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# Perrigo's Tab Owed To Shareholders Nine Years After Spurning Mylan's Hostile Takeover? \$97M

*Firm, Former CEO Agree To Settle Securities Class Action Filed After Share Price Tanked*

by [Malcolm Spicer](#)

An end to litigation filed by institutional investors, insurance companies and pension funds comes four CEOs after Perrigo's chief exec during Mylan's tender in 2015, Joseph Papa, resigned to lead another firm in 2016. Plaintiff attorneys are asking for up to 20% of settlement in fees.

[Perrigo Company PLC](#) has agreed to settle a securities class-action complaint filed in 2016 against the firm and its management when its share price plummeted after it convinced investors to reject a hostile takeover bid.

The [proposed](#) \$97m cash settlement, which a judge in April [preliminarily approved](#), will be considered for final approval on 5 September in the US District Court for New Jersey.

The settlement comes after the firm which attempted to acquire Perrigo, [Mylan Pharmaceuticals Inc.](#), merged with another pharma to form a new company and after the German business Perrigo acquired to expand into Europe – bolstering its position as an international business that also marketed branded products, and to boost its value during Mylan's takeover gambit – became a substantial drag on its earnings for several years.

While fighting the litigation, which [combined](#) two complaints filed by institutional investors, insurance companies and pension funds, Perrigo has been led by four different CEOs since the executive at the helm during the Mylan tender and European acquisition, Joseph Papa, resigned

to become CEO at another firm in April 2016.

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*“Securities fraud cases, like the one here, often turn on who said what, what they said, when they said it, and what they knew when they spoke.” – Renée Marie Bumb, chief judge New Jersey federal court*

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The complaint noted Perrigo's share price increased nearly 24% to \$216 when Mylan announced its offer in April 2015 but fell more than 6% to \$146.90 on the day shareholders voted to reject the tender in November that year and then continued falling, including an 18% dip to \$99.40 on the day Papa resigned.

Since then, the share price for the private label and store brand OTC drug giant generally has been in decline, aside from scattered, brief recoveries when the firm made notable moves, such as launching the first OTC daily oral contraceptive in the US in March. Perrigo's share price on the New York Stock Exchange closed down slightly at \$28.57 on 3 September.

The plaintiffs' class was defined to include parties who purchased shares of Perrigo common stock between 21 April 2015 and 2 May 2017, or who owned shares on 12 November 2015, the day before Perrigo shareholders rejected Mylan's takeover offer. Eligible parties who submitted claim forms on or before 26 August are class members.

### **Claims Stand Against Perrigo, Papa**

The [final amended complaint](#) filed in June 2017 named as defendants Perrigo, Papa and former chief financial officer Judy Brown, as well as members of the firm's board and the CEO of the German business Perrigo acquired, alleging misrepresentations and omissions the firm and its management made to investors while fighting a hostile takeover and throughout the class period.

Claims against the German business executive and Perrigo board members were dismissed early in the proceedings.

The complaint states that to “discourage Perrigo shareholders from accepting Mylan's offer,” the firm and its management “repeatedly made material misrepresentations and omissions about four key areas”:

- Perrigo’s organic growth;
- integration of its German acquisition, Omega Pharma NV;
- “collusive pricing in Perrigo’s most profitable division, Rx generic drugs”; and
- “the deteriorating value of Perrigo’s largest financial asset, a royalty stream for the drug Tysabri.”

In a July 2023 [opinion](#), the chief judge for the New Jersey District, Renée Marie Bumb, dismissed the Tysabri and organic growth claims, but not the Rx pricing and Omega integration claims.

The next month, Judge Bumb dismissed the claim of Rx generics collusive pricing against Papa but held in reserve a decision on the claim against Perrigo while maintaining the claim alleging the executive and the firm misled investors about the Omega integration. (Also see ["Perrigo OTC Brand Journey Detours Into Management, Operating Problems"](#) - HBW Insight, 22 Feb, 2016.)

Papa left Dublin-based Perrigo to move to the former Valeant Pharmaceutical Industries Inc. in 2016. He led the troubled business to relaunch as [Bausch Health Companies Inc.](#) before leaving in 2022 and was named CEO at [Emergent BioSolutions, Inc.](#) in February. (Also see ["OTC Naloxone Pioneer Emergent BioSolutions Puts Papa At Helm As It Navigates Strategy Shift"](#) - HBW Insight, 22 Feb, 2024.)

“After viewing the evidence in Plaintiffs’ favor and affording them every reasonable inference from that evidence, the Court finds material facts are disputed as to whether Papa’s statements were false and

## Formula Expanded, HRA Added, Tysabri Gone

An expansion Perrigo in the infant formula sector in 2022 also hasn’t panned out as well as expected. It acquired a Eau Claire, WI, facility from Nestle SA to expand its production capacity as the product category was caught in a supply crisis and rapidly needed increased supplies. (Also see ["Perrigo Adds Good Start Brand In \\$230M Statement On Boosting Infant Formula Production Capacity"](#) - HBW Insight, 1 Nov, 2022.)

However, since the Food and Drug Administration informed Perrigo about problems at the plant, prompting a recall, the firm began remediations there and at its two other formula plants, with costs estimated at \$35m to \$45m, and the formula business has been an earnings drag for several quarters. (Also see ["Stabilizing Formula Business ‘First And Foremost’ For Perrigo To Reach Sustainable Growth"](#) - HBW Insight, 11 Jun, 2024.)

whether he acted with scienter,” according to the opinion.

## ‘What They Knew When They Spoke’

Bumb made clear from the opening of her opinion that determining scienter – a person's knowledge or intent to commit a wrongdoing; a mental state indicating a person acted with knowledge of the illegality or with reckless disregard for the truth – was the focus of her review and central to determining whether the claims should be considered by a jury.

“Securities fraud cases, like the one here, often turn on who said what, what they said, when they said it, and what they knew when they spoke,” she wrote.

“While Defendants offer varying reasons why Plaintiffs’ remaining claims fail, the thrust of their arguments focus on Plaintiffs’ failure to establish scienter. Indeed, securities fraud cases, like the one here, often rise and fall on a plaintiff’s ability to prove scienter,” Bumb noted.

Concerning the claim of Papa misleading investors about the Omega integration, the judge, quoting from precedent rulings in the US Court of Appeals for the 3rd Circuit, concluded that resolving the question would require her to “make credibility determinations and ‘weigh the evidence and determine the truth of the matter,’ which is not permitted at the summary judgment stage.”

Further quoting precedent circuit rulings, Bumb explained her conclusion by saying

Although the class-action complaint alleged multiple sclerosis drug Tysabri (natalizumab) was Perrigo’s “largest financial asset” best business, it wasn’t part of the firm’s long-term plans when it gained the brand in its 2013 merger with Elan plc, a move which made Perrigo an Ireland-headquartered company. (Also see "[Perrigo’s Irish Move Sets Stage For International Boost, Net Revenue Gain](#)" - Pink Sheet, 2 Aug, 2013.)

It sold its Tysabri royalty license in 2017 to a unit of drug industry investor Royalty Pharma for \$2.85bn, including \$650m in contingent milestones. (Also see "[Perrigo 'Unlocks Value' But Weak 2017 Outlook Impedes Revelry](#)" - Scrip, 28 Feb, 2017.)

Perrigo sold its generics Rx business in 2021 in a \$1.55bn deal to Altaris Capital Partners LLC. (Also see "[It's Official: Perrigo's Entirely Consumer Health](#)" - HBW Insight, 6 Jul, 2021.)

However, the agreement with Altaris required Perrigo to retain limited potential liabilities from US regulators’ investigations of price-fixing in the Rx generics space which eventually led to criminal charges against executives in other firms and civil complaints against numerous firms including Perrigo. (Also see "[Unsealed US Price-Fixing Complaint Reveals 'Diary Of Collusion'](#)" - Generics Bulletin, 9 Feb, 2021.)

Perrigo returned to the Rx space with its 2022 acquisition of French firm HRA Pharma, a deal that brought its OTC birth control candidate,

“scienter is often a jury call because ‘whether a party acted with scienter, intertwined as it may be with an assessment of witness credibility, often cannot be undertaken appropriately on summary judgment proceedings.’”

“Suffice it to say, Papa’s evidence is not so one-sided on a scienter and falsity, and whether his statements were false and he acted recklessly when he spoke on the success of the Omega integration given the information he had is best left for a jury,” according to the opinion.

Bumb continued that because she “finds genuine issues of fact exist on the falsity of Papa’s statements, and whether he possessed scienter when he spoke,” she denied Perrigo’s summary judgment motion. “If a jury concludes Papa’s statements were false and he acted with scienter, Papa’s scienter may be imputed to Perrigo,” she wrote.

In the same opinion, the judge dismissed all claims against Brown, which alleged she misled shareholders about the Omega integration and about Perrigo’s Rx drug pricing.

The judge wrote that “despite the ‘spin’ Plaintiffs wish to put” on complaints made by the former Omega CEO, “the evidence shows Perrigo progressed with key integration tasks” and “no reasonable jury could find Brown was reckless when she spoke about the integration” due to “the conflicting information Brown had when she spoke.”

Opill (0.075mg norgestrel) (Also see "[Year After Acquisition, Perrigo Waits For US Decision On HRA’s OTC Oral Contraceptive Switch](#)" - HBW Insight, 10 May, 2023.); it sold HRA’s Rx rare disease portfolio in July to Esteve Healthcare, S.L. for €190m (\$206.7m) upfront cash and up to €85M (\$92.5m) in earnout payment.

Mylan in 2022 merged with [Pfizer Inc.](#)’s Upjohn off-patent and mature brand pharma business to form UK firm [Viatris Inc.](#) (Also see "[Viatris To Shed OTC, APIs And Women’s Health As Biocon Deal Nears Completion](#)" - Generics Bulletin, 9 Nov, 2022.)

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***Lead counsel will ask court for attorneys’ fees for all plaintiffs’ counsel at an amount up to 20% of the settlement fund and for litigation expenses payment not to exceed \$4.5m.***

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Brown stepped down as Perrigo’s CFO in 2017 after more than 15 years with the firm, which maintains its primary operations in Grand Rapids, MI. (Also see "[Perrigo Trims Workforce, Ships](#)")

[Tysabri License, Stays European Course](#)" - HBW Insight, 1 Mar, 2017.)

The judge also wrote that Brown's and Papa's patterns for trading their Perrigo shares before and after the Mylan tender weren't unusual.

### **Up To 20% For Attorneys' Fees**

According to a [summary notice](#) of the proposed settlement and plan of allocation filed by plaintiffs' lead counsel, during the hearing at the court in Newark, NJ, US Magistrate Judge Leda Dunn Wettre will determine whether to approve the proposed settlement agreed to earlier in 2024 and whether the litigation should be dismissed with prejudice against the firm and Papa.

The judge also will determine whether to approve the proposed plan of allocation to the class members and the lead counsel's application for attorneys' fees, according to the notice by the lead counsel, Joshua Silverman of Pomerantz LLP and James Harrod of Bernstein Litowitz Berger & Grossmann LLP, both firms in New York.

According to information provided by the plaintiffs' lead counsel on a website for the litigation, currently "it is not possible to make any determination" for the amount of money each class member will receive from the \$97m settlement. The attorneys also state that the court's approval of the settlement is independent from approval of an allocation plan.

Additionally, the litigation website explains that before final approval of the settlement, the court will determine the amounts of attorneys' fees and of reimbursement for their litigation expenses.

The lead counsel will ask the court for attorneys' fees for all plaintiffs' counsel at an amount up to 20% of the settlement fund and for litigation expenses payment not to exceed \$4.5m.

The attorneys state they "have not received any payment for their services in pursuing claims against" Perrigo and Papa representing the complaint class and haven't "been reimbursed for their out-of-pocket expenses."

Perrigo and attorneys for the firm and Papa did not reply to HBW Insight's requests for comment before the time this article was published.