

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, CRIMINAL TERM

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Ind. No.

PAULO MALUF,
FLAVIO MALUF,
SIMEÃO DAMASCENO de OLIVEIRA,
JOEL GUEDES FERNANDES, and
VIVALDO ALVES

Defendants.

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuse the defendants of the crime of **CONSPIRACY IN THE FOURTH DEGREE**, in violation of Penal Law §105.10(1), committed as follows: the defendants, in the County of New York, State of New York; São Paulo, Brazil; the Bailiwick of Jersey in the Channel Islands; and elsewhere, during the period from on or about January 1993 through on or about August 2004 with intent that conduct constituting the class “B” and “C” felonies of Grand Larceny in the First and Second Degree and Criminal Possession of Stolen Property in the First and Second Degree be performed, agreed with other persons known and unknown to the Grand Jury to engage in and cause the performance of such conduct.

Background to the Conspiracy

The object of the conspiracy was to steal money from the City of São Paulo, Brazil, to possess the money in Brazil, New York and elsewhere, and to conceal the existence of the conspiracy and the location of the stolen money. To do this, the conspirators perpetrated an over-invoicing and kick-back scheme involving the municipal construction of an arterial highway in São Paulo known as the Avenida Agua Espraiada project. In the course of the conspiracy, stolen proceeds were transferred to a bank account in New York County and, from

New York County, to a bank account located in the Bailiwick of Jersey in the Channel Islands. The conspirators also used the bank account in New York County to return stolen proceeds to Brazil, to buy personal items, and to pay for expenses related to Brazilian political campaigns.

During the period from on or about January 1993 to on or about December 1996, PAULO MALUF was Mayor of São Paulo. During this period and thereafter, PAULO MALUF directed the over-invoicing scheme, received kick-backs from the scheme amounting to millions of dollars, used secret bank accounts in New York County and the Bailiwick of Jersey to hide and utilize the stolen funds, and was the conspiracy's principal beneficiary.

FLAVIO MALUF is PAULO MALUF'S son. FLAVIO MALUF helped PAULO MALUF direct the over-invoicing scheme, received kick-backs, and also used bank accounts in New York County and the Bailiwick of Jersey to hide and utilize the stolen funds. FLAVIO MALUF also took steps to cover-up the conspiracy by attempting to persuade witnesses not to cooperate with law enforcement authorities investigating the scheme.

Simeão Damasceno de Oliveira (DAMASCENO) was the Finance Director at the Brazilian construction firm "Mendes Junior." As part of the conspiracy, DAMASCENO coordinated the distribution of stolen money to PAULO MALUF, FLAVIO MALUF, and others known and unknown to the Grand Jury, and prepared records to keep track of said payments.

Joel Guedes Fernandes (GUEDES) was a cashier/pay clerk at Mendes Junior. As part of the conspiracy, GUEDES was responsible for preparing records related to the conspiracy and for the distribution of stolen money to PAULO MALUF, FLAVIO MALUF, and others known and unknown to the Grand Jury.

Vivaldo Alves (ALVES) was a black market money transmitter who, as part of the conspiracy, established bank accounts on behalf of PAULO MALUF and FLAVIO MALUF in New York County to receive transfers of stolen funds. ALVES also assisted PAULO MALUF and FLAVIO MALUF in the illegal repatriation of funds to Brazil.

The Avenida Agua Espraiada over-invoicing and kick-back scheme worked as follows: To take part in the project, construction sub-contractors were required to submit over-inflated and false invoices to the general contractors. The general contractors were the Brazilian construction firm of Mendes Junior and another Brazilian construction firm called "OAS" (collectively, the "general contractors"). After receiving the over-inflated and false invoices, the general contractors submitted the invoices for payment to Empresa Municipal de Urbanização (EMURB), the São Paulo municipal agency charged with supervising the payment of funds for the project. Following EMURB'S payment of the inflated invoices, the general contractors generated kick-backs to PAULO MALUF, FLAVIO MALUF, and others both known and unknown to the Grand Jury. The kick-backs were calculated and distributed by, among others, DAMASCENO and GUEDES.

PAULO MALUF and FLAVIO MALUF sometimes received kick-back payments through cash distributions and, at other times, through the transmission of the funds through illegal black market money transmission operations, known in Brazil as "doleiros," to accounts PAULO MALUF and FLAVIO MALUF controlled in New York County and elsewhere.

PAULO MALUF and FLAVIO MALUF received some of the kick-backs in the form of wire transfers sent to accounts that PAULO MALUF and FLAVIO MALUF controlled outside Brazil, including a bank account located at Safra National Bank, 546 Fifth Avenue, New York, New York that was maintained under the code name "Chanani" (hereinafter the "New York Chanani Account").

The New York Chanani Account was opened by ALVES. Notwithstanding its use and control by PAULO MALUF and FLAVIO MALUF, ALVES told Safra National Bank that ALVES and ALVES'S wife were the beneficial owners of the New York Chanani Account.

PAULO MALUF and FLAVIO MALUF exercised dominion and control over the New York Chanani Account by, among other things, using the New York Chanani Account to: (i)

transfer funds to other accounts located at Safra National Bank in New York County that were controlled by PAULO MALUF, FLAVIO MALUF, and other members of the Maluf family; (ii) receive funds from, and transfer funds to, secret accounts located in the Bailiwick of Jersey that were controlled by PAULO MALUF, FLAVIO MALUF, and other members of the Maluf family; (iii) facilitate payment for personal items purchased in the United States for the benefit of PAULO MALUF, FLAVIO MALUF, and other members of the Maluf family; (iv) make payments related to political electoral campaigns, including PAULO MALUF'S 1998 campaign for Governor of the State of São Paulo and the 1997 campaign for Mayor of the City of São Paulo by PAULO MALUF's chosen successor; and (v) repatriate funds to Brazil for their use using the doleiro system.

Overt Acts

In the course of and in furtherance of the conspiracy, the conspirators and their agents committed and caused to be committed, in the County of New York and elsewhere, the following overt acts:

1. Beginning in January 1994, and continuing through on or about 1996, in São Paulo, Brazil, FLAVIO MALUF met with representatives from EMURB, Mendes Junior and OAS to coordinate kick-backs from the Avenida Agua Espraiada over-invoicing and kick-back scheme to PAULO MALUF.
2. Beginning in January 1994, in São Paulo, Brazil, kick-back payments related to the Avenida Agua Espraiada over-invoicing and kick-back scheme were paid in cash to PAULO MALUF and others.
3. On or about February 5, 1998, DAMASCENO prepared a document to record kick-back payments from the Avenida Agua Espraiada over-invoicing and kick-back scheme to PAULO MALUF.

4. On or about May 11, 1998, DAMASCENO prepared a document to record kick-back payments from the Avenida Agua Espraiada over-invoicing and kick-back scheme to PAULO MALUF.
5. On or about August 18, 1998, DAMASCENO prepared a document to record kick-back payments from the Avenida Agua Espraiada over-invoicing and kick-back scheme to PAULO MALUF.
6. On or about January 7, 1998, GUEDES prepared records related to the Avenida Agua Espraiada over-invoicing and kick-back scheme.
7. On or about January 28, 1998, GUEDES prepared records related to the Avenida Agua Espraiada over-invoicing and kick-back scheme.
8. On or about February 4, 1998, GUEDES prepared records related to the Avenida Agua Espraiada over-invoicing and kick-back scheme.
9. On or about October 15, 1997, ALVES opened a bank account under the code name “Chanani” at Safra National Bank, 546 Fifth Avenue, New York, New York (the “New York Chanani Account”).
10. On or about May 15, 1997, offshore shell entities and offshore trusts from the British Virgin Islands, owned and controlled by PAULO MALUF and his family, opened a bank account under the name “Durant International Corp.” at Deutsche, Morgan, Grenfell (Channel Islands), located in the Bailiwick of Jersey.

Transfers of Stolen Funds from Brazil to the New York Chanani Account

11. On or about January 9, 1998, \$1,666,667.00 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
12. On or about January 14, 1998, \$500,000.00 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.

13. On or about January 15, 1998, \$1,300,000.00 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
14. On or about January 16, 1998, \$824,059.40 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
15. On or about January 20, 1998, \$381,405.00 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
16. On or about January 21, 1998, \$450,000.00 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
17. On or about January 21, 1998, \$843,233.56 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
18. On or about January 21, 1998, \$833,817.14 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
19. On or about January 22, 1998, \$500,000.00 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
20. On or about January 22, 1998, \$409,517.00 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
21. On or about January 26, 1998, \$411,523.00 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
22. On or about January 29, 1998, \$1,265,223.72 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
23. On or about February 6, 1998, \$1,114,609.53 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.
24. On or about May 11, 1998, \$345,922.50 was transferred into the New York Chanani Account on behalf of PAULO MALUF and FLAVIO MALUF.

25. On or about August 20, 1998, \$834,854.77 was transferred into the New York Chanani Account in New York County on behalf of PAULO MALUF and FLAVIO MALUF.

**Use of Stolen Funds in the New York Chanani Account
to Make Purchases in Manhattan**

26. On or about November 5, 1998, PAULO MALUF purchased two antique watches from an auction house located in New York County with funds from the New York Chanani Account.

27. On or about November 18, 1998, PAULO MALUF made purchases from an auction house located in New York County with funds located in the New York Chanani Account.

28. On or about December 21, 1998, PAULO MALUF made purchases from an auction house located in New York County with funds located in the New York Chanani Account.

29. On or about April 20, 1999 PAULO MALUF made purchases from an auction house located in New York County with funds located in the New York Chanani Account.

**Transfers of Stolen Funds from the New York Chanani Account to Accounts
Controlled by PAULO MALUF and FLAVIO MALUF in the Bailiwick of Jersey**

30. On or about January 14, 1998, \$900,000.00 was transferred from the New York Chanani Account to the Durant International Corp. bank account at Deutsche, Morgan, Grenfell (Channel Islands), located in the Bailiwick of Jersey (hereinafter the “Jersey Durant Account”).

31. On or about January 15, 1998, \$700,000.00 was transferred from the New York Chanani Account in New York County to the Jersey Durant Account.

32. On or about January 16, 1998, \$520,000.00 was transferred from the New York Chanani Account to the Jersey Durant Account.
33. On or about January 20, 1998, \$7,600,000.00 was transferred from the New York Chanani Account to the Jersey Durant Account.
34. On or about January 21, 1998, \$900,000.00 was transferred from the New York Chanani Account to the Jersey Durant Account.
35. On or about January 23, 1998, \$2,500,000.00 was transferred from the New York Chanani Account to the Jersey Durant Account.
36. On or about November 4, 1998, \$3,000,000.00 was transferred from the New York Chanani Account to the Jersey Durant Account.

**Use of Stolen Funds in the New York Chanani Account
to Finance Brazilian Political Campaigns**

37. On or about April 24, 1998, \$102,232.61 was transferred from the New York Chanani Account to pay for expenses related to political campaigns in Brazil.
38. On or about April 24, 1998, \$75,000.00 was transferred from the New York Chanani Account to pay for expenses related to political campaigns in Brazil.
39. On or about May 19, 1998, \$72,000.00 was transferred from the New York Chanani Account to pay for expenses related to political campaigns in Brazil.
40. On or about June 26, 1998, \$123,065.70 was transferred from the New York Chanani Account to pay for expenses related to political campaigns in Brazil.
41. On or about July 2, 1998, \$121,000.00 was transferred from the New York Chanani Account to pay for expenses related to political campaigns in Brazil.
42. On or about July 8, 1998, \$150,000.00 was transferred from the New York Chanani Account to pay for expenses related to political campaigns in Brazil.

43. On or about August 3, 1998, \$126,703.56 was transferred from the New York Chanani Account to pay for expenses related to political campaigns in Brazil.
44. On or about August 5, 1998, \$37,500.00 was transferred from the New York Chanani Account to pay for expenses related to political campaigns in Brazil.
45. On or about August 25, 1998, \$106,324.00 was transferred from the New York Chanani Account to pay for expenses related to political campaigns in Brazil.
46. On or about September 23, 1998, \$55,030.00 was transferred from the New York Chanani Account to pay for expenses related to political campaigns Brazil.
47. On or about October 30, 1998, \$92,167.00 was transferred from the New York Chanani Account to pay for expenses related to political campaigns Brazil.
48. On or about November 19, 1998, \$2,257.00 was transferred from the New York Chanani Account to pay for expenses related to political campaigns Brazil.
49. On or about December 9, 1998, \$80,000.00 was transferred from the New York Chanani Account to pay for expenses related to political campaigns Brazil.

Transfer of Stolen Funds in the New York Chanani Account to Brazil

50. During the period from on or about February 18, 1998 to May 11, 1999, PAULO MALUF and FLAVIO MALUF repatriated funds from the New York Chanani Account to Brazil via money transfers sent from Safra National Bank in New York County to doleiros, known to the Grand Jury, operating in Brazil.

Efforts by Members of the Conspiracy to Hide the Existence of the Conspiracy

51. On or about March 28, 2001, in São Paulo, Brazil, during an interview with U.S. and Brazilian law enforcement officials, FLAVIO MALUF denied holding any beneficial interest in any bank accounts belonging to third parties in foreign countries, including trust accounts.
52. At the same interview, FLAVIO MALUF stated in substance that he did not know whether any of the companies belonging to members of his family had bank accounts in foreign countries.
53. In or about August, 2004, in São Paulo, Brazil, an associate of PAULO MALUF who is known to the Grand Jury, acting on behalf of PAULO MALUF, approached a witness known to the Grand Jury and attempted to bribe the witness not to cooperate with Brazilian law enforcement.

SECOND COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE**, in violation of Penal Law §165.54, committed as follows: the defendants, in the County of New York, during the period from on or about January 9, 1998 through on or about August 20, 1998, knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded one million dollars.

THIRD COUNT

AND THE GRAND JURY AFORESAID, by this indictment, accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE**, in violation of Penal Law §165.54, committed as follows: the defendants, in the County of New York, on or about January 9, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded one million dollars.

FOURTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows: the defendants, in the County of New York, on or about January 14, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

FIFTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE**, in violation of Penal Law §165.54, committed as follows: the defendants, in the County of New York, on or about January 15, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

SIXTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows: the defendants, in the County of New York, on or about January 16, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

SEVENTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows: the defendants, in the County of New York, on or about January 20, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

EIGHTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows: the defendants, in the County of New York, on or about January 21, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

NINTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows: the defendants, in the County of New York, on or about January 21, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

TENTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows: the defendants, in the County of New York, on or about January 21, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

ELEVENTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows: the defendants, in the County of New York, on or about January 22, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

TWELFTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows: the defendants, in the County of New York, on or about January 22, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

THIRTEENTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows: the defendants, in the County of New York, on or about January 26, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

FOURTEENTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE**, in violation of Penal Law §165.54, committed as follows: the defendants, in the County of New York, on or about January 29, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

FIFTEENTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE**, in violation of Penal Law §165.54, committed as follows: the defendants, in the County of New York, on or about February 6, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

SIXTEENTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows: the defendants, in the County of New York, on or about May 11, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

SEVENTEENTH COUNT

AND THE GRAND JURY AFORESAID, further accuse the defendants of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows: the defendants, in the County of New York, on or about August 20, 1998 knowingly possessed stolen property, to wit, funds stolen from the Municipality of São Paulo, Brazil, with intent to benefit themselves or a person other than an owner thereof, or to impede the recovery by an owner, and the value of the property exceeded fifty thousand dollars.

ROBERT M. MORGENTHAU
District Attorney

Filed:

NA

No.

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Paulo Maluf,
Flavio Maluf,
Simeão Damasceno de Oliveira,
Joel Guedes Fernandes and
Vivaldo Alves,

Defendants.

INDICTMENT

CONSPIRACY IN THE FOURTH DEGREE, P.L. §105.10(1)
CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE, P.L. §165.54 (5 cts)
CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE, P.L. §165.52 (11 cts)

ROBERT M. MORGENTHAU, District Attorney

ADA ADAM KAUFMANN
ADA MATTHEW ROSEN
INVESTIGATION DIVISION CENTRAL

A True Bill

Foreman

