



UNITED STATES ATTORNEY'S OFFICE
Southern District of New York

U.S. ATTORNEY PREET BHARARA

FOR IMMEDIATE RELEASE
Tuesday, May 22, 2012
<http://www.justice.gov/usao/nys>

CONTACT: U.S. ATTORNEY'S OFFICE
Ellen Davis, Jerika Richardson
Jennifer Queliz
(212) 637-2600

RRB-OIG
Patricia Marshall
(312)751-3390

FBI
Tim Flannelly, Jim Margolin
(212) 384-2100

RRB
Mike Freeman
(312) 751-4736

MTA-OIG
Eric Warner
(212) 878-0024

LIRR
Joe Calderone
(718) 558-7301

**MANHATTAN U.S. ATTORNEY ANNOUNCES CHARGES AGAINST TEN
ADDITIONAL LONG ISLAND RAILROAD RETIREES FOR PARTICIPATING IN
MASSIVE DISABILITY FRAUD SCHEME**

*U.S. Attorney's Office, Railroad Retirement Board, and Long Island Railroad Also Announce the
Creation of a Voluntary Disclosure and Disposition Program*

Preet Bharara, the United States Attorney for the Southern District of New York, Martin J. Dickman, Inspector General of the Railroad Retirement Board ("RRB-OIG"), Janice K. Fedarcyk, the Assistant Director-in-Charge of the New York Office of the Federal Bureau of Investigation ("FBI"), and Barry L. Kluger, Inspector General of the New York State Metropolitan Transportation Authority ("MTA-OIG"), announced charges today against 10 additional participants in a massive fraud scheme in which Long Island Railroad ("LIRR") workers allegedly claimed to be disabled upon early retirement so that they could receive disability benefits to which they were not entitled. All 10 individuals – BRIAN DELGIORNO, PHILIP PULSONETTI, GREGORY BIANCHINI, FRANKLIN PLAIA, MICHAEL STAVOLA, MICHAEL DASARO, KARL BRITTELL, KEVIN NUGENT, GARY SUPPER, and THOMAS DELALLA – are LIRR retirees who allegedly made fraudulent benefit claims. In combination with the 11 people who were previously charged in connection with this scheme in October 2011, this brings the total number of individuals charged to date to 21. They include two doctors and an office manager for one of the doctors who were allegedly involved in falsely diagnosing retiring LIRR workers as disabled, two "facilitators" who allegedly served as liaisons between retiring workers and the participating doctors, and 17 LIRR retirees, one of whom was also charged as a facilitator.

Mr. Bharara, Karl Blank, General Counsel of the RRB, and Helena E. Williams, President of the LIRR, also announced today the creation of a voluntary disclosure and disposition program, in which the U.S. Attorney's Office will agree not to criminally prosecute or file a civil action against any LIRR retiree who, in accordance with the program's schedule, voluntarily discloses that he or she made false and/or misleading statements to obtain RRB disability benefits, and gives up his or her right to continue receiving RRB disability benefits.

Manhattan U.S. Attorney Preet Bharara said: "The LIRR is a commuter railroad, not a gravy train. Today we have criminally charged ten more LIRR workers who planned padded retirements built on lies and greed, as the Indictment describes. Twenty-one individuals – LIRR workers, doctors, and intermediaries – now stand indicted, and the investigation is ongoing. Separately, given the sheer scale of the alleged fraud and in order to quickly relieve the RRB's multi-hundred-million-dollar disability payment obligations, for a limited time, others have the opportunity to participate in a voluntary disclosure and disposition program to avoid prosecution and civil action. I urge any participants in this alleged fraud to come forward and resolve their situations through the program rather than through prosecution."

RRB-OIG Inspector General Martin J. Dickman said: "I would like to thank the dedicated professionals from my Office, the Federal Bureau of Investigation, and the U.S. Attorney's Office for their assiduous attention to the complexities of this ongoing investigation. Today's arrests are a testament to the potent impact of cooperative law enforcement and serve as a warning that fraud will not be tolerated. Through our continued partnership with the Federal Bureau of Investigation and the U.S. Attorney's Office, we will continue to aggressively pursue individuals who have submitted false information to the Railroad Retirement Board."

FBI Assistant Director-in-Charge Janice K. Fedarcyk said: "Last October, when we carried out the first round of arrests in this investigation, we encouraged other fraudulent disability pensioners to come forward. We said then that if we didn't hear from them, they would likely hear from us. That was not an idle threat then, and it is not now. If you are culpable in this fraud, the voluntary disclosure program announced today is certainly a better choice than crossing your fingers and hoping we don't find you."

MTA-OIG Inspector General Barry L. Kluger said: "'I wish to thank U. S. Attorney Bharara, his staff, and our other partners in this ongoing investigation and prosecution, for their dedication to combating pension fraud. The Voluntary Disclosure Program jointly announced today by the U.S. Attorney, the Long Island Railroad, and the federal Railroad Retirement Board, is a fair but limited opportunity, in the public interest, for individuals who fraudulently obtained federal disability pensions to come forward, admit their wrongdoing, and thereby avoid the harsh reality of arrest and criminal prosecution. We strongly advise all such individuals to do so now before their time runs out."

The LIRR Disability Fraud Scheme

The following allegations are based on the Complaint, the Superseding Indictment unsealed today, and statements made in open court:

The RRB is an independent U.S. agency that administers benefit programs, including disability benefits, for the nation's railroad workers and their families. A unique LIRR contract

allows employees to retire at the relatively young age of 50 if they have been employed by the LIRR for at least 20 years. It is the only commuter railroad in the United States that offers a retirement pension at that age. Eligible employees are entitled to receive a LIRR pension, which is a portion of the full retirement payment for which they are eligible at 65. At 65, they also receive an RRB pension. If an LIRR worker retires at 50, he or she will receive less than their prior salary and substantially lower pension payments than those to which they will be entitled at 65. However, an LIRR employee who retires and claims disability may receive a disability payment from the RRB on top of their LIRR pension, regardless of age. A retiree's LIRR pension, in combination with RRB disability payments, can be roughly equivalent to the base salary earned during his or her career.

Hundreds of LIRR employees have exploited the overlap between the LIRR pension and the RRB disability program by pre-planning the date on which they would falsely declare themselves disabled so that it would coincide with their projected retirement date. These false statements, made under oath in disability applications, allowed LIRR employees to retire as early as age 50 with an LIRR pension, supplemented by the fraudulently obtained RRB disability annuity. From 2004 through 2008, 61% of LIRR employees who claimed an RRB benefit were between the ages of 50 and 55, and each received a disability award. In contrast, only 7% of employees at Metro-North who stopped working and received disability benefits during the same time period were between the ages of 50 and 55.

Three New York-area doctors accounted for 86% of the LIRR disability applications filed prior to 2008: Peter J. Ajemian, Peter Lesniewski, and a third unnamed doctor ("Disability Doctor-3"), who is recently deceased. Ajemian, with the assistance of his office manager, Maria Rusin, and Lesniewski, used their respective medical practices as "disability mills," preparing fraudulent medical narratives for LIRR retirees well before the employees' planned retirement dates so that the narratives could be submitted to the RRB upon retirement. These medical narratives were fabricated or grossly exaggerated in order to recommend a set of restrictions that, if legitimate, would render it impossible for the LIRR employees to continue in their occupations. Many of the purportedly "objective" findings from the tests they conducted showed nothing more than normal degenerative changes one would expect to see in patients within the relevant age bracket.

Hundreds of LIRR workers schemed to defraud the RRB in this manner, assisted by both the doctors, as well as "facilitators" who referred LIRR workers to the disability doctors, filled out applications on their behalf, and assisted and coached them to fill out their disability applications in such a way as to maximize the likelihood that they would receive disability benefits. As charged in today's Superseding Indictment, BRIAN DELGIORNO, PHILIP PULSONETTI, GREGORY BIANCHINI, FRANKLIN PLAIA, MICHAEL STAVOLA, MICHAEL DASARO, KARL BRITTELL, KEVIN NUGENT, GARY SUPPER, and THOMAS DELALLA are some of the LIRR workers who engaged in the charged disability fraud scheme.

The Voluntary Disclosure and Disposition Program

In order to address the massive LIRR fraud as efficiently and effectively as possible, and to expedite a resolution that will protect the federal government from ongoing financial harm, the U.S. Attorney's Office, in partnership with the RRB and the LIRR, today announce a voluntary disclosure and disposition program. Under the program, the U.S. Attorney's Office will agree

not to prosecute, or file a civil action against, any LIRR retiree who voluntarily comes forward and admits that he or she obtained RRB disability benefits by making false and/or misleading statements to the RRB, and agrees to give up his or her right to certain RRB disability benefits. In addition, the RRB will agree not to commence any administrative proceedings seeking the repayment of any disability benefits that are the subject of this program, and the LIRR will agree not to seek forfeiture of LIRR Company Pension Plan(s) benefits.

RRB General Counsel Karl Blank said: "The RRB endorses any efforts to identify and prevent benefit fraud and abuse. Toward that end we welcome the opportunity to partner with the U. S. Attorney's Office."

LIRR President Helena E. Williams said: "This is an important opportunity for any LIRR retiree who engaged in fraudulent activity with regard to filing for a federal disability pension to come forward, accept responsibility, avoid prosecution and avoid the potential loss of LIRR company pension benefits. We urge those involved to carefully consider this offer. These federal pension benefits – administered by the U.S. Railroad Retirement Board - must be reserved for those who are truly disabled."

How the Voluntary Disclosure and Disposition Program Works

Application materials will start being mailed today to LIRR retirees who are receiving RRB disability benefits. There will then be two phases to the program – the "Early Version" and the "Standard Version." Under the Early Version, the U.S. Attorney's Office will agree not to prosecute, or file a civil action against, any LIRR retiree who discloses that he or she made false and/or misleading statements to obtain RRB disability benefits and agrees to give up his or her right to all future RRB disability benefits they would receive as a result of the fraud. The deadline for participation in the Early Version of the program is July 6, 2012. Under the Standard Version, the U.S. Attorney's Office will agree not to prosecute, or file a civil action against, any LIRR retiree who discloses that he or she made false and/or misleading statements to obtain RRB disability benefits, gives up his or her right to all future RRB disability benefits he or she would receive as a result of the fraud, and agrees to return 50% of the RRB disability benefits he or she has already received. The deadline for participation in the Standard Version of the program is August 10, 2012. Any retiree who does not participate in either program and whom the government determines has engaged in fraud will remain subject to criminal prosecution and civil action.

Given the scope of this alleged fraud – there are over 1,500 retirees who took early retirement and are receiving RRB disability benefits – this innovative and comprehensive program was created to: (1) prevent further payments by the RRB that are the result of fraud; (2) recover as much money as possible as quickly as possible for the RRB; (3) allow retirees to take responsibility for their actions; and (4) avoid costly and protracted litigation. This program could save the RRB tens of millions of dollars.

* * *

A chart setting forth the age of each defendant, the charges against each defendant, and the maximum term of imprisonment faced by each defendant is attached.

Manhattan U.S. Attorney Bharara praised the RRB-OIG, the FBI, and the MTA-OIG for their outstanding work in the investigation, which he noted is ongoing. He also acknowledged the previous investigation conducted by the New York State Attorney General's Office into these pension fraud issues.

The Office's Complex Frauds Unit is handling the case. Assistant U.S. Attorneys Justin S. Weddle, E. Danya Perry and Daniel B. Tehrani are in charge of the prosecution.

Peter J. Ajemian, Peter Lesniewski, Maria Rusin, Marie Baran, Joseph Rutigliano, Joseph Rutigliano, Gregory Noone, Regina Walsh, Sharon Falloon, Gary Satin, Steven Gagliano and Richard Ehrlinger were previously charged in this case. The charges against them remain pending and the defendants are presumed innocent unless and until proven guilty.

The charges contained in the Superseding Indictment against the 10 additional defendants charged today are merely accusations and the defendants are presumed innocent unless and until proven guilty.

12-151

###