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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA  
:  
-v-  
:  
GARY SATIN  
:  
Defendant.  
:  
-----x

SUPERSEDING INFORMATION  
S2 11 Cr. 1091 (VM)

COUNT ONE

(Conspiracy to Defraud the United States RRB and to Commit Health Care Fraud, Mail Fraud, and the Submission of False Claims)

The United States Attorney charges:

The Defendant and Selected Co-Conspirators

1. GARY SATIN, the defendant, was an electrician for the Long Island Railroad (the "LIRR") who retired with an LIRR pension in or about June 2005, after approximately 23 years of railroad employment and at age 55. After retirement, SATIN sought and obtained sickness and disability benefits from the United States Railroad Retirement Board (the "RRB"). In his last full year with the LIRR, SATIN received approximately \$84,000 in compensation. In 2010, he received approximately \$32,000 in LIRR pension payments and approximately \$36,000 from his RRB disability annuity.

2. Peter J. Ajemian, a co-conspirator not charged as a defendant herein, was a Board-certified orthopedist who, from at least in or about 1998, up to and including at least in or about 2011, assisted retirees from the Long Island Railroad ("LIRR") in

applying for sickness and occupational disability benefits from the Rail Road Retirement Board. From in or about January 2008 until his termination on or about September 29, 2008, Ajemian was employed at a medical practice based in Rockville Centre, New York (the "Ajemian Practice"). Ajemian previously had worked at other Long Island-based practices. From 1998 through 2008, Ajemian submitted medical reports to the RRB, recommending hundreds of LIRR employees for disability benefits.

3. Maria Rusin, a co-conspirator not charged as a defendant herein, was the office manager for Peter J. Ajemian, the defendant, in a succession of practices, including at the Ajemian Practice, starting at least in or about 2000. Rusin retired and began receiving disability benefits in or about late 2009, based upon injuries she claimed to have sustained while working for Ajemian and based, in part, upon medical documentation submitted by Ajemian.

4. A co-conspirator not named as a defendant herein ("Facilitator 1") was a "facilitator" who charged a fee to assist LIRR retirees in obtaining a disability annuity from the RRB, including by steering the retirees to certain doctors, including Peter J. Ajemian, a co-conspirator not named as a defendant herein, and by participating in preparing and submitting false documents to the RRB.

Overview Of The Premeditated Disability Fraud

5. The defendant and his co-conspirators committed a

fraud in which LIRR workers who were ready to retire falsely claimed to be disabled, including occupationally disabled, in order to receive extra benefits to which they were not entitled. Specifically, LIRR employees, who were eligible to retire as early as age 50 with an LIRR pension, sought to supplement their LIRR pension with a separate RRB disability annuity which, when combined with their LIRR pension, resulted in a total income level that often approximated their pre-retirement, working income. This fraud was perpetrated with the knowing and intentional involvement primarily of three doctors, including Peter J. Ajemian, a co-conspirator not named as a defendant herein, who falsely declared retiring LIRR workers to be disabled when in truth and in fact the workers were not disabled. Typically, these disability doctors claimed that their LIRR patients suffered from various musculoskeletal impairments, which can involve claims of soft tissue injury that are more difficult to confirm by objective criteria than are other impairments, and are often diagnosed clinically, based upon pain as subjectively reported by the patient.

6. The doctors participating in the fraud profited by charging fees for preparing disability narratives and medical assessment forms, by obtaining new patient referrals from other LIRR employees and facilitators, and by billing private health insurers for unnecessary tests and visits. For example, from in or about September 2004 to in or about September 2008, the total

such revenue for Peter J. Ajemian, a co-conspirator not named as a defendant herein, was at least hundreds of thousands of dollars. This revenue provided financial motivation for the doctors to participate in the fraud.

7. For the period August 2004 through August 2008, Peter J. Ajemian, a co-conspirator not named as a defendant herein, was the treating physician for more than approximately 47% of the RRB disability applications filed by LIRR employees younger than 65.

8. For the period between in or about 1997 and in or about 2008, Peter J. Ajemian, a co-conspirator not named as a defendant herein, declared disabled over 94% of the LIRR employees he saw as patients who were eligible to retire with an LIRR pension.

The Conspirators' Exploitation Of The Overlap Between The LIRR Pension And The Railroad Retirement Board Disability Programs

9. The RRB is an independent agency within the executive branch of the Federal Government that was created in the 1930s. The RRB administers comprehensive retirement, survivor, and benefit programs, including disability benefits, for the nation's railroad workers and their families, under the Railroad Retirement and Railroad Unemployment Insurance Acts. LIRR employees participate in the RRB disability program and in the RRB pension program. The RRB disability and pension programs are primarily funded by federal employment taxes paid by railroad

employers and railroad employees nationwide and by certain federal income taxes paid by recipients of RRB pensions.

10. Retired LIRR workers can receive two pensions, but the minimum eligibility age is different for the two programs. First, LIRR workers are eligible for a pension paid by the LIRR. LIRR workers hired before 1988 may draw the LIRR pension at the age of 50, provided they have been employed for at least 20 years. Second, LIRR workers are eligible for a pension paid by the RRB, but most workers only become eligible for that full pension at the age of 65. Thus, a 65-year old LIRR retiree receives two pension payments - one from LIRR and one from RRB. But qualifying 50-year old retirees receive only an LIRR pension, and generally must wait 15 years before receiving their full second, RRB pension.

11. An LIRR employee may apply for - and receive if qualified - an RRB disability award after he or she has retired and stopped working, notwithstanding the fact that the employee collects an LIRR pension. This enables an LIRR worker to receive both the LIRR pension as well as RRB payments prior to the time he or she would be eligible to receive an RRB pension. For example, an LIRR worker who retired at age 50 would be eligible only for an LIRR pension, and would have to wait 15 years until her 65th birthday to begin collecting a supplemental RRB pension, thereby drawing a substantially lower income upon retirement. However, if that worker was deemed occupationally disabled after she retired at the age of 50, then she could immediately begin collecting both

her LIRR pension and RRB disability payments. That retiree - who would receive both her LIRR pension, as well as RRB disability payments - could then draw roughly the base salary earned during her career.

12. The RRB provides two types of disability annuities. First, a total disability annuity is based upon guidelines similar to those for Social Security disability; in other words, it requires a showing of a permanent and total disability. Second, the RRB provides for "occupational disability" annuities for railroad workers who have permanent physical or mental impairments that prevent them from performing their specific railroad jobs, regardless of whether they might be capable of performing other work. See 20 C.F.R. § 220.10(a). A railroad worker is eligible to apply for an occupational disability at age 60 if he or she has 10 years of employment, or at any age with at least 20 years of employment.

13. At all times relevant to this Information, the RRB has required medical findings to support a claim of occupational disability, including "objective" tests and reports. See 20 C.F.R. § 220.46. Among other things, these medical findings must be complete and detailed enough to allow the RRB to make a determination about whether a claimant's disability is a legitimate impairment, including "(1) [t]he nature and limiting effects of the claimant's impairment(s) for any period in question; (2) the probable duration of the claimant's

impairment(s); and (3) the claimant's residual functional capacity to do work-related physical and mental activities." Id. A "functional capacity test" is defined as "one of a number of tests which provide objective measures of a claimant's maximal work ability and includes functional capacity evaluations which provide a systematic comprehensive assessment of a claimant's overall strength, mobility, endurance and capacity to perform physically demanding tasks, such as standing, walking, lifting, crouching, stooping or bending, climbing or kneeling." 20 C.F.R. § 220.11.

14. Pursuant to federal regulations, the RRB must take into account an applicant's statement concerning the intensity of pain that he or she is suffering as well as the treating physician's descriptions of those symptoms. While applicable regulations require that the RRB determine that subjective symptoms such as pain be consistent with objectively demonstrable medical evidence, the regulations provide:

Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, the Board will carefully consider any other information the claimant may submit about his or her symptoms. The information that the claimant, the claimant's treating or examining physician or psychologist, or other persons provide about the claimant's pain or other symptoms (e.g., what may precipitate or aggravate the claimant's symptoms, what medications, treatments or other methods he or she uses to alleviate them, and how the symptoms may affect the claimant's pattern of daily living) is also an important indicator of the intensity and persistence of the claimant's symptoms. Because symptoms, such as pain, are

subjective and difficult to quantify, any symptom-related functional limitations and restrictions which the claimant, his or her treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account . . . .

See 20 C.F.R. § 220.114(c)(3).

15. The regulations further provide that, if the treating physician gives an opinion that is inconsistent with other medical evidence, including opinions obtained by RRB medical consultants, the RRB must resolve those inconsistencies based on all the evidence in the case record. In doing so, however, the RRB must "give some extra weight to the treating source's supported opinion(s) which interprets the medical findings about the nature and severity of the impairment(s)." 20 C.F.R. § 220.112(d). Thus, the regulatory system is vulnerable to abuse by employees and treating physicians who falsify and exaggerate symptoms, as the RRB is required to give their statements extra weight.

16. Typically, a treating physician completes and signs an RRB Medical Assessment filing, known as a G-250 form (hereinafter referred to as a "Medical Assessment"). The Medical Assessment sets forth the doctor's view of objective medical tests, medical findings, and required medical restrictions.

17. As a critical part of the RRB disability process, every annuitant also must file an Application for Determination of

Employee's Disability, known as a Form AA-1d (hereinafter referred to as a "Disability Application.") On the form, annuitants must describe in detail the limitations resulting from their impairment and state when they could no longer work because of their conditions. The signature page of the Disability Application reminds an applicant that he or she must answer these questions truthfully, as follows:

I know that if I make a false or fraudulent statement in order to receive benefits from the RRB or if I fail to disclose earnings or report employment of any kind to the RRB, I am committing a crime which is punishable under Federal law.

At times, annuitants receiving disability payments are directed to file a Continuing Disability Update Report, known as a form G-254A (hereinafter referred to as a "Disability Recertification"), in which they have to certify, under penalty of prosecution, certain facts about their physical condition and employment.

18. At all times relevant to this Information, RRB claims examiners reviewing applications for disability generally:

a. assumed that the doctor who provided a Medical Assessment and the applicant who submitted a Disability Application were telling the truth about the applicant's medical condition;

b. relied on the applicant when the applicant stated, as required in an RRB Disability Application, that he or she was unable to continue working because of his or her medical

condition;

c. relied on the treating physician's statements about the medical condition of the applicant, including the doctor's opinion of exertional and environmental restrictions necessitated by the patient's medical condition; and

d. relied on applicants' descriptions of their job requirements, set out in a Form G-251, to determine whether the applicants' medical conditions made them unable to fulfill their occupational duties.

19. Prior to September 2008, the RRB generally requested review by an outside medical consultant or medical examiner only when the patient's application was incomplete in some manner, not as a method for detecting fraud. Because the RRB examiners were not medical experts, they could request that a contracted consultant review medical records if the examiner believed that he or she could not interpret the disability medical evidence without expert advice.

The Defendant's Fraudulent Disability

20. GARY SATIN, the defendant, falsely claimed in his disability application that his condition rendered him unable to perform his railroad job, and that indoor and outdoor chores were "difficult." Peter J. Ajemian, a co-conspirator not named as a defendant herein, falsely claimed that SATIN "cannot continue working." In truth and in fact, as SATIN and Ajemian (and others not charged as defendants herein) well knew, SATIN was not

prevented from performing his railroad job by any medical condition, and instead pre-planned his false disability to coincide with his desired retirement date in order to supplement his retirement income.

21. GARY SATIN, the defendant, took no sick days in the 18-months prior to retirement and in the five months prior to retirement, SATIN worked approximately 154 overtime hours.

22. In preparation for retiring, SATIN consulted Facilitator 1 and Marie Baran, a co-conspirator not named as a defendant herein for advice about obtaining a disability annuity. Facilitator 1 referred SATIN to Peter J. Ajemian, a co-conspirator not named as a defendant herein. SATIN went to see Ajemian not in order to obtain medical care, but rather to pad a file to obtain a disability annuity. As a result, Ajemian billed SATIN's health insurance for various medical visits that were medically unnecessary and designed only to defraud the RRB. In addition, Ajemian referred SATIN for various medical tests, including x-rays, MRIs, and EMGs that were likewise unnecessary but fraudulently billed to SATIN's health insurance.

23. GARY SATIN, the defendant, paid Facilitator 1 approximately \$1000 for Facilitator 1's participation in the scheme, and paid Peter J. Ajemian, a co-conspirator not named as a defendant herein, approximately \$1000 for his participation in the scheme.

24. After his retirement, with the assistance of his

co-conspirators, including Facilitator 1 and Peter J. Ajemian, GARY SATIN, the defendant, applied for and obtained sickness benefits and an occupational disability annuity from the RRB. In order to obtain these benefits, SATIN and his co-conspirators made a number of false and fraudulent statements to the RRB, including that SATIN was unable to perform his railroad job because of a medical condition.

25. GARY SATIN, the defendant, and his co-conspirators also exploited his phony disability claims to obtain other benefits. For example, SATIN applied for and obtained a handicapped parking pass from New York State, with the assistance of Peter J. Ajemian, a co-conspirator not named as a defendant herein. In the application, SATIN and Ajemian falsely claimed that SATIN was "severely limited in [his] ability to walk."

26. As a result, as of July 31, 2012, GARY SATIN, the defendant, has fraudulently obtained approximately \$5,900 in RRB sickness benefits and approximately \$241,100 in disability benefits. If SATIN's fraud was not discovered, he would have received a total of approximately \$320,600 in disability benefits from the RRB from his retirement through age 65.

27. Since retiring and fraudulently obtaining an RRB disability annuity, GARY SATIN, the defendant, has performed landscaping, contracting, and electrical work for pay.

Perjury Before the Grand Jury

28. On or about April 28, 2011, GARY SATIN, the

defendant, appeared before a Grand Jury sitting in the Southern District of New York. After being sworn to tell the truth, and after having been advised of his rights and his obligation to provide truthful, non-misleading testimony before the Grand Jury, subject to the penalties for perjury, SATIN perjured himself. Among other things, SATIN knowingly and intentionally provided false and misleading testimony on material matters, including falsely denying performing landscaping, contracting, and electrical work since fraudulently obtaining an RRB disability annuity.

#### Statutory Allegations

29. From at least in or about 1998, up to and including at least in or about 2011, in the Southern District of New York and elsewhere, GARY SATIN, the defendant, and others known and unknown, combined, conspired, confederated and agreed together and with each other to (1) defraud the United States and an agency thereof, to wit, the RRB; and (2) violate Title 18, United States Code, Sections 1341, 1347, and 287.

30. It was a part and an object of the conspiracy that GARY SATIN, the defendant, and others known and unknown, would and did defraud the United States of America and the RRB by obtaining sickness and disability benefits by means of false and fraudulent statements.

31. It was further a part and an object of the conspiracy that GARY SATIN, the defendant, and others known and

unknown, would and did make and present to a person and officer in the civil, military, and naval service of the United States, and to a department and agency thereof, a claim upon and against the United States and a department and agency thereof, knowing such claim to be false, fictitious, and fraudulent, to wit, the defendant and his conspirators would and did defraud the RRB by making false and fraudulent statements in order to obtain disability benefits, in violation of Title 18, United States Code, Section 287.

32. It was further a part and an object of the conspiracy that GARY SATIN, the defendant, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, for the purpose of executing such scheme and artifice and attempting so to do, would and did place in a post office and authorized depository for mail matter, a matter and thing to be sent and delivered by the Postal Service, and would and did deposit and cause to be deposited a matter and thing to be sent and delivered by a private and commercial interstate carrier, and would and did take and receive therefrom, a matter and thing, and would and did knowingly cause to be delivered by mail and such carrier according to the direction thereon, and at the place at which it is directed to be delivered by the person to whom it is addressed, a matter and thing, in violation of Title 18, United

States Code, Section 1341.

33. It was further a part and an object of the conspiracy that GARY SATIN, the defendant, and others known and unknown, knowingly and willfully, would and did execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program and to obtain, by means of false and fraudulent pretenses, representations, and promises, any of the money and property owned by, and under the custody and control of, a health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

Overt Acts

34. In furtherance of the conspiracy and to effect the illegal objects thereof, GARY SATIN, the defendant, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about July 1, 2005, Peter J. Ajemian signed a narrative regarding GARY SATIN.

b. On or about July 25, 2005, GARY SATIN signed an application for RRB disability benefits.

c. On or about March 7, 2011, GARY SATIN mailed and caused to be mailed to the RRB's office in Manhattan, New York, a Disability Recertification.

d. On or about April 28, 2012, in the Southern District of New York, GARY SATIN gave false testimony under oath

before the Grand Jury.

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

COUNT TWO

(Perjury Before the Grand Jury)

The United States Attorney further charges:

35. The allegations contained in Paragraphs 1 through 28 are repeated and realleged as if fully stated herein.

36. On or about April 28, 2011, in the Southern District of New York, GARY SATIN, the defendant, having taken an oath to testify truthfully in a proceeding before a Court and Grand Jury of the United States, knowingly, and contrary to such oath, did make false material declarations, to wit, he gave the following underlined material false testimony:

Q. Since your retirement, have you earned any income?

(a) A. None whatsoever.

\* \* \*

Q. No paid work since you have retired?

(b) A. No.

\* \* \*

Q. And do you ever help other people with home improvement projects?

(c) A. No. They might have asked me, because the guy around the corner, John, asked me what to do, and I usually tell him.

\* \* \*

Q. On the parts [of the application form for a handicapped placard] you could read, did you think they were accurate before you submitted them?

(d) A. Yes. Basically, I needed the sticker because my back bothered me. I didn't abuse it.

\* \* \*

Q. Do you know – have you ever done any landscaping work in North Carolina?

(e) A. Just my own.

Q. What did you do on your own landscaping?

A. Mowed the lawn, planted a couple of flowers. That's about it.

Q. Did you help install any in-ground irrigation?

(f) A. No.

\* \* \*

Q. Have you ever helped or participated in installing in-ground irrigation?

(g) A. Never.

Q. Have you ever worked for a [specified] company . . . ?

(h) A. No. The only thing I did for Mr. [specified], he had purchased a house in Salisbury, and since he has an excavating business he said, "Can you go out there and checking on the house and see how they are doing," and report back to him. And that's basically all I did.

\* \* \*

Q. Did you install new wiring in that house?

(i) A. No.

Q. Did you change switches in that house?

(j) A. No. Just bought stuff.

\* \* \*

Q. Do you think you have ever said to anyone something like: You're all suckers because the Long Island Rail Road pays you thousands of dollars a month for not working?

(k) A. Never.

(Title 18, United States Code, Section 1623.)

**FORFEITURE ALLEGATIONS WITH RESPECT TO COUNT ONE**

37. As the result of conspiring to commit the mail fraud offense in violation of 18 U.S.C. §§ 371 and 1341 as alleged in Count One of this Information, GARY SATIN, the defendant, shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C), and 28 U.S.C § 2461, all property, real and personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the offense.

Substitute Assets Provision

38. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 18 U.S.C. § 982(b) and 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property, to wit, \$247,000.

(Title 18, United States Code, Section 981;  
Title 21, United States Code, Section 853(p);  
Title 28, United States Code, Section 2461)

*Preet Bharara*

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PREET BHARARA  
United States Attorney