

## Paulo Maluf (Jersey)

**Case ID:**

ARW-149

**Jurisdiction of Origin of Public Official or Entity Allegedly Involved:**

Brazil

**Position of Public Official(s) (yrs in office):**

Governor and Mayor of Sao Paulo (Governor, 1979-1983; Mayor, 1993-1996); Legislator (as of 2007)

**Jurisdiction of Asset Recovery:**

Jersey

**Jurisdiction of Asset Recovery ? Description:**

Location of Recovery Effort, Asset Location / Alleged Asset Location

**Asset Recovery Start:**

1999

**Asset Recovery End:**

Ongoing

**UNCAC Offenses Implicated:**

Art.17

Art.23

**Money laundering Implicated:**

Yes

**Legal Basis for Asset Recovery:**

Private Civil Action

**Intl.Cooperation: MLAT/Letter of Request?:**

Letter of Request

**Basis for Intl Cooperation:**

Criminal Justice (International Co-operation) (Jersey) Law 2001

**Contributing Factors in Asset Recovery:**

Ongoing Case

**Status of Asset Recovery :**

Ongoing

**Stage in Asset Recovery Chain:**

Before Court of First Instance

**Assets Adjudicated, Not Yet Returned - Description:**

plus unspecified amount in accrued interest

**Agreement for Returned Assets:**

Ongoing

**Agreement for Returned Assets - Description:**

N/A

**Case Summary:**

In April 2013, in upholding the lower court's judgment in a private civil action brought by Brazilian authorities, the Jersey Appeals Court summarised the decision as follows: "After trial the Royal Court (H.W.B. Page, Q.C. and Jurats) concluded that the claim succeeded and, in November 2012, found and held:-

- (i) That the second respondent had been the victim of a fraud substantially as alleged;
- (ii) That Paulo Maluf was to some extent a party to that fraud, receiving some fifteen secret payments;
- (iii) That Flavio Maluf, knowing of the nature of such payments arranged for a large proportion of those funds to be transferred out of Brazil and into the bank account known as Chanani with Safra International Bank of New York, an account controlled by Paulo Maluf and beneficially owned by either or both of him and his son;
- (iv) That those latter payments were traceable into the bank accounts of the first and second appellants with Deutsche Bank in Jersey;
- (v) That the knowledge of the Malufs that such payments were the proceeds of a fraud on the present respondents was attributable to each of the defendants;
- (vi) That each of the present appellants was, accordingly, liable to the present respondents as constructive trustee;
- (vii) That the knowledge of the Malufs that the present appellants had no entitlement to such payments was attributable to each of the present appellants, giving rise to liability on the basis of unjust enrichment; and
- (viii) That the present respondents had a proprietary claim to specified monies from funds currently held by Deutsche Bank in accounts in the name of the present appellants."

(Source: Brazil v. Durant. [2013] JCA 071, at para 4.) The Federal Republic of Brazil and the State of Sao Paulo had brought a civil suit in the Isle of Jersey against frozen assets held in the names of two companies that are alleged to be beneficially owned by Mr. Maluf and/or his son. (Source: Republic of Brazil v. Durant, 2012 JRC 094.) As the Jersey Royal Court noted, the action is a claim by Brazil "to certain funds, of the order of US\$10.5 million plus interest, held in bank accounts in Jersey in the name of the defendants, Durant International Corporation ("Durant") and/or Kildare Finance Limited ("Kildare") and subject of a freezing order granted by the Royal Court on 13th March, 2009." The funds were alleged to have flowed through the "Chanani" account at Safra Bank of New York. (Source: Republic of Brazil v Durant, 2011 JRC 091.) The Jersey courts had granted Norwich Pharmacal disclosure orders in the Durant Intl, et al and Citibank et al cases. (Sources: Durant Intl. Corp. v. Att. Gen., 2006 JLR 31 (19 Jan 2006) and 2006 JLR 112 (17 Mar 2006); Brazil v. Citibank, 2006 JLR 478 (1 Nov 2006); Macdoel Invs v. Brazil, 2007 JLR 201 (19 Mar 2007)).

In 2015, in an important judgment upholding the concept of backwards tracing of assets, the UK Privy Council rejected an appeal by Durant International that of the US\$10.5 million determined to be proceeds of bribes, the total amount that should be traced to the bribery should be limited to US\$7.7 million. (Source: The Federal Republic of Brazil and another v. Durant International Corporation and another, [2015] UKPC 35.)

According to the New York County District Attorney's Office's March 2007 indictment against Mr. Maluf and his family members and associates, \$26 million have been frozen in Jersey; U.S. and Brazilian authorities are seeking to forfeit these funds. (Sources: The People of the State of New York v. Paulo Maluf, Flavio Maluf, Simeao Damasceno de Oliveira, Joel Guedes Fernandes and Vivaldo Alves, Indictment filed on March 8, 2007 in New York state Supreme Court, County of New York and New York County District Attorney's Office, News Release on the Paulo Maluf case, March 8, 2007; "Promotoria quer repatriar R \$303 milhoes de empresa de Maluf," Estadao.com.br, August 3, 2009; Swiss Federal Department of Police and Justice Press Release, "Strengthening co-operation in the fight against crime / Brazilian delegation visits Bern," October 14, 2002, accessed at <http://www.ejpd.admin.ch/content/ejpd/en/home/dokumentation/mi/2002/2002...>) According to a secondary source, the return of MacDoel funds are said to have been under negotiation. (Source: Marcelo Godoy and Fausto Macedo, "Acordo de Maluf traria US\$13 mi a cofres da

Prefeitura de Sao Paulo," Estado.com.br, August 25, 2011.)

### **Disposition of Criminal Case(s):**

According to the March 8, 2007 press release by the New York County District Attorney's Office, Mr. Maluf was indicted in New York for his alleged conspiracy in embezzlement of public funds and concealment of such funds, and that charges were also pending against him in Brazil. (Source: The People of the State of New York v. Paulo Maluf, Flavio Maluf, Simeao Damasceno de Oliveira, Joel Guedes Fernandes and Vivaldo Alves, Indictment filed on March 8, 2007 in New York state Supreme Court, County of New York and New York County District Attorney's Office, News Release on the Paulo Maluf case, March 8, 2007.) According to Agence France Presse, on November 4, 2013, Mr. Maluf's conviction on "administrative corruption" was upheld by a Brazilian court. (Source: Agence France Presse, "Graft sentence upheld for ex-Sao Paulo ex-mayor," November 4, 2013.)

### **Jurisdiction of Origin: Investigative Agency:**

Brazilian Financial Intelligence Unit; Ministry of Justice; Federal Police

### **Jurisdiction of Origin: Prosecuting Authority/Civil Attorney(s):**

Prosecutor General of the State of Sao Paulo, Prosecutor General of the Republic of Brazil

### **Jurisdiction of Origin: Courts Involved:**

Superior Tribunal of Justice

### **Jurisdiction of Asset Recovery: Investigative Agency:**

Jersey Police

### **Jurisdiction of Asset Recovery: Prosecuting Authority/Civil Attorney(s):**

BakerPlatt (Attorney Stephen Baker, for the Jersey Attorney General); Advocate P.D. James for the Federal Republic of Brazil;




### **Jurisdiction of Asset Recovery: Courts Involved:**

Court of Appeal; Royal Court (Samedi Division)

### **Documents:**

Maluf\_Interpol\_Wanted\_May\_6\_2011.pdf  
Maluf\_Jersey\_Citibank\_2006\_JLR\_478.pdf  
Maluf\_Jersey\_Civil\_Actions\_Estadao.com\_Aug\_3\_2009.pdf  
Maluf\_Jersey\_Durant\_Intl\_2006\_JLR\_31.pdf  
Maluf\_Jersey\_Durant\_Intl\_2006\_JLR\_112.pdf  
Maluf\_Jersey\_Macdoel\_2007\_JLR\_201.pdf  
Maluf\_New\_York\_Indictment\_Mar\_8\_2007.pdf  
Maluf\_NY\_Indictment\_Press\_Release\_Mar\_8\_2007.pdf  
Maluf\_Swiss\_Dept\_Justice\_Oct\_14\_2002.pdf  
Maluf\_Jersey\_Republic\_of\_Brazil-v-Durant\_2011\_JLR\_091  
Maluf\_Jersey\_MacDoel\_Negotiations\_Estadao.com.br\_Aug\_2011

### **Documents:**

<b>Attachment</b>	<b>Size</b>
 Maluf_Brazil v Durant_2013_JCA_71_Apr_11_2013.pdf	524.9 KB
 Maluf_Brazil-v-Durant_2013_JRC_019A_24-Jan-2013.pdf	374.41 KB
 Maluf_Interpol_wanted_Feb_6_2015.pdf	579.51 KB

### **Other Sources:**

Republic of Brazil v. Durant, [2015] UKPC 35 (August 3, 2015), at <https://www.jcpc.uk/cases/docs/jcpc-2013-0069-judgment.pdf>; [2013] JCA 071 (April 11, 2013), at <http://www.jerseylaw.je/Judgments/UnreportedJudgments/Documents/Display...>

[2013] JRC 019A (January 24, 2013), at <http://www.jerseylaw.je/Judgments/UnreportedJudgments/Documents/Display...> and [2012] JRC 211 (November 16, 2012), at <http://www.jerseylaw.je/Judgments/UnreportedJudgments/Documents/Display...>

See also, *Brazil v. Durant*, [2012] JCA 151 (August 22, 2012) and [2012] JCA 094 (May 11, 2012);  
*Durant Intl. Corp. v. Att. Gen.*, 2006 JLR 31 (19 Jan 2006); 2006 JLR 112 (17 Mar 2006) and 2011 JLR 091 (April 27, 2011);  
*Brazil v. Citibank*, 2006 JLR 478 (1 Nov 2006);  
*Macdoel Invs v. Brazil*, 2007 JLR 201 (19 Mar 2007).

See also, *The People of the State of New York v. Paulo Maluf, Flavio Maluf, Simeao Damasceno de Oliveira, Joel Guedes Fernandes and Vivaldo Alves*, Indictment filed on March 8, 2007 in New York state Supreme Court, County of New York, accessed at <http://manhattanda.org/whatsnew/press/2007-03-08%20Maluf%20Indictment%20...> New York County District Attorney's Office, News Release on the Paulo Maluf case, March 8, 2007, accessed at <http://www.manhattanda.org/whatsnew/press/2007-03-08.shtml> 1/;

"Promotoria quer repatriar R \$303 milhoes de empresa de Maluf," *Estadao.com.br*, August 3, 2009. Swiss Federal Department of Police and Justice Press Release, "Strengthening co-operation in the fight against crime / Brazilian delegation visits Bern," October 14, 2002, accessed at <http://www.ejpd.admin.ch/content/ejpd/en/home/dokumentation/mi/2002/2002...> Paulo Maluf, Interpol Wanted List, at Interpol website: [http://www.interpol.int/public/data/wanted/notices/data/2009/08/2009\\_136...](http://www.interpol.int/public/data/wanted/notices/data/2009/08/2009_136...) (last accessed on February 6, 2015); Marcelo Godoy and Fausto Macedo, "Acordo de Maluf traria US\$13 mi a cofres da Prefeitura de Sao Paulo," *Estado.com.br*, August 25, 2011, accessed at <http://www.estadao.com.br/noticias/impreso,acordo-de-maluf-traria-us-13...> Agence France Presse, "Graft sentence upheld for ex-Sao Paulo ex-mayor," November 4, 2013, at <http://www.globalpost.com/dispatch/news/afp/131104/graft-sentence-upheld...>