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11 MAG 2748

Before: HONORABLE KEVIN NATHANIEL FOX  
United States Magistrate Judge  
Southern District of New York

- - - - - x TO BE FILED UNDER SEAL

UNITED STATES OF AMERICA : COMPLAINT  
  
- v. - : Violations of  
18 U.S.C. § 1349  
  
PETER J. AJEMIAN, :  
PETER J. LESNIEWSKI, :  
MARIA RUSIN, : COUNTY OF OFFENSE:  
MARIE BARAN, : MANHATTAN  
JOSEPH RUTIGLIANO, :  
GREGORY NOONE, :  
REGINA WALSH, :  
SHARON FALLOON, :  
GARY SATIN, :  
STEVEN GAGLIANO, and :  
RICHARD EHRLINGER, :  
  
Defendants. :

- - - - - x  
SOUTHERN DISTRICT OF NEW YORK, ss.:

ADAM M. SUITS, being duly sworn, deposes and says that he is a Special Agent with the Office of the Inspector General, Office of Investigations, United States Railroad Retirement Board, and charges as follows:

COUNT ONE

1. From at least in or about 1998, up to and including in or about 2011, in the Southern District of New York and elsewhere, PETER J. AJEMIAN, PETER J. LESNIEWSKI, MARIA RUSIN, MARIE BARAN, JOSEPH RUTIGLIANO, GREGORY NOONE, REGINA WALSH, SHARON FALLOON, GARY

SATIN, STEVEN GAGLIANO, and RICHARD EHRLINGER, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, to violate Sections 1341 and 1347 of Title 18, United States Code.

2. It was a part and an object of the conspiracy that PETER J. AJEMIAN, PETER J. LESNIEWSKI, MARIA RUSIN, MARIE BARAN, JOSEPH RUTIGLIANO, GREGORY NOONE, REGINA WALSH, SHARON FALLOON, GARY SATIN, STEVEN GAGLIANO, and RICHARD EHRLINGER, the defendants, and others known and unknown, willfully and knowingly, 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 take and receive there from, such matter and thing, and would and did cause to be delivered by mail 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.

3. It was further a part and an object of the conspiracy that PETER J. AJEMIAN, PETER J. LESNIEWSKI, MARIA RUSIN, MARIE BARAN, JOSEPH RUTIGLIANO, GREGORY NOONE, REGINA WALSH, SHARON FALLOON, GARY SATIN, STEVEN GAGLIANO, and RICHARD EHRLINGER, the defendants, and others known and unknown, willfully and knowingly would and did execute and attempt to execute a scheme and artifice to defraud health care benefit programs and obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, health care benefit programs, 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.

(Title 18, United States Code, Section 1349.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

4. I am a Special Agent with the Office of the Inspector General, Office of Investigations, United States Railroad Retirement Board ("RRB-OIG"). I have been a Special Agent with RRB-OIG since in or about October 2010, and, since that time, I have personally

been involved in an investigation into disability fraud at the Long Island Railroad ("LIRR"), as set forth below. Previously, beginning in or about 1997, I was a Special Agent at the Federal Bureau of Investigation, in a variety of capacities, including as associate division counsel, and, prior to that, I was a prosecutor with the Judge Advocate General for the United States Navy. From in or about 1994 to 1996, I also worked as a senior casualty claims adjuster/fraud investigator for a private insurance carrier. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, my examination of reports and records, and my conversations with other law enforcement officers and witnesses. This affidavit is based upon my investigation, my conversations with witnesses and other law enforcement agents, and my examination of reports, records, and consensual recordings. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

#### The Defendants

5. PETER J. AJEMIAN, the defendant, is a Board-certified orthopedist who has been assisting LIRR retirees apply for RRB occupational disability benefits since at least in or about 1998. 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 United States Rail Road Retirement Board ("RRB"), recommending at least 734 LIRR employees for disability.

6. MARIA RUSIN, the defendant, was the office manager for PETER J. AJEMIAN, the defendant, in a succession of practices, including at the Ajemian Practice, starting in at least in or about 2000. RUSIN retired and began receiving social security disability benefits in or about late 2009.

7. PETER J. LESNIEWSKI, the defendant, is a Board-certified orthopedist. From at least in or about 1998 until in or about 2008, LESNIEWSKI submitted medical reports to the RRB, recommending at least approximately 222 LIRR workers for disability benefits.

8. MARIE BARAN, the defendant, worked as an RRB district office manager, based in Westbury, New York, until her retirement in or about December 2006. After her retirement, she began working as a "facilitator" who purported to advise and assist LIRR workers in planning their disability applications at the time of their retirement.

9. JOSEPH RUTIGLIANO, the defendant, was a former LIRR conductor and union president who applied for and received RRB occupational disability benefits after his retirement. After his retirement, RUTIGLIANO also worked as a facilitator, like MARIE BARAN, the defendant.

10. GREGORY NOONE, REGINA WALSH, SHARON FALLOON, GARY SATIN, STEVEN GAGLIANO, and RICHARD EHRLINGER, the defendants, are all former LIRR employees who have retired on LIRR pensions. After their retirement, they each applied for and received RRB occupational disability benefits.

#### Overview Of The Premeditated Disability Fraud

11. On the basis of the evidence set forth below, there is probable cause to believe that the defendants and their co-conspirators participated in a massive fraud scheme in which LIRR workers who were ready to retire falsely claimed to be disabled, including occupationally disabled, so that they could 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 - through this widespread fraud - 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 scheme was executed with the knowing assistance primarily of three doctors - two of whom are charged in this Complaint and the other of whom is recently deceased - who falsely declared disability on behalf of these retiring LIRR workers when in truth and in fact the workers were not disabled. This scheme was also aided by "facilitators" who served as liaisons between the retiring workers and participating doctors. As a result of this fraudulent scheme, the doctors received millions of dollars in corrupt payments from patients and insurance companies. And based my analysis of the data, including but not limited to the percentage of LIRR applicants handled by the three doctors discussed in this Complaint and actual disability payouts to date, I further estimate that the fraudulent

scheme could cause the RRB to pay unwarranted occupational disability benefits exceeding one billion dollars if disbursed in full.

12. In furtherance of the fraud, the co-conspirators typically took the following steps, among others:

- a. In anticipation of filing an RRB disability application, LIRR employees saw one of three disability doctors - PETER J. AJEMIAN and PETER J. LESNIEWKSI, the defendants, and a third doctor who is now deceased ("Disability Doctor-3"), who collectively accounted for approximately 86% of the LIRR disability applications filed during the times relevant to this Complaint.
- b. The disability doctors prescribed for the LIRR employees a series of unnecessary medical tests, including at times rounds of x-rays, scans and nerve conduction tests, as well as purported treatments, including physical therapy, in order to pad the patients' medical files.
- c. The LIRR employees generally paid the doctors between approximately \$800 and \$1200, often in cash, to prepare a medical assessment and/or illness narrative for submission to the RRB.
- d. The disability doctors then prepared fabricated or grossly exaggerated medical assessments and/or illness narratives in which they recommended a set of restrictions that, if bona fide, would have rendered it impossible for the LIRR employees to continue in their occupations.
- e. Sometime after retiring in anticipation of receiving an LIRR pension, the LIRR employees prepared disability applications that falsely claimed an inability to work, even though the employees were performing their jobs up until the time they retired.
- f. The LIRR employees paid one of a small group of so-called "facilitators," including MARIE BARAN and JOSEPH RUTIGLIANO, the defendants, to assist with the disability process by, among other things, working with the doctors' offices, coordinating the disability benefit applications of LIRR employees, and either filling out their applications themselves or coaching the LIRR employees to fill out their disability applications in such a way as

to maximize the likelihood that such employees would receive disability benefits.

13. The defendants did all of this knowing that the LIRR employees were not, in fact, disabled - that is, they were not, in fact, unable to perform their jobs because of medical impairments; rather, the employees were simply planning to retire and wished to supplement their LIRR pension benefits with RRB occupational disability payments. In fact, the defendants knew full well that the LIRR employees, who were generally working full-time (and, indeed, often working overtime),<sup>1</sup> had pre-planned the date on which they would declare themselves disabled, and that this scheduled date was contemporaneous with their projected retirement date. PETER J. AJEMIAN, the defendant - with the assistance of MARIA RUSIN, the defendant - and PETER J. LESNIEWSKI, the defendant, used their respective medical practices as "disability mills," using unnecessary medical tests and exaggerated medical narratives to conceal the fact that the LIRR employees were paying them to prepare disability applications when the employees were not in fact disabled. Hundreds of their patients, including JOSEPH RUTIGLIANO, GREGORY NOONE, REGINA WALSH, SHARON FALLOON, GARY SATIN, STEVEN GAGLIANO, and RICHARD EHRLINGER, the defendants, falsely claimed that they were unable to work in their LIRR positions because of their medical conditions.

14. The defendants and their co-conspirators had strong financial motivations to prepare the fraudulent medical assessments on behalf of LIRR patients:

- a. For example, from in or about September 2004 to in or about September 2008, approximately 453 LIRR patients of PETER J. AJEMIAN, the defendant, received RRB disability benefits based upon AJEMIAN's recommendation. Each patient paid AJEMIAN an average of between approximately

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<sup>1</sup> I am aware from this investigation that the pensions of retirees were and are calculated based upon a formula keyed to their income in the five years prior to retirement. I believe that, for this reason, LIRR workers have been motivated to work extra overtime hours in their last few years of service in order not only to earn overtime pay, but also to increase their monthly pension and here, disability payments. Many LIRR workers who claimed disability on the date of their retirement often worked many hours of overtime right up until the very day when they and their physicians claimed they were utterly unable to continue doing their railroad jobs.

\$800 and \$1200 for a narrative (excluding any additional costs for various forms), and billings by AJEMIAN to private insurers resulted in substantial additional payments of approximately \$4500 per patient (although that number could vary significantly, depending on the number of purported visits, testing, and treatments the particular patient received). Taken together, AJEMIAN's total revenue from these patients was approximately \$2.5 million. The 453 annuitants, in turn, have already received over \$90 million (\$90,000,000) in RRB disability benefit payments and are slated to receive more than \$210 million (\$210,000,000) in future payments.

- b. Using the same time frame and average narrative payments and insurance payments, the profit to PETER J. LESNIEWSKI, the defendant, for a sampling of 134 LESNIEWSKI patients is estimated at over approximately \$750,000. The 134 LESNIEWSKI annuitants, in turn, have already received over \$31 million (\$31,000,000) in RRB disability benefit payments, and are slated to receive more than \$64 million (\$64,000,000) in future payments.

15. Among the absurd results of this scheme are the following, which are described in detail below:

- a. GREGORY NOONE, the defendant, is a retired LIRR engineering manager who annually receives at least approximately \$105,000 in combined pension and disability payments - based on a disability he planned months in advance of its claimed onset. In his disability application, NOONE claimed that he suffered severe pain when gripping and using simple hand tools and pain in his knees, shoulder, and back from bending or crouching; for his part, PETER J. AJEMIAN, the defendant, claimed in a medical assessment that NOONE's condition warranted restrictions on bending, stooping, and reaching overhead. Nevertheless, NOONE has regularly played tennis several times per week, and in a nine-month period in 2008, NOONE signed in to play golf at a particular course on 140 days.
- b. REGINA WALSH, the defendant, who worked as director of employee services at the LIRR, annually receives at least approximately \$108,000 in combined pension and disability payments - based on a disability she planned months in advance of its claimed onset. In her disability

application, WALSH claimed that sitting at a desk and using a computer caused her considerable neck, shoulder, and hand pain, and that she experienced leg pains when standing more than five minutes or when sitting more than 15 minutes. Nevertheless, WALSH has been surveilled shoveling heavy snow for approximately one and a half hours and walking with a baby stroller for approximately 40 minutes.

- c. SHARON FALLOON, the defendant, a retired LIRR human resources manager, annually receives at least approximately \$90,349 in combined pension and disability payments, based on her claims that activities such as walking and standing cause her "disabling pain" and stairs are "very difficult" for her. Nevertheless, FALLOON was surveilled vigorously exercising at a gym for more than two consecutive hours, including approximately 45 minutes in a step aerobics class.
- d. GARY SATIN, the defendant, a retired LIRR electrician, annually receives at least approximately \$69,559 in combined pension and disability payments - based on a disability he planned at least one year before its claimed onset. In his disability application, SATIN claimed that his condition rendered indoor and outdoor chores "difficult," and AJEMIAN claimed that SATIN "cannot continue working." Nevertheless, SATIN admitted to law enforcement agents that he was still capable of performing his railroad work. In addition, SATIN has performed landscaping, contracting, and electrical work for pay since retiring from the LIRR due to a purported disability.
- e. RICHARD EHRLINGER, the defendant, is a retired LIRR conductor who annually receives at least approximately \$56,959 in combined pension and disability benefits - based on a disability he planned at least one year before its claimed onset. In his disability application, EHRLINGER claimed that his condition included knee pain that caused him problems walking and getting on and off trains. His application was supported by medical records prepared by Disability Doctor-3. Nevertheless, EHRLINGER runs a party rental business and has been surveilled and photographed personally loading and unloading stacks of chairs and tables.



- f. STEVEN GAGLIANO, the defendant, a retired LIRR signal operator, annually receives at least approximately \$76,810 in combined pension and disability payments, for a purported disability that he claimed rendered him unable to "do any of the physical labor required in his job as a signalman," because of "severe and disabling pain in back, shoulder & legs" and that PETER J. LESNIEWSKI, the defendant, claimed rendered GAGLIANO occupationally disabled. Nevertheless, in 2009, GAGLIANO successfully completed a 400-mile bike tour in northern New York.
- g. JOSEPH RUTIGLIANO, the defendant, was a former railroad union president and LIRR conductor who retired in or about 1999 with an RRB disability award. In the year prior to retiring, he worked well over 500 hours overtime, took no sick leave whatsoever, and then applied for a disability with a narrative prepared by PETER J. LESNIEWSKI, the defendant. After retirement, RUTIGLIANO began working as a facilitator, accepting thousands of dollars in exchange for coaching other LIRR employees who applied for disability.

16. To investigate the fraudulent nature of the disability applications and medical assessments submitted to the RRB by and on behalf of LIRR employees, other law enforcement agents and I have, among other things:

- a. Analyzed certain categories of RRB disability applications by LIRR employees for the existence of inculpatory patterns;
- b. Reviewed statements made and documents created by PETER J. AJEMIAN, MARIA RUSIN, PETER J. LESNIEWSKI, and MARIE BARAN, the defendants, regarding their handling of disability claims for LIRR employees;
- c. Interviewed co-workers of AJEMIAN, RUSIN, and LESNIEWSKI, the defendants, about the treatment of LIRR patients compared with non-LIRR patients at AJEMIAN and LESNIEWSKI's medical practices; and
- d. Investigated a group of disability applicants through the use of interviews, physical surveillance, and file review by an orthopedic expert.

Some of this evidence is set forth below.

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

17. Created in the 1930s, the RRB is an independent agency within the executive branch of the Federal Government. 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 employees and railroad employers nationwide and by certain federal income taxes paid by recipients of RRB pensions.

18. Based on my investigation, I have learned that 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 relatively young age of 50, provided they have been employed for at least 20 years. No other commuter railroad in the United States offers a retirement pension at the age of 50. 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.<sup>2</sup> 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.

19. I have further learned, however, that 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. (An LIRR employee is only required to have worked 12 of the previous 30 months, and the regulations do not explicitly disqualify a

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<sup>2</sup> A very small subset of employees with 30 years of service could claim an RRB pension at the age of 60. Other workers can claim a reduced RRB pension at the age of 62, but must wait until the age of 65 to claim their full pension. Unreduced annuities are payable at full retirement age, which is gradually rising from 65 to 67, depending on year of birth.

retiree). 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 65<sup>th</sup> 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. I believe that this interplay of retirement and disability benefits motivated LIRR employees to falsely declare disability as a way to supplement their post-retirement income.

20. 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. As a result, LIRR workers who retire at age 50, with 20 years of employment, are eligible to apply for occupational disability benefits - assuming, of course, that they have such a disability.

21. The RRB requires 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.

22. 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).

23. 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.

24. 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.

25. As a critical part of the RRB disability process, every annuitant also must file a Form AA-1d, known as an "Application for Determination of Employee's Disability" (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 form G-254, known as a Continuing Disability Update Report (hereinafter referred to as a "Disability Recertification"), in which they have to recertify, under penalty of prosecution, certain facts about their physical condition.

26. Based on interviews with the director of the disability review division of the RRB, which handles the review of disability benefits applications from LIRR employees and other railroads, I have learned that, at all times relevant to this Complaint:

- a. The RRB claims examiners assume that the doctor who provides a Medical Assessment and the applicant are

telling the truth about the applicant's medical conditions.

- b. The RRB examiners rely on the patient when the patient states, as required in an RRB Disability Application, that he or she is unable to continue working because of his or her medical condition.
- c. The RRB examiners rely 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.
- d. As a general matter, prior to September 2008, the RRB only requested review by an outside medical consultant or medical examiner when the patient's application was incomplete in some manner, not as a method for detecting fraud. Because the examiners are not medical experts, they can request that a contracted consultant review medical records if the examiner believes he or she cannot interpret the disability medical evidence without expert advice.
- e. The RRB examiners trust the applicants to accurately describe their job requirements, and rarely if ever confirm those job descriptions by comparing them with third party submissions. (The RRB routinely asks the LIRR for job descriptions, but during the period up to and including September 2008, did not follow up when the LIRR failed to respond - which was virtually all of the time.) The RRB uses an applicant-provided job description, set out in a Form G251, to determine whether the applicant's medical conditions - typically as described by the treating physician - make them unable to fulfill their occupational duties.
- f. Prior to September 2008, the examiners received no substantive training on how to detect potential fraud by applicants. They do not view themselves as having the tools or responsibility to detect fraud.

The Pattern Of Disability Claims  
At The Long Island Railroad

27. Based on a report prepared by the U.S. Government Accountability Office, I have learned that in fiscal year 2007, LIRR workers applied for occupational disability benefits at a rate 12 times higher than workers from comparable commuter railroads, such as Metro North Railroad.

28. I have reviewed data about the profiles of LIRR workers receiving disability benefits, collected as part of an RRB-OIG analysis, including a database maintained by the RRB known as the Payment Rate Entitlement History ("PREH"), and specifically looked at retirees coded for LIRR (1311) or Metro North (3345), a comparable metropolitan area commuter railroad. Based upon that analysis, I have learned that:

- a. Between 2004 and 2008, approximately 1,423 LIRR employees over the age of 50 stopped working and began receiving some form of RRB pension benefits, RRB disability benefits or both. Of those, 869 (i.e., 61%) were between the ages of 50 and 55 years old. Each of those 869 employees received an RRB disability award. By contrast, at Metro North, only 61 people (i.e., 7%) of the people who stopped working and starting receiving RRB benefits were between the ages of 50 and 55.
- b. Over 75% of LIRR workers receiving RRB occupational disability first retired while in their early fifties. Given the way that the LIRR and RRB pensions work, as described above, absent a disability award, virtually all of these retirees would have had to rely only upon their LIRR pensions until the age of 65.
- c. Approximately 1129 (i.e., 79%) of the LIRR employees over age 50 who began receiving RRB benefits in the 2004 through 2008 time period received occupational disability payments. By contrast, at Metro North, approximately only 122 (i.e., 15%) of employees received occupational disability payments.

In other words, the exceptionally high rate of occupational disability applications for the LIRR can be attributed to the fact that the LIRR, and the LIRR alone, offers a pension to employees as young as 50 years old. Since these workers cannot receive a full

RRB pension for many years, in most cases until the age of 65, the employees may make up the shortfall by claiming to be disabled. This creates an opportunity for unscrupulous employees to lie about their physical condition in order to retire at an earlier age with a salary almost equivalent to what they would earn if they continued working full time.

29. I have also reviewed an analysis by the RRB from a report dated March 3, 2011 (the "RRB Report"), comparing various statistics relating to LIRR retirees collecting disabilities versus retirees of comparable commuter railroads, using data from 2005 to 2009. Among other things, the RRB Report identified significant differences in the primary disease diagnoses between LIRR workers and all other railroad employees. Specifically:

- a. Over approximately 91% of LIRR employees listed musculoskeletal impairments (including arthritis/rheumatism) as their primary diagnosis, compared with approximately 45% of employees at Metro-North, a comparable tri-state commuter railroad.<sup>3</sup>
- b. Further, a much lower percentage of LIRR retirees met the criteria for total disability annuities than did retirees from comparable railroads: only approximately 38% of the LIRR annuitants eventually met the medical criteria for a total and permanent disability determination, in comparison to approximately 73% of all RRB annuitants.

30. Based on an analysis of RRB PREH database records and RRB disability applications, I have further learned that only three New York-area doctors were the treating physicians for approximately 86% of the RRB disability applications that LIRR employees filed prior to September 2008.<sup>4</sup> Those three physicians were PETER J.

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<sup>3</sup> Based upon my training and experience, including my involvement in the investigation of this case, I am aware that musculoskeletal impairments 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.

<sup>4</sup> For this analysis, LIRR annuitants were selected by using a particular code (PREH code 1311), which designates LIRR employees.



AJEMIAN, PETER J. LESNIEWSKI, the defendants, and a Long Island-based orthopedist who is recently deceased ("Disability Doctor-3"). Specifically, other individuals and I have analyzed all living annuitants classified as LIRR workers who were younger than 65 and applied for RRB disability benefits prior from approximately August 2004 through August 2008 (thus, a shorter time period than that used in paragraph 28), and found the following:

<u>Treating Physician</u>	<u>Number of Applicants</u>	<u>Percent of Total</u>
Peter Ajemian	444	47.0%
Disability Doctor-3	238	25.2%
Peter Lesniewski	126	13.3%
All Other Doctors	136	14.4%
<b>TOTAL</b>	944	

In other words, for the time period analyzed, AJEMIAN, LESNIEWSKI and Disability Doctor-3 accounted for approximately 86% of all LIRR workers who were younger than 65 and applied for RRB disability benefits.

31. I have also reviewed the disability rates for all LIRR employees who first saw PETER J. AJEMIAN, the defendant, in 2005 and who subsequently filed for RRB disability benefits. Specifically, based on RRB Disability Applications, I compared the date of the patients' first appointments to see AJEMIAN with the date that they retired and claimed to have become unable to work in a Disability Application filed with the RRB. This analysis demonstrated that virtually all of the LIRR patients first saw AJEMIAN while they were still actively employed. Yet according to the Medical Assessments filed by AJEMIAN in connection with those patients' RRB Disability

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In fact, this methodology undercounts the number of LIRR workers for whom AJEMIAN and LESNIEWSKI submitted medical assessments because, among other reasons, some LIRR workers are classified as union employees using a different PREH code. Based on other records, including documents provided by MTA, LIRR, the LIRR Insurance Carrier, and the doctors' medical practices, I have learned for example, that AJEMIAN and LESNIEWSKI wrote medical assessments for 461 and 104 LIRR annuitants, respectively, between September 2004 and September 2008 alone.

Applications, virtually all of them became "disabled" within two years of first receiving AJEMIAN's "treatment." Specifically:

% of Patients Declared Disabled By <u>First</u> AJEMIAN Appointment	3.45%
% of Patients Declared Disabled Within <u>180 Days</u> After First AJEMIAN Appointment	26.72%
% of Patients Declared Disabled Within <u>360 Days</u> After First AJEMIAN Appointment	66.38%
% of Patients Declared Disabled Within <u>540 Days</u> After First AJEMIAN Appointment	88.79%
% of Patients Declared Disabled Within <u>720 Days</u> After First AJEMIAN Appointment	96.55%

In other words, if one were to credit AJEMIAN's Medical Assessments as being accurate and truthful, then his "treatment" of his patients almost inevitably failed to improve their purported conditions and, within two years, nearly all of his treatments resulted in his patients' steady and inexorable progression from otherwise healthy and working individuals to purportedly disabled persons.

32. Based on records obtained from the Ajemian Practice, the RRB, the Metropolitan Transportation Authority of the State of New York ("MTA"), which oversees the LIRR, and the insurance carrier for LIRR employees (the "LIRR Insurance Carrier"), I am aware of approximately 837 LIRR employees that were seen by PETER J. AJEMIAN, the defendant, between 1998 and September 2008. Of that number, approximately 53 were ineligible to receive benefits because they had not yet reached the requisite age and/or years of service as of September 2008, and 4 were eligible to receive full RRB pension benefits as of that time. Thus, of the remaining universe of approximately 780 eligible workers, approximately 734 (i.e., over 94%) applied for and received an RRB disability award. Of the 46 that did not receive an RRB disability award, I have learned the following:

- a. One employee filed a disability claim, but withdrew it after there was unfavorable publicity about the LIRR disability applications in September 2008;
- b. One employee had a fully prepared disability

narrative from AJEMIAN but did not file for disability after accepting a high-paying job as an engineer working as a consultant to the LIRR;

- c. Two employees died before September 2008; and
- d. The remaining AJEMIAN patients did not apply for disability benefits.

33. I have similarly reviewed the disability rates for all LIRR employees who first saw PETER J. LESNIEWSKI, the defendant, in 2005 and who subsequently filed for RRB disability benefits. Specifically, based on the 40 patients who filed Disability Applications where the Disability Application or its supporting documents indicated that they first saw LESNIEWSKI in 2005, virtually all of them had become "disabled" within two years of first receiving LESNIEWSKI's "treatment":

% of Patients Declared Disabled By <u>First</u> LESNIEWSKI Appointment	12.5%
% of Patients Declared Disabled Within <u>180 Days</u> After First LESNIEWSKI Appointment	27.5%
% of Patients Declared Disabled Within <u>360 Days</u> After First LESNIEWSKI Appointment	72.5%
% of Patients Declared Disabled Within <u>540 Days</u> After First LESNIEWSKI Appointment	95.0%
% of Patients Declared Disabled Within <u>720 Days</u> After First LESNIEWSKI Appointment	97.5%

Only one patient that first saw LESNIEWSKI in 2005 did not claim to have become disabled within 720 days. That patient claimed a disability approximately 964 days after first visiting LESNIEWSKI.

34. Based on records obtained from the former medical practice where PETER J. LESNIEWSKI practiced, the LIRR Insurance Carrier, and the RRB, I am aware of approximately 258 LIRR employees who were seen by PETER J. LESNIEWSKI, the defendant, between in or about 1997 and 2008. Of that number, all but 25 (i.e., over 90%) applied for and received an RRB disability award. Of the 25 who did not receive an RRB disability award, I have learned that twenty-one were either too young or did not have enough years of employment to qualify for an LIRR retirement pension. In other words, for the time

period analyzed, LESNIEWSKI declared disabled over 98% of the LIRR employees he saw as patients who were eligible to retire with an LIRR pension.

Statements By PETER J. AJEMIAN and MARIA RUSIN

35. On or about September 26, 2008, while wearing a consensual recording device, a colleague at the Ajemian Practice ("Medical Worker-1") had a conversation with PETER AJEMIAN, the defendant (in person) and MARIA RUSIN, the defendant (telephonically), which recording I have reviewed. At the start of the conversation, Medical Worker-1 told AJEMIAN that he was concerned about news reports describing AJEMIAN's involvement in disability fraud by LIRR employees. He asked AJEMIAN to explain what AJEMIAN was doing and whether it was a threat to the Ajemian Practice. At one point, AJEMIAN asked RUSIN to join the conversation by phone. Among other things, AJEMIAN and RUSIN stated the following during that conversation:

- a. AJEMIAN stated that patients were, at times, referred to him by "facilitators," who were paid by the patients. AJEMIAN stated that of the three doctors who did LIRR cases, over the prior seven years, "I may be the most busiest of all" due to "word of mouth referral."
- b. AJEMIAN stated that "before they come to my office," his LIRR patients "already had that expectation" that "they're gonna end up with a narrative suggesting disability."
- c. AJEMIAN stated that his patients were not totally disabled, just disabled for their jobs. He stated that based on his clinical examinations and the scans that were conducted "you may find degenerative changes, which can happen to anybody that doesn't do a railroad job, but interferes as to how they do their job." AJEMIAN claimed to rely on the patients' description of their conditions: "When the point comes whereby the patient is not feeling better. And I will say, 'look, uh your condition is not improving.' . . . I take what they tell me . . . to be the truth. And I can't question their integrity."
- d. AJEMIAN stated that the percentage of occasions when he recommended disability "could have been one hundred percent."

- e. At a point in the conversation between AJEMIAN and Medical Worker-1, AJEMIAN called RUSIN on the phone, and the three continued the conversation, which continued to be consensually recorded by Medical Worker-1. Thereafter, AJEMIAN explained to Medical Worker-1 (and RUSIN agreed) that patients were at times referred by advisors, and "on the average roughly twelve to fourteen months later, we prepare a narrative."
- f. AJEMIAN stated (and RUSIN agreed) that "they [LIRR patients] come many times knowing an approximate date when they . . . want to consider or begin their disability, realizing they are coming to an end of their abilities to continue working, and they provide us with the date." RUSIN then stated that "I ask them, 'uh, when are you retiring?'" RUSIN noted that LIRR patients "get a certain amount of money" upon retirement, and "when they go on disability they get the rest of the money so for them if they go on disability and retirement that's what's worth it. Otherwise, just to go on retirement is not worth it."
- g. Both AJEMIAN and RUSIN stated or agreed that the patients who came in looking to go on disability generally were also planning to retire, and that "most of them go on disability . . . at the point when they're gonna retire. . ." They also agreed that "they will do both at the same time, more or less," and that "the target date for the [medical] reports is right around when, uh, their retirement date."
- h. RUSIN stated that while it was "very rare," she would have conversations with the patients' facilitators, including MARIE BARAN, the defendant. RUSIN stated that some 75-90% of their patients "come already with" advisors when they first come to the office, and AJEMIAN agreed: "When they come here for the first time to the office they already have these names of people who to use" to facilitate their disability applications.
- i. Medical Worker-1 pressed RUSIN on the use of advisors, and RUSIN then backtracked from her initial statement. Specifically, RUSIN then stated "when they come to us I don't know if they have an advisor or not when they start seeing the doctor I have no idea." RUSIN stated "I know all the names because . . . I always ask them who is your advisor in case I have a question, but . . . or they call

me like I told you for every, you know, if they need anything."

- j. AJEMIAN stated that he "always prepare[d] everything for peer review" at the RRB, and did not realize until the news articles came out that his narratives were not reviewed. AJEMIAN stated that he found it "staggering" that there was no peer review at the RRB, and that he was just "trusting the system." AJEMIAN stated that there were "people who are . . . borderline or something that may not have satisfied the criteria. Then they would have been turned down."

Based on my participation in the investigation to date, I believe that these recorded statements demonstrate, among other things, RUSIN and AJEMIAN's knowledge that LIRR employees came to the practice for the purpose of applying for disability; that RUSIN and AJEMIAN knew the employees were usually still working (and thus not occupationally disabled) but planned to time a disability application to coincide with the employees' retirement dates; that the employees were using paid facilitators to help apply for disability; and that AJEMIAN approved virtually 100% of all LIRR employees for disability.

36. I have reviewed a report of an interview of MARIA RUSIN, the defendant, on or about August 30, 2010, by law enforcement agents. Based on that report, I have learned that RUSIN made multiple statements that I believe, based on other evidence (including the above-referenced recorded conversation), to constitute false exculpatory statements designed to conceal her knowledge of and participation in the fraud. Specifically, I have learned that she stated the following, in part:

- a. RUSIN served as an office manager for PETER J. AJEMIAN, the defendant, until she purportedly suffered a workplace injury on or about December 30, 2009.
- b. RUSIN denied knowing that almost all of the LIRR patients were retiring at the same time they were claiming an occupational disability from the LIRR.
- c. She was never told that an LIRR patient was planning to retire except when the patient was directed to see her to pay for a narrative. This usually occurred at the end of

the process of seeing AJEMIAN, about two weeks to one month prior to the worker's retirement.

- d. She had no understanding about how an occupational disability would affect the payout for a worker who was retiring.
- e. AJEMIAN instructed RUSIN to put the patient's retirement date in box 3(a) of RRB Form SI-1b, which reads "date in which the LIRR patient became sick or injured." This was always the date that RUSIN put in this box. RUSIN, when filling out this form, never asked an LIRR patient what date they actually got sick or injured.
- f. After news of an investigation broke, AJEMIAN told RUSIN that he was surprised the disability rates were so high. He said that the RRB should have had its own doctor checking into everything.

37. A review of medical files for LIRR employees seen by PETER J. AJEMIAN, the defendant, further confirms that AJEMIAN and MARIA RUSIN, the defendant, knew that the LIRR employees first began seeing AJEMIAN as part of a premeditated plan to schedule their disability applications with an expected retirement date that was months or years later. Specifically, I have reviewed Ajemian Practice documents demonstrating the following:

- a. On routing sheets filled out on a new patient's first visit to the Ajemian Practice, AJEMIAN, at times, noted the date - many months in advance - of an LIRR employee's planned retirement. Thus, for example, according to a patient routing sheet on July 30, 2007, a patient ("LIRR Employee-1") had an appointment with AJEMIAN. At that appointment, AJEMIAN noted that the patient's last work day was to be on October 29, 2007, that he planned to go out "sick" on October 30, 2007, and that he planned to retire on November 1, 2007. In fact, based on a review of RRB and LIRR files, I have learned that LIRR Employee-1 followed through on his plan: Employee-1 went out "sick" on October 31, 2007, and retired on November 1, 2007.
- b. A post-it note signed with RUSIN's initials and contained in the file of an LIRR worker ("LIRR Employee-2"), in or about early March 2004, states: "plans to retire July 1. Patient will let me know on 3/31," and indicates that RUSIN

had left a message with LIRR Employee-2's wife on March 8, 2004. Indeed, I have learned from RRB records that, as predicted months earlier, LIRR Employee-2 did in fact retire on June 30, 2004, and received a narrative to support a Disability Application from AJEMIAN dated June 28, 2004.

- c. A telephone message from an office worker to RUSIN contained in the file of another LIRR patient ("LIRR Employee-3"), dated September 28, 2005, states that LIRR Employee-3 "wants to change date on narrative." In fact, AJEMIAN dated a narrative some two months later, November 29, 2005 in which he "recommended an occupational disability" for LIRR Employee-3. This indicates that AJEMIAN's statement of the disability date was dictated by the patient, and not by the patient's actual medical condition.
- d. Medical records for one particular LIRR patient ("LIRR Employee-4") reflect that LIRR Employee-4 paid AJEMIAN \$800 in cash on September 27, 2001 to fill out LIRR Employee-4's disability forms and write a narrative recommending approval of disability benefits. Handwritten notes on the record of the payment state: "Need Narrative by December 1<sup>st</sup>. picking up forms. Going sick 11/13/01." I have reviewed RRB records indicating that indeed, LIRR Employee-4 went out sick on or about November 15, 2001, at which time AJEMIAN provided a narrative for LIRR Employee-4, recommending approval of RRB disability benefits. In other words, AJEMIAN had already collected money from his patient to write a disability narrative in which he would opine that the patient was medically unable to continue working at a time when the patient was still working full time, often with overtime, and would continue working overtime for two months. In my review of patient files, I have seen many other instances indicating that patients, while continuing to work, often paid for narratives falsely deeming them incapable of working.
- e. Certain progress notes and narratives appear, at times, to have been drafted prior to the actual dates of "treatment," in that certain of the progress notes reflect visits by patients with AJEMIAN at times when AJEMIAN was not even in the office. As background, I have seen a termination letter from the head of the Ajemian Practice,



indicating that AJEMIAN's employment by that medical practice was terminated on September 29, 2008. I have also spoken with the head of the Ajemian Practice, who has informed me that, indeed, AJEMIAN never again reported to work at the Ajemian Practice after that date. Yet, I have reviewed a completed sickness form for one LIRR employee and a narrative for another employee, containing medical judgments by AJEMIAN based on purported office visits to AJEMIAN at the Ajemian Practice after AJEMIAN had been fired from the practice. In other words, AJEMIAN had created these documents well in advance of actual patient visits.

Statements By Co-workers Of PETER J. AJEMIAN And  
MARIA RUSIN About The LIRR Disability Practice

38. Other law enforcement agents have spoken to a medical technician ("Medical Worker-2") who had long been employed by PETER J. AJEMIAN, the defendant, to perform certain diagnostic testing for AJEMIAN's LIRR patients. Based upon my review of a report of that interview, I am aware that Medical Worker-2 stated that AJEMIAN was the "quarterback" who reviewed all the Magnetic Resonance Imagings ("MRIs"), Electromyography tests ("EMGs"), and x-rays,<sup>5</sup> and who made a determination as to that patient's condition. Medical Worker-2 estimated that, based on his memory of reviewing the diagnostic test results while working for AJEMIAN, approximately twenty percent of these patients had no problems at all. Medical Worker-2 also indicated that most laborers in their fifties would have normal degenerative changes that could be documented, i.e., that would appear in scans and images.

39. I have reviewed a report that other law enforcement agents prepared of an interview with a medical technician ("Medical Worker-3") who had long been employed by PETER J. AJEMIAN, the defendant, to perform certain diagnostic testing for AJEMIAN's LIRR patients. According to Medical Worker-3:

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5 An MRI is a medical imaging technique that is used to visualize detailed internal structures, particularly for the body's soft tissues. An EMG is a technique for evaluating electrical activity within the body's musculature. An x-ray is a technique used in radiology to visualize the body's internal structures, such as bones.

- a. The vast majority of AJEMIAN's patients were LIRR workers. AJEMIAN wrote approximately fifteen narratives a week for approximately \$1500 per narrative. AJEMIAN's LIRR patients were the only ones who received such lengthy, expensive narratives.
- b. AJEMIAN directed Medical Worker-3 to take many more diagnostic images of AJEMIAN's LIRR patients than AJEMIAN ordered for his other patients - even patients who had suffered serious traumatic injuries such as car accidents.
- c. The LIRR patients were "looking to get out" and the entire process with the LIRR patients was very "hush-hush." In particular, MARIA RUSIN, the defendant, met with the LIRR patients behind closed doors and the narratives were kept "secret."

40. I have also reviewed a report prepared by other law enforcement agents who interviewed an office worker ("Medical Worker-4") employed by PETER J. AJEMIAN, the defendant. According to Medical Worker-4:

- a. MARIA RUSIN, the defendant, almost exclusively handled the LIRR patients and their narratives. RUSIN took each LIRR patient into her office and closed the door, and those visits typically lasted between five and twenty minutes.
- b. LIRR patients in the waiting room - many of whom appeared to know each other - openly discussed what they were planning to do once they went out on disability.

41. I have also reviewed a report prepared by other law enforcement agents who interviewed an office worker ("Medical Worker-5") employed by PETER J. AJEMIAN, the defendant, both for his medical practice and for his in-house physical therapy practice. According to Medical Worker-5:

- a. AJEMIAN ordered physical therapy for many LIRR employees who, in Medical Worker-5's opinion, did not seem to need physical therapy and were not disabled. Indeed, the physical therapy practice seemed instead like a "social club," and many of the LIRR patients scheduled their physical therapy appointments at the same time and would do nothing more than talk and drink coffee together.

- b. Medical Worker-5 found it odd that LIRR patients would wait for hours to see AJEMIAN when there was nothing useful that AJEMIAN - who did not perform surgeries - could do for these patients.
- c. MARIA RUSIN, the defendant, had told Medical Worker-5 that she (RUSIN) was the only one who could work with the LIRR patients. RUSIN instructed Medical Worker-5 that when RUSIN was out of the office, Medical Worker-5 was not to work with the LIRR patients, and should instruct LIRR patients to come back when RUSIN was in the office.
- d. RUSIN "guide[d]" the LIRR patients through the disability process and took them into a private office and closed the door, in a way that Medical Worker-5 characterized as "sneaky."
- e. On several occasions when Medical Worker-5 was filling in for RUSIN, Medical Worker-5 retrieved voice messages left for RUSIN by MARIE BARAN, the defendant. BARAN also visited the office and RUSIN and BARAN went out for lunch together on a number of occasions.

Statements By PETER J. LESNIEWSKI

42. On or about October 29, 2008, PETER J. LESNIEWSKI, the defendant, was interviewed by other law enforcement agents, and made certain statements. Based on my discussion with these agents, and my review of a report of the interview, I have learned that LESNIEWSKI's statements included the following:

- a. LESNIEWSKI had worked with the now-deceased physician, Disability Doctor-3, in or about 1994 and 1995.
- b. A person not named as a defendant herein ("Facilitator-1") referred LIRR employees to LESNIEWSKI for medical evaluations. LESNIEWSKI's job was to work up the patient's medical file and prepare a narrative. He charged between \$850 and \$1000 for the narrative.
- c. Facilitator-1 told LESNIEWSKI how to write the narratives and what the RRB wanted to see on them. LESNIEWSKI prepared incorrect narratives and disability documents with respect to approximately 25% to 30% of his LIRR patients.

- d. LESNIEWSKI saw LIRR patients who had medical problems that were correctable by surgery. Many of those patients declined any treatment because all they wanted was to get the RRB disability. They were afraid that if their medical condition improved they would not get the disability.
- e. On all the LIRR patients' Medical Assessment forms he submitted to the RRB, LESNIEWSKI represented that the patients were restricted from heavy lifting, bending, kneeling, standing, walking, and sitting. LESNIEWSKI did so because he was aware that the patients were seeing him solely to gain disability benefits.
- f. LESNIEWSKI knew that the LIRR patients were seeing him just to get their disability, and he believed the RRB would not approve their disability. He estimated that 50% were not in fact disabled.
- g. LESNIEWSKI would not have made those statements in the disability documentation if he had known that the RRB was going to rely only on his report in making its determination.

43. On or about October 29, 2008, immediately after talking with the agents, PETER J. LESNIEWSKI, the defendant, also drafted and signed a written statement, which I have reviewed. In that signed statement, LESNIEWSKI stated, among other things:

- a. LESNIEWSKI received approximately 30 patients that were referred to him by Facilitator-1. The patients paid LESNIEWSKI between \$850 and \$1000 for each narrative.
- b. LESNIEWSKI generally prepared narratives concluding with a statement that "it can be stated with a 'reasonable degree of medical certainty that the patient is disabled for his occupation with the Long Island Railroad.'" LESNIEWSKI "put this statement on the narratives to ensure that the patient would receive his occupational disability."
- c. When he wrote his assessments, LESNIEWSKI believed that "an independent doctor would have determined that my statements would fall short of the level for disability."

- d. The information that LESNIEWSKI provided to the RRB with respect to his patients' condition "was exaggerated on approximately 20 percent of the narratives." LESNIEWSKI exaggerated his patients' exertional restrictions. LESNIEWSKI was aware that adding these exaggerated restrictions would have the effect of "aid[ing] in their receiving an occupational benefit from the U.S. RRB." He was told to put that information on the form by Facilitator-1.
- e. "Some of the MRI results had minimal findings but [he] would insert subjective complaints not objective findings of pain. The patients had to [sic] much secondary gain not to exaggerate their symptoms and problems. [He] hoped that someone on review would have noted the subjective nature of these findings and followed up."
- f. The narratives that LESNIEWSKI prepared "highlighted the patient's problems to aid them or to 'bring it home' that they would obtain their disability from the U.S. RRB."

Statements By Co-workers Of PETER J. LESNIEWSKI  
About His LIRR Disability Practice

44. I have reviewed a report of an interview of an office worker ("Medical Worker-6") employed in the medical practice of PETER J. LESNIEWSKI, the defendant. According to Medical Worker-6:

- a. LESNIEWSKI was "easy" and "lenient" with all his patients, including with his LIRR patients.
- b. LIRR patients "brag[ged]" and talked about their disabilities in the waiting area, while at the same time bragging that they were playing golf. LIRR workers also made statements indicating that they had been coached on what to say to LESNIEWSKI.
- c. The LIRR patients all seemed to have the same diagnoses.

45. Based upon my review of a report of a former employee ("Medical Worker-7") of PETER J. LESNIEWSKI, the defendant, I have learned that:

- a. The LIRR patients all seemed to know one another and would have a "coffee klatsch" in the waiting area.
- b. Medical Worker-7 asked LESNIEWSKI about this, and LESNIEWSKI responded that the LIRR workers had back conditions from working on trains and the constant vibration would cause their problems. LESNIEWSKI also told Medical Worker-7 that he [LESNIEWSKI] had to listen to what the LIRR patients told him.

46. Based upon my review of a report of an interview of a former employee ("Medical Worker-8") of PETER J. LESNIEWSKI, the defendant, I have learned that Medical Worker-8 stated in sum and in part:

- a. The LIRR patients who visited LESNIEWSKI all seemed to know one another, and were vocal about their disabilities and their retirement from the LIRR.
- b. Medical Worker-8 asked LESNIEWSKI why he had so many LIRR patients with back problems, and he responded that back problems are what occur from working on the railroad.

MARIE BARAN

47. As set forth above, MARIE BARAN, the defendant, a former RRB district office manager, based in Westbury, New York, was a facilitator retained by at least approximately 148 LIRR workers seeking RRB disability benefits. According to BARAN's business records, which I have reviewed, and interviews conducted by myself and other law enforcement agents of numerous such clients, BARAN charged each client approximately \$200 toward the start of her relationship with them, and an additional \$1200 near the time that she or the applicant completed the RRB Disability Application. These payments appear almost always to have been made in cash. BARAN referred patients primarily to PETER J. AJEMIAN, the defendant, as well as, at times, to Disability Doctor-3 and, less often, to PETER J. LESNIEWSKI, the defendant. Indeed, BARAN's husband, an LIRR retiree, receives RRB disability benefits based on a Medical Assessment done by LESNIEWSKI. In turn, according to statements that AJEMIAN and MARIA RUSIN, the defendants, made in the September 26, 2008 consensually recorded conversation with Medical Worker-1, they would at times put LIRR patients in contact with BARAN and other facilitators.

48. On or about September 24, 2008, other federal law enforcement agents interviewed MARIE BARAN, the defendant, the report of which interview I have reviewed. In that interview, BARAN stated the following, among other things:

- a. Prior to her retirement in December 2006, BARAN worked at the RRB as a district manager responsible for processing claims for RRB disability.
- b. Upon retirement, BARAN opened a labor consulting company, which she used to help LIRR workers get through the RRB disability system. She helped them fill out the appropriate RRB forms and sometimes recommended doctors for medical appointments. Patients paid BARAN for helping to prepare the paperwork.
- c. It was not BARAN's fault that the RRB disability system was "broken," and she would simply tell the LIRR workers who retained her as a consultant to "go ahead, give it a shot at the O/D [occupational disability]."
- d. The LIRR workers felt that they were entitled to give disability a shot because they had paid into the RRB fund while they were working at the LIRR.
- e. In filling out the RRB Disability Applications, BARAN would ask the applicants questions in a leading manner, such as: "is it safe to say that you can't lift 50 pounds, bend down, walk on uneven terrain, etc.," and the applicant would provide the answer.
- f. It was not her fault that the LIRR applicants "worked the system."
- g. BARAN stated that the interviewing FBI agents had probably never heard of the RRB before and that the agents were never going to figure it out or prove anything because "it's all legal."
- h. On one occasion, BARAN tried to "stop a guy" who she thought was not disabled from filing. BARAN could not recall that "guy's" name.

- i. At the conclusion of the interview, BARAN told an interviewing agent "you are never going to figure it out honey."

49. I have reviewed certain records maintained by MARIE BARAN, the defendant, including certain emails and records of payment from her clients. Based on those records, I have learned the following, among other things:

- a. I have reviewed an email attachment from BARAN to an LIRR worker ("LIRR Employee-5") that, according to BARAN's computer records, was last modified on July 29, 2008. In that note, BARAN stated that LIRR Employee-5's appointment [with BARAN] was scheduled for August 19, 2008, and she requested a cash payment of \$200. Also in that note, BARAN instructed LIRR Employee-5: "Call Dr. Peter Ajemian at [phone number listed] ask for Maria - tell them you are retiring from LIRR and are working with Marie Baran. Get the earliest possible appointment." I believe that "Maria" is a reference to MARIA RUSIN, the defendant. Based on medical records I have reviewed, LIRR Employee-5's first appointment with PETER J. AJEMIAN, the defendant, occurred on or about July 31, 2008 - just two days after BARAN appears to have composed this note. Based on RRB records, LIRR Employee-5 left the LIRR on or about September 30, 2008, and thereafter he applied for and was awarded an RRB disability annuity based upon a narrative submitted by AJEMIAN.
- b. I have reviewed an email message that BARAN sent to another individual on or about November 18, 2008, after news stories had broken about potential fraud in the misuses of the RRB disability program by LIRR workers. In that email, BARAN stated: "I am off in the wilds of Canada having a great time but I checked my email today and found that the Sh . . . hit the fan. Both Newsday and the Post ran the story, God help me. Who knows whose [sic] next." I am aware that New York Newsday and The New York Post ran news stories on or about November 18, 2008, reporting that another facilitator not named as a defendant herein had been arrested on charges in connection with having illegally helped LIRR workers obtain disability benefits.
- c. I have reviewed a notice from the Transportation Communications Union ("TCU"), of which LIRR workers were



members, of a scheduled "retirement planning seminar" to be held on May 11, 2005. The stated purpose for the seminar was "to help our members make decisions regarding the finances of retirement." Among the featured speakers was MARIE BARAN, the defendant, listed as the district RRB manager, as well as another individual who was listed as a "labor/disability consultant." The notice stated that "it's never too early to start planning for" retirement.

50. Other agents and I have interviewed numerous former clients of MARIE BARAN, the defendant, most of whom paid at least approximately \$1200 in cash to BARAN in exchange for her assistance in filling out a disability narrative for submission to the RRB. A number of these former BARAN clients stated that BARAN had filled out the forms for them, without consulting them about the veracity of the statements therein. For example:

- a. One BARAN client ("LIRR Employee-6") stated that BARAN had pre-filled out his Disability Application for him, even before BARAN's meeting with him, although BARAN "may have" asked him to confirm certain statements. LIRR Employee-6 acknowledged that certain statements in the Disability Application were not truthful, in that they exaggerated his condition and his symptoms, and that he could have continued to work at the LIRR were he not eligible to retire at that time.
- b. Another former client ("LIRR Employee-7") of MARIE BARAN, the defendant, with whom I have spoken, stated that BARAN had completed the Disability Application herself, later asking him leading questions about the types of activities that he purportedly found difficult to do. LIRR Employee-7 admitted that he was in fact capable of continuing to work at the LIRR at the time of his retirement with disability benefits.

JOSEPH RUTIGLIANO

51. I have also reviewed records for JOSEPH RUTIGLIANO, the defendant, an LIRR railroad conductor and the president and local chairman of a railroad union. He thus held two jobs at the end of his tenure with the LIRR. He retired on or about October 28, 1999, at the age of 52, after approximately 27 years of employment. After filing a Disability Application, on or about December 21, 1999, supported by a Medical Assessment filed by PETER J. LESNIEWSKI, the

defendant, RUTIGLIANO was approved by the RRB for disability benefits, which RUTIGLIANO is still receiving.

52. In the period November 1998 through October 1999, that is, the approximately 12 months immediately preceding his retirement, JOSEPH RUTIGLIANO, the defendant, worked the following approximate overtime hours:

	<u>Overtime Hours</u>
November 1998	55 hours
December 1998	41 hours
January 1999	31 hours
February 1999	65 hours
March 1999	60 hours
April 1999	46 hours
May 1999	70 hours
June 1999	37 hours
July 1999	42 hours
August 1999	20 hours
September 1999	50 hours
October 1999	53 hours
<b>TOTAL</b>	<b>570 hours</b>

During this same period, RUTIGLIANO took the following sick time:

	<u>Sick Days</u>
November 1998	0 hours
December 1998	0 hours
January 1999	0 hours
February 1999	0 hours
March 1999	0 hours
April 1999	0 hours
May 1999	0 hours
June 1999	0 hours
July 1999	0 hours
August 1999	0 hours
September 1999	0 hours
October 1999	0 hours
<b>TOTAL</b>	<b>0 hours</b>

At the time of his retirement, RUTIGLIANO received payments of \$45,340 in buyouts of vacation time, sick time or both.

53. I have also learned that JOSEPH RUTIGLIANO, the

defendant, had for years planned to retire shortly after his 50<sup>th</sup> birthday. I base this conclusion on my review of estimated pension and railroad retirement income sheets which he solicited.

- a. RUTIGLIANO requested a pension estimate sometime prior to February 28, 1991 in which he estimated that he would retire on or about November 24, 1997.
- b. RUTIGLIANO requested a second pension estimate sometime prior to May 14, 1996, in which he estimated that he would retire on or about November 24, 1997.
- c. RUTIGLIANO requested a third pension estimate sometime prior to March 25, 1998 in which he estimated that he would retire on or about November 23, 1998.
- d. RUTIGLIANO requested a fourth pension estimate sometime prior to May 21, 1999, in which he estimated that he would retire on or about November 23, 1999.

I am not aware of any indication that RUTIGLIANO ever requested a pension estimate based on an assumption that he would retire at the age of 65.

54. I have reviewed the Disability Application for JOSEPH RUTIGLIANO, the defendant. I have learned the following:

- a. In the application, RUTIGLIANO claimed that he was no longer able to work as of October 29, 1999. In other words, at the end of a year in which RUTIGLIANO worked hundreds of hours of overtime as a conductor, a separate job as a union official, and took no sick leave at all, RUTIGLIANO claimed to suffer a debilitating disability that began on the same date he retired.
- b. He further submitted a Medical Assessment and narrative prepared by PETER J. LESNIEWSKI, the defendant. In his narrative, LESNIEWSKI explained, among other things, that RUTIGLIANO "fractured his spine from a fall several years ago, specifically 1988." LESNIEWSKI added that RUTIGLIANO's back pain was getting worse over the years, and also catalogued problems with RUTIGLIANO's right shoulder, right wrist and right knee. The narrative offered no explanation for why this ten-year old injury did not interfere with RUTIGLIANO's overtime collection

or failure to require any sick days.

- c. In support of his application, RUTIGLIANO also submitted a "Job Description" form in which he set forth a lengthy narrative of his job duties and punctuated most or all of them by saying "I was no longer able to do this work because of the severe disabilities I suffer."

55. I have also learned from other law enforcement agents that LIRR retirees identified JOSEPH RUTIGLIANO, the defendant, as a facilitator who, after his retirement, aided other retirees with RRB Disability Applications in exchange for payments of approximately \$1000. I have reviewed several applications that contain "Job Description" narratives that are similar in form and substance to the one that RUTIGLIANO submitted on his own behalf in 1999. In particular, these narratives repeatedly assert, in substance, that the applicant became "no longer able to do this work because of the severe disabilities [he or she] suffer[s]."

56. I have reviewed video images published by the New York Times of JOSEPH RUTIGLIANO, the defendant, playing golf. I am also aware from law enforcement surveillance done in July 2008, and from golf course records, that RUTIGLIANO played golf at one particular course about two times per month in 2008. In the New York Times video image, RUTIGLIANO appears to swing a golf club and walk on a golf course with ease, notwithstanding his claims to the RRB about his shoulder, knee, wrist and back conditions.

57. As mentioned earlier, I have reviewed a consensual recording of a conversation between PETER J. AJEMIAN, the defendant, and Medical Worker-1. In that recording, Medical Worker-1 asked "Who introduced you to this whole opportunity in the first place?" AJEMIAN responded, "The gentleman who was on the front cover of Sunday New York Times, Joe Rutigliano . . . is a patient of mine. And he was probably the first one."

#### Additional LIRR Annuitants

58. In addition to examining the pattern of disability claims of patients treated by PETER J. AJEMIAN, PETER J. LESNIEWSKI, the defendants, and Disability Doctor-3, and reviewing statements by those defendants and their co-workers about their practices, other law enforcement agents and I have also investigated particular individuals for whom each of these doctors submitted disability Medical Assessments to the RRB. These investigations further

support the conclusion that AJEMIAN, LESNIEWSKI and Disability Doctor-3 were fraudulently claiming that their patients were disabled when in fact those patients did not suffer from medical impairments that prevented them from performing their job duties. This Complaint describes the fraudulent applications for disability submitted by AJEMIAN on behalf of GREGORY NOONE, REGINA WALSH, SHARON FALLOON, GARY SATIN, the defendants. It also describes the fraudulent applications submitted by LESNIEWSKI on behalf of STEVEN GAGLIANO, the defendant, and an LIRR retiree not named as a defendant herein ("LIRR Employee-8"). Finally, it describes the fraudulent application submitted by Disability Doctor-3 on behalf of ROBERT EHRLINGER, the defendant.

GREGORY NOONE

59. I have reviewed records for GREGORY NOONE, the defendant, an LIRR manager of engineering operations who retired on or about May 31, 2007, at the age of 58, after approximately 36 years of employment. After retirement, he applied for and was awarded an RRB occupational disability annuity. In his last full calendar year of LIRR employment, NOONE earned approximately \$110,000. In 2010, NOONE received a total of at least approximately \$105,000 in combined pension and disability payments, not including any private insurance payments.

60. Based on the evidence set forth herein, I do not believe that GREGORY NOONE, the defendant, was unable to work in August 2007 when he applied for an RRB occupational disability. I reach that conclusion because, among other things: (1) NOONE predicted that he would stop working in the summer of 2007, many months before he actually did so; (2) in his final months of work he used little sick leave and in fact received a large payout of sick time; (3) NOONE never obtained any prescription painkillers or anti-inflammatories in the time leading up to the purported onset of his disability; (4) NOONE elected to see PETER J. AJEMIAN, the defendant, approximately one year before he retired and at a time when he already knew he was likely to retire well before his 65<sup>th</sup> birthday; and (5) his purported disability, which included a restriction that he not reach overhead, has not prevented him from regularly playing tennis, golf, and other athletic activities that an able-bodied person would enjoy.

61. I have learned that for about two years prior to his retirement, GREGORY NOONE, the defendant, had intended to retire from the LIRR. This is based on the review of two applications for pension

estimates that NOONE filed with the LIRR as follows:

- a. In an estimate request filed on or about July 8, 2005, NOONE wrote that he would retire in July 2007. He then crossed out 2007, and replaced it with 2006.
- b. In an estimate request filed on or about March 15, 2007, NOONE estimated that he would retire on or about June 1, 2007.

62. Based on LIRR employee records, I have learned that between July 2005 and his retirement on May 31, 2007, GREGORY NOONE, the defendant, applied for no sick leave with the RRB. NOONE took one sick day in or about the end of May 2007. He took no other sick days in 2007. In fact, NOONE took no additional sick days from the time that he first saw PETER J. AJEMIAN, the defendant, in June 2006 through his retirement. At the time of his retirement, NOONE received a payout of \$21,608 for unused sick days and a payout of \$33,367 of vacation pay (which is approximately 10 weeks).

63. In a Disability Application dated August 8, 2007, GREGORY NOONE, the defendant, stated the following, knowing that he could be prosecuted for false statements:

- a. He listed as the medical condition causing him to file: "cervical spine spondylosis, radiculopathy, bilateral cubital tunnel syndrome, left shoulder rotator cuff tear, bilateral CTS, lumbar spine herniated disc, bilateral facet arthritic changes and degenerative disc disease, left more than rt knee problems."
- b. NOONE listed the date this condition began to affect his ability to work as May 30, 2007, and the date that he could no longer work because of this condition as May 31, 2007.
- c. In response to a question asking for a description of how his condition prevented NOONE from working, NOONE wrote: "I cannot remain on my feet for more than a couple of hours without experiencing pain in my knees and back. I cannot walk along the train ballast... without pain in my knees and back. I cannot climb culverts or embankments without severe back, neck, and knee pain. I cannot climb onto or down from train equipment or rail-bound machinery without experiencing severe shoulder, back, arm, hand and knee pain . . . I cannot open or close train doors or windows

without experiencing shoulder, neck and back pain. I cannot bend, crouch or kneel... without experiencing pain in my knees, shoulder and back."

- d. NOONE also reported that the following activities caused severe pain: climbing ladders and stairs, lifting and carrying heavy tools or equipment, gripping and using simple hand tools, sitting at computer work station for more than an hour, typing on a keyboard, and writing with a pen or pencil.
- e. In response to questions about NOONE's daily activities, NOONE listed the following categories as "hard" - which was defined as something that "I can do . . . with difficulty or with help": sitting, standing, walking, eating, bathing, indoor chores, outdoor chores, driving a motor vehicle. NOONE stated that he was utterly unable to use public transportation because "any vibrating or rocking causes back, neck and knee pain." NOONE also stated that "dressing" is "hard" because "twisting & reaching above shoulder causes pain. Bending to tie shoes causes back pain." He reported that "holding utensils is difficult and painful."

64. Based on medical files, I believe that GREGORY NOONE, the defendant, first saw PETER J. AJEMIAN, the defendant, on or about July 6, 2006, that is, approximately 10 months before his retirement, for various claimed maladies.

65. I have reviewed a Medical Assessment dated June 7, 2007 that GREGORY NOONE, the defendant, submitted to the RRB in support of the Disability Application. The form was completed by PETER J. AJEMIAN, the defendant, and it listed the following restrictions:

NO sitting nor standing > 2 hrs total/day;  
NO walking > 3 hrs. total/day;  
NO push, pull, lift, carry > 20 lb;  
NO kneeling, pushing, bending, squatting,  
crouching, stooping, climbing, nor reaching  
overhead.

AJEMIAN also restricted NOONE as follows:

no work at heights or on uneven terrain,

no work around machinery,  
avoid vibrations,  
avoid extremes of heat and humidity.

AJEMIAN recommended that NOONE be approved for RRB occupational disability benefits.

66. PETER J. AJEMIAN, the defendant, also submitted a narrative report in support of the RRB Disability Application for GREGORY NOONE, the defendant. In that narrative, AJEMIAN reported the following:

- a. NOONE first saw AJEMIAN for an initial examination as a patient on July 6, 2006. NOONE complained about neck pain which he said referred to his shoulder, back pain to both legs with sciatica, and left and right knee pain.
- b. Before a second appointment, AJEMIAN directed and NOONE underwent the following medical tests:
  1. The same day as NOONE's first visit, July 6, 2006, AJEMIAN had NOONE take x-rays of his cervical spine.
  2. On August 1, 2006, NOONE had an MRI of his left shoulder.
  3. On August 2, 2006, NOONE had a second MRI of his lumbar spine.
  4. Also on August 2, 2006, NOONE had EMG nerve conduction studies of his upper extremities.
  5. Two weeks later, on August 16, 2006, NOONE had an EMG-nerve conduction study to both lower extremities.
  6. That same day, NOONE had a third MRI, this time of his lumbar spine.
- c. On August 17, 2006, NOONE went to AJEMIAN for a second appointment.
- d. On May 7, 2007, NOONE returned for a third appointment. AJEMIAN concluded that:



The diagnoses and recommendations are unfortunately unchanged. I admonished the patient at this time, given his lack of improvement over the last several months' time that the likelihood of him being able to continue working in his current capacities are nil. At this time, I recommended occupational disability retirement from the Rail Road.

- e. On June 7, 2007, AJEMIAN again examined NOONE and stated "I highly recommend this patient for occupational disability retirement effective immediately."

67. Based in part on these submissions, GREGORY NOONE, the defendant, was granted disability benefits by the RRB.

68. In a Disability Recertification, sent to and from RRB's offices in Manhattan, New York, GREGORY NOONE, the defendant, knowing that he could be prosecuted for false statements, stated that, from about November 1, 2007 to March 11, 2011, his condition had remained the "same."

69. Contrary to the assertions made by GREGORY NOONE and PETER J. AJEMIAN, the defendants - such as that NOONE could not reach overhead, bend or crouch - this investigation has shown that during his retirement, NOONE has been and is in fact an avid athlete whose physical condition permits him to regularly engage in physical activity. For example:

- a. During most of the period relevant to this Complaint, NOONE regularly played lengthy games of tennis several times a week. For example, I have reviewed video surveillance of NOONE, taken on three separate occasions on or about February 1, 2011, February 3, 2011, and February 4, 2011, during which he is seen bending, stooping, and serving overhead as he engages in competitive tennis.
- b. In addition, I have learned from records obtained from the a Long Island golf course that NOONE signed in to play golf on 140 days in from January 1, 2008 through September 2008 (without any fee, due to his alleged disability). However, after the publication of newspaper articles in September 2008 reporting widespread disability fraud, which included reports of purportedly disabled LIRR retirees regularly playing golf, NOONE signed in for no

further golf games.

70. I have further learned that GREGORY NOONE, the defendant, was an active tennis player during the time that he was seeing PETER J. AJEMIAN, the defendant, and receiving physical therapy. Specifically, the physical therapy notes state, among other things:

- a. On or about October 2, 2006, NOONE reported that he was "sore from playing tennis but he is showing improvement weekly in his ability to perform over head activities."
- b. On or about October 12, 2006, NOONE reported that physical therapy "is allowing him to function playing tennis at a higher level than prior to starting treatment."
- c. On or about October 16, 2006, NOONE reported "a great deal of discomfort in his left shoulder following an excessive session of tennis."
- d. On or about October 18, 2006, NOONE reported that "he played a lot of tennis for the past two days and has a sore shoulder. He does however state that his ability to play has increased significantly."
- e. On or about October 25, 2006, NOONE stated that he "continues to have discomfort in his left shoulder but also continues to play very aggressive tennis on a daily basis."
- f. On or about November 6, 2006, NOONE stated that "he injured his hamstring playing tennis yesterday."
- g. The next physical therapy visit after November 2006 was on or about February 14, 2007. On that date, NOONE reported that "approximately a week ago he injured his back playing tennis."
- h. On or about August 21, 2007, NOONE reported that he "was able to swing the tennis racket without over extending."
- i. On or about September 6, 2007, NOONE reported "similar complaints" to previous visits "but is becoming more active with tennis and functional activities."
- j. On or about September 11, 2007, NOONE reported that "he

was able to play tennis yesterday but is significantly sore after he plays."

71. I also know that GREGORY NOONE, the defendant, told PETER J. AJEMIAN, the defendant, that he was playing tennis actively during the time that AJEMIAN was seeing NOONE for the purpose of producing a disability narrative. Specifically, in a patient note dated August 17, 2006, AJEMIAN wrote:

Mr. Noone elicits questions specifically regarding if any further harm will be incurred if he does recreational tennis and continue with his physical therapy will cause any further injury to his rotator cuff. I told him at this point in time with nearly ¼ inch retraction and muscle atrophy, this is a chronic entity and no further injury will be incurred unless he has noted specific trauma.

72. I have further learned from the medical records kept by PETER J. AJEMIAN, the defendant, that AJEMIAN had prescribed Tylenol with codeine for GREGORY NOONE, the defendant. Based on medical records supplied by the LIRR Insurance Carrier and affiliated prescription medication delivery services, I have learned that, despite the punishing limitations that were described in the Disability Application by AJEMIAN and NOONE, NOONE never in fact obtained any prescription painkillers, including Tylenol with codeine, or anti-inflammatories in 2006 and 2007. In other words, it does not appear that NOONE ever filled the prescription.

73. I have also spoken with an independent orthopedic surgeon (the "Independent Doctor"), who has been retained by the Government to review the medical file maintained by PETER J. AJEMIAN, the defendant, and other records related to GREGORY NOONE, the defendant. According to the Independent Doctor:

- a. AJEMIAN's notes report certain medical problems, but contain nothing to support an ultimate finding that NOONE is occupationally disabled. A person with all of NOONE's conditions would be capable of working for many years.
- b. Some tests, in fact, show that NOONE is healthy. For example, a Nuclear Scan dated November 30, 2004 demonstrates that NOONE has good exercise capacity. Similarly, a cardiac stress test taken by a cardiologist

on or about July 15, 2005 demonstrates excellent exercise capacity, and in fact NOONE informed the cardiologist that he played tennis three hours per day.

- c. AJEMIAN's restrictions - including an inability to walk more than three hours per day, a bar on pushing and pulling, and a directive to avoid vibrations - are inconsistent with playing tennis for hours at a time.

REGINA WALSH

74. I have also reviewed records for REGINA WALSH, an LIRR director of employee services who retired on or about August 31, 2006, at the age of approximately 58, after over approximately 28 years of employment. After retirement, WALSH applied for and was awarded an RRB occupational disability annuity. In her last full calendar year of LIRR employment (2005), WALSH's compensation was approximately \$102,000. In 2010, WALSH received a total of at least approximately \$108,000 in combined pension and disability payments, not including any private insurance payments.

75. Based on the evidence set forth herein, I do not believe that REGINA WALSH, the defendant, was unable to work as of August 2006 as she claimed in a Disability Application. I reach that conclusion because, among other things: (1) WALSH predicted that she would stop working at about the time she in fact retired many months before she actually did so; (2) in her final months of work she used little sick leave and obtained a buyout of over \$50,000 for unused sick time; (3) WALSH never obtained any prescription painkillers or anti-inflammatories in the time leading up to the purported onset of her disability; (4) WALSH elected to see PETER J. AJEMIAN, the defendant, approximately ten months before she retired and at a time when she had already contemplated retiring well before her 65<sup>th</sup> birthday; (5) Walsh admitted going to see AJEMIAN because he had "a good track record" of getting people a disability award; and (6) when WALSH saw a physical therapist in October and November 2005, at AJEMIAN's direction, she admitted that she was able to do everything at work she wanted to do and her physical therapist discharged her for realizing all the goals of physical therapy.

76. REGINA WALSH, the defendant, requested estimates from the LIRR pension department of what her retirement pension would be at certain retirement dates. In particular:

- a. In a pension request filed on or about June 1, 2000, WALSH

received an estimate for a December 1, 2000 retirement date. The estimated monthly pension amount for this retirement date was approximately \$3896.

- b. In a pension request filed on or about July 12, 2002, WALSH received estimates for February 1, 2003 and June 1, 2003 retirement dates. The estimated monthly pension amount for these retirement dates were approximately \$4799 and \$4845 respectively.
- c. In a pension request filed on or about March 29, 2006, WALSH received an estimate for a September 1, 2006 retirement date.

77. Based on LIRR pay information reported to the RRB, I have learned that in calendar year 2006, REGINA WALSH, the defendant, used one day of sick leave in March and in August each and, in calendar year 2005, WALSH used two days of sick leave in October and one day each in December 2005. In other words, from the time that WALSH first saw PETER J. AJEMIAN, the defendant, in October 2005, through her retirement in August 2006, WALSH took only a total of five sick days. Because WALSH had so many unused sick days, she collected sick-time buyout of approximately \$52,752.96 at the time of her retirement.

78. In her Disability Application, REGINA WALSH, the defendant, stated the following, knowing that she could be prosecuted for false statements:

- a. WALSH listed as the medical condition causing her to file:

Neck spasm bilaterally  
right shoulder impingement  
left cubital tunnel and carpal tunnel  
hamstring contractures - generative disk 5-6  
and 6-7.

- b. WALSH listed the date this condition began to affect her ability to work and the date that she could no longer work because of this condition as August 31, 2006.
- c. WALSH stated that in October 2005, PETER AJEMIAN, the defendant, had imposed the following restrictions on her:

No lifting arms over head. Use carpal tunnel

hand braces. No sitting, standing or walking for extended periods. No heavy lifting of any kind.

- d. In response to a question asking for a description of how her condition prevented her from working, WALSH wrote:

Sitting at desk and using a computer caused consider [sic] pain in neck, shoulder and hands. Sitting or standing for any length of time caused considerable pain in both legs. It was necessary to walk long distances from facility to facility for meetings, training and information [sic] sessions. I was frequently required to drive to employees [sic] homes to provide counselling [sic]. Sitting in an automobile for any length of time caused me great discomfort both in neck and legs.

- e. In response to questions about the daily activities of which she was capable, REGINA WALSH, the defendant, stated that sitting, standing, and walking are all "hard," and that she could "only walk short distances" as she experienced "leg pains when standing more than 5 min or when sitting more than 15 min." WALSH also stated that even dressing herself was "difficult due to neck and hand pain," that indoor chores were hard, and that she was unable to do any outdoor chores. WALSH also stated that driving and using public transportation were hard as "sitting causes pain. Arms on steering" and "stairs at RR station difficult. Sitting - pain." WALSH also stated that she goes "to the gym 4 or 5 times a week to do stretching and exercise [sic] to maintain flexibility."

79. Based on medical files that I have reviewed, I believe that REGINA WALSH, the defendant, first saw PETER J. AJEMIAN, the defendant, on or about October 10, 2005 for various claimed maladies. In a medical history form WALSH completed on that date, WALSH listed as the reasons for the visit "carpal tunnel/arthritis hands" and "soreness pain back of legs."

80. I have reviewed a Medical Assessment dated December 20, 2006, that REGINA WALSH, the defendant, submitted to the RRB in

support of her Disability Application. It was completed by PETER J. AJEMIAN, the defendant, and it listed the following restrictions:

NO pushing, pulling, carrying, lifting > 10 lbs.  
NO sitting nor standing > 2 hrs/day.  
NO kneeling, crouching, bending, stooping,  
climbing, nor reaching overhead.

AJEMIAN also stated that WALSH had the following environmental restrictions:

no work at heights, nor around machinery; avoid  
vibrations and extremes of heat and humidity.

81. PETER J. AJEMIAN, the defendant, also submitted a narrative report dated August 31, 2006, in support of the RRB Disability Application for REGINA WALSH, the defendant. In that narrative, AJEMIAN reported the following:

- a. WALSH first saw AJEMIAN for an initial examination as a patient on October 10, 2005. WALSH complained about pain in her "neck, her right shoulder, numbness to the right hand and occasional pain to both legs, muscles, calves, and thighs."
- b. In describing the history of the present illness, AJEMIAN stated:

She says she experiences tightness and pain, numbness to both hands particularly discomfort, soreness in the back of both legs that persists all the time as well. She has difficulty in standing, although she tries to exercise and walk that seems to irritate both her legs. Doing her job requires keyboarding, lifting, pushing, and pulling and other similar forms of transfer activity which unfortunately fails to improve over time. She presents for evaluation as the numbness in the back of her neck and spasm there, and tightness in the arm wakes her from her sleep constantly.

- c. As part of the October 10, 2005 office visit, x-rays of her cervical spine and right shoulder were conducted. AJEMIAN also referred WALSH for an MRI of her cervical spine and EMG nerve conduction studies on her upper

extremities. WALSH underwent the MRI on or about October 18, 2005 and the EMG nerve conduction studies on or about November 9, 2005.

- d. At this first visit, AJEMIAN also prescribed physical therapy for WALSH.
- e. AJEMIAN's records indicate that WALSH's second visit took place on or about December 2, 2005, and that thereafter she visited AJEMIAN on or about February 3, 2006, August 15, 2006, and September 5, 2006.
- f. AJEMIAN's narrative indicates that on February 3, 2006, WALSH declined AJEMIAN's suggestion that she receive an epidural steroid injection "to help break the source of pain and discomfort," and further indicates that AJEMIAN told WALSH future surgery may be required.
- g. The narrative reports that at the August 15, 2006 visit, WALSH claimed that "she cannot continue working" and that "[s]he feels that she cannot continue working safely for the [LIRR] and has decided at this point in time to consider disability retirement." AJEMIAN further reported that he "recommended that she strongly consider occupational disability retirement."
- h. AJEMIAN's narrative also states that at the September 5, 2006 visit, WALSH was unimproved and "resigned to the fact that she cannot continue working. She has decided to retire."

82. However, as noted above and contrary to the development of events set forth in the narrative by PETER J. AJEMIAN, the defendant, REGINA WALSH, the defendant, had already requested a pension estimate in March 2006 in which she estimated a September 1, 2006 retirement date. Further, LIRR records indicate that WALSH applied for an LIRR pension on or about August 10, 2006, prior to the August 15, 2006 visit to AJEMIAN.

83. I have also reviewed records concerning the physical therapy received by REGINA WALSH, the defendant. Specifically, I have learned the following:

- a. In her initial visit to a physical therapist, on or about October 25, 2005, WALSH stated on a form that she was "not



limited at all" in moderate activities or in climbing several flights of stairs. In response to a question as to whether, in the past four weeks, she had "accomplished less than you would like," WALSH disagreed, and checked no (in other words, that she had been able to accomplish all that she wanted to accomplish).

- b. In a form she filled out at the physical therapy facility on or about November 15, 2005, WALSH checked a box that said "I have no pain at the moment." In responding to a question about her functionality at work, WALSH checked a box stating that "I can do as much as I want to." She also stated that "I can engage in all my recreational activities with no neck pain at all" and "I can drive my car without neck pain."
- c. WALSH received physical therapy on or about October 25 and November 1, 3, 7, 10, and 15 of 2005.
- d. On or about November 15, 2005, the physical therapy facility sent a letter to PETER J. AJEMIAN, the defendant, stating that WALSH was discharged from physical therapy because all the goals of treatment were met, and she had no significant complaint of shoulder pain and was able to actively elevate, and that WALSH had minimal cervical and lumbar pain, both without radicular pain.

84. In the narrative PETER J. AJEMIAN, the defendant, prepared on behalf of REGINA WALSH, the defendant, for submission to the RRB, AJEMIAN made no mention that WALSH had been successfully discharged from physical therapy or that she had been able to meet all her treatment goals.

85. In a Disability Recertification, sent to and from RRB's offices in Manhattan, New York, REGINA WALSH, the defendant, knowing that she could be prosecuted for false statements, self-reported that, during the period from February 1, 2007 to March 3, 2011, her condition had remained the "same."

86. As a result of this investigation, I believe that, contrary to her statements to the RRB, REGINA WALSH, the defendant, was able to bend, push and walk for extended periods of time without difficulty. On or about January 21, 2011, other law enforcement agents conducted surveillance of WALSH, in which they observed her shoveling snow for approximately one and a half hours, which

photographs I have reviewed. On or about January 25, 2011, I conducted surveillance of WALSH, during which I observed WALSH walking outside for over approximately 40 minutes, while pushing a baby stroller, which I recorded with a video camera. She did all these activities with apparent ease and with no apparent discomfort, despite that she had claimed that walking and pushing caused her severe pain, and that she was "not at all" capable of performing any outdoor chores.

87. I have further learned from medical records kept by PETER J. AJEMIAN, the defendant, that AJEMIAN had prescribed Tylenol with codeine and anti-inflammatories for REGINA WALSH, the defendant. Based on medical records supplied by the LIRR Insurance Carrier and related prescription medication providers, I have learned that WALSH did not fill her Tylenol with codeine prescription.

88. Other RRB-OIG agents spoke with REGINA WALSH, the defendant, on or about May 20, 2009, and I have reviewed a report of that interview. In that interview, WALSH stated, among other things:

- a. Prior to her retirement, WALSH had begun speaking with MARIE BARAN, the defendant, about her retirement and the possibility of occupational disability.
- b. WALSH had scheduled an appointment with PETER J. AJEMIAN, the defendant, because most of the LIRR employees used him and he had "a good track record for getting the disabilities through."
- c. Her own disability was "so-so."
- d. When WALSH went to AJEMIAN for her appointment, MARIA RUSIN, the defendant, would ask if WALSH were going to apply for occupational disability, and suggested that she should.
- e. WALSH was asked to pay \$2000 in cash for the narrative, which she did, as well as an additional \$1000 to \$1100 for filling out forms.
- f. WALSH had paid for the narrative when she first started seeing AJEMIAN.

SHARON FALLOON

89. I have reviewed records for SHARON FALLOON, the defendant, an LIRR human resources manager who retired on or about September 30, 2007, at the age of approximately 53, after over approximately 24 years of LIRR employment. After retirement, FALLOON applied for and was awarded an RRB occupational disability annuity. In 2006 - her last full year of employment - FALLOON earned \$82,249. In 2010, FALLOON received \$53,824 from her LIRR pension and \$36,525 from her RRB disability annuity, for total annual payments of \$90,349.

90. Based on the evidence set forth herein, I do not believe that SHARON FALLOON, the defendant, was unable to work as of August 2006 as she claimed in a Disability Application. I reach that conclusion because, among other things: (1) months before FALLOON actually retired, she had pre-planned her retirement date; (2) FALLOON elected to see PETER J. AJEMIAN, the defendant, approximately eleven months before she retired and at a time when she had already contemplated retiring well before her 65<sup>th</sup> birthday; and (3) FALLOON has been videotaped performing aerobic exercises that would be utterly impossible if she in fact had the medical conditions and restrictions used to justify her application for occupational disability.

91. I know that SHARON FALLOON, the defendant, had been contemplating early retirement for several years prior to her actual retirement. Specifically, I base this on the following:

- a. I have reviewed an Application for Pension Estimate that FALLOON completed on or about June 4, 2007. She said that her planned retirement was September 30, 2007, that is, the date she actually retired.
- b. I have also reviewed an earlier Application for Pension Estimate that FALLOON completed on or about January 24, 2004. In that form, she stated that her planned retirement date was December 31, 2004.

92. I have reviewed a Disability Application, dated November 14, 2007, in which SHARON FALLOON, the defendant, stated the following, among other things, knowing that she could be prosecuted for false statements:

- a. FALLOON listed the medical condition causing her to file

for disability as follows:

Disabling neck pain . . . , causing pain radiating into my shoulders and arms, left worse than right, causing numbness and weakness as well as limitation and restriction of motion and use . . . . Disabling low back pain . . . , causing pain radiating into my legs, left worse than right, with limitation and restriction of motion and use, with loss of strength and sensation . . . . Disabling left hip pain with piriformis syndrome causing pain, tingling, and numbness with limitation and restriction of motion and use, with instability and loss of strength . . . . Disabling left knee pain and pathology . . . causing swelling, stiffness, buckling, painful range of motion, instability and loss of the ability to exert . . . . Disabling bilateral hand and wrist pain involving carpal tunnel syndrome, with numbness, and weakness, causing decreased grip strength and restriction of motion and use.

- b. In response to questions about her daily activities, FALLOON stated that, essentially, all activities were difficult for her, including sitting, standing, walking, eating, bathing, dressing, indoor chores, and outdoor chores. For example, in explaining why standing was difficult, FALLOON wrote:

After standing for more than 15-20 minutes, I get severe, sharp, disabling pain in my back with pain radiating into my legs, left worse than right. After 40 minutes, the pain is unbearable and I cannot support my body very well. I must lie down and rest . . . . In addition, standing aggravates the disabilities of my left hip and left knee and causes disabling pain and buckling. After approximately 15 minutes of standing, the pain in my left knee requires that I shift my weight and if I stand longer, I have to sit in order to relieve the pain and stress. The pain in my left knee and hip causes weakness and instability causing me to limp. I cannot stand to exert to do the work

required around my home or on the railroad . . . . Standing is also difficult because the pain and weakness in my hands and wrists prevents me from adequately gripping handholds with one hand while using my other hand to do work on the railroad or do work around the house.

- c. To explain why walking was difficult, FALLOON wrote:

After walking approximately 15 minutes, I get increased sharp pains in my back that travels into my legs, left worse than right. The pain becomes worse after 5 or 6 blocks . . . also, walking 10 to 15 minutes causes tremendous onset of left hip and left knee pain. I have great trouble with stairs and ladders - I have difficulty keeping my balance because my left hip and left knee are unstable . . . .

- d. In response to why indoor and outdoor chores were difficult, FALLOON specifically reported that "I cannot shovel or rake." In response to why taking public transportation was hard, FALLOON stated that "climbing steps is very difficult and causes pain so I try to avoid this."

93. SHARON FALLOON, the defendant, first saw PETER J. AJEMIAN, the defendant, on or about October 17, 2006 for various claimed ailments. As was typical, AJEMIAN chronicled FALLOON's purportedly deteriorating condition, culminating in a narrative dated October 1, 2007, in which AJEMIAN concluded that FALLOON was occupationally disabled.

94. Based on LIRR records, I have learned that between the first time SHARON FALLOON, the defendant, saw PETER J. AJEMIAN, the defendant, (i.e., on October 17, 2006) and her retirement in September, 2007, FALLOON took only seven sick days: two in November 2006, one in January 2007, two in March 2007, and two in May 2007.

95. I have reviewed a Medical Assessment submitted by SHARON FALLOON, the defendant, to the RRB in support of the Disability Application dated October 1, 2007, and signed by PETER J. AJEMIAN, the defendant, listing the following restrictions:

NO sitting, standing, walking more than three

(3) hours daily.

NO pushing, pulling, lifting and carrying,  
lifting > 25 lbs.

NO bending, stooping, squatting, crouching,  
kneeling, twisting, climbing nor reaching  
overhead.

No work at heights or on uneven terrain, no work  
around machinery,  
avoid vibrations,  
avoid extremes of temperatures and humidity.

96. PETER J. AJEMIAN, the defendant, also submitted a narrative report dated October 1, 2007, in support of the RRB Disability Application for SHARON FALLOON, the defendant. In that narrative, AJEMIAN reported the following:

- a. FALLOON first visited him on October 17, 2006, complaining of pain in her neck, left hip and left knee. She reported that she was in "no acute distress" at the time of the visit. At the first visit, AJEMIAN directed that FALLOON get x-rays of her cervical spine, lumbar spine, left hip, and left knee, which were all taken that day. AJEMIAN's reports of the first visit made no mention of a problem with FALLOON's hands, and in fact AJEMIAN noted that "there is no cubital or carpal tunnel compression neuropathy."
- b. On or about November 27, 2006, FALLOON underwent an MRI of her left knee at AJEMIAN's direction.
- c. On or about December 4, 2006, FALLOON had a patient visit with AJEMIAN.
- d. On or about January 3, 2007, FALLOON underwent an EMG-nerve conduction study to both lower extremities.
- e. On or about January 10, 2007, FALLOON underwent an EMG-nerve conduction study on her upper extremities.
- f. On or about January 15, 2007, FALLOON had a patient visit with AJEMIAN.
- g. On or about February 1, 2007, FALLOON underwent an MRI of the lumbar spine.
- h. On or about February 19, 2007, FALLOON had a patient visit

with AJEMIAN.

- i. On or about April 28, 2007, FALLOON underwent an MRI of the cervical spine.
- j. On or about May 14, 2007, FALLOON had a patient visit with AJEMIAN.
- k. On or about July 13, 2007, FALLOON had a patient visit with AJEMIAN. In his notes, AJEMIAN stated that "[t]he patient is frustrated by her lack of improvement and raises questions and concerns of whether or not she will ever get better." AJEMIAN recommended that FALLOON continue her physical therapy and "I have made her aware once again of the permanency of her problems and the likelihood of progression."
- l. On or about September 11, 2007, FALLOON had a patient visit with AJEMIAN. AJEMIAN concluded that "I advised the patient to strongly consider occupational disability retirement. She is hesitant to do so and will think about this." (As mentioned above, however, on or about June 4, 2007, FALLOON had already told the LIRR that she estimated she would retire on September 20, 2007.)
- m. On or about September 28, 2007, FALLOON returned to AJEMIAN's office and reported that she is "unable to continue working, unable to do safe gainful employment. She is concerned about the safety of her well-being as well." AJEMIAN recommended "[t]he fact that her neck, her arms, her back and her legs are unimproved and the knee continues to deteriorate, I will recommend occupational disability retirement on behalf of this patient effective October 1, 2007."

97. Based on billing records for the Ajemian Practice, I have also learned that SHARON FALLOON, the defendant, paid PETER J. AJEMIAN, the defendant, \$800 for the disability narrative and \$200 to fill out a Medical Assessment on or about August 7, 2007. That is, FALLOON paid for the disability narrative two months prior to the examination in which AJEMIAN reported reaching the conclusion that she was disabled and before the patient visit in which FALLOON purportedly indicated that she was "hesitant" to consider occupational disability.

98. In a Disability Recertification, sent to and from RRB's offices in Manhattan, New York, SHARON FALLOON, the defendant, knowing that she could be prosecuted for false statements, self-reported that, during the period from March 1, 2008 to March 5, 2011, her condition had remained the "same."

99. Other law enforcement officers and I have conducted surveillance of SHARON FALLOON, the defendant, on multiple occasions. From that surveillance, I have learned the following:

- a. In or about January 2011, other law enforcement agents and I conducted surveillance of FALLOON, in which it was observed that she spent several hours at a gym on two occasions. On or about January 25, 2011, a law enforcement agent conducted surveillance of FALLOON inside this gym over the course of several hours, which was recorded on videotape and which videotape I have reviewed. In this video, FALLOON can be seen climbing on an elliptical trainer for over approximately 30 minutes; taking a step aerobics class for approximately 45 minutes; taking an additional exercise class for approximately 30 minutes, and using the elliptical trainer once again for approximately 30 minutes - thus for a total of more than two hours of virtually continuous exercise. At that point, the video concluded only because the tape ran out, although FALLOON continued her workout. In this video of her workout, FALLOON can be seen lunging, twisting, lifting weights, reaching, climbing, and performing other strenuous activities - all conduct that she and AJEMIAN had specifically told the RRB that she could not perform.
- b. Further, I have also saw FALLOON on or about January 18, 2011 outside her home after a snowstorm, bending, pushing and clearing snow from her stoop, as well as clearing snow and scraping ice from her vehicles and putting a child on a school bus, despite that she had stated to the RRB that she was incapable of performing such activities and had specifically gone so far as to state that she could not shovel snow.

100. I have further learned from medical records kept by PETER J. AJEMINIAN, the defendant, that AJEMIAN had prescribed Tylenol with codeine for SHARON FALLOON, the defendant, on or about September 28, 2007. Based on medical records supplied by the LIRR Insurance Carrier, I have learned that in 2007 and 2008, FALLOON never



obtained any prescription painkillers, except for one prescription fill on or about September 29, 2007 for Tylenol III, which contains codeine.

101. I have also spoken to the Independent Doctor about his review of the medical file maintained by PETER J. AJEMIAN, the defendant, and other records related to SHARON FALLOON, the defendant. According to the Independent Doctor:

- a. The Independent Doctor noted that in a note dated February 19, 2007, AJEMIAN diagnosed FALLOON with "bi-lateral carpal tunnel" based on the results of a January 10, 2007 EMG test. According to the Independent Doctor, EMG tests are not a reliable method for initial diagnosis of carpal tunnel because the tests might show entirely asymptomatic conditions. They are only medically useful after a patient clinically reports symptoms which an EMG might corroborate to some extent. Here, the notes prior to February 19, 2007, indicate no complaints by FALLOON related to her hands or otherwise indicative of carpal tunnel. It was only after AJEMIAN concluded based on the EMG test that FALLOON had bilateral carpal tunnel that AJEMIAN began to report - for the first time - FALLOON's complaints about physical symptoms consistent with bilateral carpal tunnel.
- b. AJEMIAN concluded in a chart note dated or about December 4, 2006, that FALLOON suffered from "left knee . . . posterior horn medial meniscus tear," based in part on an MRI that had been conducted on November 27, 2006. According to the Independent Doctor, an MRI report showed an abnormal signal that can only be said to lead to "suspicion" of such a tear, and cannot support the conclusion of a full-blown tear. Further, virtually all patients of this age group would show this type of MRI finding.
- c. In his notes, AJEMIAN recorded a list of what he titled "impression," followed by what appeared to be a catalogue of FALLOON's physical impairments. In fact, according to the Independent Doctor, many of the "impressions" are not grounded in medicine or the patient data. For example:
  1. AJEMIAN wrote that FALLOON had a "right sided C6 and C7 radiculopathy" [i.e., a back condition causing

back pain and radiating leg pain]. According to the Independent Doctor, there were no objective medical tests or clinical data supportive of this diagnosis.

2. AJEMIAN also offered as a third impression that "convex right thoracolumbar scoliosis of approximately 10°." According to the Independent Doctor, 10° is within normal range of motion and the remaining impression is nothing more than jargon.
3. AJEMIAN's seventh impression was "L2, L3, and L4 radiculopathy with weakness and also left knee patella femoral malalignment and chondromalacia." According to the Independent Doctor, AJEMIAN's medical notes show no indication at all of the "left knee patella femoral malalignment and chondromalacia."

#### GARY SATIN

102. I have also reviewed records for GARY SATIN, the defendant, an LIRR electrician who retired on or about June 30, 2005, at the age of approximately 55, after approximately 23 years of employment. After retirement, he applied for and was awarded an RRB occupational disability annuity. In his last full year with the LIRR (2004), SATIN earned \$84,442. In 2010, he received \$32,991 in LIRR pension payments and \$36,468 from his RRB disability payments, for a total of \$69,559 in annual payments.

103. Based on the evidence set forth below, I do not believe that GARY SATIN, the defendant, was in fact unable to continue working at the time he submitted his Disability Application. I base this conclusion on, among other things, evidence that: (1) SATIN knew that he would retire sometime around his actual retirement date for many months prior to his retirement; (2) SATIN visited PETER J. AJEMIAN, the defendant, for the first time only four months prior to this retirement; (3) an independent medical examination conducted in November 2006 contradicted many of the extreme findings made by AJEMIAN, and based a conclusion of continued disability almost entirely on SATIN's subjective descriptions of his own condition, including depression; and (4) video surveillance and witness statements prove that since retiring on disability, SATIN has secretly been engaged in manual labor and, in particular, chores that are inconsistent with his purported medical condition.

104. I am aware that GARY SATIN, the defendant, had been contemplating early retirement for at least one year prior to his actual retirement. I base this conclusion on the following facts:

- a. On or about November 3, 2004, SATIN submitted an Application for Pension Estimate. On that form he requested that his pension estimate be based on "a date for 2006."
- b. On May 20, 2005, SATIN submitted an Application For Pension Estimate in which he anticipated that his last day of active work would be June 30, 2005 and that his pension would begin on July 1, 2005.

105. I have reviewed a Disability Application, dated July 25, 2005, in which GARY SATIN, the defendant, stated the following, among other things, knowing that he could be prosecuted for false statements:

- e. SATIN listed the medical condition causing him to file for disability as follows:

Cervical spine anti-lordotic curve with constant spasm, Cervical spine herniated discs with hypertrophic changes of the uncovertebral joints bilaterally. Cervical radiculopathy at C5-6 and C6-7. Severe cubital tunnel syndrome left ulnar nerve. Thoracolumbar scoliosis. Central disc herniations at L2-3, L3-4 and L4-5 and also dessication and disc herniation to the L5-S1 level. Severe carpel tunnel syndrome right and left median nerve."

- f. SATIN listed the date this condition began to affect his ability to work as June 30, 2005, and the date that he could no longer work because of this condition as the following day, July 1, 2005.
- g. In response to a question asking SATIN to describe how his condition prevented him from working, SATIN responded:

"My job requires me to lift, bend, climb, walk over ballasts and third rail embankments, bridges, carry heavy parts, work in close

quarters, push and pull heavy cables, dig holes, work in all kinds of weather conditions, work around 750 volts, remove and replace cables, third rails, carry parts a long distance, climb up and down embankments and bridges due to my medical conditions listed herein, I can no longer perform my job as an electrician."

- h. In response to a question about his daily activities, SATIN stated that he suffered pain from sitting, standing or walking for prolonged periods, and that bathing, dressing, indoor and outdoor chores, driving, using public transportation, and writing were all difficult for him to do. SATIN specifically stated that he could only perform light outdoor chores.

106. GARY SATIN, the defendant, first saw PETER J. AJEMIAN, the defendant, on or about February 4, 2005 for various claimed ailments. In his progress notes, AJEMIAN catalogued SATIN's purportedly deteriorating condition, culminating in a narrative dated July 1, 2005, in which AJEMIAN concluded that SATIN was occupationally disabled. SATIN later was approved by the RRB for disability benefits.

107. Based on records provided by LIRR, I have learned that GARY SATIN, the defendant, took no sick days between the first time he saw PETER J. AJEMIAN, the defendant, in February 2005 and his retirement in June 2005. In fact, according to RRB records, SATIN took no sick leave at all from the LIRR in 2004 or 2005. Moreover, according to LIRR records, between February and June 2005, SATIN worked approximately 154 overtime hours, as well as additional double time hours for completing tasks beyond those required by his usual assignments.

108. I have reviewed a July 21, 2005 Medical Assessment submitted to the RRB in support of the Disability Application submitted by GARY SATIN, the defendant, in which PETER J. AJEMIAN, the defendant. AJEMIAN checked the following restrictions, among others:

Claimant can sit for less than 6 hours a day  
total  
Bend/Stoop - Never  
Climb - Never  
Claimant can lift more than 50 pounds (Never)

Claimant can use both Hands for repetitive simple grasping - No; Fine Manipulation - No; Pushing/Pulling - No  
Claimant can use both feet for repetitive foot controls - No;  
Claimant is restricted in activities involving driving /operating machinery (totally), uneven terrain/stairs (totally)

109. PETER J. AJEMIAN, the defendant, also submitted a narrative report dated July 1, 2005, in support of the RRB Disability Application for GARY SATIN, the defendant. In that narrative, AJEMIAN reported the following:

- a. SATIN first saw AJEMIAN on or about February 4, 2005, complaining of pains involving his neck, his back and both feet. AJEMIAN noted that "there is no evidence of any cubital or carpal tunnel symptoms elsewhere."
- b. At that first visit, AJEMIAN ordered x-rays of SATIN's cervical spine, lumbar spine and both feet.
- c. On or about March 2, 2005, SATIN underwent an EMG-nerve conduction to both lower extremities.
- d. On or about March 9, 2005, SATIN underwent an EMG-nerve conduction study to both upper extremities. AJEMIAN reported that this test showed signs of carpal tunnel syndrome.
- e. On or about March 28, 2005, SATIN saw AJEMIAN for the second time. At this meeting, SATIN reported persistent complaints of neck and lower back pain and added that he had numbness in his hands and fingers. AJEMIAN recommended use of a right wrist cock-up brace.
- f. On or about April 21, 2005, SATIN underwent an MRI of the cervical spine.
- g. On or about June 17, 2005, SATIN visited AJEMIAN for the third time. AJEMIAN wrote that SATIN reported that his complaints of pain were unchanged. AJEMIAN reported:

I reviewed all the patient's hard copy films and made him very clearly aware of the extent of his

pathology, progressive nature of his entities and the likelihood of not improving even with interventional pain relief and possible surgical decompression, he has very significant problems that will only get worse over time. I have told the patient he should consider disability retirement and he will think about this and get back to me at sometime in the future.

- h. AJEMIAN added: "he will continue working in the capacity as best he presently can."
- i. On or about July 1, 2005, SATIN again visited AJEMIAN. AJEMIAN reported that:

SATIN was "resigned to the fact that he is not going to improve. After careful discussion with his wife and upon review of his findings in my office, he is considering deciding [sic] to go through with the disability process as he cannot continue working."

110. Based on financial records maintained by the Ajemian Practice, I have learned that, on or about June 17, 2005, GARY SATIN, the defendant, paid PETER J. AJEMIAN, the defendant, \$750 for the preparation of a disability narrative. On that same date, SATIN also received a form from AJEMIAN stating that SATIN was eligible for a handicapped parking placard because SATIN "has limited or no use of one or both lower limbs" and he "has a neuro-muscular dysfunction which severely limits mobility."

111. On or about November 6, 2006, an independent medical examiner prepared a report on an examination he had conducted of GARY SATIN, the defendant, on or about October 24, 2006. I have reviewed a report prepared by that medical examiner. From the report, I learned that the examiner found SATIN to be "a reliable historian" of his medical condition and history. I have learned that the examiner had the following impressions of SATIN's conditions:

He has significant neck and low back pain symptoms that do not seem to affect his ability to sit, stand, move about, carry or handle objects and travel.  
There are no obvious limitation of speech,

vision, and hearing.

However, the chronic and persistent nature of his symptoms and poor response to therapy is likely responsible for his reactive depression and together can reality [sic] affect his ability to perform optimally in any job duties.

112. On or about September 23, 2008, other law enforcement agents interviewed GARY SATIN, the defendant. Based on my review of a report of that interview, I have learned that among other things, during that interview:

- a. SATIN stated he had not been employed or self-employed since his retirement.
- b. SATIN also stated that his condition had not improved since his retirement.
- c. SATIN admitted, however, that he was still capable of doing his railroad work if he had to.

113. In a Disability Recertification, sent to and from RRB's offices in Manhattan, New York, GARY SATIN, the defendant, knowing that he could be prosecuted for false statements, self-reported that, during the period from December 1, 2005 to in or about March, 2011, his condition had remained the "same." In addition, in response to a question as to whether or not he was employed or self-employed, SATIN responded "no."

114. As a result of this investigation, I am aware that GARY SATIN, the defendant, was not physically restricted in the ways in which he and PETER J. AJEMIAN, the defendant, represented to the RRB. First, as set forth in the preceding paragraph, SATIN admitted to interviewing agents that he could still perform his job functions if necessary. Moreover, law enforcement agents have spoken to at least two witnesses who have stated that SATIN is employed, doing landscaping, electrical and contracting work. Specifically:

- a. Agents have spoken to a person who knows SATIN ("Witness-1"). Witness-1 provided a video that Witness-1 had taken of SATIN, on or about October 1, 2008, installing an irrigation system for a landscaping company. I have reviewed this video, which shows SATIN performing physical labor as he bends, digs, shovels, rakes and lifts as he installs a lawn irrigation system.

- b. Law enforcement agents have also spoken with another witness ("Witness-2"), who has stated that she/he hired SATIN in or about April 2008 to perform electrical and carpentry work on Witness-2's property in North Carolina. Witness-2 stated that SATIN installed new wiring, changed switches, installed ceiling fans and did basic carpentry work, for which SATIN was paid several thousand dollars in cash. In addition, Witness-2 was aware of work that SATIN was performing for another landscaping company.

115. Based on a review of information provided by the LIRR Insurance Carrier and affiliated prescription medication delivery companies, I have learned that in 2004 and 2005, GARY SATIN, the defendant, did not fill any prescriptions for anti-inflammatories or painkillers, except that on or about September 20, 2005, SATIN filled a prescription for 7.5 mg of Mobic (generic Meloxicam).

116. I have also spoken to the Independent Doctor about his review of the medical file maintained by PETER J. AJEMIAN, the defendant, and other records related to GARY SATIN, the defendant. According to the Independent Doctor:

- a. In general, AJEMIAN justified his conclusions about SATIN's medical condition only by reference to SATIN's subjective reports and complaints, and not on objective medical testing. For example, AJEMIAN reported his impression of "C6, C7 radiculopathy," an impression that, according to the Independent Doctor, is unsupported by any objective medical testing.
- b. Even based on AJEMIAN's own clinical findings, there are inconsistencies that cannot be reconciled. For example, AJEMIAN reported "chronic cervical spasm" and normal rotation in notes of the first visit, February 4, 2005. According to the Independent Doctor, these two clinical results are incompatible.

RICHARD EHRLINGER

117. I have also reviewed records for RICHARD EHRLINGER, the defendant, an LIRR conductor who retired on or about October 1, 1998, at the age of approximately 51, after over approximately 23 years of employment. After retiring, EHRLINGER applied for and was awarded an RRB occupational disability annuity. In his last full



year of active work (1997), EHRLINGER earned \$58,936. In 2010, EHRLINGER received a total of \$56,959 in total RRB disability and LIRR pension payments.

118. Based on the evidence set forth below, I do not believe that RICHARD EHRLINGER, the defendant, was in fact unable to continue working at the time he submitted his Disability Application. Among other things, I base this conclusion on the following: (1) EHRLINGER knew that he would retire sometime around his actual retirement date for at least one year prior to his actual retirement; and (2) surveillance demonstrating that EHRLINGER has continued to work in a family business that requires him to engage in physical activity that is inconsistent with his purported medical condition.

119. I know that RICHARD EHRLINGER, the defendant, had planned on retiring in or about October 2008 for at least one year prior to that. Specifically, I have reviewed a Request for Pension Estimate filed by EHRLINGER on or about September 18, 1997, in which EHRLINGER estimated that he would retire on October 31, 1998.

120. I have reviewed a Disability Application, dated November 9, 1998, in which RICHARD EHRLINGER, the defendant, stated the following, among other things, knowing that he could be prosecuted for false statements:

- a. EHRLINGER listed as the medical condition causing him to file for disability: "My knees (especially the right one) is causing me a lot of pain. [Disability Doctor-3] has requested authorization for Synvisc injections. He believes that I am a candidate for total knee replacement."
- b. EHRLINGER listed the date this condition began to affect his ability to work as August 9, 1997, and the date that he could no longer work because of this condition as October 1, 1998.
- c. In response to a question asking for a description of how his condition prevented him from working, EHRLINGER wrote:

The movement of the train caused pain in the knees. The electric trains wasn't too bad, but the diesel trains and the bi-levels was too much. I had problems walking, getting on and off the train to throw switches, etc.

- d. EHRLINGER stated that, since September 1998, he had been restricted by Disability Doctor-3 from the following: "No standing too long. No lifting."
- e. In response to questions about the daily activities of which he was capable, EHRLINGER stated that standing and walking were "hard," and that he could do neither for long periods of time. He similarly reported that driving and using public transportation were "hard." EHRLINGER stated that he could not perform outdoor chores at all.

121. In a Disability Recertification, RICHARD EHRLINGER, the defendant, knowing that he could be prosecuted for false statements, self-reported that, during the period from March 1, 1999 to March August 26, 2009, his condition had remained the "same," and he had not been employed or self-employed. In a similar but separate form, sent to and from RRB's offices in Manhattan, New York, EHRLINGER self-reported that, during the period from March 1, 1999 to March 24, 2011, his condition had remained the "same." In addition, in response to a question as to whether or not he was employed or self-employed, EHRLINGER responded "no."

122. RICHARD EHRLINGER, the defendant, first saw Disability Doctor-3 on or about August 9, 1997 with complaints of knee pain.

123. As a result of this investigation, I am aware that RICHARD EHRLINGER, the defendant, was not in fact physically restricted in the ways in which he and Disability Doctor-3 represented to the RRB. I am aware that EHRLINGER has been operating a rental business, by the name of "All in the Family," that supplies tables, chairs and tents to customers for events. I have seen a website for "All in the Family," advertising that they serve "all your party needs," and stating that "We are truly All in the Family: Son in law Michael, Father in law Richie, Uncle Tony, and Cousin Anthony," and providing a number for "wife/daughter Jenna." A phone number for the main office is listed, as well as for a "second regional office," at which the caller could reach "Richie" (the "EHRLINGER phone number"). I have called the EHRLINGER phone number, and a male voice answered the phone by saying "tents, tables and chairs."

124. On several occasions in or about March through June 2009, other law enforcement agents and I conducted surveillance, and took photographs, of RICHARD EHRLINGER, the defendant. On certain

occasions, we observed EHRLINGER, as well as another LIRR annuitant who also is receiving RRB disability benefits ("LIRR Employee-9"), conducting operations for EHRLINGER's business, including bending, stooping, and lifting tables and chairs. For example, on or about May 8, May 29, and June 25, 2009, EHRLINGER was observed loading and unloading chairs and large round tables. On or about June 5, June 8, and June 15, 2009, EHRLINGER and LIRR Employee-9 were observed loading and unloading tables and chairs. Not only is EHRLINGER's employment inconsistent with his certification to the RRB of non-employment, but I also believe that the work performed by EHRLINGER is fundamentally inconsistent with his statements of disability to the RRB.

125. I have reviewed bank records for an account held by RICHARD EHRLINGER, the defendant, and his wife (who, since in or about 2002, has been receiving benefits for total disability from the Social Security Administration, paid by the RRB). Those bank records reflect that between 2004 and 2009, over \$50,000 in cash and checks were deposited. The memo lines of many of the checks reflect particular job numbers or particular parties or that the checks were for tables and/or chairs.

STEVEN GAGLIANO

126. I have also reviewed records for STEVEN GAGLIANO, the defendant, an LIRR signal operator who retired on or about August 21, 2006, at the age of approximately 50, after approximately 27 years of employment. After his retirement, GAGLIANO applied for and received an RRB occupational disability annuity. In his last full year of active employment (2005), GAGLIANO earned \$89,290.99. In 2010, GAGLIANO received approximately \$41,926 in LIRR pension payments and \$34,884 in RRB occupational disability payments, or a total of \$76,810 in payments.

127. Based on the evidence set forth below, I do not believe that STEVEN GAGLIANO, the defendant, was not in fact occupationally disabled when he applied for disability payments in 2006. I based this conclusion on, among other things: (1) GAGLIANO based his application on multiple problems, including terrible back pain that required him to restrict activities such as sitting and standing; (2) contrary to these claims, GAGLIANO's physical condition is good enough to engage in 400 mile bicycle tours and other sporting events; and (3) in connection with those events, GAGLIANO has signed documents stating that he is in sound medical condition.

128. I have reviewed a Disability Application, dated October 31, 2006, in which STEVEN GAGLIANO, the defendant, stated the following, among other things, knowing that he could be prosecuted for false statements:

- a. GAGLIANO listed as the medical condition causing him to file for disability: "Severe and disabling pain and weakness in back, left shoulder, and left wrist caused by: 1. Acromioclavicular arthrosis left shoulder with impingement, 2. Degenerative disc dease [sic] of the lumbar spine, 3. Triangular fibrocartilage complex tear, left wrist."
- b. GAGLIANO listed the date this condition began to affect his ability to work as November 25, 2005, and the date that he could no longer work because of this condition as July 26, 2006.
- c. In response to a question requesting that GAGLIANO describe how his condition prevented him from working, he responded that, as a result of his disabilities:

I can no longer lift & carry up to 100 pounds, climb ladders, 90 ft poles, embankments, twist/turn, bend, kneel, squat, crawl, lift over head, push/pull wire & cable dig holes shovel dirt or do any of the physical labor required in my job as a signalman on the railroad.

- d. In response to a question about his daily activities, STEVEN GAGLIANO, the defendant, stated that sitting, standing, walking, eating, bathing, dressing, driving, using public transportation, conducting personal business, and writing were all "hard" for him, explaining that he suffered from "severe & disabling pain in back, shoulder & legs," as well as weakness, an inability to bend, twist and turn without back, leg and shoulder pain. GAGLIANO further stated that he was "not at all" capable of performing any indoor or outdoor chores.

129. STEVEN GAGLIANO, the defendant, first saw PETER J. LESNIEWSKI, the defendant, on or about November 25, 2003 for alleged back pain. In a narrative to the RRB dated July 31, 2006, LESNIEWSKI concluded "within a reasonable degree of medical certainty" that GAGLIANO was occupationally disabled and that his condition was

permanent.

130. Based on a review of the patient file for STEVEN GAGLIANO, the defendant, maintained by the medical practice where PETER J. LESNIEWSKI, the defendant, worked, I have learned the following:

- a. GAGLIANO saw LESNIEWSKI on or about November 25, 2003. GAGLIANO reported "low back pain" and noted that he had a laminectomy in 1986. The pain was described as "some back pain again over the last few months. Seems to be increasing. Goes down both legs, no numbness or tingling."
- b. He had an MRI of the lumbar spine on or about December 2, 2003.
- c. GAGLIANO saw LESNIEWSKI on or about December 16, 2003. LESNIEWSKI reported that GAGLIANO "continues to have some back pain," and that GAGLIANO's MRI "basically showed some degenerative changes." LESNIEWSKI stated that GAGLIANO might need effusion at some point.
- d. GAGLIANO saw LESNIEWSKI on or about November 23, 2004. He complained that his "back still bothers him, left hand pain." LESNIEWSKI stated that his "x-rays are unremarkable."
- e. He had an MRI of the left wrist on or about December 1, 2004.
- f. GAGLIANO saw LESNIEWSKI on or about December 14, 2004. He complained of "pain in his wrist" and LESNIEWSKI stated that, based on an MRI, GAGLIANO "probably has a tear." LESNIEWSKI noted that GAGLIANO would not consent to surgery, so would be treated with anti-inflammatories.
- g. GAGLIANO saw LESNIEWSKI on or about April 26, 2005. Handwritten notes indicate that GAGLIANO complained of back pain.
- h. GAGLIANO saw LESNIEWSKI on or about October 18, 2005. According to notes of the visit, GAGLIANO complained of back pain and LESNIEWSKI reported an impression of significant "osteoarthropathy." The only treatment

listed was anti-inflammatories.

- i. GAGLIANO saw LESNIEWSKI on or about January 17, 2006. He reported a significant amount of pain in his wrist. LESNIEWSKI stated that "he has significant carpometacarpal problems" but that LESNIEWSKI didn't "believe there is much else we can do at this time." There was no mention of shoulder pain or back pain in the notes.
- j. GAGLIANO saw LESNIEWSKI on or about February 28, 2006. According to notes of the visit, GAGLIANO said he was "developing pain in his left shoulder" and had an injury some time back that he never cared for. There was no mention of back or wrist pain in the notes.
- k. GAGLIANO saw LESNIEWSKI on or about May 2, 2006. According to notes of the visit, GAGLIANO reported a "significant amount of pain in his left shoulder" but "does not wish surgery" or "injections." The notes made no mention of back pain or wrist pain.
- l. GAGLIANO saw LESNIEWSKI on or about June 20, 2006. LESNIEWSKI noted that GAGLIANO returned with complaints of "problems associated with his left shoulder." There was no mention of back pain in the notes. GAGLIANO reported an impression that "the patient will need surgical intervention" because LESNIEWSKI believed GAGLIANO had a rotator cuff tear. GAGLIANO "does not want surgical intervention at this point," but said he would accept LESNIEWSKI's recommendation for a "reduction of activities."
- m. GAGLIANO saw LESNIEWSKI on or about July 25, 2006. In the note for that visit, LESNIEWSKI wrote that GAGLIANO complained about pain that "just came on suddenly." LESNIEWSKI further noted that GAGLIANO "has had it in the past" and that "a workup has revealed some osteoarthropathy." This was the same day that LESNIEWSKI wrote the Medical Assessment imposing restrictions that rendered GAGLIANO occupationally disabled, as set forth in greater detail below.

131. In a narrative supplied in connection with the Disability Application of STEVEN GAGLIANO, the defendant, PETER J. LESNIEWSKI, the defendant, wrote, among other things, the following:

- a. LESNIEWSKI noted that GAGLIANO "will require several areas of surgical intervention, most acutely in his left shoulder."
- b. LESNIEWSKI gave three impressions: (1) Acromioclavicular arthrosis left shoulder with impingement; (2) Degenerative disc disease of the lumbar spine; and (3) triangular fibrocartilage complex tear, left wrist.
- c. LESNIEWSKI concluded that "I am aware of this patient's occupation on the Long Island Rail Road and given the above noted diagnoses, it can be stated with a reasonable degree of medical certainty that the patient is disabled for his occupation and this disability is permanent."

132. In his August 2, 2006 Medical Assessment recommending occupational disability for STEVEN GAGLIANO, the defendant, PETER J. LESNIEWSKI, the defendant, catalogued the following restrictions:

No lifting > 20 lbs., no bending, no twisting,  
no prolonged sitting/standing, no overhead  
reach  
No vibrations exposure

133. In a long-form Disability Recertification dated August 25, 2010, STEVEN GAGLIANO, the defendant, knowing that he could be prosecuted for false statements, self-reported that:

- a. While he could walk, dress, and drive, "any lifting, bending is restricted due to back surgery and shoulder and knee pain."
- b. In response to a request that he describe any change in his condition since his retirement on disability in July 2006, GAGLIANO responded that "my condition has become more restricted over the years since retirement date," and he stated that his condition prevented him from working at that time.

134. As a result of this investigation, I believe that STEVEN GAGLIANO, the defendant, was not in fact physically restricted in the ways in which he and PETER J. LESNIEWSKI, the defendant, represented to the RRB. Specifically, in or about early July 2009, GAGLIANO met an individual who, unbeknownst to GAGLIANO, is a law

enforcement agent ("Agent-1") while both were riding their bicycles on a path at a Long Island park. At that time, GAGLIANO informed Agent-1 that he was retired from the LIRR, and was training for an upcoming 400-mile bike ride in northern New York. I have reviewed documents from the organizers of that bike tour, indicating that GAGLIANO participated in the tour from July 12 to 19, 2009. In his registration form, GAGLIANO signed a release of liability provision, specifically attesting that:

I realize that [the bike tour] requires physical conditioning, and I represent that I am in sound medical condition. I have no physical or medical condition that would endanger either myself or others.

#### LIRR Employee-8

135. I have reviewed a Medical Assessment dated December 15, 2004 that PETER J. LESNIEWSKI, the defendant, prepared on behalf of LIRR Employee-8's Disability Application. In that form, LESNIEWSKI described the following restrictions. As far as exertional restrictions, LESNIEWSKI stated, among other things, the following:

- In an 8 hour workday, claimant can stand and/or walk with normal breaks for less than 2 hours total.
- In an 8 hour workday, claimant can sit with normal breaks for less than 6 hours total.
- Claimant can lift less than 10 pounds unlimited; less than 20 pounds occasionally; and less than 50 or 100 pounds never.
- Claimant is unable to bend and stoop; crouch and squat; and can only climb occasionally and reach above his head frequently.
- Claimant cannot use both hands for repetitive fine manipulation.

LESNIEWSKI also described the following environmental restrictions:

- Claimant is totally restricted from activities involving unprotected heights and exposure to vibrations.
- Claimant is moderately restricted from driving and operating machinery.

136. I have also reviewed a medical narrative dated November 24, 2004, that PETER J. LESNIEWSKI, the defendant, prepared

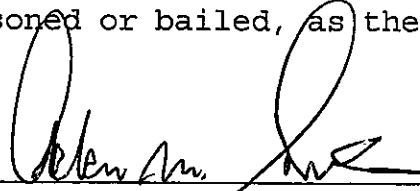


in support of LIRR Employee-8's Disability Application. In this narrative, LESNIEWSKI stated that LIRR Employee-8 first visited LESNIEWSKI on June 24, 2003, complaining of neck pain, as well as a wrist injury that occurred while playing golf. LIRR Employee-8 underwent x-rays of the spine. LESNIEWSKI reported that LIRR Employee-8 later complained of severe lower back pain, with spasm and tenderness. LESNIEWSKI then described a series of conditions and concluded that:

I am aware of job occupations on the Long Island Rail Road. Given the above noted diagnosis, it can be stated within a reasonable degree of medical certainty that this patient is disabled for his job occupation and that this disability is ongoing and permanent.

137. Other law enforcement agents and I interviewed LIRR Employee-8. Among other things, LIRR Employee-8 stated that, despite the Medical Assessment and recommendation for RRB disability submitted by PETER J. LESNIEWSKI, the defendant, LIRR Employee-8 actually was capable of continuing to work at the LIRR at the time he received an occupational disability award. Furthermore, LIRR Employee-8 stated that, despite LESNIEWSKI's Medical Assessment and recommendation for RRB disability, LESNIEWSKI had never informed him that he was under any exertional restrictions.

WHEREFORE, deponent asks that a warrant be issued for the arrests of PETER J. AJEMIAN, PETER J. LESNIEWSKI, MARIA RUSIN, MARIE BARAN, JOSEPH RUTIGLIANO, GREGORY NOONE, REGINA WALSH, SHARON FALLOON, GARY SATIN, STEVEN GAGLIANO, and RICHARD EHRLINGER, the defendants, and that they be imprisoned or bailed, as the case may be.



ADAM M. SUITS  
Special Agent  
Office of the Inspector General,  
U.S. Railroad Retirement Board

Sworn to before me this  
26<sup>TH</sup> day of October, 2011.



THE HONORABLE KEVIN NATHANIEL FOX  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK