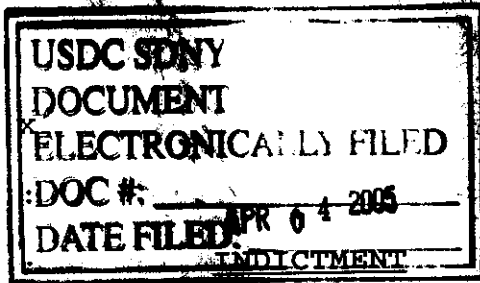


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

- v -

PAUL BOGHOSIAN and  
WILLIAM H. SPENCER,

: 05 Cr.

Defendants. :

**05CRIM. 351**

----- x  
COUNT ONE

(Conspiracy to Commit  
Bankruptcy Fraud)

The Grand Jury charges:

Relevant Individuals and Entities

1. At all times relevant to this Indictment, Hawaiian Airlines, Inc. ("HAL") was a corporation organized under the laws of the State of Hawaii with its headquarters located in Honolulu, Hawaii. At all times relevant to this Indictment, HAL was a subsidiary of Hawaiian Holdings, Inc. ("Hawaiian Holdings") and purported to be Hawaii's biggest and longest-serving airline, and the second largest provider of passenger air service between Hawaii and the United States mainland.

2. On or about March 21, 2003, HAL filed a voluntary petition for bankruptcy pursuant to Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Hawaii (the "Bankruptcy Court").

**JUDGE PRESKA**

3. At all times relevant to this Indictment, Hawaiian Investment Partners Group LLC ("HIP") was a limited liability corporation organized under the laws of the State of Nevada. On or about July 29, 2004, HIP, and other interested parties, filed a plan of reorganization for HAL with the Bankruptcy Court (including amendments, the "HIP Plan").

4. At all times relevant to this Indictment, PAUL BOGHOSIAN, the defendant, purported to be the operating manager of Hawaiian Air Joint Venture ("HAJV"). HAJV, in turn, purported to be a financial backer of, and potential participant in, the HIP Plan to reorganize HAL.

5. At all times relevant to this Indictment, WILLIAM H. SPENCER, the defendant, purported to be the trustee of the E&M Trust. In turn, the E&M Trust purported to own a majority equity interest in HAJV.

6. At all times relevant to this Indictment, an FBI agent acting in an undercover capacity (the "UC") purported to be the manager of a hedge fund (the "Hedge Fund") with its headquarters located in New York, New York.

7. At all times relevant to this Indictment, ABN Amro Bank, N.V. ("ABN Amro Bank") was an international bank with its headquarters located in Amsterdam, The Netherlands.

### The Fraudulent Scheme

8. By in or about November 2004, there were two competing reorganization plans for HAL pending before the Bankruptcy Court: (1) the Hip Plan; and (2) a joint plan proposed by the Bankruptcy Trustee and Hawaiian Holdings, among others, that was filed on or about October 7, 2004.

9. As described more fully below, from in or about November 2004 through in or about March 2005, PAUL BOGHOSIAN and WILLIAM H. SPENCER, the defendants, and others known and unknown, engaged in a scheme to defraud by making a series of false representations in submissions to the Bankruptcy Court regarding their ability to fund the HIP Plan, and then disseminating those false representations to potential investors in the HIP Plan. Among other material terms and representations, the HIP Plan required HIP to provide approximately \$300 million in new capital to fund HAL's reorganization.

10. PAUL BOGHOSIAN and WILLIAM H. SPENCER, the defendants, and others known and unknown, falsely represented in sworn statements submitted to the Bankruptcy Court that, through the E&M Trust and HAJV, they could provide approximately \$300 million to fund the HIP Plan. Further, BOGHOSIAN and SPENCER, among others, used those false representations to: (1) solicit interested parties to support the HIP Plan; and (2) solicit others to invest in the HIP Plan or otherwise provide financing

for the HIP Plan. In addition, both BOGHOSIAN and SPENCER made false and misleading statements in depositions conducted as part of the Bankruptcy Court proceedings.

**Misrepresentations in Bankruptcy Court Submissions**

11. On or about November 11, 2004, the HIP Plan proponents filed a disclosure statement (the "HIP Disclosure Statement") with the Bankruptcy Court that contained, among other things, financial projections based on the HIP Plan business model. The HIP Disclosure Statement represented that, as required by the HIP Plan, HIP would provide at least approximately \$200,000,000 in new equity funding to HAL, and that HIP had obtained a commitment for an additional approximately \$100,000,000 line of credit for HAL. HIP represented that it would receive the total of approximately \$300 million in new funds from HAJV.

12. As proof of HIP's funding, PAUL BOGHOSIAN, the defendant, dated an affidavit on or about November 3, 2004 (the "Boghosian Affidavit") to the Bankruptcy Court that purported to describe HAJV's financial capacity to fund its obligations under the HIP Plan.

13. On or about February 4, 2005, as proof of HAJV's ability to satisfy its financial commitments as detailed in the HIP Disclosure Statement, WILLIAM H. SPENCER, the defendant, submitted an affidavit (the "Spencer Affidavit"), together with

purported bank records, to the Bankruptcy Court. SPENCER represented, among other things, that the E&M Trust had committed approximately \$500 million that it held in an account at ABN Amro Bank for HAJV's exclusive use for approximately one year.

14. From in or about November 2004 through in or about February 2005, PAUL BOGHOSIAN and WILLIAM H. SPENCER, the defendants, and others known and unknown, caused the Boghosian Affidavit and the Spencer Affidavit (collectively, the "HIP Financial Submissions") to be distributed to potential participants in the HIP Plan.

15. Among the materially false and misleading statements made by the defendants in the HIP Financial Submissions were the following:

- a. HAJV could readily obtain the approximately \$300 million necessary to fund the HIP Plan from the E&M Trust, when, in truth and in fact, as the defendants well knew, HAJV did not have access to approximately \$300 million from the E&M Trust;
- b. The E&M Trust held a bank account containing cash assets worth approximately \$500 million at ABN Amro Bank, when, in truth and in fact, as the defendants well knew, the E&M Trust held no account at ABN Amro Bank; and

c. Two officials of ABN Amro Bank had sent a letter dated on or about January 19, 2005 confirming that SPENCER held an account at the bank valued at approximately \$500 million, when, in truth and in fact, as the defendants well knew, the two officials who signed the letter were not employed by ABN Amro Bank, the account number provided was an invalid ABN Amro Bank account number, and ABN Amro Bank had never authorized such a letter because the bank had no record of maintaining accounts for either SPENCER or the E&M Trust.

**BOGHOSIAN Agrees to Bribe the UC**

16. In furtherance of this scheme, beginning in or about January 2004, PAUL BOGHOSIAN, the defendant, solicited potential investors and others to provide cash and other financing for the purported purpose of carrying out the HIP Plan.

17. Among other potential investors, BOGHOSIAN solicited the Hedge Fund to provide the approximately \$200 million in equity funding required by the HIP Plan, or, in the alternative, to provide approximately \$1.5 million in "mobilization funds" to pay expenses related to efforts to obtain Bankruptcy Court approval for the HIP Plan, such as legal fees. BOGHOSIAN informed the UC that SPENCER previously had committed

to providing the mobilization funds, but had not transmitted them as promised.

18. On or about February 21, 2005, BOGHOSIAN traveled to a meeting in New York, New York, to meet with the UC, who was acting as the manager of the Hedge Fund. During that meeting BOGHOSIAN agreed to pay a bribe of approximately \$500,000 to the UC if the UC would cause the Hedge Fund to loan BOGHOSIAN approximately \$2.5 million for "mobilization funds."

19. In an effort to conceal the bribe, at BOGHOSIAN's suggestion, on or about February 22, 2005, SPENCER, on behalf of the E&M Trust, executed a promissory note to the Hedge Fund for approximately \$2.5 million.

**Misrepresentations in Depositions**

20. On or about March 3, 2005, in furtherance of this scheme and in an effort to obtain the Bankruptcy Court's approval of the HIP Plan, WILLIAM H. SPENCER, the defendant, appeared for testimony, under oath, at a deposition conducted by attorneys representing the Bankruptcy Trustee. Among other false and misleading statements and material omissions, SPENCER testified that the approximately \$500 million described in the Spencer Affidavit was available at ABN Amro Bank, when, in truth and in fact, as the defendant well knew, there were no such funds at ABN Amro Bank.

21. On or about March 4, 2005, PAUL BOGHOSIAN, the

defendant, also appeared for testimony under oath at a deposition conducted by attorneys representing the Bankruptcy Trustee.

Among the false and misleading statements and material omissions made by BOGHOSIAN were the following:

- a. Since in or about September 2004, BOGHOSIAN testified that he had not solicited any investment in connection with HAL, when, in truth and in fact, as the defendant well knew, he had solicited investment in the HIP Plan from the UC's hedge fund beginning in or about January 2005;
- b. When asked about any due diligence that he had performed regarding SPENCER, BOGHOSIAN did not disclose that he had discovered SPENCER's name on an Internet site identifying SPENCER as having been previously involved in a prime bank note fraud;
- c. BOGHOSIAN stated that he had no concerns about the ability of the E&M Trust to provide the necessary financial backing for the HIP Plan, and that he had not spoken with anyone about providing alternative financing, when, in truth and in fact, he had approached the UC to solicit the Hedge Fund to provide the

approximately \$200 million in new equity funding required by the HIP Plan;

- d. BOGHOSIAN testified that he received an offer from the Hedge Fund for investment in HAJV, when, in truth and in fact, as the defendant well knew, he had solicited the Hedge Fund's investment;
- e. BOGHOSIAN stated that there were no terms relating to the investment by Hedge Fund other than those contained in the promissory note, when, in truth and in fact, as the defendant well knew, he had agreed to pay a bribe of approximately \$500,000 to the UC in exchange for the Hedge Fund's loan; and
- f. BOGHOSIAN stated that the approximately \$2.5 million from the UC's hedge fund was available to him on request, but that he had not drawn on it because he did not currently require the funds, when, in truth and in fact, as the defendant well knew, the UC had informed him that the funds were unavailable due to the purported freeze of the Hedge Fund's operating account.

### The Conspiracy

22. From in or about November 2004 through in or about March 2005, in the Southern District of New York and elsewhere, PAUL BOGHOSIAN and WILLIAM H. SPENCER, the defendants, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, namely to commit bankruptcy fraud, in violation of Title 18, United States Code, Section 157.

### Object of the Conspiracy

#### Bankruptcy Fraud

23. It was a part and an object of the conspiracy that PAUL BOGHOSIAN and WILLIAM H. SPENCER, the defendants, and others known and unknown, unlawfully, willfully, and knowingly, having devised a scheme to defraud, and for the purpose of executing and concealing such a scheme or artifice, made false and fraudulent representations, claims, and promises in relation to a proceeding under Title 11 of the United States Code, following the filing of the petition, in violation of Title 18, United States Code, Section 157.

### Means and Methods of the Conspiracy

24. Among the means and methods by which PAUL

BOGHOSIAN and WILLIAM H. SPENCER, the defendants, and others known and unknown, would and did carry out the conspiracy were the following:

- a. The defendants made false and fraudulent representations in submissions to the Bankruptcy Court in connection with the HAL bankruptcy proceedings;
- b. The defendants submitted false bank records to the Bankruptcy Court in connection with the HAL bankruptcy proceedings;
- c. The defendants made oral and written misrepresentations to potential investors in the HIP Plan in connection with the HAL bankruptcy proceedings; and
- d. The defendants made false and misleading statements in depositions taken in connection with the HAL bankruptcy proceedings.

**Overt Acts**

25. In furtherance of said conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

- a. On or about November 9, 2004, PAUL BOGHOSIAN, the defendant, faxed a copy of the Boghosian Affidavit to the CW in New York, New York;
- b. On or about February 4, 2005, WILLIAM H. SPENCER, the defendant, submitted a sworn statement to the Bankruptcy Court;
- c. On or about February 21, 2005, PAUL BOGHOSIAN, the defendant, met with the UC in New York, New York;
- d. On or about February 25, 2005, PAUL BOGHOSIAN, the defendant, caused the UC to wire funds from a bank account located in New York, New York;
- e. On or about March 3, 2005, WILLIAM H. SPENCER, the defendant, gave a deposition in connection with the HAL bankruptcy; and
- f. On or about March 4, 2005, PAUL BOGHOSIAN, the defendant, gave a deposition in connection with the HAL bankruptcy.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Commercial Bribery)

The Grand Jury further charges:

26. The allegations contained in Paragraphs 1 through

21, and 24 and 25 of this Indictment are repeated and realleged as if fully set forth herein.

27. On or about February 21, 2005, in the Southern District of New York and elsewhere, PAUL BOGHOSIAN, the defendant, unlawfully, willfully, and knowingly, traveled in interstate and foreign commerce and used the mails and facilities in interstate and foreign commerce, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of unlawful activity, specifically commercial bribery, in violation of New York State Penal Law Sections 180.00 and 180.03, and thereafter did perform and attempt to perform an act to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of such unlawful activity, all in violation of Title 18, United States Code, Section 1952(a)(3), namely, BOGHOSIAN traveled from St. Louis, Missouri to New York, New York in furtherance of the bankruptcy fraud and bribery schemes set forth above.

(Title 18, United States Code, Section 1952(a)(3).)

**COUNT THREE**

(Commercial Bribery)

The Grand Jury further charges:

28. The allegations contained in Paragraphs 1 through

21, and 24 and 25 of this Indictment are repeated and realleged as if fully set forth herein.

29. On or about February 21, 2005, in the Southern District of New York and elsewhere, PAUL BOGHOSIAN, the defendant, unlawfully, willfully, and knowingly, traveled in interstate and foreign commerce and used the mails and facilities in interstate and foreign commerce, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of unlawful activity, specifically commercial bribery, in violation of New York State Penal Law Sections 180.00 and 180.03, and thereafter did perform and attempt to perform an act to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of such unlawful activity, all in violation of Title 18, United States Code, Section 1952(a)(3), namely, BOGHOSIAN caused a facsimile to be transmitted on or about February 22, 2005 from St. Louis, Missouri to New York, New York in furtherance of the bankruptcy fraud and bribery schemes set forth above.

(Title 18, United States Code, Section 1952(a)(3).)

  
FOREPERSON

  
DAVID N. KELLEY  
United States Attorney

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v - :

PAUL BOGHOSIAN and :  
WILLIAM H. SPENCER, :

INDICTMENT  
05 Cr.

Defendants. :

- - - - - x

INDICTMENT  
05 Cr.

Title 18, U.S.C. § 371; Title 18 U.S.C. § 1952 (a) (3) .) and  
Title 18 U.S.C. § 1952 (a) (3) .

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DAVID N. KELLEY  
United States Attorney.

A TRUE BILL

\_\_\_\_\_  
  
Foreperson.

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1/4/05 Filed Indictment. case assigned to Judge  
Pres Kg Pitman  
J.S. M. J