

Amelia A. Cottrell
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
200 Vesey Street, Suite 400
New York, NY 10281-1022
(212) 336-1056

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
DR. LORETTA M. ITRI,	:	
DR. NEIL T. MOSKOWITZ,	:	ECF CASE
and	:	
MATTHEW CASHIN,	:	
	:	<u>COMPLAINT</u>
Defendants.	:	
	:	
	:	

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendants Dr. Loretta M. Itri, Dr. Neil T. Moskowitz, and Matthew Cashin, alleges as follows:

SUMMARY

1. This insider trading case involves a biopharmaceutical company executive who tipped her long-time friend with material nonpublic information concerning an upcoming announcement about the company’s key developmental drug.

2. The insider trading was carried out by Itri, President of Pharmaceutical Development and Chief Medical Officer of Genta, Inc. (“Genta”), and Moskowitz, a

friend who Itri has known for approximately 40 years. Through her work, Itri obtained material nonpublic information about Genta's clinical trial results for an experimental drug designed to treat advanced melanoma. During a telephone conversation just one day before the negative public announcement of the results of the trial, Itri provided Moskowitz with material nonpublic information. Minutes after his call with Itri, Moskowitz sold his Genta securities. Moskowitz then tipped Cashin and induced three other investors to sell their Genta securities before the negative public announcement. As a result of these trades made based on material nonpublic information, Moskowitz and Cashin reaped illegal gains of approximately \$139,000.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

3. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)]. The Commission seeks permanent injunctions against each of the defendants, enjoining them from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, and disgorgement of all ill-gotten gains, including profits realized and losses avoided from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest. The Commission also seeks civil penalties against each of the defendants pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78uA]. In addition, the Commission seeks an order barring Itri from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]. The Commission

seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

5. Venue lies in this Court pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], and Sections 21(d), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78uA, and 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the District of New Jersey. Genta is headquartered in Berkley Heights, New Jersey. Itri, who passed information to Moskowitz, resides in Westfield, New Jersey. In addition, communications in furtherance of the insider trading alleged in this Complaint were made from, to, or within the District of New Jersey.

DEFENDANTS

6. **Itri**, age 64, resides in Westfield, New Jersey. Itri joined Genta in 2001, and beginning in 2003 served as Genta's President of Pharmaceutical Development and Chief Medical Officer until the company filed for bankruptcy in 2012.

7. **Moskowitz**, age 62, resides in Centerport, New York. Moskowitz is an emergency room physician in Syosset, New York.

8. **Cashin**, age 55, resides in Syosset, New York. Cashin was Moskowitz's patient during an emergency room visit on August 15, 2009.

RELEVANT ENTITIES AND INDIVIDUAL

9. **Genta** is a biopharmaceutical company formerly quoted on the OTC-BB, located in Berkley Heights, New Jersey. During the relevant time period, Genta's common stock was registered pursuant to Section 12(g) of the Exchange Act. On August 2, 2012, Genta filed for Chapter 7 bankruptcy liquidation.

FACTS

Genta Conducted Nonpublic Clinical Trials for Advanced Melanoma Drug

10. Before a pharmaceutical company can release a new drug, it must conduct clinical trials to determine whether the drug is safe and effective in providing treatment to patients. Clinical trials generally proceed in three phases. In Phase 1, a trial tests the drug on a small group of people (generally, 20-80) to determine its safety, determine a safe dosage range, and identify side-effects. In Phase 2, the drug is given to a larger group of people (generally, 200-300) to determine if it is effective and further evaluate its safety. Finally, in Phase 3, the drug is given to large groups of people to confirm its effectiveness, its safety and to monitor any side-effects.

11. Between 2001 and 2009, Genta was developing Genasense, a drug for patients with advanced melanoma. During 2009, Genta was conducting a Phase 3 trial for Genasense (the "Phase 3 Trial"). Genta hoped to market Genasense at the conclusion of the Phase 3 Trial.

12. Genta released top-line results of the Phase 3 Trial on October 29, 2009 (the "Announcement"). The Announcement revealed that Genasense was not shown to be an effective drug in the Phase 3 Trial. Specifically, the Announcement stated that the Phase 3 Trial "did not show a statistically significant benefit for its co-primary endpoint

of progression-free survival” and stated that “[s]econdary endpoints of overall response rate and disease control rate . . . also did not show a statistically significant benefit.”¹

13. The market reacted negatively to the Announcement. On the day of the Announcement, Genta’s stock price fell from \$0.66 (the closing price on the October 28, 2009) to \$0.20 a share (the closing price on October 29, 2009), a decrease of \$0.46, or approximately 70 percent.

Itri’s Access to Material Nonpublic Information Concerning the Phase 3 Trial and Her Duty of Confidentiality

14. Itri, who served as the President of Pharmaceutical Development and Chief Medical Officer for Genta, had continuing access to material nonpublic information concerning the Phase 3 Trial results.

15. Itri was directly involved in the Phase 3 Trial, and one of the first people to learn of the top-line results. Specifically, Itri participated in meetings and conference calls concerning the Phase 3 Trial results on October 26 and October 27, 2009. Itri received the final independent verification of the results on October 28, 2009.

16. As an executive officer of Genta and a participant in the Phase 3 Trial, Itri was obligated to use such information only for the benefit of Genta. Itri’s employer maintained policies prohibiting insider trading and prohibiting its employees from disclosing material nonpublic information to anyone outside the company.

¹ Both primary and secondary end-points are metrics set prior to the beginning of a trial used to measure the efficacy of the drug. A primary end-point measures the most important metric of the study such as the drug’s ability to prevent disease related death. A secondary end-point measures other important possible benefits from the drug.

Moskowitz, Cashin and Other Moskowitz Contacts Acquire Genta Securities

17. Itri first met Moskowitz in the 1970s when they attended the same medical school. Itri and Moskowitz have known each other for approximately 40 years.

18. Itri remained in sporadic contact with Moskowitz over the years, and she communicated with him throughout 2009. During her conversations with Moskowitz, Itri expressed her optimism concerning the ongoing clinical trials for Genasense and indicated that she looked forward to the public announcement expected later that year.

19. After discussing Genta with Itri, Moskowitz made investments in Genta securities. Moskowitz, in fact, accumulated a large position in Genta securities in the months before the Announcement. Specifically, between September 11, 2009 and October 16, 2009, Moskowitz had net purchases of 142,000 shares of Genta. As of October 28, 2009, Moskowitz's shares of Genta were worth approximately \$93,700.

20. In addition to personally investing in Genta securities, Moskowitz also advised others, including Cashin, to invest in Genta securities. Cashin first met Moskowitz on Saturday, August 15, 2009, when Moskowitz treated Cashin in the emergency room at Syosset Hospital and had several conversations that day.

21. During these conversations, Moskowitz said that he knew the executives at Genta and he described Itri as brilliant. Moskowitz also told Cashin that Genta was conducting a drug trial for Genasense and that when the drug trial's results were announced it would have a significant positive impact on Genta's stock price. Cashin and Moskowitz stayed in touch after Cashin's emergency room visit, and they continued to discuss Genta over email and phone calls.

22. On Monday, August 17, 2009, the first trading day after Cashin's emergency room visit, Cashin made his first investment in Genta securities. In total, Cashin purchased over 173,830 shares of Genta between August 17, 2009 and October 27, 2009 in his own account and several family members' accounts. As of October 28, 2009, Cashin's shares of Genta were worth approximately \$114,700.

23. In addition to discussing Genta with Cashin, between May and October 2009, Moskowitz also advised three individuals he was friendly with to invest in Genta securities. After each individual spoke with Moskowitz about Genta, each made a small investment in Genta securities. As of October 28, 2009, these shares were worth approximately \$3,300 in total.

Itri Provided Moskowitz Material Nonpublic Information and Moskowitz Tipped Cashin

24. By virtue of her role at Genta, her involvement in the Phase 3 Trial, and in accordance with Genta's own policies, Itri owed Genta a duty to hold all information she learned in connection with her participation in the Phase 3 Trial in strict confidence and to use such information only for Genta's benefit. Despite her duty, Itri disclosed Genta's information about the Phase 3 Trial results to Moskowitz, as detailed below.

25. Itri received material nonpublic information concerning the completed Phase 3 Trial results no later than October 27, 2009. After receiving material nonpublic information concerning the Genasense drug trial results and before the Announcement, Itri communicated with Moskowitz. Specifically, on October 28, 2009, just one day prior to the Announcement, Itri called Moskowitz at 10:24 am and after speaking for approximately three minutes, she called him again at 10:29 am, and they spoke for less than a minute. During these phone calls, Itri indicated to Moskowitz that the Genasense drug trials results were disappointing.

26. Just minutes after speaking to Itri, Moskowitz began selling his Genta securities. Specifically, at 10:33 am, Moskowitz placed an order to sell all 22,000 Genta shares he held in his retirement account. Then, at 10:46 am, Moskowitz placed an order to sell all 120,000 shares he held in his individual account.

27. Shortly after Moskowitz sold his Genta securities on October 28, 2009, Moskowitz called Cashin and tipped him concerning the disappointing drug trial results. Specifically, at 11:09 am, Moskowitz called Cashin and communicated that Moskowitz had information from Itri concerning the results of the Genasense drug trial, and that this information, once it was made public, would have a significant negative effect on Genta's stock price.

28. Less than a minute after Cashin's call with Moskowitz, Cashin began selling all of his Genta securities. Cashin also instructed a family member to sell the Genta securities in that person's account. In total, Cashin and the family member sold all 173,830 shares they held on October 28, 2009.

29. On October 28, 2009, Moskowitz also contacted the other individuals he had encouraged to buy Genta securities and told them to sell their Genta securities. Each of these investors sold their entire position in Genta securities either while still on the phone with Moskowitz or minutes after ending their call with him.

Moskowitz's and Cashin's Illicit Gains

30. As a result of the trades placed the day before the Announcement, both Moskowitz and Cashin reaped illicit gains. Moskowitz reaped illicit gains of approximately \$64,000 while Cashin reaped illicit gains of approximately \$75,000.

CLAIMS FOR RELIEF

CLAIM I

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
(Against Defendants Itri, Moskowitz and Cashin)**

31. The Commission realleges and incorporates by reference paragraphs 1 through 30, as though fully set forth herein.

32. The information Itri provided to Moskowitz concerning the Phase 3 Trial was material and nonpublic. In addition, Genta, which was the source of the information, considered the information confidential and had a policy protecting confidential information.

33. Itri provided the material nonpublic information to Moskowitz in breach of the fiduciary duty that Itri owed to Genta, and did so with the expectation of receiving a benefit.

34. Moskowitz knew, recklessly disregarded, or should have known, that Itri owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to keep the information confidential.

35. Moskowitz traded based on material nonpublic information concerning the Phase 3 Trial, with the expectation of a benefit from doing so, and he knew, recklessly disregarded, or should have known, that the information was conveyed in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence.

36. Moskowitz provided the material nonpublic information to Cashin in breach of the fiduciary duty that Itri owed to Genta, and did so with the expectation of receiving a benefit.

37. Cashin knew, recklessly disregarded, or should have known, that the material nonpublic information concerning the Phase 3 Trial that he received from Moskowitz was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence.

38. By virtue of the foregoing, defendants Itri, Moskowitz and Cashin and each of them, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons. By virtue of the foregoing, defendants Itri, Moskowitz and Cashin, and each of them, directly or indirectly, violated, and unless enjoined, will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

CLAIM II
Violations of Section 17(a) of the Securities Act
(Against Defendants Itri, Moskowitz and Cashin)

39. The Commission realleges and incorporates by reference paragraphs 1 through 38, as though fully set forth herein.

40. By virtue of the foregoing, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, defendants Itri, Moskowitz and Cashin, and each of them: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon a purchaser.

41. By reason of the conduct described above, each of the defendants directly or indirectly violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

RELIEF SOUGHT

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently restraining and enjoining defendants Itri, Moskowitz and Cashin, and each of them, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

II.

Permanently restraining and enjoining defendants Itri, Moskowitz and Cashin, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

III.

Ordering defendants Itri, Moskowitz and Cashin to disgorge, with prejudgment interest, all ill-gotten gains received as a result of the conduct alleged in this Complaint, including their ill-gotten gains, and the illicit trading profits, other ill-gotten gains, and/or losses avoided of their direct and downstream tippees;

IV.

Ordering defendants Itri, Moskowitz and Cashin to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78uA];

V.

Barring Itri, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

VI.

Granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York
April 21, 2014



Amelia A. Cottrell*
Associate Director
Attorney for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION
New York Regional Office
200 Vesey Street, Suite 400
New York, New York 10281-1022
(212) 336-1056
CottrellA@sec.gov

Of Counsel:

Charles D. Riely (RielyC@sec.gov)*
Shannon Keyes (KeyesS@sec.gov)*

* Not Admitted in New Jersey