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Frozen WAPA Bank Account Connected To Court Judgement Over Unpaid Bills

A series of financial mishaps and unpaid vendor bills have led to court-ordered freezes on WAPA's bank accounts, threatening the utility's ability to purchase necessary fuel and manage operations

WAPA / **Published On May 30, 2024 06:46 AM /**

Janeka Simon **May 30, 2024**

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On Tuesday during an update from Government House on the [recent instability in the territory's electricity grid](#), Office of Management and Budget Director, Jenifer O'Neal, revealed that the Water and Power Authority's bank accounts in the territory had been frozen, rendering them temporarily unable to access funds that Ms. O'Neal said were needed for fuel purchases. One of those accounts had since been released, but at the time Ms. O'Neal did not specify the reason for the freeze in the first place.

Consortium journalists subsequently learned that WAPA's legacy of unpaid bills was to blame, with the bank account freezes coming as a result of a court order in the face of an unsatisfied judgment dating back several years.

?In 2020, Power Rental OpCo. LLC filed suit in Florida, claiming that WAPA had defaulted on a promissory note executed the previous year, in the amount of just over \$9.3 million.?

The note stemmed from a 2012 contract between WAPA and General Electric International for the lease of power generation equipment. Through various acquisitions, by the following year payments for the lease were due to be sent to OpCo. Between 2013 and 2019, the contract underwent a number of amendments, including the expansion of the agreement to include additional turbines and equipment to be leased. "Unfortunately, over time, WAPA failed to make the monthly rental payments to OpCo as required under the rental agreement," the lawsuit alleges. By April 2019, WAPA was owing over \$14 million, almost a million of which was in accrued interest.

Negotiations between WAPA and OpCo brought down the owed balance to \$9.3 million, which OpCo notes is a discount of over 30%, in exchange for the stated promissory note. However, WAPA has thus far failed to pay even that reduced balance.

In October 2021, Judge Timothy Corrigan entered judgment in favor of OpCo. WAPA was ordered to pay just over \$6.5 million, however in February of this year, OpCo approached the Puerto Rico District Court to note that WAPA still had not made good on that order. On March 25, 2024, U.S. District Judge Maria Antongiorgi-Jordan ordered that WAPA's property could then be garnished or attached in order for OpCo to collect its money, "including but not limited to accounts receivables, insurance proceeds, wages...and funds, securities or other valuables deposited [in] any bank or investment account." Post judgment interest of .07% per annum was also ordered, until WAPA satisfies the judgment in full.

The judge's order explicitly included all of WAPA's funds held in First Bank de Puerto Rico, Banco Popular de Puerto Rico, Bank of St. Croix, and Oriental Bank.

On April 18, the court received an emergency motion to quash the judge's orders, as it relates to WAPA's First Bank account. Despite the order having been issued since the previous month, it was not until April 17 that WAPA officials realized that it was unable to access its funds in that account. It was only after contacting the bank that WAPA learned of the writ, the motion claimed.

Having been denied access to funds required for fuel purchases, and with additional payments due in the coming days, WAPA was facing the prospects of being unable to replenish its fuel inventory, which would have resulted "in significant damages not only to WAPA but, as the sole utility for the Virgin Islands, to the Health, Safety and Welfare of the people of the territory," according to an affidavit from WAPA's Chief Financial Officer Lorraine Kelly.

Moreover, WAPA's funds are exempt from a writ of execution, under VI law, attorneys argued, citing Title 30 VIC § 111 in support of their argument. The execution of judgements upon WAPA's assets is precluded under local law, the motion argued.

On May 8, the court decided that the writ to Banco Popular would be quashed, "based on the state of emergency declared in the United States Virgin Islands." However, the freeze on WAPA's FirstBank account remains, at least for now.

Second Lawsuit

However, WAPA's legal woes are not just limited to this vendor. The utility, which has been embroiled in contract disputes with numerous suppliers, must grapple with finding almost \$25 million to satisfy another court judgment stemming from unpaid bills.

In 2016, Trafigura Trading LLC, who had been supplying a product described as "No. 2 distillate fuel oil" to WAPA for over three years, sued the authority over an outstanding balance of over \$24.6 million dollars that Trafigura says WAPA refused to pay.

According to the lawsuit, Trafigura's lawyers sent WAPA's then-Chief Executive Officer Hugo Hodge a letter in October 2015 notifying him that the agency was in breach of the supply contract it had signed with Trafigura. At the time, the bill was approximately \$23.5 million, according to Trafigura's first amended complaint. The company demanded payment by October 23, 2015, otherwise it would seek legal redress.

In his response, Mr. Hodge reportedly ascribed the contract breach to "critically difficult financial challenges," and vowed to come up with a payment plan to settle the debt if Trafigura did not pursue legal action. However, Trafigura argues that the crippling financial challenges Mr. Hodge said that WAPA was experiencing did not prevent it from engaging with a new supplier. By the time the lawsuit was filed in October 2015, Trafigura alleges that the new supplier had been paid more than the \$24.6 million WAPA owed to them – "funds that clearly could and should have been used to pay Trafigura's outstanding invoices to WAPA", the lawsuit argues.

Nevertheless, Trafigura took Mr. Hodge at his word, and refrained from taking legal action while waiting for a payment plan from WAPA that reportedly never materialized. Eventually, Trafigura says that it became apparent that more aggressive tactics were needed to recover the money it was owed.?

The lawsuit notes that in September 2015 – like now – WAPA was owed over \$42 million by central government for utilities at the hospitals, with other agencies owing millions more. Despite that, only 10 of the \$220 million realized from the sale of HOVENSA's refinery assets were allocated to the struggling utility company. Adding insult to injury, Trafigura alleges that WAPA only received a fraction of that \$10 million, which was "urgently needed so that WAPA, in turn, could pay its outside vendors such as Trafigura."

Aside from the chronic underfunding of WAPA however, Trafigura alleged that WAPA could have, but did not, avail itself of \$40 million line of credit that had been established by Act 7028 for the purpose of helping WAPA keep up with its fuel bills. "Act 7209 would therefore provide WAPA with substantially more than enough financing to pay off its debt to Trafigura in its entirety," the company's lawyers argued.

Notwithstanding the mechanisms in place to do so, "WAPA...has not even attempted to employ any of the viable means of financing the full payment of its debt," the 2016 lawsuit argued. A final attempt was made in March of 2016, with a demand letter to then-chair of WAPA's board, Gerald Groner. When the lawsuit was filed in August of that year, Trafigura was still awaiting a response to that letter.

By May of 2017, Trafigura and WAPA had reached an agreement. Judgment was entered in favor of Trafigura on the allegations of breach of contract, and WAPA was ordered to pay \$24,469,775.17. The other counts of the complaint were dismissed, and the court docket for the matter fell quiet.?

In 2023, Trafigura informed the court that WAPA had still not yet paid up, and asked the court to open up post-judgement discovery. Trafigura wanted to see WAPA's financial statements, their

accounts payable records, cash flow statements – any documents that could help paint a clear picture of the utility company’s financial status. The parties are currently working their way through that process.

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