



## *Southern District of New York*

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### **MANHATTAN U.S. ATTORNEY ANNOUNCES CHARGES AGAINST 10 ADDITIONAL LONG ISLAND RAILROAD RETIREES FOR PARTICIPATING IN MASSIVE DISABILITY FRAUD SCHEME**

*One New Defendant Pleads Guilty to Fraudulently Claiming and Receiving Disability Benefits  
and Other Charges*

*Final Extension of Voluntary Disclosure and Disposition Program Also Announced*

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”), Mary E. Galligan, Acting 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 – FREDERICK P. CATALANO, JR., THOMAS COSCETTA, MICHAEL COSTANZA, DANIEL R. DENIS, STEVEN DESTEFANO, JAMES M. MAHER, WILLIAM J. MCALEAVEY, KEVIN NEVILLE, CHRISTOPHER P. PARLANTE, and JAMES REISER – are LIRR retirees. DESTEFANO pled guilty before U.S. District Judge George B. Daniels to multiple charges relating to the fraud on September 4, 2012. To date, 32 defendants have been charged in connection with the alleged scheme.

Manhattan U.S. Attorney Preet Bharara said: “If you are an LIRR retiree who lied to get disability benefits, the deadline for participation in the early version of the Voluntary Disclosure program is upon you. But make no mistake – there is no deadline for concluding our

investigation. We are both relentless and patient and will continue to aggressively investigate this widespread, alleged fraud.”

RRB-OIG Inspector General Martin J. Dickman said: “Foremost, I would like to acknowledge the hardworking prosecutors and agents assigned to this ongoing investigation and the exceptional job they have done in bringing these charges. We will continue to pursue individuals who have participated in this alleged scheme to defraud the U.S. Railroad Retirement Board.”

FBI Acting Assistant Director-in-Charge Mary E. Galligan said: “After the first round of arrests in this investigation, the FBI and the U.S. Attorney made clear that we will continue the effort to identify and charge those who fraudulently obtain disability pensions, as has been alleged. The government then offered a generous voluntary disclosure and disposition option, and yet people allegedly persist in taking money for which they do not qualify. That is a crime, and we will continue to seek justice.”

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 as further evidenced by today’s ten additional arrests and guilty plea. We strongly advise those individuals who fraudulently obtained disability pensions to recognize that this investigation is not over and to take advantage of this last extension of the voluntary disclosure and disposition program offered by the U.S. Attorney.”

#### *The LIRR Disability Fraud Scheme*

The allegations below are based on public filings in the LIRR cases, including the Complaints unsealed in Manhattan federal court today, as well as statements made at DESTEFANO’s guilty plea proceeding. The defendants are presumed innocent unless and until proven guilty. The allegations and statements are as follows:

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 weekday.

Retiring LIRR employees are eligible to receive benefits from both the LIRR and the RRB. 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 at the time of retirement. The LIRR is the only commuter railroad in the U.S. that offers a retirement pension at that age. An LIRR pension is based, in part, on the average number of hours – including overtime – worked in the five years prior to retirement. The LIRR pension is a portion of what retiring workers will receive at 65, at which time they may draw an additional pension from the RRB. If, however, an LIRR worker retires and is disabled, that LIRR worker can also 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 a combination of retirement benefits from the LIRR and disability benefits from the RRB.

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 Applications, petitioning workers must describe in detail, under penalty of perjury, their disability and the limitations resulting therefrom, and state at what date 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, also under penalty of perjury, their continuing inability to work.

Hundreds of individuals are alleged to have 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 suffer from a disability that rendered them unable to perform their job. They did this in order to receive both retirement benefits from the LIRR and disability benefits from 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 "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 on pain, as subjectively reported by the patient.

As a result of this pervasive fraud, hundreds of LIRR retirees received RRB disability benefits to which they were not entitled, 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 all fraudulent claims had been paid out in full – would have exceeded approximately \$1 billion.

### *The New Defendants*

In addition to the 18 LIRR retirees previously charged, the new defendants include:

DESTEFANO is a former LIRR electrician who pled guilty to having fraudulently claimed and received disability benefits. In his disability application, DESTEFANO falsely claimed that a knee injury rendered him unable to perform his railroad job. However, he worked over 1,100 hours of overtime in his last full year before retiring. DESTEFANO has admitted that he submitted an application to the RRB for a disability annuity because he was about to lose his job at the LIRR and wanted to retire in a manner that maximized his retirement income, and not because a disability genuinely prevented him from doing his job.

The other nine defendants charged today are LIRR retirees who lied to the RRB about their ability to work in order to obtain disability payments:

CATALANO is a former LIRR gang foreman who retired based on a disability he planned months in advance, receiving approximately \$162,000 in various benefits during the first 12 months following his retirement. In his disability application, CATALANO claimed to suffer from severe shoulder, lower back, and neck pain that made standing, sitting, walking, bathing, and dressing hard for him. Nevertheless, in his last 17 months at the LIRR, CATALANO worked nearly 1,500 hours of overtime, including eight hours on his very last day of work. Further, in the same month that he began seeing a doctor for his purported disability, CATALANO successfully obtained a 4<sup>th</sup> degree black belt in jiu jitsu, and in the years following his retirement, he has continued to train for his 5<sup>th</sup> degree black belt in jiu jitsu, and has been observed attending jiu jitsu and hot yoga classes. A video of CATALANO performing jiu jitsu maneuvers shows him sparring with other adult male combatants, punching and swinging his arms, lifting, kicking, spinning, twisting and rolling on the ground.

COSCETTA is a former LIRR train conductor who retired based on a disability he planned months in advance, receiving approximately \$84,000 in various benefits during his first full year of retirement. In his disability application, COSCETTA claimed to suffer from back, neck, knee, and hand/wrist pain that, according to the notes of his doctor/co-conspirator, caused numbness, tingling, and weakness in his extremities, including shaking in his hands. Nevertheless, in his last full year of work, COSCETTA worked over 1,100 hours of overtime, including over 250 hours of overtime after his purported disability affected his ability to work. Since retiring, 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 elsewhere. COSCETTA has also been working as a funeral director.

COSTANZA is a former LIRR transportation manager who retired based on a disability he planned months in advance, receiving over \$75,000 in various benefits last year. In his disability application, COSTANZA claimed to suffer from severe neck, back, carpal tunnel, and right knee pain, that made it hard for him to sit, stand, walk, eat, bathe, and dress. Notwithstanding his claims to the RRB, COSTANZA served as an active firefighter for years following his retirement, and was injured fighting a fire five years after he purportedly became disabled. COSTANZA currently serves as Commissioner of the North Merrick Fire Department and previously served as chairman of the Nassau County Fire Commission.

DENIS is a former LIRR ticket agent who retired based on a disability he planned months in advance, receiving more in total benefits during his first full year of retirement than he earned – absent overtime pay – during his last full year of employment at LIRR. In his disability application, DENIS claimed to suffer back and shoulder pain that made it hard to sit, stand, walk, bathe, dress himself, drive a car, and write. Nevertheless, DENIS worked over 650 hours of overtime in the year before his retirement and, since his retirement, played golf on a regular basis, performed home improvement projects such as putting up sheetrock, and worked briefly as a bartender.

MAHER is a former LIRR conductor who retired based on a disability he planned months in advance, receiving more in total benefits during his first full year of retirement than he earned – absent overtime pay – during his last full year of employment at LIRR. In his disability application, MAHER claimed to suffer disabling and constant back, neck, and knee pain, as well as numbness in his hands, all of which made it difficult for him to sit, stand, walk, eat, bathe,

dress himself or drive a car. Nevertheless, in the year before his retirement, MAHER worked over 1,000 hours of overtime. Since retiring, MAHER has been seen carrying multiple bags of groceries, loading them into a car, and driving away without assistance or difficulty. MAHER has also worked on strenuous home improvement projects, including removing and reattaching a spiral staircase in his house, installing cabinets, and removing carpets. He also told a neighbor that he was “scamming the disability” and committing fraud.

MCALEAVEY is a former LIRR conductor who retired based on a total and permanent disability, receiving approximately \$79,000 in benefits in 2011. In his disability application, MCALEAVEY claimed to suffer from various ailments, including herniated and bulging disks, and carpal tunnel syndrome that rendered him unable to bend, lift, crawl, reach, push and pull, use any physical force, or carry material of any weight without feeling pain in his neck, arms, back, leg and hands. Nevertheless, in the two years prior to his retirement, MCALEAVEY worked 2,345 hours of overtime, and in the years after he retired, MCALEAVEY worked as an ironworker. To conceal the fact that he was employed to do that strenuous work, MCALEAVEY used his son’s social security number on payroll forms.

NEVILLE is a former LIRR crew dispatcher who retired based on a disability he planned months in advance, receiving approximately \$120,000 in LIRR and RRB benefits in 2011. In his disability application, NEVILLE claimed to suffer severe neck and back pain that made it hard for him to sit, stand, walk, bathe, dress, drive, or perform outdoor chores. Nevertheless, NEVILLE worked nearly 1,200 hours of overtime in the 10 months before he retired. In the years following his retirement, he played golf regularly and was observed shoveling snow, breaking patches of ice with a shovel, and plowing snow while driving an all-terrain vehicle registered in his own name.

PARLANTE is a former LIRR passenger and freight conductor who retired based on a disability he planned months in advance, receiving more in total benefits during his first full year of retirement than he earned – absent overtime pay – during his last full year of employment at LIRR. In his disability application, PARLANTE claimed to suffer from chronic neck, back, hand, and knee pain, that made it hard for him to sit, stand, walk, bathe, dress himself, sleep or do chores. Nevertheless, he worked approximately 1,150 hours of overtime in the two years before retiring, all while his treating physician and alleged co-conspirator documented his worsening condition. Since retiring, PARLANTE did not receive any medical treatment for his purported back pain and has been observed repeatedly bending as he lifted full shovels of snow at his house.

REISER is a former LIRR train conductor who retired based on a disability he planned months in advance, receiving more in total benefits during his first full year of retirement than he earned – absent overtime pay – during his last full year of employment at LIRR. In his disability application, REISER claimed to suffer from various ailments, including back and neck pain, that made it hard for him to sit, stand, walk, bathe, dress, and perform chores. Nevertheless, in the 16 months prior to his retirement, REISER worked approximately 1,150 hours of overtime and took only 10 sick days. Further, after retiring, REISER continued to work as a referee at sporting events, played basketball daily, and was observed by law enforcement playing golf and carrying bags of groceries up the stairs to his residence.

*Extension of the Voluntary Disclosure and Disposition Program*

On May 22, 2012, the U.S. Attorney's Office, in partnership with the RRB and the LIRR, announced a voluntary disclosure and disposition program. Under the program, the U.S. Attorney's Office would 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 would agree not to commence any administrative proceedings seeking the repayment of any disability benefits that are the subject of this program, and the LIRR would agree not to seek forfeiture of LIRR Company Pension Plan(s) benefits. Under the Early Version of the program, any participating LIRR retiree would have to give up his or her right to future disability benefits, while under the Standard Version of the program, any participating LIRR retiree would have to give up both future disability benefits, as well as 50% of the RRB disability benefits he or she has already received.

The deadline for participation in the Early Program, which was extended once before, is now September 14, 2012. Today, the Office announces a final two week extension, and the new deadline for participation in the Early Program is now September 28, 2012. The deadline for the Standard Version of the program will now be October 26, 2012.

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A chart setting forth the names, ages and residences of the defendants, the charges each defendant faces, and the statutory maximum penalty associated with these charges, is attached. FREDERICK P. CATALANO, JR., THOMAS COSCETTA, MICHAEL COSTANZA, DANIEL R. DENIS, WILLIAM J. MCALEAVEY, KEVIN NEVILLE, and CHRISTOPHER P. PARLANTE will be presented in Manhattan federal court later today; JAMES M. MAHER will be presented in the Middle District of Florida; and JAMES REISER will be presented in the Southern District of Florida.

Mr. 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 case is being handled by the Complex Frauds Unit of the United States Attorney's Office. Assistant United States Attorneys Amy Garzon, Edward A. Imperatore, Daniel Noble, and Tatiana Martins are in charge of the prosecution.

The charges contained in the Complaints are merely accusations and the defendants are presumed innocent unless and until proven guilty.

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| CHRISTOPHER P. PARLANTE    | 60 | Oyster Bay, NY    | Conspiracy to Commit Healthcare Fraud and Mail Fraud; Mail Fraud  | 20 yrs. in prison;<br>20 yrs. in prison   |
| DANIEL R. DENIS            | 59 | East Rockaway, NY | Conspiracy to Commit Healthcare Fraud and Mail Fraud; Mail Fraud  | 20 yrs. in prison;<br>20 yrs. in prison   |
| JAMES M. MAHER             | 59 | Eustis, FL        | Conspiracy to Commit Healthcare Fraud and Mail Fraud; Mail Fraud  | 20 yrs. in prison;<br>20 yrs. in prison   |
| FREDERICK P. CATALANO, JR. | 51 | Nesconset, NY     | Conspiracy to Commit Healthcare Fraud and Mail Fraud; Mail Fraud  | 20 yrs. in prison;<br>20 yrs. in prison   |
| THOMAS COSCETTA            | 61 | Southold, NY      | Conspiracy to Commit Healthcare Fraud and Mail Fraud; Mail Fraud  | 20 yrs. in prison;<br>20 yrs. in prison   |
| JAMES REISER               | 58 | Stuart, FL        | Conspiracy to Commit Healthcare Fraud and Mail Fraud; Mail Fraud  | 20 yrs. in prison;<br>20 yrs. in prison   |
| STEVEN DESTEFANO           | 61 | Manorville, NY    | Conspiracy to Commit Healthcare Fraud and Mail Fraud; Mail Fraud; Conspiracy to Defraud the Railroad Retirement Board; False Claims | 20 yrs. in prison;<br>20 yrs. in prison;<br>Five yrs. in prison;<br>Five yrs. in prison |
| WILLIAM J. MCALEAVEY       | 61 | Bay Shore, NY     | Mail Fraud; Aggravated Identity Theft   | 20 yrs. in prison;<br>Two yrs. in prison<br>(Mand. Minimum)                             |
| MICHAEL COSTANZA           | 59 | Merrick, NY       | Conspiracy to Commit Healthcare Fraud and Mail Fraud; Mail Fraud  | 20 yrs. in prison;<br>20 yrs. in prison   |
| KEVIN NEVILLE              | 55 | Islip Terrace, NY | Conspiracy to Commit Healthcare Fraud and Mail Fraud; Mail Fraud  | 20 yrs. in prison;<br>20 yrs. in prison   |