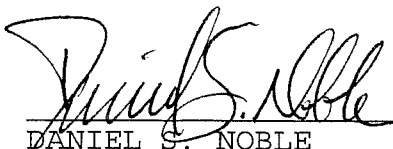


Approved:


DANIEL S. NOBLE

Assistant United States Attorney

12 MAG 2349

Before: HONORABLE JAMES C. FRANCIS IV
United States Magistrate Judge
Southern District of New York

UNITED STATES OF AMERICA

:

SEALED COMPLAINT

- v. -

:

Violations of
18 U.S.C. §§ 1341 and 1349

THOMAS COSCETTA,

:

COUNTY OF OFFENSE:

Defendant.

:

NEW YORK

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

(Health Care Fraud and Mail Fraud Conspiracy)

1. From at least in or about 2003, up to and including in or about 2012, in the Southern District of New York and elsewhere, THOMAS COSCETTA, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with others to commit mail fraud and health care fraud in violation of Sections 1341 and 1347 of Title 18, United States Code, to wit, COSCETTA conspired with others known and unknown to defraud the United States Railroad Retirement Board ("RRB") by submitting a false claim for disability benefits to which he was not entitled.

2. It was a part and an object of the conspiracy that THOMAS COSCETTA, the defendant, 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 THOMAS COSCETTA, the defendant, 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.

OVERT ACTS

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

a. On or about June 19, 2003, THOMAS COSCETTA, the defendant, signed an application for a life insurance policy in New York, New York.

b. On or about October 7, 2003, COSCETTA met with co-conspirator Peter J. Ajemian.

c. On or about August 23, 2012, COSCETTA mailed a disability recertification to the RRB in New York, New York.

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

COUNT TWO (Mail Fraud)

5. From at least in or about 2004 until at least in or about 2012, THOMAS COSCETTA, the defendant, 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, to wit, COSCETTA defrauded the RRB by submitting a false claim for disability benefits to which he was not entitled.

(Title 18, United States Code, Section 1341.)

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

6. 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.

BACKGROUND ON RAILROAD RETIREMENT BENEFITS AND
OVERVIEW OF THE PREMEDITATED DISABILITY FRAUD

7. The RRB is an independent federal agency that administers comprehensive retirement and benefit programs, including disability benefits, for the nation's railroad workers and their families. The LIRR, founded in 1834, is one of the busiest commuter railroads in North America, carrying over 250,000 customers each week day.

8. Retiring LIRR employees are eligible to receive benefits both from the LIRR and the RRB. First, retiring LIRR workers hired before 1988 may draw a pension from the LIRR if they retire at or after the age of 50 and if they have been employed for at least 20 years as of the time of retirement. An LIRR pension is based, in part, on the average number of hours worked in the five years prior to retirement. Second, retiring LIRR workers may draw an additional pension from the RRB as of the time they reach age 65.¹ If, however, an LIRR worker retires and is disabled, that LIRR worker can receive a *disability* pension from the RRB, even if he or she retires before age 65. Thus, a non-disabled LIRR retiree is only eligible to receive pension benefits from both the LIRR and the RRB if, among other things, that LIRR retiree is age 65 or older. By contrast, an LIRR worker who retires and is disabled is eligible to receive benefits from both the LIRR and the RRB as early as age 50 - pension benefits from the LIRR and disability benefits from the RRB.

9. To qualify for disability benefits, retiring railroad workers must file with the RRB an Application for Determination of Employee's Disability, known as a Form AA-1d (hereinafter referred to as a "Disability Application"). In their Disability Application, petitioning workers must describe in detail, under penalty of perjury, their disability and the limitations resulting therefrom, and state when they could no longer work because of their disability. At times, annuitants receiving disability payments are directed to file a Continuing Disability Update Report, known as a Form G-254 or G-254A (hereinafter referred to as a "Disability Recertification"), in which annuitants must certify, under penalty of perjury, their continuing inability to work.

10. THOMAS COSCETTA, the defendant, and others known and

¹ Certain LIRR workers - namely those with 30 years or more of service - are eligible to receive an RRB pension as of age 60.

unknown, engaged in a multi-year, systemic fraud to obtain RRB disability benefits. As part of this fraud, LIRR workers who were ready to retire -- and who were older than 50 but younger than 65 years old -- falsely claimed to be disabled, including to be occupationally disabled, i.e., unable to perform their railroad occupation, in order to receive benefits both from the LIRR and the RRB. Specifically, LIRR employees, who were eligible to retire as early as age 50 with an LIRR pension, routinely sought to supplement their LIRR pension by fraudulently procuring a separate RRB disability annuity which, when combined with their LIRR pension, resulted in a total income level that often approximated, and in some cases exceeded, their pre-retirement working income. This fraud was perpetrated with the knowing and intentional involvement of hundreds of LIRR retirees; "facilitators" who served as liaisons between retiring workers and participating doctors; and doctors themselves, who falsely declared retiring LIRR workers to be occupationally disabled. Typically, these disability doctors claimed that their LIRR patients suffered from various musculoskeletal impairments, which can involve claims of soft tissue injury that are more difficult to confirm by objective medical criteria than are other impairments, and are often diagnosed clinically, based upon pain as subjectively reported by the patient.

11. As a result of this pervasive fraud, hundreds of LIRR retirees received RRB disability benefits that they were not entitled to receive, and participating doctors received millions of dollars from patients and insurance companies. The foreseeable loss to the RRB disability funds -- if the scheme had not been uncovered and fraudulent claims had been paid out in full -- would have exceeded approximately \$1 billion. A complaint filed on October 26, 2011 in the U.S. District Court for the Southern District of New York against certain participants in this fraud is attached hereto as Exhibit A and is incorporated by reference herein. The defendants named in that complaint have been separately indicted in S1 11 Cr. 1091 (VM).

THE DEFENDANT

12. THOMAS COSCETTA, the defendant, worked for the LIRR as a train conductor for approximately 25 years, from in or about February 1979 through in or about April 2004. COSCETTA's duties as a conductor included, among other things, coordinating the train crew's activities, performing inspections and tests of the train equipment, recording arrival and departure times, preparing various reports, operating door switches and signals, assisting passengers

to board or exit the train, collecting and punching tickets, and making announcements.

13. THOMAS COSCETTA, the defendant, retired from the LIRR on or about May 1, 2004, at the age of 52 years. In or about June 2004, COSCETTA applied for and received an RRB occupational disability annuity. COSCETTA has received RRB disability benefits from in or about October 2004 through the present.

14. In his last full year with the LIRR (2003), THOMAS COSCETTA, the defendant, earned approximately \$124,256, of which approximately \$49,585 was overtime compensation. In 2005, the first full year after he retired, COSCETTA received approximately \$45,832 in LIRR pension payments and approximately \$38,165 from his RRB disability payments, for a total of \$83,997 in payments. In addition, COSCETTA received approximately \$11,400 in private disability insurance payments during 2005.

OVERVIEW OF THE FRAUD

15. Based on the evidence set forth below, THOMAS COSCETTA, the defendant, deliberately defrauded the RRB by falsely claiming to be disabled. I base this conclusion on, among other things: First, COSCETTA planned a particular date on which he would retire nearly sixteen months before he retired and he, in fact, retired one month before that date. Second, COSCETTA visited co-conspirator Peter J. Ajemian, who has been separately indicted and who, in only seven months, diagnosed COSCETTA with a disability in order to allow him to claim that he was "disabled" as of his planned retirement date. Third, less than one year before he retired, and only three months before his alleged disability started to affect his ability to work, COSCETTA applied for a life insurance policy with a disability waiver rider, as well as a disability insurance policy. Fourth, in his last full year of work, COSCETTA worked approximately 1,137 hours of overtime, including approximately 267 hours after his purported disability started to affect his ability to work. Fifth, after COSCETTA retired, he applied for a discharge of a federal student loan and a waiver of life insurance premiums on the ground that he was totally and permanently disabled, not just occupationally disabled. Sixth, although COSCETTA told the RRB that he stopped working as a funeral director prior to his retirement from the LIRR, COSCETTA recently stated on an application to renew his New York State funeral director's license in May 2012 that he continues to work one to ten hours per week "as needed" at a funeral home on Long Island. Finally, although COSCETTA told the RRB that

he had "bilateral carpal tunnel syndrome" and "disabling" hand and wrist pain, since at least in or about October 2005, COSCETTA has been active in trap shooting and has shot thousands of rounds at various gun clubs and trap shooting competitions in New York and other states.

THE DEFENDANT'S PURPORTED DISABILITY

16. I am aware that THOMAS COSCETTA, the defendant, had been contemplating early retirement for almost fourteen months prior to his actual retirement. I base this conclusion on the following facts:

a. On or about January 10, 2003, COSCETTA submitted an Application for Pension Estimate to LIRR in which he anticipated that his "planned retirement date" would be June 1, 2004.

b. On or about January 8, 2004, COSCETTA submitted another Application for Pension Estimate to LIRR in which he anticipated that his "planned retirement date" would be May 1, 2004, the date of his actual retirement.

17. I have reviewed a Disability Application, dated June 2, 2004, in which THOMAS COSCETTA, the defendant, stated the following, among other things, knowing that he could be prosecuted for false statements:

a. COSCETTA listed the medical condition causing him to file for disability as follows:

- 1) Herniated disc C5-6;
- 2) Chronic C6-7 radiculopathy;
- 3) Bilateral carpal tunnel syndrome;
- 4) Large bulging disc at L4-5 with degenerative disc disease;
- 5) Chronic L4-5 and L5-S1 radiculopathy;
- 6) Torn medial meniscus with degenerative changes - right knee;
- 7) Horizontal cleavage tear posterior horn medial meniscus-left knee;
- 8) Bilateral pes planus.

b. COSCETTA listed the date these conditions began to affect his ability to work as September 10, 2003, and the date that he could no longer work because of these conditions as April

27, 2004.

c. In response to a question asking COSCETTA to describe how his condition prevented him from working, COSCETTA responded:

"The disabling back, neck, left and right knee, and hand/wrist pain I suffer, along with my foot problems, have made it physically impossible for me to perform the duties of a Railroad Conductor. I am unable to open and close heavy interior and exterior train doors and windows, lift heavy couplers and evacuation boards, throw and align hand thrown track switches, derails, and dual controlled switches, crank on rail car hand brakes, work and balance on moving trains, climb aboard moving locomotives or cars, pull coupler pins to couple and uncouple cars, crouch to hang air hoses, jumpers, cables, etc."

d. In response to questions about his daily activities, COSCETTA stated that sitting, standing, walking, eating, bathing, dressing, tending to other bodily needs, indoor chores, outdoor chores, driving a motor vehicle, using public transportation, and writing were all "hard" for him. COSCETTA stated that he experienced "stabbing back, neck, and knee pain when standing for long periods" and "sharp neck and back pain when making sudden moves in the shower." COSCETTA claimed that he was unable to "dig, rake, or lift heavy garden material" or to "stand and balance for long periods." COSCETTA stated that he had difficulty sleeping due to "constant pain."

e. In response to a question about his activities during a "normal day," COSCETTA stated:

"My back, neck, knee, and foot problems have dramatically changed the way I live. I love bowling, but have not been able to play for more than five years. I go on short shopping trips, but many times return with back and knee pain. I am able to watch television, but must get up and stretch every five minutes or so because of the pain I suffer from. I spend most of my other time doing crossword puzzles or attending to my coin collection. Occasionally, I attend Elks Club or Knights of Columbus meetings and functions."

18. From my review of RRB records and files of

co-conspirator Dr. Peter J. Ajemian, I am aware that THOMAS COSCETTA, the defendant, first saw Ajemian on or about October 7, 2003 – less than seven months before COSCETTA purportedly became disabled – for various claimed ailments. In his progress notes, Ajemian catalogued COSCETTA's purportedly deteriorating condition. COSCETTA later was approved by the RRB for an occupational disability annuity and a disability freeze.

19. Ajemian's notes from his initial examination of THOMAS COSCETTA, the defendant, on or about October 7, 2003, state, in part, that COSCETTA complained of "tingling in both hands, back pain without radiculopathy, bilateral knee pain and pain in both ankles and feet." COSCETTA told Ajemian that these conditions had "been ongoing and progressive over the last several years' time." COSCETTA exhibited, among other symptoms, "a decided antalgic gait," "positive Phalen's test to both hands," lumbar spine "tenderness," "limited toe touch," difficulty in "[t]oe walking and heel walking," "bilateral knee pain," "distal swelling at each ankle," and "severe pes plauns alignment" in both feet. X-rays of COSCETTA's lumbar spine revealed "thoracolumbar scoliosis with degenerative disc disease." X-rays of both knees revealed "early arthrosis and patellofemoral chondromalacia." X-rays of both ankles demonstrated "degenerative arthritic changes" at the joints and "pes planus severe and rigid." Based on this initial examination, Ajemian diagnosed COSCETTA with all of the following:

- i. Thoracoumbar scoliosis.
- ii. Lumbar degenerative disc disease and lumbar radiculopathy.
- iii. Bilateral knee early three compartment arthrosis.
- iv. Rigid pes planus.
- v. Lumbar radiculopathy as well.
- vi. Internal derangement of the knee.
- vii. Upper extremity cervical radiculopathy
- viii. Bilateral carpal tunnel syndrome

Ajemian prescribed "EMG-nerve conduction study to both lower extremities," "MRI of the right knee," "[t]herapy," and "nonsteroidals because [COSCETTA] is on Coumadin [a blood thinner] and therefore I cannot give him an anti-inflammatory." There were no reported restrictions on COSCETTA's ability to work.

20. THOMAS COSCETTA, the defendant, returned to Ajemian on or about November 18, 2003. Ajemian's notes from COSCETTA's examination on that date state, in part, that since his last visit,

COSCETTA underwent a "positive" EMG-nerve conduction study "demonstrating radiculopathy at 5-6 and 6-7 bilateral carpal tunnel syndrome." COSCETTA's clinical findings were "unchanged." Ajemian ordered MRIs of COSCETTA's cervical and lumbar spine.

21. THOMAS COSCETTA, the defendant, returned to Ajemian approximately two months later, on or about January 23, 2004. Ajemian's notes from his examination of COSCETTA on that date state, in part: "The patient returns in follow-up unfortunately today without improvement. In fact with the recent cold weather he has had increasing difficulty while at work." COSCETTA "has increasing pain by the end of the day and has difficulty doing anything at night except just sitting down." COSCETTA complained that by the end of the day he has "puffiness" in his knees and requires "icing" and "anti-inflammatory medication" in order to work the next day. Since his last visit, COSCETTA underwent MRIs that demonstrated "herniated disc at the C5-6 level" and "bulging disc at the L4-5." COSCETTA also now displayed "significant spasm of the paraspinal muscles of the cervical spine," "restricted extension and rotation of his neck," "weakness to the upper extremities," "diminished sensation along the C5-6 and C6-7 dermatomes," "weakness of grip," "mild percussion discomfort" and "spasms" in his lumbar spine, "[r]adicular symptoms to the lower extremities," pain in both knees, "crepitus throughout his range of motion," and "pain on squatting, kneeling and arising from a seated position." Ajemian prescribed more physical therapy and an MRI of the left knee. Ajemian's notes state that "some surgical intervention will be necessary on the right [knee] at sometime in the future."

22. On or about March 26, 2004, THOMAS COSCETTA, the defendant, returned to Ajemian. Ajemian's notes from COSCETTA's examination on that date state, in part, that COSCETTA's condition was "getting progressively worse," with "a significant increase in lower back pain" and continuing neck pain, knee pain, and "numbness," "tingling," and "weakness" in his extremities. There is "increased spasm and tightness and percussion discomfort" in the lumbar spine. "Both knees continue to be positive for meniscal tears, pain with motion and medial joint line pain." Despite his earlier warning about prescribing anti-inflammatories due to the fact that COSCETTA took blood thinner medication, Ajemian prescribed "[a]nti-inflammatory medication as necessary." Ajemian recommended that COSCETTA "consider retirement at this time as the longer he works he will continue to get progressively worse." In addition, "surgical intervention may be necessary in the future."

23. On or about April 27, 2004, THOMAS COSCETTA, the defendant, returned to Ajemian for the last time before COSCETTA retired from the LIRR on May 1, 2004. Ajemian's notes from COSCETTA's examination on that date state, in part, that COSCETTA was "resigned [to] the fact that he cannot continue." COSCETTA had "pain and discomfort in his neck to both hands, with numbness to both hands . . . getting worse. Grasping items, shaking his hands in even the morning and even in sleep now is particularly worse. He has to shake his hands frequently in the morning driving his car." At work, "doing keypunching is particularly difficult." Although he had prescribed an anti-inflammatory at COSCETTA's last visit, Ajemian now noted that COSCETTA "cannot take anti-inflammatory medication because he is on Coumadin." Ajemian "strongly recommend[ed]" and "highly endorse[d]" that COSCETTA "be a disability candidate for medical retirement from the Long Island Railroad." Ajemian noted that COSCETTA has "significant" findings, "probably" requires surgery on his knees ("without guarantee of improvement"), and "may require" orthotics for his feet, although "he may be beyond such care to return to work." COSCETTA "will agree with this recommendation effectively in several days' time."

24. In support of the Disability Application of THOMAS COSCETTA, the defendant, Ajemian prepared and submitted a Disability Narrative dated April 29, 2004, and a Medial Assessment dated April 30, 2004. The Medical Assessment stated, among other things, that COSCETTA could stand or walk for "at least 2 hours total" and sit for "less than 6 hours total" in an 8-hour workday. COSCETTA could lift 20 pounds "frequently" and 50 pounds "occasionally." COSCETTA could "never" bend, stoop, or climb, and could only crouch, squat, or reach above shoulder level "occasionally." COSCETTA was completely unable to use both hands for repetitive simple grasping, fine manipulation, or pushing/pulling.

25. On or about May 20, 2005, THOMAS COSCETTA, the defendant, was granted a "disability freeze" and early Medicare coverage under the Social Security Act based on a determination that he had a "permanent medical condition" that prevented him from performing any "substantial gainful work." Based on his disability freeze, COSCETTA became eligible for Medicare as of October 1, 2006, even though he was only 55 years old.

26. In 2012, THOMAS COSCETTA, the defendant, mailed a Disability Recertification to RRB's offices in New York, New York. In the Disability Recertification, dated August 23, 2012, COSCETTA certified that his doctor told him that he cannot work, that he has

not worked for any employer, and that he has not been self-employed. COSCETTA also certified that his health had become "worse."

THE DISABILITY CLAIM WAS FRAUDULENT

27. Through my investigation, I have learned that THOMAS COSCETTA, the defendant, was not physically restricted in the ways in which he and his doctor, co-conspirator Peter J. Ajemian, represented to the RRB.

28. Based on my review of Ajemian's billing records, I am aware that Ajemian billed THOMAS COSCETTA, the defendant, \$50 for "disability forms" and \$750 for a "narrative" on or about March 15, 2004 -- approximately six weeks before Ajemian prepared the Disability Narrative and at least 10 days before Ajemian recommended that COSCETTA consider "disability retirement."

29. In his last full year of work with LIRR (2003), THOMAS COSCETTA, the defendant, worked approximately 1,137 hours of overtime, for which he was paid approximately \$49,585. Even after COSCETTA's conditions purportedly started to affect his ability to work, COSCETTA still worked approximately 267 hours of overtime.

30. I have reviewed policy and claim records maintained by an insurance company ("Insurance Company-1") for THOMAS COSCETTA, the defendant. From my review of these materials, I have learned the following:

a. On or about June 19, 2003 -- less than three months before COSCETTA's conditions purportedly began to affect his ability to work and approximately ten months before he retired -- COSCETTA submitted an application for a short-term disability insurance policy to Insurance Company-1. On the application, COSCETTA stated that he was not "currently disabled," had not been treated for "carpal tunnel syndrome" in the last two years, and had not been treated for any "back, neck or joint injury" in the past year. The disability insurance policy took effect on September 1, 2003 -- nine days before COSCETTA's conditions purportedly began to affect his ability to work.

b. On or about October 13, 2004, COSCETTA submitted a claim to Insurance Company-1 claiming that he was "totally disabled." Ajemian completed and signed the physician's disability statement in support of COSCETTA's claim. Although the Medical Assessment that Ajemian submitted to the RRB on or about April 30,

2004 stated that COSCETTA could lift 20 pounds "frequently" and 50 pounds "occasionally," among other things, Ajemian certified to Insurance Company-1 that COSCETTA was "totally disabled" as of April 27, 2004.

c. After his initial claim was approved in or about November 2004, COSCETTA submitted multiple "Continuing Disability Claim Forms" to Insurance Company-1. In support of each claim, COSCETTA submitted a certification by Ajemian that COSCETTA remained totally disabled and unable to work.

d. Between in or about November 2004 through in or about April 2006, Insurance Company-1 paid COSCETTA approximately \$23,800 in short-term disability benefits.

31. I have reviewed policy and claim records maintained by another insurance company ("Insurance Company-2") for THOMAS COSCETTA, the defendant. From my review of these materials, I am aware of the following:

a. On or about June 19, 2003 — the same day that COSCETTA completed an application for a short-term disability insurance policy with Insurance Company-1 — COSCETTA signed an application for a \$100,000 life insurance policy underwritten by Insurance Company-2 in New York, New York. COSCETTA stated on the application that he was not "disabled" and had not "missed more than 5 days of work due to accident or illness within the past 6 months." COSCETTA requested a "Disability Waiver Provision," pursuant to which Insurance Company-2 would waive COSCETTA's life insurance premiums if COSCETTA were to become "totally disabled" and unable to work.

b. After COSCETTA retired, he submitted a "Disability Claim Form" dated October 13, 2004 to Insurance Company-2, claiming that he was "totally disabled." COSCETTA listed the following as his disabilities: "herniated discs, cervical, bulging discs, lumbar spine."

c. On or about October 15, 2004, co-conspirator Peter Ajemian completed an "Attending Physician's Statement of Disability" in support of COSCETTA's disability claim. Ajemian stated that COSCETTA had "[s]evere limitation of functional capacity" and was "incapable of minimal (Sedentary) activity." Under "Prognosis," Ajemian stated that COSCETTA was "totally disabled" from his own job and "any other job." Although Ajemian's medical files include a prescription for physical therapy for

COSCETTA that is dated November 17, 2004, Ajemian told Insurance Company-2 on October 15, 2004, that COSCETTA was not "a suitable candidate for further rehabilitation services" and that COSCETTA was "totally disabled."

d. In a letter dated November 11, 2004, Insurance Company-2 notified COSCETTA that his claim for waiver of premium benefits had been approved effective April 27, 2004, which was "the beginning date of total disability." Insurance Company-2 subsequently granted a continuance of COSCETTA's waiver of premiums on multiple occasions based on COSCETTA's and Ajemian's representations that COSCETTA remained "totally disabled."

32. From my review of Peter Ajemian's medical file and billing records for THOMAS COSCETTA, the defendant, I know that COSCETTA was required to pay Ajemian approximately \$50 for each of the physician certification forms that were submitted to Insurance Company-1 and Insurance Company-2 on COSCETTA's behalf, unless Ajemian waived the fee. On at least one occasion, COSCETTA requested that Ajemian complete five certifications in advance and leave the dates blank to be filled in by COSCETTA before he submitted them to the insurance company.

33. From my review of the federal student loan records of THOMAS COSCETTA, the defendant, and Peter Ajemian's medical file and billing records for COSCETTA, I am aware of the following:

a. On or about March 16, 2005, COSCETTA completed and signed a "Loan Discharge Application: Total and Permanent Disability" ("Loan Discharge Application") requesting that the U.S. Department of Education discharge his consolidated federal student loan. COSCETTA certified that he had "a total and permanent disability," meaning that he was "unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death."

b. On or about March 15, 2005, COSCETTA wrote a check to Ajemian's practice for \$100.00. In the memo area is written: "Two Forms - Fee." A handwritten note from COSCETTA to indicted co-conspirator Marie Rusin in Ajemian's office states: "Please fill out both these forms and mail back to me ASAP. Check enclosed \$100.00." On what appears to be a post-it note is written: "Maria, I filled in dates of last treatment and next appointment. I have an appointment for 4/19/05 at the office."

c. On or about April 12, 2005, Ajemian completed and signed the "Physician's Certification" on COSCETTA's Loan Discharge Application. Ajemian stated that COSCETTA's disability began on October 7, 2003, and that his condition prevented him "from being able to work and earn money in any capacity" as of April 29, 2004. At that point in time, however, Ajemian had not seen COSCETTA for almost three months; it was not until Ajemian saw COSCETTA on or about April 18, 2005 - after the date of COSCETTA's Loan Discharge Application - that Ajemian purportedly determined that COSCETTA was "totally disabled from any and all work."

d. Sometime between in or about December 2005 and July 2006, Ajemian submitted additional forms documenting COSCETTA's purported total and permanent disability in support of COSCETTA's Loan Discharge Application. On or about May 3, 2006, COSCETTA wrote a check to Ajemian's practice for \$50. In the memo area is written: "Fed Student Loan."

e. In two letters dated October 22, 2007 that were submitted in support of COSCETTA's Loan Discharge Application, COSCETTA declared that he "did not receive any monies or earned income" for 2006 or 2007, and that he was "totally disabled and [had] been so since 04/29/2004."

f. The total amount outstanding on COSCETTA's student loan that was discharged was approximately \$39,954.

34. On or about April 13, 2005, approximately 11 months after his retirement, the RRB conducted a physical examination of THOMAS COSCETTA, the defendant, and concluded that his prognosis was "[f]air." COSCETTA told the evaluating physician that he had his back, neck, knee, and shoulder conditions "for many, many years and gradually they have become worse over time." COSCETTA was able to "shower[], bathe[], and dress[] himself daily." Upon examination, COSCETTA had a normal gait, could walk on his heels and toes "without difficulty," and could squat half the distance to the floor. COSCETTA needed no help changing for the exam or getting off the exam table, although he did require help sitting up. COSCETTA's hand and finger dexterity were "intact" and he had full grip strength. The physician concluded that COSCETTA had only "mild to moderate limitations of sitting, standing, walking, bending and lifting."

35. I have reviewed bank records of THOMAS COSCETTA, the defendant. From my review of these records, I have learned that although COSCETTA stated in his Disability Application that he had

not been able to go bowling "for more than five years" due to his disability, COSCETTA appears to have continued to bowl after his retirement. Specifically, COSCETTA's bank records show that he wrote checks for \$100 or \$125 approximately once per month to a bowling alley on Long Island from at least in or about April 2004 through in or about April 2007. In the memo area is written: "6:30 Wed[nesday] Men's Invitational."

36. From my review of bank records of THOMAS COSCETTA, the defendant, and records maintained by the New York State Department of Health, Bureau of Funeral Directing, I know that COSCETTA continues to be a licensed funeral director in New York. Although COSCETTA stated in a Vocational Report submitted to the RRB in connection with his Disability Application that he had stopped working as a funeral director in or about 2002 and that he was "no longer able to do this work" due to his "disabilities," COSCETTA stated in a May 2012 application for a two-year funeral director's license that he continued to work as a funeral director one to ten hours per week "as needed" at a funeral home on Long Island. COSCETTA's license application also states that between November 2011 and April 2012, he completed 12 hours of continuing education classes for funeral directing. COSCETTA's bank records show that COSCETTA wrote checks to the New York State Department of Health to pay for his biennial license fees in or about May 2006, April 2008, May 2010, and May 2012. In addition, COSCETTA's bank records show that since his retirement, COSCETTA has paid dues to the Nassau-Suffolk Funeral Directors' Association and the New York State Funeral Directors' Association.

37. I have read a report by an agent with the Federal Bureau of Investigation who spoke with an acquaintance of THOMAS COSCETTA, the defendant. From my review of this report, I learned that COSCETTA told the acquaintance that "he is collecting \$105,000.00 per year, tax free" and that "if anyone else knew, the reaction would not be favorable." The acquaintance stated that COSCETTA is not disabled. Despite claiming disability due to, among other things, "disabling" hand and wrist pain and inability to stand and balance for long periods of time, COSCETTA has been active in trap shooting since his retirement from the LIRR. The acquaintance stated that COSCETTA engages in clay target shooting at least three times per week locally, and has traveled to Connecticut for a trap-shooting competition. The acquaintance said that COSCETTA is able to lift heavy ammunition and weapons with no issues. In addition, prior to news reports regarding the LIRR disability fraud scheme, COSCETTA did "power lifting" at a gym.

38. On or about August 3, 2012, I viewed the website of the Amateur Trapshooting Association ("ATA"), located at www.ShootATA.com. From my review of this website, I learned the following:

a. The ATA serves as the governing body of the sport of American-style trapshooting. Trapshooting is a specific form of clay target shooting. Trapshooting is "a game of movement, action and split-second timing." It requires the "accuracy and skill to repeatedly aim, fire and break the 4¼ inch disc which are hurled through the air at a speed of 42mph, simulating the flight path of a bird fleeing a hunter."

b. There are three different disciplines in American-style trapshooting: Singles, Doubles, and Handicap. In Singles, the shooter stands 16 yards away from the center of the "trap house" and shoots at random targets that fly at various angles in front of the shooter. In Doubles, the shooter must break two targets fired from the trap house simultaneously. In Handicap - considered the "most prestigious" event - the shooter is assigned a handicap distance based on past performances from which he or she must shoot. The handicap distance varies from 18 to 27 yards.

c. The ATA's "Shooter Information Center" includes an entry for "Thomas N. Coscetta" located in New York with ATA Membership Number 0611136. Based on my participation in this investigation, I believe that this individual is THOMAS COSCETTA, the defendant. The website indicates that COSCETTA's ATA membership is currently "paid."

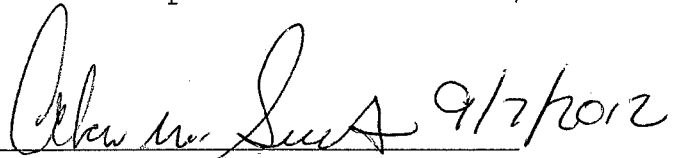
d. The ATA's statistics for COSCETTA indicate that since in or about October 2005, COSCETTA has shot approximately 19,600 single shots, 4,300 double shots, and 10,500 handicap shots. In 2012, COSCETTA's accuracy appears to be 94% in singles, 69% in doubles, and 86% in handicap. COSCETTA's handicap yardage is 22 yards. COSCETTA appears to shoot several times per month at the Peconic River Sportsman Club and the Mattituck Gun Club on Long Island, among other locations.

39. I have reviewed a video taken on or about January 3, 2012, at a gun club on Long Island that show THOMAS COSCETTA, the defendant, trap shooting in the snow. In the video, COSCETTA stands behind the traphouse and rotates through five different stations. At each station, COSCETTA repeatedly takes ammunition from a bag that

hangs near his waist, loads his shotgun, aims, and fires at the clay trap. The round of shooting depicted in the video lasts approximately ten minutes.

40. From my review of the bank records of THOMAS COSCETTA, the defendant, I have learned that since his retirement from the LIRR in April 2004, COSCETTA has spent thousands of dollars on dues and/or registration fees at gun clubs, trap shooting associations, and trap shooting competitions in New York, Connecticut, and Pennsylvania, including the Peconic River Sportsman Club and the Mattituck Gun Club. COSCETTA has also spent thousands of dollars on trapshooting ammunition, guns, and related equipment.

WHEREFORE, deponent asks that a warrant be issued for the arrest of THOMAS COSCETTA and that he be imprisoned or bailed, as the case may be.

Handwritten signature of Adam M. Suits, dated 9/12/2012.

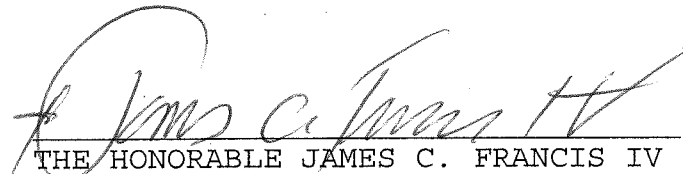
ADAM M. SUITS

Special Agent

Office of the Inspector General,
U.S. Railroad Retirement Board

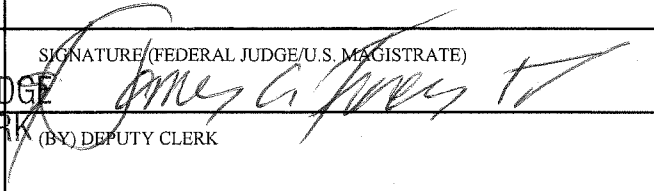
SEP 07 2012

Sworn to before me this
____th day of September, 2012

Handwritten signature of James C. Francis IV.

THE HONORABLE JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

WARRANT FOR ARREST

United States District Court		DISTRICT SOUTHERN DISTRICT OF NEW YORK	
UNITED STATES OF AMERICA v. THOMAS COSCETTA		DOCKET NO. 12 MAG	MAGISTRATE'S CASE NO. 2349
		NAME AND ADDRESS OF INDIVIDUAL TO BE ARRESTED THOMAS COSCETTA	
WARRANT ISSUED ON THE BASIS OF: <input type="checkbox"/> Order of Court <input type="checkbox"/> Indictment <input type="checkbox"/> Information <input checked="" type="checkbox"/> Complaint		DISTRICT OF ARREST	
TO: UNITED STATES MARSHAL OR ANY OTHER AUTHORIZED OFFICER		CITY	
YOU ARE HEREBY COMMANDED to arrest the above-named person and bring that person before the United States District Court to answer to the charge(s) listed below.			
DESCRIPTION OF CHARGES			
Mail Fraud and Conspiracy to Commit Mail Fraud and Health Care Fraud. (Title 18, United States Code, Sections 1341 and 1349.)			
IN VIOLATION OF	UNITED STATES CODE TITLE Title 18	SECTION(s) Sections 1341 & 1349	
BAIL	OTHER CONDITIONS OF RELEASE		
ORDERED BY JAMES C. FRANCIS IV UNITED STATES MAGISTRATE JUDGE SOUTHERN DISTRICT OF NEW YORK	SIGNATURE (FEDERAL JUDGE/U.S. MAGISTRATE) 		DATE ORDERED SEP 07 2012
CLERK OF COURT	(BY) DEPUTY CLERK		DATE ISSUED
RETURN			
This warrant was received and executed with the arrest of the above-named person.			
DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER	
DATE EXECUTED			

Note: The arresting officer is directed to serve the attached copy of the charge on the defendant at the time this warrant is executed.