supplemental Affidavit dated April 23, 2002 as Exhibit "A-Palmy"⁸⁵
6. 5th Supplemental Affidavit dated July 25, 2002 as Exhibit "A-Maler"⁸⁶
7. 6th Supplemental Affidavit dated August 2, 2007 as Exhibit "A-Vibur-Avertina" (**Criminal Case No. 22867** Azio-Verso-Vibur Foundation Scolari, Valamo, Spinus Foundation and **Criminal Case No. 22869** Avertina, Xandy, Wintrop, Charis, Vibur-Avertina)⁸⁷
8. Judicial Affidavit dated May 31, 2011 on **Criminal Case No. 22868** re: Aguamina Foundation and **Criminal Case No. 22870** re: Banque de Paribas⁸⁸

The documents lengthily identified by Atty. Chavez in his testimony adjunct to the Judicial Affidavits he executed were as follows, to wit:

1. Exhibits "A-PH-CH MLAT" to "E- PH-CH MLAT" inclusive of sub-markings respecting the Mutual Legal Assistance Treaty between the Philippines and the Swiss Confederation.
2. Common Exhibits "A" to "V," "X" to "Z," "BB" to "DD," inclusive of sub-markings **under the 1st Affidavit of Francisco I. Chavez dated October 6, 1999**
3. Exhibits "A-Trinidad" to "YY-Trinidad" inclusive of sub-markings (Criminal Case No. 17288 with reference to Trinidad Foundation) **under the 2nd Supplemental Affidavit dated February 16, 2001**
4. Exhibits "A-Rayby" to "M-Rayby" inclusive of sub-markings (Criminal Case No. 17289 with reference to Rayby Foundation) **under the 3rd Supplemental Affidavit dated August 15, 2001**

⁸¹ Records, Vol. 4, p. 1118

⁸² Records, Vol. 5, p. 1445

⁸³ Records, Vol. 5, p. 1563

⁸⁴ Records, Vol. 5, p. 1712

⁸⁵ Records, Vol. 5, p. 1850

⁸⁶ Records, Vol. 6, p. 42

⁸⁷ Records, Vol. 8, p. 21

⁸⁸ Records, Vol. 9, p. 230

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5. Exhibits "A-Palmy" to "II-Palmy" inclusive of sub-markings (Criminal Case No. 17290 with reference to Palmy Foundation) **under the 4th Supplemental Affidavit dated April 23, 2002**
6. Exhibits "A-Maler," "C-Maler" to "Y-25(t)-Maler" inclusive of sub-markings (Criminal Case No. 17287 with reference to Maler Foundation) **under the 5th Affidavit Supplemental Affidavit dated July 25, 2002**
7. Exhibits "A-Vibur-Avertina" to "NNNNN-Vibur-Avertina," inclusive of sub-markings (Criminal Cases Nos. 22867 with reference to Azio-Verzo-Vibur Foundations and Criminal Case No. 22869 with reference to Avertina, Xandy, Wintrop, Charis, Scolari, Velamo, Spinus Foundations) **under the 6th Supplemental Affidavit dated August 2, 2007**
8. Exhibits "A-CC# 22868 & 22870" to "X-1-CC# 22868 & 22870" inclusive of sub-markings (Criminal Cases Nos. 22868 and 22870 with reference to Aguamina Foundation and Banque de Paribas, respectively) **under the Judicial Affidavit dated May 31, 2011**

Atty. Chavez likewise alleged that as regards the local company, **Asian Reliability Company, Inc.(ARCI)**, the PCGG documents show that while the said corporation was not registered in the names of Marcoses, they were the beneficial owners thereof over which they had financial interest. That accused Imelda Marcos participated in the management and exercise of discretion in the said corporation through Vicente Chuidian, its President, as attorney-in-fact or dummy of the accused. This is said to be shown by the documents consisting of:

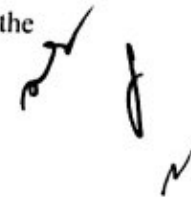
- (1) Letter to Ferdinand Marcos dated January 5, 1984 penned by Antonio Garcia, President of Dynetics Corporation where ARCI owns interest, reporting on the intra-corporate dispute in Dynetics and where it was stated that Vicente Chuidian holds the voting trust of and represents the Marcos in Dynetics thru ARCI, marked as Exhibit "D."
- (2) Memorandum of Vicente Chuidian to Ferdinand Marcos dated January 18, 1984 which was routed to accused Imelda in her capacity as Minister of Human Settlements; Chuidian in the said Memorandum, claimed to have personally spoken to Ms. Marcos who allegedly instructed him to brief Ferdinand of their electronic business, ARCI's revised overall financial plan and financial picture of Dynetics, marked as Exhibit "E."

Aside from these documents, the following PCGG records allegedly show the management and prerogative of Ms. Marcos in the conduct of business of ARCI and Dynetics, who was regularly consulted and briefed

of the operations of ARCI by its officers, made aware of ARCI's profitability, and informed of the management disputes through Vicente Chuidian, to wit:

- (1) Letter to Imelda Marcos of Chuidian dated January 31, 1984 reporting on what he referred to as "*our electronic business*" as Exhibit "F" (ARCI);
- (2) Letter to Ferdinand Marcos by Chuidian dated June 26, 1984 reporting on ARCI business, as Exhibit "G" (ARCI);
- (3) Typewritten translation of the marginal note of Ferdinand on the Memorandum of Cesar Virata, former Prime Minister dated September 27, 1985, as Exhibit "J" to "J-4" (ARCI);
- (4) Transcript of Stenographic Notes of hearing before the PCGG held on June 5, 1984 involving Rosendo Bondoc, Acting President of Philguarantee and stood as its representative in the ARCI Board of Directors as Exhibit "K" (ARCI). Bondoc during said PCGG hearing claimed he knew of the electronics business of the "highest authority" referring to accused Imelda and talked personally with Ferdinand on ARCI; he knew of the estimated cost of the electronic project of ARCI and the cause against Chuidian because of the incurred losses of the government on ARCI's loan, and that he was told by Imelda not to resign from Philguarantee;
- (5) Cesar Virata Affidavit dated February 20, 1992 corroborating the testimony of Rosendo Bondoc concerning the financial interest and management control of Ferdinand and Imelda Marcos on the conduct of business of ARCI and Dynetics as Exhibit "L" (ARCI) and Exhibit "MM" (ARCI); Affidavit of Victor Macalincag, Treasurer of the Republic of the Philippines, dated February 20, 1992 substantiating Virata's Affidavit as Exhibit "M" (ARCI); Joint Supplemental Affidavit of Virata and Macalincag dated April 22, 1992 on the alleged discretion and supervision of Ferdinand Marcos over the affairs of ARCI and Philguarantee as Exhibit "N" (ARCI).

That Ms. Marcos intervened in matters before several offices of the government, such as the Central Bank of the Philippines, for such financial interest in **ARCI** for the grant of behest loans shown in her marginal notes inscribed on the following documents:

- (1) Letter dated August 3, 1982 of Vicente Chuidian to Jaime Laya, CB Governor as Exhibit "A" (ARCI), which states "*To Gov. Laya, We refer for your approval. Thank you. [signed] Imelda Marcos;*" and
 - (2) Memorandum of Chuidian to Guillermo Soliven, Special Assistant to CB Governor dated July 14, 1983 which states "*Gov. J. Laya, I highly recommend the approval of this proposal vital to our development program. Thank you. [signed] Imelda R. Marcos July 30, 1983*" as Exhibit "B" (ARCI) which documents are in the custody of PCGG attested to by the
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Affidavit of Benjamin Alonte of the PCGG dated August 1, 1991, as Exhibit "C" (ARCI).

To supplement his testimony in relation to ARCI, he executed his 8th Supplemental Judicial Affidavit dated May 2, 2012 in Criminal Cases Nos. 17291 and 19225 with attached documents, marked as Exhibits "A" to "MM" (ARCI).

Chavez also claimed that accused Ms. Marcos made several admissions in her *Answer* in the forfeiture proceedings docketed as SB Case No. 0141 before the *First Division*, marked as *Exhibit "Y,"* that she was not only a former Minister of Human Settlements from 1976 to 1986 but also the former Chairman of Metro Manila Commission from 1985 to 1986, which was taken judicial cognizance of by the *Sandiganbayan* as reflected in the Transcript of Stenographic Notes in the said proceeding dated September 7, 1989, marked as *Exhibit "W."* Thus, Chavez claimed that being a member of the Batasang Pambansa and a Cabinet member, Ms. Marcos' participation in the aforementioned Swiss foundations violates RA 3019 Section 3(h) in relation to the 1973 Constitution, Article IX, Section 8 as well as Section 11, Article VIII thereof. That Ms. Marcos' financial interest in ARCI as well as her intervention in the management thereof, taking advantage of her position, by securing the approval of the Central Bank Governor of the US\$25M loan applied for by ARCI and guaranteed by the Philguarantee, likewise constitutes a violation of the same law.

Ambassador Luis Ascalon, former *Charge d' Affaires* and later Ambassador to Switzerland from March 16, 1987 up to April 21, 1992, testified that in his capacity as such, he performed a primary role in the legal assistance proceedings of the Marcos ill-gotten wealth and acted as the conduit between the Philippine authorities and those of the Swiss government. That in giving assistance to the legal proceedings, he employed mechanisms in accordance with diplomatic practice wherein all official representations of the Philippine Government are transmitted by diplomatic notes to the Swiss Federal Department of Justice and Police, and the Philippine Embassy receives and forwards to appropriate Philippine authority official documents and communications which the Swiss government may transmit in the course of the proceedings.

In these cases, he testified that he was receiving official instructions directly from the PCGG, headed by Hon. Jovito R. Salonga, the Office of the Solicitor General, headed by Atty. Frank I. Chavez, and from the designated Swiss Lawyers who were members of the Swiss Parliament in the name of Sergio Salvioni, Dr. Moritz Louemberger and Mr. Guy Fontanet hired by the Philippine government for representation and assistance before the Swiss



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courts. There were occasions when the Republic of the Philippines sent a delegation to Switzerland, headed by Atty. Chavez, to examine the documents pertaining to the Marcos Swiss accounts and confer with Swiss Lawyers and Officials of the Swiss Government. He stated, however, that he did not have the power or authority to pass upon the propriety, validity or legality of such representations.

In his capacity as the then Ambassador to Switzerland, he participated in the process by transmitting some of these documents pertaining to the Marcos Swiss accounts to Atty. Chavez by way of a *diplomatic pouch* under his cover Letters dated December 12, 1991, December 20, 1991 and October 16, 1991, respectively marked as Exhibits "B-1", "B-2" and "B-3." These mentioned documents were turned over to him in a sealed manner and since he does not open and read sealed documents, he presumed that the cover letters enumerate the documents that were contained inside. In relation thereto, two cash vouchers were issued by the Foreign Service of the Republic of the Philippines dated October 27, 1988 and March 1989, one was sent to Solicitor General Chavez and the other one to the Office of the President. Those cash vouchers were intended for the payment of the cost of documents sent by DHL to the Solicitor General of the Philippines on October 18, 1988 and February 17, 1989. The DHL carrier issued two Official Receipts on the transactions.

In support of his testimony, he executed his Judicial Affidavit dated September 24, 2012.⁸⁹

Mr. Jaime Laya, former Governor of the Central Bank of the Philippines (CB) from 1981 to 1984, was presented who testified on his unmarked Judicial Affidavit dated October 10, 2013.⁹⁰ During his incumbency as Head of the CB, the country was experiencing an acute dollar crisis; that CB resorted to the program of floating of treasury notes. The continuing shortfalls in dollar receipts prompted him to seek the assistance of President Marcos and Ms. Marcos in the issuance of Treasury Notes to Filipinos who could possibly have access to USD abroad, asking them to convince Filipino businessmen to generate additional subscriptions to the dollar notes issue.

That sometime in August or September 1983, President Marcos called him to advise that he had called friends in Europe and that he should expect remittances from two (2) Swiss Banks. Funds were subsequently received by the CB from the said Swiss banks amounting to 200 million USD, with no indication of who the principals thereof were. The amounts were left

⁸⁹ Records, Vol. 10, p. 382

⁹⁰ Id., p. 428

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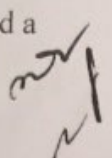
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unclaimed after maturity of the Treasury Notes. The CB also received a Letter dated September 15, 1983 from Jaime Zobel de Ayala, marked as *Exhibit "T-Maler,"* committing to purchase US dollar treasury notes. He identified his Letter to Jose B. Fernandez, then Chairman of the Monetary Board of CB, dated March 12, 1986, marked as *Exhibit "VVVV-Vibur-Avertina,"* where he clarified the IMF findings on the so-called overstatement of the Philippine international reserves in 1983, including the possible interventions therein of then President Marcos and Ms. Marcos, and on CB actions described as "kiting" or the "black market intervention" or "Binondo Central Bank." He likewise pointed to his Memorandum to Ms. Marcos dated October 21, 1983, marked as *Exhibit "W-Maler,"* on the status of Dollar Treasury Note issue, as well as the Treasury Notes issued in 1983, marked as *Exhibit "U"* inclusive of sub-markings.

Mr. Cesar Virata, former Chairman and member of the Board of Directors of Philguarantee from January 31, 1977 until February 26, 1986, testified that he was the Minister of Finance from February 1970 to February 1986 and Prime Minister from July 1981 to March 1986. As Finance Minister, he was the Ex-officio Chairman of Philguarantee beginning 1977. Among his functions as part of the Board was the approval of guarantees in favor of applicants; that ARCI's foreign loan in 1981 in the amount of US\$25 million was approved for the purpose of financing its capital requirements for five (5) interrelated electronic projects, namely: electronics and semi-conductor equipment, manufacture, machine shop, wafer fabrication, precious metal recovery and plating, and a testing facility.

He claimed the projects did not materialize because the funds were used for other purposes. In March 1983, Philguarantee Board learned from its president, Rosendo Bondoc, that ARCI used the proceeds of the loan to purchase shares of stock in local and US based companies in violation of the conditions of the approval of Philguarantee's guarantee. As a result, in May 1985, Philguarantee filed a lawsuit in the Superior Court of California against Mr. Chuidian, ARCI President, and his companies which included ARCI, to recoup the loan proceeds. However, President Ferdinand Marcos told him that the agenda should first be cleared up with him. In September 1985, Philguarantee received a draft of a proposed settlement agreement from a representative of President Marcos, providing for the termination of the lawsuit in California against Chuidian and his companies. The draft was in favor of Chuidian and imposed unacceptable obligations on Philguarantee. The Board, thus, recommended to President Marcos, through a Memorandum dated September 27, 1985, that Philguarantee should not enter into such an agreement, but President Marcos returned the latter with handwritten note instructing him to negotiate with Chuidian and cooperate. Hence, he called a




meeting on September 30, 1985 with the Board of Philguarantee, which decided to draft a counter-settlement requiring from ARCI a restitution to Philguarantee and to authorize Cesar Macuja, a member of its Board, to negotiate the restitution agreement with Chuidian in California. That together with Macalincag and Macuja, he met with Ronaldo Zamora, personal counsel and close confidant of the late President Marcos, who assured them that it would not be a problem for Philguarantee to recover at least US\$8 million in any settlement with Chuidian. That Macuja, accompanied by Zamora, went to California on October 3, 1985 to discuss the settlement with Chuidian. However, Macuja thereafter reported to the Board of Philguarantee that he signed an agreement with Chuidian dated October 5, 1985 without any provision for restitution.

He continued with his testimony, stating the Board decided not to accept the October 5, 1985 agreement which could not be considered binding without any provision for restitution. Thus, he received a call from President Marcos on November 6, 1985 who was very angry that he reneged on the agreement with Chuidian. In a meeting on November 8, 1985, the Board directed Macuja to inform Chuidian that Philguarantee could not be a party to the October 5, 1985 agreement to protect the interests of Philguarantee. The latter allegedly took the following actions, viz: (1) recommended the prosecution of Bondoc and Chuidian, (2) filed a lawsuit against Chuidian and his companies in California, (3) repudiated the October 5, 1985 agreement, (4) sent another team to Chuidian to renegotiate the provisions of the said agreement to ensure that Philguarantee would not be burdened by financial liability. As a result of the renegotiation, a new agreement was entered into on November 27, 1987 which devolved the financial obligations upon Asian Reliability and Dynetics, Inc.

He identified his Affidavits dated February 20, 1992 as Exhibit "L" (ARCI), June 20, 1986 as Exhibit "MM" (ARCI), and Joint Supplemental Affidavit with Victor Macalincag dated April 22, 1992 as Exhibit "N" (ARCI).

Mr. Victor Macalincag corroborated the testimony of Mr. Virata and testified, among others, that he became the Officer-in-Charge of Philguarantee on January 11, 1985 following the suspension of its former President Rosendo Bondoc in view of his complicity with Mr. Chuidian's/ARCI's diversion of the US\$ 25 million loan proceeds guaranteed by Philguarantee. On November 22, 1985, a representative of President Marcos came to see him to inform them that the latter was very angry and that he wanted matters with Chuidian cleared up. That he was shown a list of four (4) instructions from the late President Marcos but can only recall three (3), viz: (1) to withdraw the telex to Chuidian repudiating the October 5, 1985



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agreement; (2) to submit the settlement agreement for judicial confirmation; (3) to send a Philguarantee team to the US to implement the agreement; that the Board was ordered by the late President to abide by the principal terms of the October 5, 1985 agreement, hence, in accordance with his instructions, Philguarantee dispatched a team to San Francisco, California to renegotiate the provisions of the October 5, 1985 agreement. As a result of the renegotiation, the November 27, 1987 agreement was entered into which absolved all its liability to Chuidian, and instead devolved the said obligations upon Dynetics, Inc.

Mr. Macalincag identified his Affidavit dated February 20, 1992 marked as Exhibit "M" (ARCI) inclusive of sub-markings, Joint Supplemental Affidavit with Cesar Virata dated April 22, 1992, marked as Exhibit "N" (ARCI), inclusive of sub-markings.

Evidence for the Defense

On July 14, 2016, the prosecution and the defense stipulated on the authenticity and existence of the Transcript of Stenographic Notes (TSN) of the cross-examination of ASG Cesar del Rosario in Criminal Cases Nos. 91-101732-39, 91-101879-92 & 91-101959-69, entitled *People of the Philippines versus Imelda R. Marcos, et. al.* before the Regional Trial Court, Branch 26, Manila, supposedly to be identified by the intended defense witnesses Jessalee C. Roque and Marites D. Gauran, court stenographers of the Regional Trial Court of Manila, Branch 26. The defense marked the said TSN, to wit: Exhibit "1" - TSN dated September 5, 2006; signature of Marites Gauran as Exhibit "1-a"; TSN dated October 10, 2006 as Exhibit "2"; signature of Jessalee Roque as Exhibit "2-a"; TSN dated November 28, 2006 as Exhibit "3" and signature of Maritess Gauran as Exhibit "3-a."

Issue

The issue in these cases is whether or not the accused, Ms. Marcos, is guilty of ten (10) counts of violation of Republic Act No. 3019, Section 3(h).

Findings and Ruling of the Court

Republic Act No. 3019, Section 3(h) provides:

Section 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x



(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or any law from having any interest.

In *Teves, et. al. vs. Sandiganbayan*,⁹¹ the Supreme Court has laid the essential elements of the crime of violation of Section 3(h) of the Anti-Graft Law as follows:

1. The accused is a public officer;
2. He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction;
3. He either
 - a. intervenes or takes part in his official capacity in connection with such interest; or
 - b. is prohibited from having such interest by the Constitution or by any law.

On the other hand, Section 11, Article VIII of the 1973 Constitution provides, *viz*:

Section 11. No Member of the National Assembly shall appear as counsel before any court inferior to a court with appellate jurisdiction, before any court in any civil case wherein the government, or any subdivision, agency, or instrumentality thereof is the adverse party, or before any administrative body. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by, the government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, during his term of office. He shall not intervene in any matter before any office of the government for his pecuniary benefit. [emphasis supplied]

Further, Section 8, Article IX of the 1973 Constitution provides, *viz*:

Section 8. The Prime Minister and the Members of the cabinet shall be subject to the provisions of sections ten and eleven of Article Eight hereof and may not appear as counsel before any court or administrative body, or participate in the management of any business, or practice any profession. [emphasis supplied]

Basic is the principle in criminal law, that, the evidence presented must be sufficient to prove the *corpus delicti* – the body or substance of the crime and in its primary sense refers to the fact that a crime has been actually

⁹¹ G.R. No. 154182, December 17, 2004



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committed.⁹² To produce conviction, the guilt of the accused must be established by proof beyond reasonable doubt, which however, does not mean such a degree of proof that, excluding the possibility of error produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.⁹³

***The prosecution must rely on the strength
 of its own evidence***

As Ms. Marcos did not present any contrary evidence, it behooves this Court to examine and determine the presence of each and every element constituting the offense charged in the ten (10) *Informations*, by examining the bits and pieces of the evidence for the prosecution. Settled is the legal principle that conviction is never founded on the weakness of the defense but rather always rests on the strength of the prosecution evidence.⁹⁴ The rule of thumb in criminal prosecution is that each and every element of the crime must be proven without reasonable doubt and the burden of proof to do so lies on the prosecution.

The First Element:

That the accused is a public officer

A "public officer" pursuant to RA No. 3019 Section 2(b) "includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government."

Undoubtedly, during the time material to these ten (10) cases, accused Ms. Marcos was a public officer. She was the Minister of Human Settlements from June 1976 to February 1986 and as such a Cabinet Member, which was taken judicial cognizance of in *People of the Philippines vs. Ferdinand Marcos et al* docketed as SB Case No. 0141, *First Division, Sandiganbayan*⁹⁵ Judicial notice of this fact is also reflected in the Transcript of Stenographic Notes in the said proceeding held on September 7, 1989 marked as *Exhibit "W."* Notably in the said case, Ms. Marcos also admitted in her *Answer* paragraph 11 thereof, marked as *Exhibit "Y,"* that she was not only a former Minister of Human Settlements from 1976 to 1986 but also the former Chairman of Metro Manila Commission from 1985 to 1986.

⁹² *People vs. Rentoria*, G.R. No. 175333, September 21, 2007 [533 SCRA 708]

⁹³ Section 2, Rule 133, Rules of Court; *People v. Uy*, 392 Phil. 773, 782-783 (2000)

⁹⁴ *People vs. Salidaga*, GR No. 172323, January 29, 2007; *People v. Tan*, 432 Phil. 171, 199 (2002); *Franco vs. People*, GR No. 191185, February 1, 2016

⁹⁵ TSN, Chavez, November 27, 2000, p. 36-38; *Sandiganbayan Decision in Civil Case No. 0140 as Exhibit "DD" & "DD-6"*; *Answer of Imelda Marcos in Civil Case No. 0141 paragraph 11*

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Being of public knowledge, it is likewise incumbent upon this Court to take judicial notice of such fact, much so that in a pleading Ms. Marcos filed in relation to the instant cases, she admitted she was Metro Manila Governor, which post she held in concurrent capacity as Minister of Human Settlements, and a member of the *Interim Batasang Pambansa* from 1978 to 1984.⁹⁶ An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof, which may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.⁹⁷ Nothing on record belies the admission or that it was made by apparent mistake, hence, conclusive upon the accused. In **Joshua Alfelor vs. Hosefina Halasan**,⁹⁸ it was held:

X x x A party who judicially admits a fact cannot later challenge that fact as judicial admissions are waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party x x x

The first element, therefore, that accused Ms. Marcos must be a public officer is satisfied, she being so from 1976 to 1986, or until she and her husband Ferdinand Marcos, who was then President of the Philippine Republic, were toppled from their respective seats in government.

The Second Element:

**That the accused has a direct or indirect
 financial or pecuniary interest in any
 business, contract, or transaction**

Whether or not the accused, Ms. Marcos, had a direct or indirect financial or pecuniary interest in the various foundations, entities, businesses, contracts, and transactions subject matter of these cases is determined by a review of evidence. Remarkably, the circumstances surrounding the facts of these cases are peculiar, whereby foreign accounts, individuals and entities are involved, one after another, in what is alleged to be a schematic plan or complex pattern of cover up. Though the task of unearthing evidence is inherently difficult in this situation, the prosecution endeavored to prove its case based on testimonies of witnesses who identified documents retrieved from both from foreign and local sources, including those recovered from the Malacañang Palace after the Marcos family went in exile in 1986.

⁹⁶ Motion for Reconsideration dated 18 February 2002, pa. 14, page 2 thereof, Records, Vol. 6-B, p. 12

⁹⁷ *Capangpangan vs. People*, GR No. 150251, November 23, 2007 [583 SCRA 279]; Section 4, Rule 129, Rules of Court

⁹⁸ GR No. 165987, March 31, 2006

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***The documents identified and authenticated
 bear proof of what they purport to be***

The validity of the documents, presented and offered in evidence by the prosecution, passed the scrutiny of the Court.

Identified by witnesses Chavez and Ascalon were the voluminous Swiss documents attached as annexes to the *Certificate of Authentication* by Ma. Fe Pangilinan-Klingert, Philippine Consul to Switzerland, marked as Exhibits "C" to "J" with sub-markings, under various cover Letters transmitted via *diplomatic pouch* to Ambassador Ascalon dated December 12, 1991 marked as Exhibit "B", December 20, 1991 as Exhibit "B-2", October 16, 1991 as Exhibit "B-3." Having been authenticated in accordance with Swiss established legal procedure, the *existence* and *authenticity* of these attached documents retrieved from Swiss banks by Peter Cosandey, are given weight in evidence. The Swiss legal procedure of certifying as to existence of documents was relayed and explained by Chavez and Ascalon, whose testimonies in relation thereto were left un rebutted. Full faith and credit must be given on these documents as they were officially transmitted in pursuance of the Decision rendered by Peter Cosandey dated December 6, 1989,⁹⁹ and affirmed by the Swiss Federal Supreme Court in its Decision dated December 21, 1990.¹⁰⁰ In *Republic vs. Sandiganbayan*,¹⁰¹ the Supreme Court recognized the antecedents of the said Swiss Decision, to wit:

Notably, in April 1986, pursuant to E.O. No. 2, the Republic of the Philippines through the PCGG filed a request for mutual assistance with the Swiss Federal Police Department, under the procedures of the International Mutual Assistance in Criminal Proceedings (IMAC) to freeze the bank deposits of the Marcoses located in Switzerland. IMAC is a domestic statute of Switzerland which generally affords relief to the kind of request from foreign governments or entities as authorized under E.O. No. 2. The various Swiss local authorities concerned granted the request of the Philippine government and ordered the Swiss deposits to be blocked until the competent Philippine court could decide on the matter.

It should be emphasized likewise that since public interest, public policy and the nation's history are deeply rooted in these cases, substantial justice demands that the documents identified by the witnesses, who testified based on record, be considered, unbridled by technicalities.

At any rate, when the documents identified and marked were formally offered by the prosecution, the accused did not interpose any objection thereto, hence, the admissibility in evidence of all the documents presented

⁹⁹ Exhibit "Z", "Z(t)"-Vibur-Avertina

¹⁰⁰ Exhibit "E-Vibur-Avertina"

¹⁰¹ GR No. 152154, July 15, 2003



was favorably ruled upon by this Court when it resolved to admit¹⁰² the prosecution's Consolidated Formal Offer of Documentary Evidence filed on December 3, 2015, there being no opposition from the accused.¹⁰³

Culled from these evidence, testimonial and documentary, hereunder is the Court's determination of the presence or absence of the element of 'pecuniary interest' of Ms. Marcos, in any business, contract or transaction relating to each of the foundations and entities subject of the instant cases.

**Criminal Case No. 17287
(Maler Foundation)**

Here, the financial and pecuniary interest of the accused in Maler Foundation is undoubtedly established.

The Rules and Regulations of then Maler Establishment signed by Ferdinand and Imelda Marcos on October 19, 1968,¹⁰⁴ states among others, that:

"Art. 1. During their lifetime, Mr. Ferdinand E. Marcos or Ms. Imelda R. Marcos will have sole and full right of disposal on 50% each of the aforementioned assets, it being understood that all their orders are to be given to Maler Establishment c/o Swiss Bank Corporation."

Having the full right of disposal of Maler Establishment, Ms. Marcos participated directly or indirectly, in the management of the affairs of the said Establishment. Evidence shows that Mr. Ferdinand and Ms. Imelda Marcos appointed Dr. Andre Barbey and Jean Louis Sunier as attorneys of the company and as administrator and manager of all assets of Maler Establishment, which according to them "we have just bought from Swiss Bank Corporation, Geneva." This is shown in a Letter the Marcos couple signed dated October 19, 1968 addressed to Messrs. Andre Barbey and Jean Louis Sunnier c/o Swiss Bank Corporation, Geneva.¹⁰⁵

In a separate Letter of same date, October 19, 1968, signed by the Marcos couple and addressed to "Maler Establishment c/o Swiss Bank Corporation Geneva,"¹⁰⁶ it was stated –

With reference to the Rules and Regulations addressed today to your company, please note that all instructions to be transmitted to you in the future will be signed with the word **John Lewis** as per specimen given on this letter. These instructions will have to be

¹⁰² Minutes of the Proceedings held on March 14, 2016, Records, Vol. 11, p. 389

¹⁰³ Records, Vol. 11, p. 273

¹⁰⁴ Exhibit "J"-Maler

¹⁰⁵ Exhibit "G"-Maler

¹⁰⁶ Exhibit "I"-Maler

given by letter, it being understood that the word John Lewis will be put at the very end of the message. We expressly declare that this word John Lewis will have the same values as our own personal signature and that full discharge for all responsibility will be given to you for the operations ordered under this name."

Ms. Marcos also mentioned in a Letter signed by her dated October 19, 1968 addressed to "Maler Establishment c/o Swiss Bank Corporation" that:¹⁰⁷

"With reference to the assets we have deposited under No. 134.240 G.M. in the name of your company with Swiss Bank Corporation, Geneva, we wish to confirm the validity of the Rules and Regulations signed today by us. We further declare that each one of us has a 50% right of ownership on these assets."

While Maler Establishment was created on February 5, 1962, at the time when Ms. Marcos was not yet a public officer, evidence shows that Ms. Marcos continued to have her financial interest in the said establishment, and had control over the disposition thereof. In fact, on November 17, 1981 it was converted to Maler Foundation, increasing its capital to SFr 30,000 via a Decision/Resolution of the "*The legal owner, legal founder*," SEDES Trust Company, and appointing Dr. Karlheinz Ritter as Board of the foundation authorized to sign individually.¹⁰⁸ The Articles of Incorporation of Maler Foundation was registered on November 17, 1981,¹⁰⁹ which appears to be the same Articles applied to Maler Establishment registered on February 5, 1962. On February 28, 1984, Maler Foundation transferred the power of attorney for the management of its assets maintained in SBC to Suntrust Investment Co., S.A. under Account 98.929 N.Y Vaduz Liechtenstein, Geneva,¹¹⁰ and under Account 254.508 B.T. Vaduz-Lienchtenstein, Geneva of February 28, 1984.¹¹¹

Circumstantial evidence also shows Ms. Marcos' disposition of the finances of Maler Foundation. In Jaime Laya's Memorandum to Ms. Marcos dated October 21, 1983,¹¹² he asked for help from Ms. Marcos to look for investment in the US dollar treasury notes issue of the Philippines. As a response, Ms. Marcos wrote solicitation letters to various businessmen,¹¹³ which allegedly was taken by the Marcos' Swiss foundations as instruction for them to invest in US dollar denominated notes issue of the Philippines. Placements then came in, including those from (1) Bank Hofmann, Zurich-

¹⁰⁷ Exhibit "H"-Maler

¹⁰⁸ Exhibit "O(t)"-Maler.

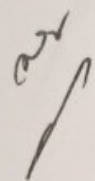
¹⁰⁹ Exhibit "P(t)"-Maler,

¹¹⁰ Exhibit "R"-Maler

¹¹¹ Exhibit "R-2"-Maler.

¹¹² Exhibit "W-2"-Maler, "W-3"-Maler

¹¹³ Exhibit "S"-Maler



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US\$50M (2) SBC-Geneva-US\$10M, and (3) Paribas-Geneva-US\$15M, all under the name of *Roberto Benedicto*, as shown by the (1) Sales Report of the Central Bank of the Philippines on the US\$ Denominated Treasury Notes as of October 4, 1983.¹¹⁴ (2) the Memorandum of Jaime Laya dated October 21, 1983 to Mr. and Ms. Marcos regarding the status of dollar treasury notes indicating the investment of Roberto Benedicto in the amount of US\$75M,¹¹⁵ and (3) another Sales Report of CB as of November 14, 1983 indicating said placement of Roberto Benedicto.¹¹⁶

Maler's investment in the US\$ Treasury Notes appears to be through its account with SBC, Geneva (which had four accounts- 254508-BT for Maler I Foundation and CO-94.678-SB for Maler II Establishment; at the early stage, its account number was CO-134-240-GM and 98929-NY, respectively) shown in the series of Subscription Statements or movement of capital in these accounts.¹¹⁷ These investments earned profits as shown in the (1) Memorandum of the CB Treasury Department dated June 13, 1984¹¹⁸ crediting interests due on June 15, 1984 on US\$ Treasury Notes issued on September 21, 1983 to Bank Hofmann, Zurich (re its placement of US\$50M) and SBC Corporation (re its placement of US\$10M), and in the (2) Memorandum of CB Government Securities Department to the CB Treasury Office re: payment of interest due December 17, 1984.¹¹⁹ Ms. Marcos' interests in the treasury notes investments is shown by her act of directly monitoring its progress.¹²⁰

Criminal Case No.17288
("Trinidad Foundation")

Similar to Maler Foundation, the financial and pecuniary interest of Ms. Marcos in Trinidad Foundation is evident.

Documentary evidence shows that **Trinidad Foundation** was established and managed by Ms. Marcos in Switzerland through her appointed trustees. On August 26, 1970, in Vaduz, Ms. Marcos issued and signed a written Mandate to Mr. Markus Geel to arrange with a Liechtenstein lawyer to establish Trinidad for the account of Ms. Marcos marked as *Exhibit "D"-Trinidad*. It states:

¹¹⁴ Exhibit "W"-Maler,"

¹¹⁵ Exhibit "W-2"-Maler and "W-3-Maler,"

¹¹⁶ Exhibit "W-4"-Maler.

¹¹⁷ Exhibits "X"-Maler and series, "V"-Maler and series

¹¹⁸ Exhibit "W-5"-Maler

¹¹⁹ Exhibit "V"-Maler.

¹²⁰ Exhibits "U"-Maler and "W"-Maler.

"I kindly request you to arrange with a Liechtenstein lawyer or company of your choice for my account and under my personal responsibility the creation of a foundation in Liechtenstein, having its domicile in Triesenberg. The name of the Foundation shall be

TRINIDAD FOUNDATION

I have approved the By-laws and regulations of the foundation and beg you to appoint as Trustees the following persons:

Mr. C.W. Fessler
Mr. E. Scheller
Dr. Otto A. Tondury

I finally instruct you to fully pay the capital of the Foundation, amounting to Sw.Fr.100'000—and to debit my account with this sum as well as with all your expenses in connection with the creation of the Foundation included a remuneration for your services.

Yours faithfully,

Imelda Romualdez Marcos (sgd)

The Statutes of Trinidad Foundation of August 28, 1970 signed by Ms. Marcos¹²¹ shows that it had for its purpose "*the investment and administration of the Foundation's assets and the utilization of the capital and interest in favor of the persons specified in separate Regulations.*" In the Regulations of Trinidad Foundation dated August 28, 1970 signed by both Markus Geel and Ms. Marcos in Zurich,¹²² Ms. Marcos was named as the first beneficiary during her lifetime while her children, Imelda (Imee), Ferdinand Jr. (Bongbong) and Irene were named as second beneficiaries in equal shares. The "Agreement" of even date¹²³ was signed by and between Ms. Marcos and Mr. Markus Geel constituting a mandator/mandatory relationship pertinent to Trinidad Foundation, whereby Mr. Geel as mandatory would act in conformity with the instructions given by Ms. Marcos, as mandatory. Ms. Marcos' financial interest and participation in the management of Trinidad Foundation are also shown in another Agreement between Ms. Marcos, as mandator, and Mr. C Walter Fessler/Mr. Ernest Scheller, as mandatory, dated August 28, 1970.¹²⁴

¹²¹ Exhibit "E"-Trinidad

¹²² Exhibit "F" to "F-3"-Trinidad

¹²³ Exhibit "G"-Trinidad

¹²⁴ Exhibit "H"-Trinidad

Again, while Trinidad Foundation was created at the time when Ms. Marcos was not yet a public officer, she maintained her financial interests therein and continued to managed its affairs up to its dissolution.

In a Letter signed by Ms. Marcos to the Board of Trustees of Trinidad Foundation dated March 10, 1981,¹²⁵ she instructed it to remit to Bank Hofmann, Zurich, "all assets, securities, time deposits and balances presently held in Trinidad Foundation, as a final distribution of Trinidad Foundation, which is to be liquidated thereafter," in favor of Fides Trust Company, Zurich, for the account "*Reference Dido*". She wrote—

"I have taken note of the accounts and of the investments as well as of the activities of Trinidad Foundation regarding the period from its constitution up to this date.

I approve the accounts and all additional statements without any reservation, and I release the executives and officers as well as all other persons who took part in the management of the company's affairs or in the administration of the company's assets for their activities during this period."

Yours faithfully,

Imelda Romualdez Marcos (sgd)

Prior to Trinidad's dissolution in accordance with the foregoing directive of Ms. Marcos, various Credit and Debit Advices and Statements of Accounts pertaining to Trinidad Foundation show the movement of capital of the said foundation.¹²⁶ As certified to by the Office of the Public Register/Record Vaduz dated August 12, 1981,¹²⁷ Trinidad Foundation was accordingly dissolved in line with the decision/resolution of the Board of the foundation dated August 3, 1981.

**Criminal Case No. 17289
("Rayby Foundation")**

The financial interest of Ms. Marcos over Rayby Foundation is also apparent from the documents presented by the prosecution.

Primarily, in an undated Letter signed by Ms. Marcos addressed to Mr. Theo Bertheau,¹²⁸ she mandated the latter to establish Rayby Foundation with a note that its capitalization and costs be debited against the account of Trinidad Foundation. She stated:

¹²⁵ Exhibit "I"-Trinidad,

¹²⁶ Exhibits "K" to "YY"-Trinidad

¹²⁷ Exhibit "J"-Trinidad,

¹²⁸ Exhibit "C"- Rayby

"I kindly request you to arrange through an appropriate Liechtenstein intermediary for my account and under my personal responsibility the creation of a Foundation in Liechtenstein, having domicile in Vaduz. The name of the foundation shall be

RAYBY- FOUNDATION

I have approved the By-laws; a copy of them, signed by me, is attached hereto. Please take care that the following gentlemen are appointed as members of the Foundation's Council"

1. Mr. C.W. Fessler
2. 2. Mr. E. Scheller
3. 3. Mr. F.W. Schweizer

I further instruct you to fully pay the capital of the Foundation, amounting to Sw.Frs 100'000.--, and to debit the US-Dollar account of Trinidad foundation with this sum as well as with all your expenses and fees in connection with the creation of the captioned Foundation. Moreover, I request you to transfer securities for the equivalent of US-dollar 1 Mil. From the safekeeping account of Trinidad Foundation to a new safekeeping account in the name of the new Foundation.

Yours faithfully,

Imelda Romualdez Marcos (sgd)

The certifications issued by the District Court Chancery of Liechtenstein Vaduz dated June 22, 1973¹²⁹ and July 2, 1973¹³⁰ confirm the establishment of Rayby Foundation on June 22, 1973 with the same personalities - Fessler, Sheller and Ritter as members of the Board of Directors, and FW Schweizer as additional director.

In the Agreement of June 22, 1973 signed by and between Ms. Marcos and Mr. Theo Bertheau,¹³¹ Ms. Marcos as mandator constituted Mr. Bertheau as mandatory, who had the following function, viz:

"x x x undertakes to exercise the functions of the founder only in accordance with such instructions as he may receive from the mandatory in person or from an intermediary duly introduced by written power of attorney."

As mandator, Ms. Marcos in the same Agreement undertook the following, viz:

¹²⁹ Exhibit "D(t)"-Rayby

¹³⁰ Exhibit "E(t)"-Rayby

¹³¹ Exhibit "F"-Rayby

Handwritten signature and initials in the bottom right corner of the page.

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" x x x assumes full responsibility for all the acts and dispositions of the mandatary deriving from the mandate x x x."

Another agreement with similar provisions was signed on June 22, 1973 between Ms. Marcos, as mandator, and Mr. C.W. Fessler, Mr. E. Scheller, Mr. F.W. Schweizer, as mandataries who were staff members of Swiss Credit Bank.¹³² The By-laws of Rayby Foundation marked as *Exhibit "H"-Rayby*, was signed by Ms. Marcos. Article 7 thereof shows the extent of control of Ms. Marcos over Rayby Foundation via its "founder", to wit:

"The founder is authorized to amend or modify the Deed of foundation or these By-laws and to issue supplementary provisions to these by-laws in the form of Regulations.

He appoints the beneficiaries and decides the extent of their benefit.

He appoints and removes the members of the Foundation's Council.

He is authorized to dissolve the Foundation.

The founder may transfer all these powers to a third party whom he designates in a Deed of Appointment. The third party has the right to further transfer the powers on other persons.

X x x"

Ms. Marcos' pecuniary interest in Rayby Foundation is further shown in the Regulations of Rayby Foundation dated June 22, 1973¹³³ signed by Mr. Theo Bertheau, whereby the latter designated Ms. Marcos as its "first and only beneficiary x x x during her lifetime."

It appears that Rayby Foundation was created to where the assets of Trinidad Foundation would be transferred. The transfer did not take place because on March 10, 1981, in Manila, Ms. Marcos signed and issued a written order to the Board of Trustees of Rayby, thru a Letter¹³⁴ directing the transfer to Trinidad Foundation, for its account with Credit Suisse, Zurich (SKA) any assets and balances held by Rayby, and to subsequently liquidate Rayby. Correlatively on even date, Ms. Marcos ordered the Board of Trinidad Foundation to dissolve Rayby and transfer all its assets to Bank of Hofmann in favor of Fides Trust Co. under the account "*Reference Dido*."¹³⁵ In accordance therewith, SKA issued Debit Advice on June 12, 1981 debiting the amount of SFR 8,572.50 from Rayby Foundation G 19 Current Account 403031-01,¹³⁶ and crediting on the same day SFR 8,572.50 to Trinidad

¹³² Exhibit "G"-Rayby

¹³³ Exhibit "I"-Rayby

¹³⁴ Exhibit "J"-Rayby

¹³⁵ Exhibit "I"-Trinidad.

¹³⁶ Exhibit "K"-Rayby

Foundation G 19 Current Account 463498-41.¹³⁷ In accordance with the aforesaid directive of Ms. Marcos, Rayby Foundation was dissolved on April 6, 1981, as shown in the Certification from the Office of the Public Register, Vaduz.¹³⁸

Ms. Marcos' hand in the establishment, control and dissolution of Rayby Foundation, as borne by the foregoing documentary evidence, highly sustains her pecuniary interest in the said foundation.

Criminal Case No. 172890
("Palmy Foundation")

The documents presented pertinent to Palmy Foundation, woven together, likewise prove that it belongs to Ms. Marcos.

The Certification of Public Registry Office, Vaduz dated March 19, 2002¹³⁹ shows that Palmy Foundation was created on May 13, 1981, whereby the following persons were given the "joint authority to sign," viz: Dr. Ivo Beck, and Limag Management & Administration AG, Vaduz, while "*Gestionsanstalt, Vaduz*" was authorized as legal representative. *Exhibit "D" and "E"-Palmy* shows that on September 10, 1981, Palmy Foundation, represented by Limag Management, entered into a Contract for the opening of an account and/or safekeeping account with Credit Suisse (Swiss Credit Bank) to be credited in the name *Palmy Stiftung Vaduz G9* with all its correspondence pertinent to the said account to be mailed to Fides Trust Co., a member of the Board of Directors of Palmy Foundation. Ms. Marcos' financial interests in Palmy is circumstantially linked to her earlier order shown in *Exhibit "I"-Trinidad*, directing Trinidad Foundation to dissolve Rayby Foundation and transfer all its assets to Bank of Hofmann in favor of Fides Trust Co. under the account "*Reference Dido*." In the handwritten letter dated November 27, 1981 of Ferdinand Marcos to the Board of Trustees of Avertina Foundation,¹⁴⁰ an instruction was given for the latter to place US\$2M at the disposal of Imelda Marcos, who in turn, ordered that the said amount be credited to Palmy Foundation.

It is worth noting that in a Decision rendered by Magistrate Peter Cosandey dated December 6, 1989 marked as *Exhibits "Z" and "Z(t)-Palmy*," Palmy Foundation was one of the subjects of the *Petition for Legal Assistance* by the Philippine Government filed on April 7, 1986 by its

¹³⁷ Exhibit "L"-Rayby

¹³⁸ Exhibit "M(t)"-Rayby

¹³⁹ Exhibit "I(t)"-Palmy

¹⁴⁰ Exhibit "CC"-Palmy

hired legal counsels - Fontanet and Salvioni. The pertinent portions of said Decision states that –

“x x x

The Palmy Foundation was established on May 13, 1981 in Vaduz (Doc. No. 24007). Atty. Ivo Beck of Vaduz and the LIMAG Management and Administrative Corporation of Vaduz were named members of the Foundation's Board of Trustees. The account was officially opened with Credit Suisse on September 10, 1981. (Doc. No. 24000-24004). The beneficial owner of the foundation was not made known to the bank since the Fides Trust Company acted as fiduciary (Doc. No. 24005-24006).

“The records available at the Credit Suisse do not show who the beneficial owner of the Palmy Foundation is. However, when one compares the listing of the securities in the safe deposit register of Trinidad Foundation as of December 31, 1981 (Doc. No. 24229-24233), one can clearly see that practically the same securities are listed. This can likewise be observed with the rest of the foundations under new names. Under the circumstances, it is certain that Palmy Foundation is the beneficial successor of the Trinidad foundation. [underscoring supplied]

“It is clearly seen from the documents cited above that all three foundations named belong to Imelda Marcos and from at least a quasi-legal and financial entity, which justifies ruling on the further use of the bank documents and the assets of the foundations in a single unified Order.

“b) The Palmy Foundation at the very least is directly connected to the Petition for Legal Assistance. It is named in the Petition and in the Memorandum of the Legal Counsels Fontanet and Salvioni dated April 25, 1986 (act.2.3.2. Clause 58). It is also one of the subjects of the failed partial release of assets in July 1986. Further mention is made of the Palmy Foundation, among others, in the Preliminary Report on the Marcos Accounts in Switzerland submitted by the Financial Monitoring Team on May 23, 1988 (act. 2.3.76), where it is stated in the appendix, that this Foundation is under the direct and sole beneficial ownership of Imelda Marcos.”

As stated earlier, the Decision of Zurich Magistrate Cosandey dated December 6, 1989 ruled in favor of the Philippine Government and the appeal therefrom to Swiss Federal Supreme Court by the Marcoses was denied in a Sentence of the Swiss Federal Court dated December 21, 1990.

By and large, any doubt on Ms. Marcos' interest in Palmy is obliterated by a “Declaration” dated April 11, 1989¹⁴¹ of Dr. Ivo Beck, who was given the authority to sign for Palmy Foundation, stating that the beneficial owner of Palmy Foundation, holder of Account No. 391528 was Ms. Imelda Marcos

¹⁴¹ Exhibit “DD”-Palmy

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of Malacañang, Manila, Philippines. Another document signed by G. Raber dated September 30, 1988, marked as *Exhibit "EE"-Palmy* shows that Palmy, holder of Account No. 391528-9 was owned by the "Marcos Familie."

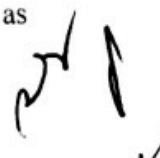
This evidence clearly leads to the inevitable conclusion of Ms. Marcos' pecuniary interest in Palmy foundation.

**Criminal Cases Nos. 17291 ("Asian Reliability Loan")
and 19225 ("Asian Reliability Company, Inc.")**

The facts underlying these two (2) cases are intertwined, thus, the alleged pecuniary interest of Ms. Marcos in Asian Reliability Company, Inc.(ARCI) and in the loans applied for by ARCI, the subject of these cases, shall be jointly discussed.

In Criminal Case No. 19225, Ms. Marcos allegedly had financial interest in the said corporation as part owner thereof, which she acquired sometime in 1980, while in Criminal Case No. 17291, Ms. Marcos purportedly intervened in the opening, managing, and/or administering its business venture by securing and recommending the approval of Central Bank Governor Jaime C. Laya for ARCI's applied \$25M loan for its semiconductor projects guaranteed by the Philippine Guarantee Corporation (PHILGUARANTEE).

Although nothing from the record shows that the said local corporation was registered in the name of Ms. Marcos, her beneficial ownership as part owner of ARCI is circumstantially shown by the fact that Mr. and Ms. Marcos have been regularly consulted and briefed of the operations of ARCI, made aware of the profitability of its business projects, and even informed them of the management disputes within ARCI, viz:

1. Letter to Ferdinand Marcos dated January 5, 1984 penned by Antonio Garcia, President of Dynetics Corporation where ARCI owns interest, reporting on the intra-corporate dispute in Dynetics and where it was stated that Vicente Chuidian holds the voting trust of and represents the Marcoses in Dynetics thru ARCI, marked as Exhibit "D."
 2. Memorandum of Vicente Chuidian to Ferdinand Marcos dated January 18, 1984 which was routed to accused Imelda in her capacity as Minister of Human Settlements; Chuidian claims to have personally spoken to Ms. Marcos who instructed him to brief Ferdinand of their electronic business, ARCI's revised overall financial plan and financial picture of Dynetics, as Exhibit "E."
 3. Letter to Imelda Marcos of Chuidian dated January 31, 1984 reporting on what he referred to as "our electronic business" as Exhibit "F" (ARCI);
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4. Letter to Ferdinand Marcos by Chuidian dated June 26, 1984 reporting on ARCI business, as Exhibit "G" (ARCI);
5. Typewritten translation of the marginal note of Ferdinand on the Memorandum of Cesar Virata, former Prime Minister dated September 27, 1985, as Exhibit "J" to "J-4" (ARCI).

The pecuniary interest of the Marcoses in ARCI is sustained by witness Rosendo Bondoc, Acting President of Philguarantee who stood as its representative in ARCI's Board. In the Transcript of Stenographic Notes¹⁴² of hearing before the PCGG held on June 5, 1986 involving Bondoc, he stated that he knew of the electronics business of the "highest authority" referring to Mr. and Ms. Marcos, and that he talked personally with Mr. Ferdinand Marcos on ARCI. He knew of the estimated cost of the electronic project of ARCI and of Philguarantee's case against Chuidian because of the incurred losses of the government on ARCI's loan. And that he was told by Ms. Marcos not to resign from Philguarantee.

In his testimony and Affidavit¹⁴³ dated February 20, 1992, Cesar Virata corroborated the testimony of Rosendo Bondoc concerning the financial interest of Ferdinand and Imelda Marcos on the conduct of business of ARCI and Dynetics. Victor Macalincag, Treasurer of the Republic of the Philippines, also testified on his Affidavit¹⁴⁴ dated February 20, 1992 substantiating Virata's testimony. They executed a Joint Supplemental Affidavit¹⁴⁵ dated April 22, 1992 affirming the discretion and supervision of Ferdinand Marcos over the affairs of ARCI and Philguarantee. By logical assumption from the foregoing evidence, Mr. and Ms. Marcos, to whom the registered officers of ARCI regularly reported to as regards ARCI operations and profitability, undoubtedly had beneficial interests in ARCI.

Corollary thereto, Ms. Marcos' intervention in facilitating and securing from the Central Bank of the Philippines, thru then Governor Jaime C. Laya, the grant of ARCI's applied US\$25M loan for its electronic projects guaranteed by the Philguarantee, is necessarily tainted by some pecuniary interests. Proof of said intervention consists of the Letter dated August 3, 1982 of Vicente Chuidian to Jaime Laya,¹⁴⁶ bearing Ms. Marcos' marginal note who wrote:

*"To Gov. Laya, We refer for your approval. Thank you,
 [signed] Imelda Marcos;"*

(sgd) Imelda Marcos



¹⁴² Exhibit "K" (ARCI)

¹⁴³ Exhibit "L" (ARCI) and Exhibit "MM" (ARCI);

¹⁴⁴ Exhibit "M" (ARCI)

¹⁴⁵ Exhibit "N" (ARCI)

¹⁴⁶ Exhibit "A" (ARCI)

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Proving a similar point is the Memorandum¹⁴⁷ of Chuidian to Guillermo Soliven, Special Assistant to CB Governor dated July 14, 1983 also bearing Ms. Marcos' marginal note, which states:

"Gov. J. Laya, I highly recommend the approval of this proposal vital to our development program. Thank you. [signed] Imelda R. Marcos July 30, 1983"

(sgd) Imelda Marcos

On this score, the Court is more than convinced of Ms. Marcos' pecuniary interest in ARCI, who intervened in facilitating the grant of ARCI's applied loan from the Central Bank. This is corroborated by the affirmative testimonies of witnesses Laya, Virata and Macalincag, which are credible, they being competent officers who were privy to the subject transactions of Ms. Marcos relating to ARCI, and who were not shown to have any motive to perjure.

Notably, when confronted with these allegations and evidence, Ms. Marcos chose to remain silent and did not even testify. This is contrary to the actuation of an innocent person who normally would stand and rise up to his defense when challenged by incriminating assertions as in these cases.

Criminal Case No. 22867
("Azio-Verzo-Vibur Foundations")

Criminal Case No. 22869
("Avertina Foundation comprised of two (2) groups of foundations –
[1] Xandy/Wintrop Foundations and
[2] Charis/Scolari/Valamo/ Spinus Foundations")

Ms. Marcos' pecuniary interest in these foundations are herein discussed jointly, considering that by evidence, the creation and collapse of the aforementioned foundations subject of Criminal Cases Nos. 22867 and 22869 appear to be interrelated.

The *Informations* for these cases basically allege that Ms. Marcos had direct or indirect financial interests, and participated in the management of the abovementioned foundations, which she and her husband utilized as a conduit in the funneling of ill-gotten wealth, by opening and maintaining bank accounts with SKA or Credit Swiss Bank or Swiss Credit Bank Corporation

¹⁴⁷ Exhibit "B" (ARCI)



(SBC) in the name of these foundations for the benefit of Ms. Marcos, her late husband Ferdinand, and their children.

Mr. Marcos' pecuniary interest in these foundations is evident from the documents, where she was categorically shown to have employed the same pattern of intervention she and her husband perpetrated in the management of Maler, Trinidad, Rayby and Palmy foundations, for the benefit of the Marcos family.

A trace back of documents reveal that **Vibur Foundation** was former **Verzo Foundation**, which in turn was previously named **Azio Foundation**.

On June 11, 1971, Mr. Marcos requested Dr. Theo Bertheau for the creation of **Azio Foundation** in Vaduz.¹⁴⁸ Mr. Marcos executed a Power of Attorney¹⁴⁹ appointing Roberto S. Benedicto as his attorney-in-fact with respect to Azio Foundation. In the Regulations of Azio dated June 11, 1971 signed by Mr. Marcos in Manila,¹⁵⁰ he named himself as the first beneficiary of Azio and the "*Marcos Foundation, Inc., Manila*" as the second beneficiary. Dr. Theo Bertheau accordingly signed and issued in Zurich on June 23, 1971 the said Regulations¹⁵¹ bearing the instruction of Mr. Marcos. Later, in his handwritten Letter dated November 12, 1971,¹⁵² Mr. Marcos ordered Azio Foundation to name Austraphil PTY Ltd. Co. as the first and only beneficiary of Azio Foundation, which Dr. Theo Bertheau followed by signing the Regulations of Azio in Zurich dated December 14, 1971¹⁵³ bearing the same directive of Mr. Marcos.

In a handwritten Letter signed by Mr. Marcos dated December 14, 1971,¹⁵⁴ he canceled the existing Regulations of Azio and named **Charis Foundation** as first and only beneficiary. This is also shown in Azio's Regulations signed by Dr. Theo Bertheau dated December 4, 1972.¹⁵⁵

In the Resolution of the Legal Founder of Azio dated August 29, 1978,¹⁵⁶ the company name of **Azio Foundation** was changed to **Verzo Foundation**.¹⁵⁷ Dr. Helmuth M. Merlin, Walter C. Fessler and Ernst Sheller were authorized to sign and issue orders for Verzo Foundation.¹⁵⁸ The Letter of Mr. Marcos to Verzo's Board of Directors dated March 11, 1981

¹⁴⁸ Letter dated June 11, 1971 as Exhibit "F"-Vibur-Avertina

¹⁴⁹ Exhibit "G"-Vibur-Avertina

¹⁵⁰ Exhibit "I"-Vibur-Avertina

¹⁵¹ Exhibit "J"-Vibur-Avertina

¹⁵² Exhibit "K"-Vibur-Avertina

¹⁵³ Exhibit "L"-Vibur-Avertina

¹⁵⁴ Exhibit "M"-Vibur-Avertina

¹⁵⁵ Exhibit "N"-Vibur-Avertina

¹⁵⁶ Exhibit "O(t)"-Vibur-Avertina

¹⁵⁷ Exhibit "O(t)"-Vibur-Avertina

¹⁵⁸ Exhibit "P(t)"-Vibur-Avertina.

requested to remit all assets, securities, time deposits and balances of Verzo to Bank Hofmann AG Zurich in favor of Fides Trust Company Zurich.¹⁵⁹

The Office of the Public Register, Vaduz certified ¹⁶⁰ that **Vibur Foundation** was registered in Vaduz on May 13, 1981 with Dr. Ivo Beck and Limag Management as its Board members. The Board opened an account in Credit Suisse Bank via a Contract dated September 10, 1981.¹⁶¹ As shown earlier, Dr. Ivo Beck, and Limag Management were the same signing authorities relative to Palmy Foundation account¹⁶² in which Ms. Marcos had financial interest. Fiduciary time deposits and deposit of securities of **Vibur Foundation** were also arranged on September 10, 1981 and September 12, 1981.¹⁶³ On March 18, 1986, **Vibur Foundation** was dissolved in a Resolution of its Board signed by Dr. Ivo Beck on behalf of Limag Management.¹⁶⁴ In the "Declaration" for opening an account or securities account no. 467857-5 of Vibur Foundation dated April 11, 1989 signed by Dr. Ivo Beck, it named Ferdinand Marcos as beneficial owner.¹⁶⁵ The "Classification Note: Confidential" signed by G. Raber on behalf of Vibur Foundation, dated September 30, 1988, reference to said account no. 467857-5 named **Marcos Family** as the owner.¹⁶⁶

From the foregoing, the pecuniary interest of Ms. Marcos in **Vibur Foundation** has sufficient documentary basis. Her financial interests in Vibur is categorically shown in the handwritten letter of Mr. Marcos¹⁶⁷ addressed to Credit Suisse, Zurich, where he ordered the closure of accounts of Vibur with Suisse Credit Bank and transfer its assets to:

"Xandy Foundation:

Mrs. Jane Ryan
Mr. William Saunders
Mr. Ferdinand E. Marcos"

Basically, the names "**William Saunders**" and "**Jane Ryan**" under Xandy Foundation referred to Ferdinand Marcos and Imelda Marcos, respectively. It was shown that earlier contracts and documents executed and signed by Mr. Marcos and Ms. Marcos in 1968 for the opening of current

¹⁵⁹ Exhibit "Q"-Vibur-Avertina.

¹⁶⁰ Exhibits "R(t)"-Vibur-Avertina

¹⁶¹ Exhibit "S"-Vibur-Avertina; Exhibit "S-7"-Vibur-Avertina.

¹⁶² Exhibit "I(t)"-Palmy

¹⁶³ Exhibits "S-9" and "T"-Vibur-Avertina

¹⁶⁴ Exhibit "W-(t)"-Vibur-Avertina.

¹⁶⁵ Exhibit "Z"-Vibur-Avertina

¹⁶⁶ Exhibit "AA(t)"-Vibur-Avertina

¹⁶⁷ Exhibits "HH-Vibur-Avertina."

account/safe custody with Credit Suisse used said pseudonyms.¹⁶⁸ Ms. Marcos as "Jane Ryan" constituted Mr. Marcos as her lawful attorney to represent her in Swiss Credit Bank as per Power of Attorney dated March 21, 1968.¹⁶⁹

On the other hand, it was Mr. Marcos and Ms. Marcos thru their Letter¹⁷⁰ to Mr. Markus Geel dated March 3, 1970, who instructed the creation of **Xandy Foundation**. The Letter states:

Dear Sir,

I kindly request you to arrange with a Liechtenstein lawyer or company of your choice for my account and under my personal responsibility the creation of a Foundation in Liechtenstein, having its domicile in Vaduz. The name of the Foundation shall be SANDY FOUNDATION

I have approved the By-laws and regulations of the Foundation and beg you to appoint as Trustees the following persons:

Mr. C.W. Fessler
Mr. C. Souviron
Mr. E. Sheller

I finally instruct you to fully pay the capital of the Foundation, amounting to Sw.Fr. 100'000. - and to debit my account with this sum as well as with all your expenses in connection with the creation of the Foundation included a remuneration for your services.

Yours faithfully,

(sgd) Ferdinand E. Marcos
(sgd) Imelda R. Marcos

Mr. and Ms. Marcos prepared and signed the handwritten "Regulations of Sandy Foundation" dated February 13, 1970¹⁷¹ where the said spouses were named as the first beneficiaries, the surviving spouse as the second beneficiary and the Marcos children as the third beneficiaries. The typewritten version of the said Regulation was signed by Mr. Markus Geel.¹⁷²

Later, the company name of Xandy Foundation Vaduz was changed to **Wintrop Foundation**, Vaduz.¹⁷³ with C.W. Fessler, Dr. Helmuth Merlin, C. Souviron and E. Scheller as authorized signatories of Wintrop.¹⁷⁴ In their

¹⁶⁸ Exhibit "CC"-Vibur-Avertina; Exhibit "DD"-Vibur-Avertina; Exhibit "EE"-Vibur-Avertina; Exhibit "FF"-Vibur-Avertina; Exhibit "GG"-6"

¹⁶⁹ Exhibit "GG" Vibur-Avertina.

¹⁷⁰ Exhibit "JJ"-Vibur-Avertina

¹⁷¹ Exhibit "KK"-Vibur-Avertina

¹⁷² Exhibit "LL"-Vibur-Avertina.

¹⁷³ Certification by the Office of Public Record Vaduz dated September 7, 1978 as Exhibit MM(t)-Vibur-Avertina

¹⁷⁴ Exhibit "NN"-Vibur-Avertina.

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Letter to the Board of Trustees of Wintrop Foundation dated March 10, 1981,¹⁷⁵ Mr. and Ms. Marcos stated:

"Gentlemen:

We request you to kindly remit to
 Bank Hofmann AG, Zurich
 in favor of Fides Trust Company, Zurich
 attn. Mr. Rychner
 for account: "Reference Port, Rubrique R + Rubrique S
 respectively", (sic)

all assets, securities, time deposits xxx presently held in Wintrop Foundation, x x x as a final distribution of Wintrop Foundation, which is to be liquidated thereafter.

We have taken note of the accounts and of the investments as well as of the activities of

WINTROP FOUNDATION

regarding the period from its constitution up to this date.

We approve the accounts and all additional statements without any reservation, and we release the executives and officers as well as all other persons who took part in the management of the company's affairs or in the administration of the company's assets for their activities during this period.

Yours very truly,
 (sgd) Ferdinand Marcos
 (sgd) Imelda Marcos"

Meanwhile, a Certification from Vaduz Public Register dated May 13, 1981 shows **Avertina Foundation** was registered with Dr. Ivo Beck in Vaduz and Limag Management as members of the Board.¹⁷⁶ It opened its account, safekeeping accounts, deposit of securities or renting of safety deposit box with Suisse Bank.¹⁷⁷ The beneficial owners of Avertina accounts were Ferdinand Marcos and Imelda Marcos, named in the "Declaration on opening an account or securities account" reference: 211925 dated April 11, 1989¹⁷⁸ by Dr. Ivo Beck, as representative of the account holder.

Along the same scheme of transferring accounts and assets from one foundation to another, Mr. Marcos wrote Dr. Theo Bertheau an undated letter¹⁷⁹ where he requested to arrange for the creation of **Charis Foundation**

¹⁷⁵ Exhibit "OO"-Vibur-Avertina

¹⁷⁶ Exhibit "PP(t)"-Vibur-Avertina

¹⁷⁷ Exhibits "QQ", "RR", "SS", "TT", "UU", "VV", "WW", "XX", "YY", "ZZ" and "AAA"-Vibur-Avertina.

¹⁷⁸ Exhibit "HHH"-Vibur-Avertina

¹⁷⁹ Exhibit "KKK"-Vibur-Avertina

and to name C.W. Fessler, E. Scheller and Peter Ritter as members of the Board. The Agreement¹⁸⁰ was signed between Mr. Marcos as mandator, with C.W. Fessler and E. Scheller as mandataries of **Charis Foundation Zurich** dated November 12, 1971, which further constituted a special power of attorney in favor of Roberto Benedicto as his representative in the Council of Charis.¹⁸¹ In his hand printed regulation¹⁸² of Charis dated November 12, 1971 signed by Mr. Marcos, he named himself as first beneficiary and Xandy Foundation as second beneficiary. The Regulations of Charis issued in accordance therewith by Dr. Bertheau on December 30, 1971¹⁸³ named Mr. Marcos as first beneficiary and Xandy Foundation as second beneficiary.

The pattern of changing the names of the foundations continued, viz: (1) the company name of Charis Foundation was changed to **Scolari Foundation** on December 13, 1974 shown in the Certification of Liechtenstein, District Court Chancery¹⁸⁴ and the Certification by Public Register of Vaduz of even date.¹⁸⁵ Notably, the same personalities - C.W. Fessler, Peter Ritter and E. Scheller - were constituted as members of the Board of Scolari.¹⁸⁶ (2) Scolari Foundation was renamed to **Velamo Foundation** on August 29, 1978¹⁸⁷ constituting the same C.Walter Fessler, Dr. Peter Ritter and Ernst Scheller as board members.¹⁸⁸ Mr. Marcos ordered on March 11, 1981 the latter's Board of Trustees for the remittance of all assets, securities, time deposits, balances held by Velamo to Bank Hofmann AG, Zurich in favor of Fides Trust Company, Zurich under account "Reference Omal."¹⁸⁹

It was also shown that **Spinus Foundation** was registered on May 13, 1981 per Certification of same date of the Office of Public Register Vaduz with familiar personalities, Dr. Ivo Beck and Limag Management, as Board members authorized to sign.¹⁹⁰ It opened an account or safekeeping account in Credit Suisse shown in a Contract dated September 10, 1981,¹⁹¹ with Special arrangements supplementing the contract dated September 10, 1981 and Letter of Special Instruction of Spinus to Credit Suisse for arrangement of fiduciary deposits.¹⁹² **Spinus Foundation** closed

¹⁸⁰ Exhibit "LLL"-Vibur-Avertina

¹⁸¹ Exhibit "MMM" and "PPP"-Vibur-Avertina

¹⁸² Exhibit "NNN"-Vibur-Avertina

¹⁸³ Exhibit "OOO"-Vibur-Avertina

¹⁸⁴ Exhibit "QQQ"-Vibur-Avertina & Exhibit "QQQ"-Vibur-Avertina

¹⁸⁵ Exhibit "SSS"-Vibur-Avertina

¹⁸⁶ Exhibit "RRR(t)"-Vibur-Avertina

¹⁸⁷ Exhibits "SSS" and "UUU"-Vibur-Avertina

¹⁸⁸ Exhibit "TTT"-Vibur-Avertina

¹⁸⁹ Exhibit "UUU"-Vibur-Avertina

¹⁹⁰ Exhibit "VVV"-Vibur-Avertina

¹⁹¹ Exhibit "WWW"-Vibur-Avertina

¹⁹² Exhibit "WWW," "YYY," And "ZZZ," -Vibur-Avertina

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its account from Credit Suisse and remitted the same to **Avertina Foundation**,¹⁹³ while various placements were made under Avertina account of securities listed.¹⁹⁴ It has to be recalled that as earlier shown, the beneficial owners of **Avertina Foundation** were Mr. Ferdinand Marcos and Ms. Imelda Marcos.

Criminal Case No. 22868
("Rosaly's-Aguamina Foundations")

In this case, it was alleged that Ms. Marcos had direct or indirect financial interests, and participated in the management and administration of **Aguamina Foundation**, formerly Rosaly's Foundation, which she and her husband utilized as a conduit for the funneling of ill-gotten wealth. They opened and maintained bank accounts with SKA or Credit Swiss Bank or Swiss Credit Bank Corporation (SBC) in the name of Aguamina Foundation for their benefit, which she ordered to be remitted to the Central Bank of the Philippines to be invested in high-yielding issues of Dollar Treasury Notes. She allegedly intervened in the placements of the Central Bank for the benefit of this foundation.

The prosecution tried to prove the pecuniary interest of Ms. Marcos in Aguamina circumstantially under the theory of conspiracy, which is sustained by evidence. As already stated, Ms. Marcos used the pseudonym, "*Jane Ryan*" and Mr. Marcos' pseudonym, "*William Saunders*" to open accounts in Swiss banks, who thereafter worked for the deposits and transfers of funds under these account names, inclusive of the Aguamina Foundation. The scheme is similar to that perpetrated in Xandy, Trinidad, Maler, Rayby, Palmy and Azio Foundations. Ms. Marcos' pecuniary interest in Aguamina is necessarily related to her husband, who was the named beneficiary of Aguamina. As alleged, the further act of Ms. Marcos and her husband in appealing to the Swiss Federal Supreme Court the Decision of the Cantonal Magistrate of Fribourgh granting the request of the Philippines for mutual assistance in criminal matters, which covered Aguamina Foundation, among others,¹⁹⁵ points to the conclusion that that Ms. Marcos was one of the beneficial owners thereof. In fact, Ms. Marcos' denial of having been privy to the transactions of Aguamina was rejected by the Supreme Court in the forfeiture case involving the Marcos family.¹⁹⁶

¹⁹³ Exhibits "DDDD" to "GGGG" -Vibur-Avertina

¹⁹⁴ Exhibits "RRRR" to "TTTT"-Vibur-Avertina

¹⁹⁵ Exhibit "A-222868 & 22870"

¹⁹⁶ GR No. 152154, July 15, 2003

Handwritten signature and initials in the bottom right corner of the page.

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Ms. Marcos' impliedly admitted ownership of, or pecuniary interest in these foundations which were subject of the forfeiture proceedings before the Sandiganbayan docketed as Civil Case No. 0141

Meanwhile, Ms. Marcos' Answer to the Petition for Forfeiture particularly under paragraph 22 thereof, marked as Exhibit "Y-4-a" is an admission of her pecuniary interest in the foundations subject of these cases, to wit: Maler, Trinidad, Rayby, Palmy, Aguamina and Vibur-Avertina group of foundations. She pleaded therein that she "*den[ies] x x x in so far as it alleges that [they] clandestinely stashed the country's wealth in Switzerland x x x the truth being that [their] aforesaid properties were lawfully acquired.*" Her statement is a negative pregnant, such that her ownership of the subject properties is deemed admitted. In *Republic of the Philippines v. Sandiganbayan*,¹⁹⁷ the Supreme Court explained:

A denial pregnant with the admission of the substantial facts in the pleading responded to which are not squarely denied. It was in effect an admission of the averments it was directed. Stated otherwise, a negative pregnant is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party. It is a denial pregnant with an admission of the substantial facts alleged in the pleading. Where a fact is alleged with qualifying or modifying language and the words of the allegation as so qualified or modified are literally denied, has been held that the qualifying circumstances alone are denied while the fact itself is admitted.

As held by the Supreme Court in the same case,¹⁹⁸ citing the case of *Santiago vs. de los Santos*, 61 SCRA 146 [1974]:

An admission made in the pleadings cannot be controverted by the party making such admission and becomes conclusive on him, and that all proofs submitted by him contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not. This doctrine is embodied in Section 4, Rule 129 of the Rules of Court.

The Supreme Court in *Republic vs. Sandiganbayan*¹⁹⁹ went on to state that:

The allegations in x x x of the petition for forfeiture referring to the creation and amount of the deposits of the Rosalys-Aguamina Foundation as well as the averment in x x x the said petition with respect to the sum of the Swiss bank deposits estimated to be US\$356 million were again not specifically denied by respondents

¹⁹⁷ Id.

¹⁹⁸ Id.

¹⁹⁹ Id.

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in their answer. The respondents did not at all respond to the issues raised in these paragraphs and the existence, nature and amount of the Swiss funds were therefore deemed admitted by them. As held in *Galofa vs. Nee Bon Sing*, if a defendant's denial is a negative pregnant, it is equivalent to an admission.


Moreover, respondents' denial of the allegations in the petition for forfeiture for lack of knowledge or information sufficient to form a belief as to the truth of the allegations since respondents were not privy to the transactions was just a pretense. Mrs. Marcos privy to the transactions was in fact evident from her signatures on some of the vital documents attached to the petition for forfeiture which Mrs. Marcos failed to specifically deny as required by the rules. It is worthy to note that the pertinent documents attached to the petition for forfeiture were even signed personally by respondent Mrs. Marcos and her late husband, Ferdinand E. Marcos, indicating that said documents were within their knowledge.

As correctly pointed out by Sandiganbayan Justice Francisco Villaruz, Jr. in his dissenting opinion:

The pattern of: 1) creating foundations, 2) use of pseudonyms and dummies, 3) approving regulations of the Foundations for the distribution of capital and income of the Foundations to the First and Second beneficiary (who are no other than FM and his family), 4) opening of bank accounts for the Foundations, 5) changing the names of the Foundations, 6) transferring funds and assets of the Foundations to other Foundations or Fides Trust, 7) liquidation of the Foundations as substantiated by the Annexes U to U-168, Petition [for forfeiture] strongly indicate that FM and/or Imelda were the real owners of the assets deposited in the Swiss banks, using the Foundations as dummies.

How could respondents therefore claim lack of sufficient knowledge or information regarding the existence of the Swiss bank deposits and the creation of five groups of accounts when Mrs. Marcos and her late husband personally masterminded and participated in the formation and control of said foundations? This is a fact respondent Marcoses were never able to explain.

The admission is heightened by the fact that in the subject criminal cases, Ms. Marcos never bothered to present any evidence in Court to counter her pecuniary interest in these foundations, the creation of which she and her husband conceived, and the affairs thereof they personally directed.



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Criminal Case No. 22870
("Pretorien-Gladiator- Cesar – ESG Foundations")

Likewise, the prosecution attempted to establish Ms. Marcos' interests in these foundations by circumstantial evidence, and theory of conspiracy.

Ms. Marcos allegedly had direct or indirect financial interests in the management of the abovementioned foundations/establishments, which she and her husband utilized as a conduit for the funneling of ill-gotten wealth. Allegedly, they opened and maintained bank accounts with Banque de Paribas for the account of the following establishments -**Pretorien, Gladiator, Cesar, and ESG**, for the benefit of Mr. and Ms. Marcos, and their children, which Ms. Marcos ordered to be remitted to the Central Bank of the Philippines to be invested in high-yielding issues of Dollar Treasury Notes; that she intervened in the placements of the Central Bank for the benefit of these foundations.

The following records show that various accounts were opened in Banque de Paribas, Switzerland, to wit: (1) Application to open account no. 073043 in the name of Imelda Marcos filed on October 3, 1980 thru S. Cattai and Ph. Siegenthaler;²⁰⁰ (2) Power of Attorney executed by Ms. Marcos in favor of Mr. Ferdinand Marcos dated September 29, 1980 in relation to her account at Banque de Paris under Account No. 073043²⁰¹ (3) [Secret] account of Ferdinand Marcos with Banque de Paris in Geneva under Account No. 36521N²⁰² (4) Power of Attorney given by Ferdinand Marcos to S. Cattai in relation to Banque de Paris Account No. 36521N²⁰³ (5) Transfer of fund dated March 30, 1979 effected from Pretorien, Cesar, Gladiator and Mabari Foundations²⁰⁴ (6) Statement of Income Securities as of November 10, 1978²⁰⁵ (7) Letters of Mr. and Ms. Marcos to hold all securities and cash at the disposal of Michael de Guzman²⁰⁶ (8) Statement of Baltazar Aquino on alleged kickbacks he collected for Ferdinand Marcos²⁰⁷ (9) Statements of Antonio Florendo, Reymundo Feliciano, Jesus Tanchangco, Jesus Vergara on the "Westinghouse Deal" and "Binondo Central Bank,"²⁰⁸ which allegedly were invested in Swiss banks.

Ms. Marcos' had pecuniary interest in Account No. 073043, which she opened at Banque de Paribas thru her agent, S. Cattai cannot be denied,

²⁰⁰ Exhibit "P"-22868 & 22870

²⁰¹ Exhibit "P-1" and "P-2"-22868 & 22870

²⁰² Exhibit "P-4" to "P-8"-22868 & 22870

²⁰³ Exhibit "P-3"-22868 & 22870

²⁰⁴ Exhibit "P-9"-22868 & 22870

²⁰⁵ Exhibit "P-10"-22868 & 22870

²⁰⁶ Exhibit "S" and "S-1"-22868 & 22870

²⁰⁷ Exhibit "T"-22868 & 22870

²⁰⁸ Exhibit "T-5" to "T-12"-22868 & 22870

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where she gave an explicit authority to Ferdinand Marcos in relation to this account for whose acts she was, therefore, bound. Her pecuniary interest in relation to Account No. 36521N was by virtue of her husband's interest therein, who appeared to have authorized the same person, S. Cattai, in opening this account.

However, as to how the funds of the said account eventually landed for the account of Pretorien, Cesar, Gladiator and ESG foundations, as allegedly these foundations were used as conduits for funneling ill-gotten wealth, and some of the funds were allegedly remitted to the Philippine Central Bank for investment upon the order of Ms. Marcos, the evidence is hazy and lacking in material details. All that the documents showed were bits and pieces of deposits and transfer of funds in various accounts, without effectively bridging by clear evidence the relation of the accounts opened by Mr. and Ms. Marcos to these foundations, much less to their alleged ill-gotten wealth.

Third Element

That the accused (a) intervenes or takes part in her official capacity in connection with such interests; or is (b) prohibited from having such interest by the Constitution or by any law

There are two modes by which a public officer may violate Section 3(h) of Republic Act No. 3019. The *first mode* is - if in connection with his or her pecuniary interest in any business, contract, or transaction, the public officer intervenes or takes part in his or her official capacity. The *second mode* is when he or she is prohibited from having such interest by the Constitution or by any law.

"Actual intervention in his official capacity" in the business, contract or transaction in which the public officer has financial or pecuniary interest is required under the *first mode*. In **Trieste vs. Sandiganbayan**,²⁰⁹ the Supreme Court held:

What is contemplated in Section 3(h) of the anti-graft law is the *actual intervention* in the transaction in which one has financial or pecuniary interest in order that liability may attach. (Opinion No. 306, Series 1961 and Opinion No. 94, Series 1972 of the Secretary of Justice). The official need not dispose his shares in the corporation as long as he does not do anything for the firm in its contract with the office. For the law aims to prevent the dominant use of influence, authority and power (Deliberation on Senate Bill 293, May 6, 1959, Congressional Record, Vol. 11, page 603).

²⁰⁹ 145 SCRA 508 (1986)

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In **Macariola vs. Asuncion**,²¹⁰ citing *People vs. Menses*, it was ruled that:

As was held in one case involving the application of Article 216 of the Revised Penal Code which has a similar prohibition on public officers against directly or indirectly becoming interested in any contract or business in which it is his official duty to intervene, "(It is not enough to be a public official to be subject to this crime; it is necessary that by reason of his office, he has to intervene in said contracts or transactions; and, hence, the official who intervenes in contracts or transactions which have no relation to his office cannot commit this crime." (People vs. Menses, C.A. 40 O.G. 11th Supp. 134, cited by Justice Ramon C. Aquino; Revised Penal Code, p. 1174, Vol. 11 [1976]).

The application of actual intervention was further affirmed and elucidated in the cases of *Caballero, et. al vs. Sandiganbayn*²¹¹ and *Palma Gil, et. al. vs. People*.²¹² However, this requirement is not essential under the *second mode* of commission of the offense. What is only required is that the public officer had prohibited interests under the Constitution or by law, either in the management of a business (Article IX, Section 8 of the 1973 Constitution) or had intervened in any matter before the government for his pecuniary benefit (Article VIII, Section 11 of the 1973 Constitution).

Article VIII Section 11 of the 1973 Constitution states:

Section 11. No Member of the National Assembly shall appear as counsel before any court inferior to a court with appellate jurisdiction, before any court in any civil case wherein the government, or any subdivision, agency, or instrumentality thereof is the adverse party, or before any administrative body. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by, the government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, during his term of office. He shall not intervene in any matter before any office of the government for his pecuniary benefit.

The prohibition under Article VIII Section 11 finds no application to Ms. Marcos in Criminal Cases Nos. 17287 (Maler Foundation), 17288 (Trinidad Foundation), 17289 (Rayby Foundation) and 172890 (Palmy

²¹⁰ 208 SCRA 283 (1992)

²¹¹ GR No. 137355-58, September 25, 2007

²¹² 177 SCRA 229 (1989)

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Foundation), 22867 (Azio-Verzo-Vibur Foundations), 22869 (Avertina Foundation), 22870 (Rosaly's-Aguamina Foundations).

For one, in Criminal Cases Nos. 17287 (Maler Foundation), 17288 (Trinidad foundation), 17289 (Rayby foundation) and 172890 (Palmy foundation), Ms. Marcos is not charged with violation of such provision of the 1973 Constitution, but under another provision - Article IX, Section 8 thereof.

Second, while in Criminal Cases Nos. 22867 (Azio-Verzo-Vibur Foundations), 22869 (Avertina Foundation), 22870 (Rosaly's-Aguamina), Ms. Marcos is charged with violation of RA 3019 Section 3 (h) in relation to Article VIII, Section 11 of the 1973 Constitution, a mere possession of pecuniary interest in the foundations subject of these cases is not penalized thereunder. What is prohibited is the intervention in her official capacity in any transaction, contract, franchise or special privilege granted by the government. In these foundations, the evidence does not say so, nor does it show that she intervened, for her pecuniary benefit, in any matter before any government office. The setting up of these Swiss foundations, the contracts or transactions that relate thereto, were private in character, which did not require any intervention of the Philippine Government, or in which Ms. Marcos would have been called upon to act or intervene in her official capacity as a member of the National Assembly or as a Cabinet member.

As cited in *Trieste vs. Sandiganbayan*,²¹³ what the law aims to prevent here is the use of influence, authority and power of a public officer, i.e. as a member of the National Assembly, in a transaction or business with the government. This is not the situation in the aforesaid cases.

However, the circumstance is changed *viz-a-viz* Article IX, Section 8 of the 1973 Constitution, with which Ms. Marcos is charged in Criminal Cases Nos. 17287 to 17290, 22867, 22869, and 22870 in relation to RA No. 3019, Section 3 (h). Said Constitutional provision states:

Section 8. The Prime Minister and the Members of the cabinet shall be subject to the provisions of sections ten and eleven of Article Eight hereof and may not appear as counsel before any court or administrative body, or participate in the management of any business, or practice any profession.

²¹³ *Supra*, Note 155

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"*Management*" is defined as "the organization and coordination of the activities of a business in order to achieve a defined objective."²¹⁴ Ms. Marcos, in her Memorandum, cited a definition of "*management*" as "the administration of an organization, whether it be a business, a not-for-profit organization, or government body x x x includes the activities of setting the strategy of an organization and coordinating the efforts of its employees to accomplish its objectives through the application of available resources, such as financial, natural, technological and human resources."²¹⁵

As overwhelmingly established by evidence in **Criminal Cases Criminal Cases Nos. 17287, 17288, 17289, 172890, 22867, 22869, and 22870**, Ms. Marcos organized, coordinated and directed the affairs of Maler, Trinidad, Rayby, Palmy, Azio-Verzo-Vibur, Avertina, and Rosalys-Aguamina Foundations, either personally or thru her designated agents, from the creation up to the end or dissolution thereof, including the transfer and disposition of their respective assets and accounts. In other words, Ms. Marcos participated in the management thereof, by exercising control over their assets and the disposal thereof, appointing the persons to represent these foundations, transmitting instructions, and ratifying the decisions and circumstances of these persons, all geared towards a particular objective.

Ms. Marcos argued as a defense in her Memorandum that, what is prohibited under Article IX, Section 8 is to "*participate in the management of any business.*" Allegedly, the subject foundations are not in the nature of a business.

The Court is not convinced.

A "*business*" is generally defined as the activity of making one's living or making money by producing or buying and selling goods or services. Simply put, it is any activity or enterprise entered into for profit.²¹⁶ On the other hand, a "*foundation*" is generally established and maintained for charitable, educational, religious or other benevolent purpose. In a civil law system such as the Swiss regime, a foundation is normally defined "as legal entity established by the endowment of assets for a specified purpose. In theory, this purpose must be one of public interest."²¹⁷

²¹⁴ <http://www.businessdictionary.com/definition/management.html>

²¹⁵ Memorandum, Records, Vol. XII, p. 191

²¹⁶ <https://en.wikipedia.org/wiki/Business>, citing Burton's Legal Thesaurus, 4E. S.v. "business." Retrieved April 1, 2018 from <https://legal-dictionary.thefreedictionary.com/business>

²¹⁷ "The Swiss Legal Framework on Foundations and Its Principles About Transparency," Lucas R. Arrivillaga Georg von Schnurbein, International Journal of Not-for-Profit Law / Vol. 16, No. 1, September 2014 / 30, citing Art. 80 of the Swiss Civil Code (<http://www.icnl.org/research/journal/vol16iss1/swiss-legal-framework.pdf>)

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The term "foundation" shall not be controlling in determining the nature of engagement of the subject Swiss entities put up by Ms. Marcos. Though named as a "foundation," the evidence shows that these entities were put up primarily for the entrepreneurial activity of opening bank accounts and deposits, transferring funds, earning interests and even profit from investment, for the private benefit of the Marcos family as beneficiaries. The purpose of setting up these entities is definitely not charitable, educational, religious or otherwise in service of public interests. In fact, in the related case of *Republic vs. Sandiganbayan*²¹⁸ involving some monies and Swiss accounts of the Marcoses, the Supreme Court ruled that "**management of businesses, like the administration of foundations to accumulate funds, was expressly prohibited under the 1973 Constitution x x x.**" Here, Ms. Marcos' predicate act of "having a pecuniary interest" in these foundations, the affairs of which she is shown to have actively administered for her private gain and benefit, falls within the context of the proscribed acts under Article IX, Section 8 of the 1973 Constitution.

In *Doromal vs. Sandiganbayan*,²¹⁹ it was enunciated that there are two reasons for these prohibition: (1) to avoid conflict of interest; and (2) to force the officials to devote full time to their official duties.

It is by intent of the law to be stricter with the members of the Cabinet, among others, because they exercise more powers. Therefore, more checks and restraints against them are called for since there is more possibility of abuse in their case.²²⁰ Considering that the setting up of these foundations by Ms. Marcos is evidently tainted with her private pecuniary interest, it is with more reason that the application of this prohibition in these cases shall not be *technically* restrained. Rather, the intent of the law shall be given its full course and application. Thus, for each of these cases, the Court finds Ms. Marcos liable for violation of RA 3019, Section 3 (h) in relation to Article IX, Section 8 of the 1973 Constitution.

On the civil aspect of Criminal Cases Nos. 17287 (Maler Foundation), 17288 (Trinidad Foundation), 17289 (Rayby Foundation) and 172890 (Palmy foundation), 22867 (Azio-Verzo-Vibur Foundations), 22869 (Avertina Foundation), 22870 (Rosaly's-Aguamina), considering that the accounts and assets of the foundations involved in these cases had been the subject of a separate forfeiture proceedings, this Court defers to the latter's disposition thereof.

²¹⁸ Supra, Note 196

²¹⁹ 177 SCRA 354 (1989)

²²⁰ Bernas, Joaquin, "The 1987 Constitution: A Commentary," 2009 edition, citing Commissioner Foz, p864.

Going to **Criminal Case No. 19225 (ARCI and Dynetics)**, the *Information* alleges that Ms. Marcos –


“x x x unlawfully acquire financial pecuniary interest in Asian Reliability Company, Inc., and Dynetics, private entities, then headed by Vicente B. Chuidian by becoming part owners thereof wherein she is prohibited by law and the Constitution from having any interest.”

While Ms. Marcos' pecuniary interest in ARCI has evidentiary basis as earlier discussed, by itself alone, said circumstance does not make an offense. By solely having a financial interest in a business, as generally alleged in the *Information*, without any allegation of fact as to how the same becomes unlawful, does not properly charge an offense. The fundamental test of whether the facts averred in the information amount to an offense is whether the facts alleged would establish the essential elements of the crime as defined by law.²²¹ The information must allege clearly and accurately the elements of the crime charged. In this case, however, the specific provision of the 1973 Constitution or law alleged to have been violated in relation to RA 3019 Section 3 (h) was not stated in the charge sheet, whereas, the specific acts upon which the supposed violation of the law is anchored is lacking. The accused's constitutional right demands that she be informed of the nature and cause of accusation against her pursuant to Article IV, Section 1 of the 1973 Constitution that “no person shall be deprived of life, liberty, or property without due process of law x x x.” The prosecution's failure to do so on this score inevitably results to the dismissal of the charge against the accused.

Likewise, Ms. Marcos cannot be found guilty in **Criminal Case No. 17291 (ARCI Loan)**.

True, it was shown by evidence that Ms. Marcos' intervened in ARCI's application for US\$25M loan with the Central Bank of the Philippines guaranteed by Philguarantee by recommending the approval of ARCI's applied loan, through her letter to Mr. Jaime Laya, then Central Bank Governor. While this act may be in violation of Article VIII, Section 11 of the 1973 Constitution, to wit: “to intervene in any matter before any office of the government for his pecuniary benefit,” the same is not the offense charged in this case. The *Information* rather charges a violation of RA 3019 Section 3(h) in relation to *Article IX Section 8 of the 1973 Constitution*, which prohibits “management in any business.” Due process requires that an

²²¹ Mendoza-Ong v. People, 414 SCRA 181; Lazarte vs. Sandiganbayan GR No. 180122, March 13, 2009



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accused be properly informed of the cause of accusation against him or her, lest the accused is entitled to an acquittal.

Meanwhile, a review of evidence points not to Ms. Marcos, but to her husband Mr. Marcos, who personally participated in the management, control and direction of the affairs of ARCI. Criminal responsibility being personal to the perpetrator thereof, the same cannot be attributed by implication to Ms. Marcos. The evidence merely shows Ms. Marcos' financial interests in ARCI, being the spouse of Mr. Marcos, but evidence of her active participation in the management and control thereof, which is prohibited under Article VIII, Section 11 of the 1973 Constitution, is insufficient. There is no positive act on her part that is shown to sustain her alleged management or administration of ARCI. In fact, the prosecution evidence shows that at the lone instance when Ms. Marcos' was consulted by Chuidian about ARCI thru his Letter dated January 18, 1984,²²² the response of Ms. Marcos was merely for Chuidian to brief Mr. Marcos about the matter.

On the other hand, Ms. Marcos' intervention with the Central Bank to facilitate the grant of ARCI's applied loan is not an act of management. As previously defined, "*management*" is "the organization and coordination of the activities of a business in order to achieve a defined objective."²²³ A contrary interpretation of "*management*" to include Ms. Marcos' intercession with the Central Bank in relation to its applied loan would unreasonably stretch too far the contextual definition of "*management*" viz-a-viz Article IX, Section 8 of the 1973 Constitution.

Anent **Criminal Case No. 22870 ("Pretorien-Gladiator-Cesar- ESG Foundations")**, it was already discussed that Ms. Marcos' pecuniary interest is shown by evidence of Account No. 073043, which she opened through S. Cattai and Ph. Siegenthaler, as well as to Account No. 36521N opened by Mr. Marcos. However, the evidence is unclear as to how these accounts relate to Pretorien-Gladiator-Cesar- ESG Foundations. The evidence is inadequate to prove the active participation of Ms. Marcos in the management of the subject foundations, or intervention in any matter before the government for her pecuniary benefit relative to these foundations in supposed violation of Article VIII, Section 11 and Article IX Section 8 of the 1973 Constitution, respectively. Thus, for **Criminal Case No. 22870**, the acquittal of Ms. Marcos is imperative. In the case of *Macayan vs. People of the Philippines*, it was held:²²⁴

²²² Exhibit "E"

²²³ <http://www.businessdictionary.com/definition/management.html>

²²⁴ GR No. 175842, March 18, 2015

It must be stressed that in our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt. Where there is no moral certainty as to their guilt, they must be acquitted even though their innocence may be questionable. The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt.

Final Statement

It is pertinent to state in closing that proof beyond reasonable doubt which is the quantum of evidence required to convict an accused, is meant that all things given, the mind of the judge can rest at ease concerning its verdict.²²⁵ Conviction in a criminal case does not entail absolute certainty - what is required only is that degree of proof which, after an examination of the entire records of the case, produces in an unprejudiced mind moral certainty of the culpability of the accused.²²⁶ With these guideposts in mind, thus, the Court hereby renders its verdict.

WHEREFORE, judgment is hereby rendered finding the accused, Imelda R. Marcos:

(a) **GUILTY** beyond reasonable doubt for violation of RA No. 3019, Section 3(h) in relation to *Article IX, Section 8 of the 1973 Constitution in Criminal Cases Nos. 17287, 17288, 17289, 172890, 22867, 22868, and 22869* whereby she is sentenced, in each of these cases, to suffer the indeterminate penalty of imprisonment from six (6) years and one (1) month as minimum to eleven (11) years as maximum, with perpetual disqualification to hold public office. As regards the civil aspect consisting of forfeiture of the assets and accounts of the foundations subject of these cases, the Court defers to the disposition thereof in the forfeiture proceedings separately instituted against the accused;

(b) **ACQUITTED** in **Criminal Case No. 19225**, for failure of the *Information* therein to charge an offense;

²²⁵ Pilares, Sr. vs. People, 518 SCRA 143

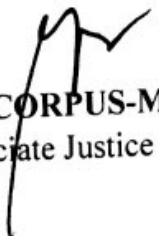
²²⁶ People vs. Delim, 533 SCRA 366

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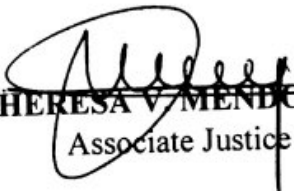
(c) **ACQUITTED** in Criminal Cases Nos. 17291 and 22870, for insufficiency of evidence.

SO ORDERED.


MARYANN E. CORPUS-MANALAC
Associate Justice


WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


RAFAEL R. LAGOS
Chairperson, Fifth Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE - TANG
Presiding Justice