

## Pharma Drama: bluebird bio, Inc. Directors Accused of “Grossly Excessive” Compensation While separate Errant Gene Therapeutics Lawsuit Heads for Trial



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*In new twists on a convoluted tale of medicine and money, a shareholder lawsuit against bluebird bio, Inc.'s (formerly Genetix) directors is accusing them of overpaying themselves, as other litigation moves forward.*

*bluebird bio has been featured on our site in the past; a good overview of the ongoing battle of Errant Gene Therapeutics (EGT) versus bluebird bio, capital firm Third Rock Ventures, and the Memorial Sloan Kettering center (MSK) can be found [here](#). Other news about bluebird partnering with Novo-Nordisk is [here](#). The bluebird-MSK litigation accuses both of essentially slow walking and trying to “kill” EGT’s allegedly superior gene vector product.*

### Too Much or Just How it is?

In the new case, filed in Delaware state court on March 20, 2020, a shareholder alleges that bluebird’s eight directors, including Chairman Daniel Lynch, have been grossly overpaid for several years. According to the suit, the 2018 average compensation for board members was \$748,652, and the average for other mid-cap firms with similar value was about one-third of this amount. The suit includes causes of action for breach of fiduciary duty, unjust enrichment, and wasting corporate assets. The suit seeks an order that the directors must “disgorge” or return their excess pay, and it also seeks corporate-governance reform aligning compensation with real-life metrics. This case will test the accuracy of bluebird’s website claim that, “All our interactions are guided by our belief of putting patients first....”

### A Small World or Awash in Conflict?

The common theme involves allegations of general ethical failure. The tangled nature of the parties and entities makes one wonder if our corporate medicine world is not awash in conflicts of interest. Discussing EGT’s lawsuit, the New York Times in 2015 [said](#) that “Errant Gene is demanding to regain control of the [gene vector] project. *It accuses Sloan Kettering of sitting on the therapy because the cancer center’s president, Dr. Craig B. Thompson, has ties to Third Rock Ventures, the venture capital firm that bankrolled Bluebird. Third Rock also financed Agios Pharmaceuticals, a company of which Dr. Thompson is a co-founder.*” (Italics added.)

### One Perspective

In a currently showing, albeit one-sided, presentation at the Museum of Surgical Science in Chicago, the creator, Megan Euker, professor at the School of the Art Institute of Chicago, outlines some of the allegations that, if true, give at least some elements of Pharma a bad name. For context, the exhibition notes that bluebird bio’s CEO Nick Leschly could have a “genetic” link to malfeasance in that his father, Jan Leschly, was the CEO in charge of SmithKline Beecham during the Paxil debacle, in which they hid data showing a 700% increase in suicide attempts when compared to a placebo. Nick, for his part, earned about 24 million dollars in 2018 while simultaneously raising the price of the bluebird bio treatment from \$800,000 to \$1.8 million and while bluebird bio was losing more than \$2 Million per quarter. Trial in the cases of EGT v. Sloan Kettering and bluebird bio is set for July 8, 2020 and proceeds against Third Rock Ventures and Nick Leschly in Massachusetts.

## **Adhesion Contracts?**

A final important fact alleged in the Chicago exhibit relates to the contract between MSK and bluebird bio: in it, MSK, which is a non-profit entity, agrees to indemnify bluebird bio in an odd manner: it is a normal agreement as to all potential claimants *except* EGT. But, for EGT, it explicitly includes “gross negligence and willful misconduct.” This means that, only with respect to EGT, MSK agreed to pay any claims owed by bluebird for intentional torts. This is illegal in Texas and California (for example see Cal. Civil Code Section 1668: “Certain contracts unlawful. All contracts which have for their object...exempt[ing] anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law”).

Even if legal, the clause raises serious questions: why should a non-profit medical center take on liability for intentional misconduct by a private for-profit firm? In an email, which EGT thinks helps prove their case, Nick Leschly states openly: “Pat Girondi—need to shut him down...curious what he called about...my emails were clear want to get him to buy into a CDA to review Michel's data. Be nice, suck up, etc... if you think (and I think) that Michel has valuable data.”

### **Must Hear from All Sides**

In fairness, the various allegations against bluebird bio, etc. have not been fully litigated—and it is easier to make a claim in a suit than it is to prove it. A summary of bluebird bio's recent activity and response to COVID-19 can be found on [Yahoo News](#). At *TrialSite News*, we will continue to cover this saga and look forward to also presenting the defendants' side of these cases as the information becomes public. A fair and balanced pursuit is absolutely necessary.