

## *Roofers' Pension Fund v. Joseph C. Papa, et al.*

**COURT:** United States District Court for the District of New Jersey  
**CASE NUMBER:** 16-cv-02805  
**CLASS PERIOD:** 04/21/2015 - 05/03/2017  
**CASE LEADERS:** James A. Harrod, Jesse L. Jensen  
**CASE TEAM:** R. Ryan Dykhouse, Reiko Cyr, Catherine E. van Kampen, Danielle Disporto

Perrigo Company PLC. (“Perrigo” or the “Company”) investors’ losses allegedly arise from Perrigo’s disastrous efforts to prevent a takeover attempt by Perrigo’s rival, Mylan N.V. (“Mylan”). This class action alleges claims on behalf of investors who purchased Perrigo common stock from April 21, 2015 through May 3, 2017, either in the U.S. on the NYSE, or in Israel on the TASE (which claims are being pursued in the U.S. litigation by application of Israeli law); claims are also asserted on behalf of all investors who were entitled to tender shares of Perrigo common stock as of November 12, 2016, when the proposed tender offer by Mylan expired.

Perrigo and its senior executives engaged in a public battle with Mylan to convince Perrigo shareholders to pass on Mylan’s tender offer, which valued Perrigo shares at \$177 each. Specifically, to convince its shareholders to reject Mylan’s offer, Perrigo falsely touted strong organic growth, a disciplined approach to acquisitions, and its transparency as the strengths behind its business strategy and told shareholders that Perrigo had better prospects as a stand-alone company. The Company also promised that “tremendous revenue synergies” would come from integrating the Company’s \$4.5 billion acquisition of Omega—the largest OTC manufacturer in Europe. Convinced by the Company’s representations, Perrigo shareholders rejected Mylan’s tender offer. Just a few months later, however, Perrigo revealed significantly declining revenue and earnings as a result of enormous competitive pressures and problems integrating Omega. The Company also announced two impairment charges relating to Omega, which together total over \$650 million—nearly 15% of the total acquisition value of Omega. What’s more, the Company’s CEO Joseph Papa—who was the face of Perrigo’s public campaign urging shareholders to reject Mylan’s bid—suddenly resigned, leaving analysts questioning whether the Company’s rosy statements about Perrigo’s business were true. The market then began to discover that Perrigo’s supposed competitive pressures actually related to a collusive scheme among generic prescription drug manufacturers. On March 3, 2017, the market learned that Perrigo had garnered the attention of antitrust regulators. On May 2, 2017 Perrigo was raided by the Department of Justice in connection with its investigation. As a result of these disclosures, Perrigo stock fell precipitously, declining more than 62% from the start of the Class Period and causing investors billions in investor losses.

On June 21, 2017, we filed the operative Complaint in the action. Briefing on Defendants’ motions to dismiss was completed on November 6, 2017. On July 27, 2018, the Court issued a decision granting in part and denying in part Defendants’ motion to dismiss, sustaining the action. Discovery has been ongoing since September 2018, and will continue through September 2019. On April 17, 2019, the Court in large part granted our motion to compel production of certain documents related to the government investigation and ordered substantial completion of document production by June 3, 2019 and the completion of production by July 1, 2019. On June 27, 2019, the Court granted the request of all parties to extend the completion deadline to August 30, 2019, and to extend the close of all fact discovery (originally scheduled for September 16, 2019) to December 16, 2019. On September 4, 2019, the Court granted permission to intervene by the Department of Justice. On October 10, 2019, the

Department of Justice wrote with the consent of all parties to request the Court grant a limited stay of discovery related only to Perrigo's generic drugs business until November 15, 2019, at which time the Department of Justice will seek to extend the stay an additional three to four months based on the status of its ongoing criminal investigation. The Court granted that request for a stay, and then, on December 13, 2019, granted the Department of Justice's request to extend the limited stay until March 15, 2020. On April 9, 2020, the Court granted the Department of Justice's request to extend the limited stay further, to June 3, 2020. On July 14, the Court granted an additional request from the Department of Justice to extend the limited stay to August 31, 2020, and extended the deadline for fact and expert discovery to December 31, 2020. On September 29, 2020, the Court granted another request from the Department of Justice to extend the limited stay to October 30, 2020, but made clear that this would be the final extension of the stay absent evidence of significant progress in the criminal investigation. We have begun to schedule the depositions currently subject to the stay (assuming it will expire), while fact and expert discovery and depositions have continued on the other aspects of the case, including timely serving three affirmative expert reports on September 29, 2020.

In addition, on November 30, 2018, we moved for class certification. Defendants then filed their opposition on March 29, 2019, and we filed our reply on June 5. On November 14, 2019, the Court granted our motion in full and certified all three requested classes. On November 29, 2019, Defendants filed a Rule 23(f) petition to the Third Circuit seeking interlocutory appeal of just one of the classes certified, the class of investors who were entitled to tender as of November 12, 2016, when the proposed tender offer by Mylan expired. Plaintiffs filed an opposition to this petition on December 9, 2019. On April 30, 2020, the Third Circuit denied Defendants' Rule 23(f) petition seeking interlocutory appeal, leaving in place all classes requested by Plaintiffs and certified by the District Court.

Finally, during an October 15, 2020 status conference and in a subsequent order, the Court set an schedule for the Parties to submit pre-motion letters requesting leave to file any expected summary judgment and/or *Daubert* motions. Pursuant to the Court's schedule, on December 22, 2020, Defendant Perrigo filed a letter requesting leave to file summary judgment and *Daubert* motions relating to all three of Plaintiffs' experts. In addition, Defendant Papa (Perrigo's former CEO) and Defendant Brown Perrigo's former CFO) each filed their own letter stating they would join Perrigo's motions but also requesting leave to file motions for summary judgment solely on the issue of their scienter. On January 4, 2021, in accordance with the Court's schedule, we timely filed a letter in response to Perrigo's letter as well as a letter responding to both Brown and Papa's letters. The Court has not indicated precisely when it intends to address these letters. The Court thereafter ordered that Defendants may each file a single motion integrating any and all *Daubert* and summary judgment arguments. On April 9, 2021, each Defendant filed their respective motion in accordance with the Court's ruling. Our opposition is due on June 3, 2021, and Defendants' replies are due on July 7, 2021. The Court has ruled that there will be no further extensions of these deadlines.

In addition, on July 1, 2021, the case was reassigned from Judge Madeline Cox Arleo (who had issued the decision denying Defendants' motions to dismiss and overseen the case since then) to Judge Julien Xavier Neals. On October 14, 2021, the Court conducted a status conference for the case, at which the Court indicated that it expected it would schedule an oral argument for the pending summary judgment and *Daubert* motions, that it expected to rule on those motions by early 2022, and that it further expected to set a trial date for late spring / early summer 2022. The Court heard oral argument for the pending summary judgment and *Daubert* motions on April 7, 2022. We are now awaiting the Court's decision on the summary judgment and *Daubert* motions.

## Case Documents

- May 18, 2016 - Complaint for Violations of the Federal Securities Laws
- June 21, 2017 - Amended Complaint for Violation of the Federal Securities Laws
- July 7, 2018 - Motion to Dismiss Decision
- November 14, 2019 - Class Certification Opinion