

## Postscript

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### It's still a bribe whether before or after the deed

**STIMULUS:** Groping for words to explain its mishandling of public funds, Malacañang has added "stimulus" to its defense vocabulary.

The Palace said that the Disbursement Acceleration Program that it concocted in 2011 was a barrel into which savings were hidden to be used as "stimulus" for economic development. The idea was to release large sums into the money stream to stimulate the sluggish economy.

Was it then just for convenience that the Palace dipped into this secret DAP barrel to source the P1.1-billion stimulation for senators who had voted — as President Noynoy Aquino wanted — to convict impeached Chief Justice Renato Corona?

**STILL A BRIBE:** And lest you forget, President Aquino hastened to add, the extra P50 million to P100 million given each lawmaker was not a bribe, because Corona was brought down in May while the stimulus reached the senator-judges around December already.

So do we now say that the billion-peso holdAP was just a well-meaning "stimulus"?

But wait: (1) Until now, Malacañang cannot show the legal basis for its inventing the DAP; (2) In bribery, whether the stimulus was applied before or after the dark deed, it is still effectively a bribe; and (3) How could those DAP dolos have boosted the economy and improved the lives of the masses when much of it went to stimulating private pockets.

**INTERPLEADER:** What happens when you maintain a substantial deposit in a supposedly venerable bank and an interloper claims your account then starts to withdraw from it over your repeated objections?

Exercising prudence, any reputable bank will act to protect itself and the contending parties. Normally, it will suspend withdrawals until the conflicting claims are resolved.

No bank worth its name wants to be blamed later for recognizing the wrong party in such a dispute. To play safe, it files in court what is called an interpleader case for a judicial determination of the true owner of the account who may validly withdraw from it.

**BANK NEGLIGENCE:** But it does not always happen that way.

In the case of the Philcomsat Holdings Corp., it took years of litigation for the firm to kick out agents of the Presidential Commission on Good Government who were found by the court to have looted the company and dissipated its assets.

In a decision last Sept. 25, the Makati Regional Trial Court also found the PHC's depository bank "negligent" and so ordered it to refund the P102 million in questioned withdrawals it had allowed despite written



objections of the legitimate PHC board.

Makati RTC Judge Selma Alaras said the bank "fell short of the required diligence ascribed to banks (and) its failure to do so constitutes negligence."

**S.C. DECISION:** Way back on Oct. 24, 2006, the Makati RTC nullified the 2004 election of the group of PCGG nominee Enrique Locsin as directors of PHC, a listed company 81-percent owned by Philippine Communications Satellite Corp. (Philcomsat).

The court recognized the group of Katrina Ponce-Enrile, being majority owners of Philcomsat, as the legitimate directors. But Locsin and fellow PCGG nominees refused to get out and insisted on controlling corporate assets, including P200 million deposited at BPI.

Writing checks in the millions, some of them to themselves, the Locsin-PCGG group caused the accounts to be, in the words of the court, "depleted by overwhelming amounts."

In July 2013, the Supreme Court affirmed a Court of Appeals decision declaring the Ponce-Enrile group as the legitimate board. The SC also ordered the other group to return the millions they had received since their August 2004 illegal takeover.

**BPI NOTIFIED:** The bank was notified of the dispute way back in February 2007. In the first of several letters to BPI president/CEO Aurelio Montinola III, the Ponce-Enrile group asked the bank to freeze the account and file an Interpleader case to determine the account's legitimate owner.

The bank froze the PHC deposits for one day, but lifted it because of a temporary restraining order of the Court of Appeals (which turned out later to have been forum-shopped).

It was only in August 2008 that BPI filed an interpleader complaint with the RTC. By this time, however, the bank had already released P102 million to the Locsin group.

**WITNESSES:** The Ponce-Enrile group presented three witnesses including Montinola, who was subpoenaed as adverse witness. Also, the court noted that the Locsin group "failed or refused to participate in the proceedings."

Locsin group chair Concepcion Poblador testified as adverse witness for the bank. The court said: "When cross-examined, she exhibited uncertainties in their operations, on the dates of their group's alleged board meetings, the number of their employees, also their office address. Her credibility, similar to that of her testimony, is scant."

On the BPI's explanations for allowing the Locsin group's disbursements, the court said: "Each explanation fails to persuade. At the first sign of an existing conflict, the bank is expected to act with extreme caution to ensure that it does not release deposits to one not entitled to it... BPI was aware that the authority of the Locsin group was still unresolved, but it has opted to shut its eyes to it."

The bank tried to show that the disbursements rebounded to the benefit of PHC. The court found this "implausible", saying: "The disbursement vouchers BPI presented do not support this. Most of the disbursements were paid off to the officers of the Locsin group or related to their expenses for representations, legal fees of their lawyers and other similar expenses."

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