THE HIGH COURT

COMMERCIAL

[2024] IEHC 9

RECORD NUMBER 2021/3571P

BETWEEN

CHUBB EUROPEAN GROUP SE (FORMERLY ACE EUROPEAN GROUP LIMITED),

AIG EUROPE SA (FORMERLY AIG EUROPE LIMITED), AXIS SPECIALTY EUROPE SE,

ALLIANZ GLOBAL CORPORATE & SPECIALTY SE,

ALLIED WORLD ASSURANCE COMPANY (EUROPE) DESIGNATED ACTIVITY COMPANY (FORMERLY ALLIED WORLD ASSURANCE COMPANY (EUROPE) LIMITED),

LIBERTY MUTUAL INSURANCE EUROPE SE (FORMERLY LIBERTY MUTUAL INSURANCE EUROPE LIMITED),

XL INSURANCE COMPANY SE,

ZURICH INSURANCE PLC,

QBE EUROPE SA/NV (FORMERLY QBE INSURANCE (EUROPE) LIMITED)

and

LLOYD'S INSURANCE COMPANY SA

PLAINTIFFS

AND

PERRIGO COMPANY PLC, JOSEPH PAPA, JUDY BROWN, MARC COUCKE, LAURIE BRLAS, JACQUALYN A FOUSE, ELLEN R HOFFING, MICHAEL R JANDERNOA, DONAL O'CONNOR, GARY COHEN, HERMAN MORRIS JR, GERALD K KUNKLE JR, JOHN HENDRICKSON, RONALD WINOWIECKI, DOUGLAS BOOTHE, DAVID GIBBONS and RAN GOTTFRIED

DEFENDANTS

JUDGMENT OF Mr Justice Twomey delivered on the 11th day of January, 2024

INTRODUCTION

1. This case, which involves the interpretation of insurance contracts, was listed for 12 days, yet it ended up running for just 7 days. As the manner in which this saving of court time was achieved may be of more general application, it is to be noted that it arose from the fact that, prior to the trial, the lawyers involved had prepared an Agreed Statement of Facts. The complexity of the factual background to this case is illustrated by the fact that the Agreed Statement of Facts runs to 50 closely typed pages. As these facts were agreed by the parties in advance of the trial, there ended up being a 42% saving of a scarce public resource (court hearing time). This is because this Court was saved having to spend days hearing evidence

regarding those facts, since they had been agreed by the parties. In addition to the saving of court hearing time, there was also a saving of judgment writing time, as it was not necessary for this Court, after the hearing, to carefully sift through all the evidence in order to make various findings of fact, upon which to base the Court's conclusions on the legal issues. Therefore, as well as being in the public interest, there can also be a self-interest for the parties in providing an Agreed Statement of Fact, since the parties are likely to receive their judgment sooner.

2. While this approach is not suitable for every case (e.g. in a dispute on a point of law), the finalisation of an Agreed Statement of Facts will, in many situations, lead to a significant reduction in the amount of court hearing time, for the benefit of other litigants waiting to have their cases heard, and a reduction in waiting times for judgments, for the benefit of the parties.

3. As regards those agreed facts, they are set out in the Appendix to this judgment (and capitalised terms which are used in this judgment, but not defined therein, are defined in that Agreed Statement of Facts). Accordingly, it is not necessary to repeat those facts in any detail in the body of the judgment. However, in very brief summary, it is sufficient to note that certain directors of the first defendant ("**Perrigo**"), a company incorporated in Ireland, were accused of having falsely inflated that company's true value in order to persuade the shareholders in Perrigo to reject a financially attractive offer for their shares ($179 per share) from another company, Mylan ("**Mylan Offer**").

4. The directors of Perrigo allegedly received millions of dollars in bonus payments from Perrigo for successfully resisting the takeover bid by Mylan. Shortly thereafter, the share price dropped to $89 per share and it is alleged that this drop occurred when the truth of Perrigo's financial position became clear. As a result, shareholders in Perrigo took a number of class actions in the US against Perrigo and its directors. Perrigo had Directors' and Officers' and

Company Reimbursement Insurance to cover, *inter alia*, legal expenses and costs incurred by the directors, in the event of any claims against them in the exercise of their duties.

5. This case is concerned with a consideration of the terms of those policies in the aftermath of the failed Mylan Offer. It involves the interpretation of various insurance policies between the insured, Perrigo, and the insurers, i.e. the plaintiffs, a number of insurance companies represented by the first plaintiff ("**Chubb**"). The key question for determination by this Court concerns the interpretation of an aggregation clause in the 2014 Policy.

6. In very general terms, an aggregation clause is relevant where there are two separate claims made in separate years against an insured. Normally, the first claim would be treated as being made under the first year's insurance policy and the later claim as being made under the subsequent year's policy. However, an aggregation clause provides that, in certain circumstances, the later claim is treated as a single claim with the first claim, and so both claims are treated as being made under the first year's policy. In this way, both claims are subject to the limits on the first year's policy and any retention on that year's policy.

7. Aggregating claims from two separate years to one year's policy can be advantageous to the insurer *or* the insured depending on the circumstances. It is for this reason that aggregation clauses *'require a construction which is not influenced by any need to protect the one party or the other'* per Hobhouse L.J. in *Lloyds TSB General Insurance Holdings Ltd and others v Lloyds Bank Group Insurance Co Ltd* [2003] UKHL 48 at para [30].

8. In this instance, it seems clear that aggregation would be advantageous to the insurer, Chubb. This is because Chubb is alleging, and Perrigo is denying, that certain later claims made against Perrigo, after the first claim against the 2014 Policy, should be aggregated back to the 2014 Policy. On the other hand, Perrigo is arguing that the claims made after this first claim should not be aggregated back, but should be responded to by policies which were active when the later claims were made, i.e. the 2015 Policy and the 2016 Policy. To explain the commercial

significance to the parties of whether the claims are aggregated back to the 2014 Policy or not, Chubb pointed out that each year's policy has a limit on the insurance of $125 million. Thus, for example, if Perrigo had a claim of $200 million in 2015 and a claim of $50 million in 2016, and if the claims are *not* aggregated back to 2015, then Perrigo would receive a total of $175 million from Chubb in respect of both claims (i.e. $125 million maximum in 2015 and $50 million in 2016). However, if the 2016 claim is aggregated back to 2015, then Perrigo only receives $125 million in respect of both of these claims. Thus, in this example, Perrigo is down, and Chubb is up, $50 million as a result of aggregation.

9. In other circumstances, aggregation could be financially advantageous to the insured. For example, the retention under the policies is $1 million (i.e. the amount an insured has to pay on each claim, before the insurer will pay) and so aggregating the amount of a 2015 claim and a 2016 claim (of say $900,000 each) to the 2015 Policy would lead to the retention on that year's policy of $1million to be exceeded (by $800,000). In this example, the result of the aggregation is that the Chubb is down, and Perrigo is up, $800,000, as Perrigo gets paid the $800,000 from Chubb, that it would not have received if the claims had *not* been aggregated, but instead had been spread over two years.

10. In broad terms, the aggregation clause in this case provides that if a wrongful act gives rise to a claim which was notified under the 2014 Policy, then if a '*similar or related'* wrongful act gives rise to a claim in later years, then those later claims are aggregated back to the 2014 Policy. Accordingly, the key issues in this case are, firstly what is meant by a '*similar or related'* wrongful act when that term is used in an aggregation clause, and secondly, whether the wrongful acts, which form the basis for the first claim against Perrigo under the 2014 Policy, are '*similar or related'* to the wrongful acts, which form the basis of the later claims which were made against Perrigo.

11. The first claim notified by Perrigo under the 2014 Policy, i.e. the Mylan Counterclaim, was an application by Mylan in the US for an injunction to prevent Perrigo allegedly making misrepresentations to shareholders in order to defeat the Mylan Offer. The subsequent claims involve, *inter alia*, class actions taken in the US against Perrigo, by its shareholders, alleging financial loss as a result of alleged misrepresentations made by Perrigo in order to defeat the Mylan Offer. While the events relevant to this case occurred almost exclusively in the US, the relevant policies of insurance, taken out by Perrigo, are subject to Irish law. Hence, the interpretation of the relevant clauses of the insurance policies are subject to determination by this Court under Irish law.

12. In addition to considering the aggregation clause, this judgment also considers a specific exclusion from cover in the 2016 Policy regarding a claim (known as the Roofers Complaint), which had been notified under the 2014 Policy and the 2015 Policy. However, after that 2016 Policy was written, the proceedings in the Roofers Complaint were amended to include new wrongful acts against Perrigo, not included in the original Roofers Complaint. The question therefore arises as to whether it is just the Roofers Complaint, or the Amended Roofers Complaint, which is excluded from cover under the 2016 Policy.

13. The judgment also considers whether a derivative action taken in the US (the 2019 Derivative Action) against Perrigo qualifies for cover under the 2014 Policy. In very general terms, a derivative action in the US involves a shareholder in a company bringing a claim, on behalf of that company, with the company as a nominal defendant, seeking authority to pursue *a claim against third parties*, which it is alleged the company should have pursued. Since, the company is only nominally a defendant, a key issue is whether a derivative action is a claim *against the company*, so as to be covered by a policy that provides insurance cover for claims against the company.

14. Finally, it should be noted that this judgment describes the *alleged* wrongful acts against Perrigo and its directors as 'wrongful acts'. It does so for ease of reference but also because the term 'wrongful act', as used in the relevant aggregation clause, is defined as including '*alleged'* wrongful acts. It is to be noted that nothing turns on whether the alleged wrongful acts turn out to be a wrongful or not. This is because the issue in this case is not whether alleged wrongful acts are in fact wrongful. Rather it is whether Chubb has to provide insurance cover for the legal and other costs of Perrigo and its directors in defending the alleged wrongful acts, irrespective of whether they turn out to be wrongful or not. Thus, where this judgment refers to wrongful acts on the part of Perrigo or its directors, it is important to note that this is a reference to that term as defined in the relevant policy, i.e. as an *alleged* wrongful act. In addition, for ease of reference, the wrongful acts are described in this judgment as having been done by Perrigo, although in most cases they are alleged to have been done by the directors and former directors of Perrigo.

BACKGROUND

15. While the key issue in this case can, and has been, easily stated, the factual background to the original claim made under the 2014 Policy and the claims which have been made under the subsequent policies (the 2015 Policy and the 2016 Policy), is considerably more complex. Paragraphs 6.1 to 7.2 of the Agreed Statement of Facts give a useful summary of the background to the litigation between Perrigo and Mylan, which led to the Mylan Counterclaim against Perrigo. The Mylan Counterclaim alleges that Perrigo made a series of misrepresentations regarding, inter alia, the Mylan Offer, in order to persuade shareholders in Perrigo to reject that offer. The Mylan Counterclaim was notified by Perrigo to the 2014 Policy. Clause 5.1(iii) of the 2014 Policy states:

"If a single Wrongful Act or act or a series of related Wrongful Acts or acts give rise to a claim under this Policy then all claims made after the expiry of this Policy arising out of such similar or related Wrongful Acts or acts shall be treated as though first made during this Policy Period."

16. For the purposes of this aggregation clause, the Mylan Counterclaim contains the first set of wrongful acts, to which claims made '*after the expiry of the [2014] Policy'* are compared, to determine if those later wrongful acts are '*similar or related'* to them. If they are then those later wrongful acts are '*treated as though first made during the [2014] Policy Period'*. The later wrongful acts are contained in four subsequent claims, which are considered in detail below i.e. the Roofers Complaint, the Keinan Complaint, the Amended Roofers Complaint and the Carmignac Complaint.

17. However, before doing so, it is necessary to have regard to the law relevant to the interpretation of aggregation clauses in insurance contracts.

LAW APPLICABLE TO THE INTERPRETATION OF AGGREGATION CLAUSES

18. There was no disagreement between the parties that the principles set out by Lord Hoffmann, in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 All ER 98 at pages 114 – 115, are applicable to the interpretation of the insurance contracts in this case. These principles were most recently adopted by the Supreme Court in the case of *Law Society of Ireland v Motor Insurance Bureau of Ireland* [2017] IESC 31 at para [7] and it is not proposed to set them out herein. However, of particular importance in this case is the fourth principle, i.e. that the meaning which a document conveys to a reasonable man is not the same thing as the meaning of its words to be found in a dictionary. In this regard, Lord Hoffmann makes clear that the meaning of a document is what the parties using those words, '*against the relevant background'*, would reasonably have understood the document to mean.

19. Since in this case we are dealing with the specialised world of insurance contracts, and within that world, the even more specialised world of aggregation clauses, the *'relevant background'* for the interpretation of those clauses has particular importance. Thus, in considering what is meant by '*similar or related'*, when that term is used in an aggregation clause, it is not what a dictionary says those terms mean, that is relevant. For example, one might be 'related' to a person by blood or marriage, but this is clearly not the meaning of that term in Clause 5.1(iii) of the 2014 Policy. Instead, regard must be had to the following case law on insurance contracts to determine the '*relevant background'* for the interpretation of the term '*similar or related'* in the aggregation clause in this case.

Aggregation clauses generally

20. First, it is necessary to consider aggregation clauses generally. As regards the purpose of those clauses, in the English Court of Appeal case of *Scott v Copenhagen Reinsurance Co (UK) Ltd* [2003] EWCA Civ 688, at para [12], Rix L.J. stated that:

> "There were no submissions as to how, if at all, the function of an aggregation clause might assist this court to resolve the issue before it. I suppose, however, that its function is to police **the imposition of a limit by treating a plurality of linked losses as if they were one loss**. For this purpose the losses have to be identified by a unifying concept: in this case 'one event', or strictly speaking 'arising from one event'". (Emphasis added)

21. In a similar vein, in the English High Court case of *AIG Europe Limited v OC320301 LLP & Ors* [2015] EWHC 2398 (Comm), Teare J. noted at paragraph [30] that:

> "The aim or object of the [aggregation] clause is to permit claims to be aggregated for the purpose of applying the limit of the insurer's liability per claim."

At para. [68] of *Scott,* Rix L.J. went on to note that:

> "A plurality of losses is to be regarded as a single aggregated loss if they can be sufficiently linked to a single unifying event by being causally connected with it. The aggregating function of such a clause is antagonistic to a weak or loose causal relationship between losses and the required unifying single events. This is the more easily seen by acknowledging that, once a merely weak causal connection is required, there is in principle no limit to the theoretical possibility of tracing back to the cause of causes. The question therefore in my judgement becomes: **is there one event which should be regarded as the cause of these losses so as to make it appropriate to regard these losses as constituting for the purposes of aggregation under the policy one loss**" (Emphasis added)

22. Based on the foregoing, it is clear that, in considering an aggregation clause, this Court is considering a '*unifying concept'*, for treating more than one loss as one loss. In this case, the unifying concept is that the two sets of losses arise from similar or related acts. Thus, to take the first claim after the Mylan Counterclaim, i.e. the Roofers Complaint, the question is, are the wrongful acts in the Roofers Complaint similar or related to the wrongful acts in the Mylan Counterclaim, such that it is appropriate to regard the two sets of losses '*as constituting for the purposes of aggregation under the policy'* one loss , and so apply '*the limit of the insurer's liability per claim'*, and in this way restrict Chubb's liability to the limit on the 2014 Policy?

23. In deciding this question, regard must be had to the wrongful acts '*in the round'*. This is clear from the UK Supreme Court case of *AIG Europe Ltd v Woodman* [2017] UKSC 48 at para [25]. There, Lord Toulson noted that that when considering whether two or more transactions were subject to an aggregation clause, the transactions were:

> "to be judged not by looking at the transactions exclusively from the viewpoint of one party or another party, but objectively taking the transactions in the round."

While that case involved 'transactions', rather than 'wrongful acts', there is no reason in principle why this approach should not be taken when one is comparing wrongful acts, for the purposes of determining whether they aggregate back to a previous year's policy.

The wording of the aggregation clause is '*critical'*

24. There are a number of other observations regarding aggregation clause which need to be borne in mind, when they are being considered by the courts. The first is that the words chosen by the parties for their aggregation clause is critical. This is clear from the judgment of Lord Hoffmann in the House of Lords decision in *Lloyds TSB General Insurance Holdings Ltd and others v Lloyds Bank Group Insurance Co Ltd* [2003] UKHL 48, at para [17]. He stated that:

> *"***The choice of language** by which parties designate the unifying factor in an aggregation clause **is thus of critical importance** and can be expected to be the **subject of careful negotiations**; as Lord Mustill observed in the *AXA* case [1990] 3 All ER 517 at 526, [1996] 1 WLR 1026 at 1035, among players in the reinsurance market '**keen interest [is] shown**… **in** the techniques of limits, layers and **aggregations'**." (Emphasis added)

Thus, the actual words which Chubb and Perrigo have chosen for their aggregation clause is an important part of the '*relevant background'* when interpreting their contracts.

An 'event' aggregation clause v. an 'originating cause' aggregation clause

25. Another part of that '*relevant background'* is the type of aggregation clause chosen - whether an 'event' aggregation clause or an 'originating cause' aggregation clause. Thus, one critical aspect of the '*careful negotiations'* to which Lord Hoffmann refers is whether the insured and the insurer agree to an aggregation clause in which the '*unifying factor'*, which leads to the aggregation of the disparate claims, is an 'event' or an 'originating

cause/underlying cause' (referred to hereinafter as just an 'originating cause'). It is clear from the *Lloyds* case that there is an important difference between an 'event' clause and an 'originating cause' clause (and indeed, as noted below, a difference in the cost of the insurance, depending on which clause is agreed). This is clear from para [14] of Lord Hoffman's judgment (in which he referenced the High Court judgment of Moore-Bick J. which was under appeal):

> *"*Moore-Bick J said ([2001] 1 All ER (Comm) 13 at 24 (para 24)) that the purpose of an aggregation clause was:
>
> > '… to enable two or more separate losses covered by the policy to be treated as a single loss for deductible or other purposes when they are linked by a unifying factor of some kind [….]

26. At para. [16], Lord Hoffman continued:

> An 'event', [Lord Mustill in *AXA Reinsurance (UK) Ltd v Field* [1996] 3 All ER 517] said, was 'something which happens at a particular time, at a particular place, in a particular way'. **A 'cause' on the other hand, was less constricted**: it could be a continuing state of affairs or the absence of something happening. The word '**originating' was also in his opinion chosen 'to open up the widest possible search for a unifying factor**'. This meant that in the *AXA* case the incompetence of a Lloyds underwriter was not an 'event' giving rise to the losses under a number of separate policies which he had written on behalf of various syndicates, whereas in [*Cox v Bankside Members Agency Ltd* [1995] 2 Lloyd's Rep 437] it had been held to be the 'originating cause' of such losses" [….].

27. At para [25], Lord Hoffmann noted that the '*underlying cause'* clause which was the '*unifying factor'* for the aggregation of disparate claims in that case was, in contrast to an *'event'* clause, a very broad unifying factor:

"It means that the parties started by choosing a very narrow unifying factor: not 'any underlying cause', not 'any event' or even 'any act or omission', but only and specifically an act or omission which gives rise to the civil liability in question. Having chosen this as the opening and, one must assume, primary concept to act as unifying factor, they have then, by a parenthesis, produced **a clause in which the unifying factor is as broad as one could possibly wish**." (Emphasis added)

28. The significant difference between an event clause and an originating cause clause is also illustrated by the English Court of Appeal case of *Spire Healthcare Ltd v Royal & Sun Alliance Insurance Ltd* [2022] EWCA Civ 17, where at para [21], Andrews LJ stated that:

"Aggregation clauses like this one, which refer to claims or occurrences "consequent on or attributable to one source or original cause", use a traditional and well-known formula to **achieve the widest possible effect** as Longmore LJ (delivering the judgement of the court) stated in *AIG Europe Ltd v OC320301 LLP* [2017] 1 All ER 143, para 21. Whilst the decision of the Court of Appeal in that case was overturned by the Supreme Court in *AIG v Woodman* (above), those observations were not disapproved. Indeed, they are consistent with a long line of earlier authorities." (Emphasis added)

29. Another general point of relevance to the choice by Perrigo and Chubb of an 'event' clause, rather than a 'originating cause' clause, is made by Lord Hobhouse at para [31] of *Lloyds*, where he states:

"Another preliminary observation which needs to be made, which is true of very many professionally drafted commercial and financial contracts, and is particularly true in the present case, is that **there are often well-established alternatives open to the parties in the drafting of their agreemen**t. **The choice made from among these alternatives**

represents part of the bargain struck by the parties and must be respected by anyone (judge or arbitrator) adjudicating upon a dispute arising under the document. As noted by Lord Mustill in *AXA Reinsurance (UK) LTD v Field* [1996] 3 All ER 517 at 522 – 527, [1996] 1 WLR 1026 at 1031 – 1035, and, as I will explain below, **aggregation clauses come in different well-established forms**. The clause in the present case is no exception. The form it takes is plain and apparent from the language which the parties have used." (Emphasis added)

30. At para [51], he states:

"Returning to the aggregation clause in the present policy, there are no words of equivalent strength to those found in the *AXA* and *Municipal* cases – 'attributable to' – 'a single source' – 'originating cause' [….] The parties could, if they had so chosen, have used a clause such as that found in the *AXA* or *Municipal* cases. **They chose not to and, no doubt, the cost of obtaining insurance cover was reduced as a result. Their choice should be respected.** (Emphasis added).

31. There is no doubt that the disputed clause in this case (Clause 5.3(iii) of the 2014 Policy) is an 'event' aggregation clause and not an 'originating' aggregation. It is also clear that claims against Perrigo would be more likely to be aggregated with an 'underlying cause' (or 'originating cause') clause, than they would be with an 'event clause', and so more likely that that there would be an application of *'the limit of the insurer's liability per claim*'. This explains Lord Hoffmann's reference to why choosing an originating cause clause, over an event clause, should lead to a reduction in insurance costs for the insured. This is because it is more likely, with an originating cause clause, that claims from subsequent years will be aggregated to an earlier year and so it is more likely that the insured will make a saving of the maximum pay-out on the policy, *albeit* that the insured may benefit from exceeding any retention paid.

32. Applying Lord Hoffmann's logic, Perrigo would be expected to have paid more for the benefit of an 'event' clause, than if it had agreed to an 'originating cause' clause. This therefore is part of the '*relevant background'* when interpreting Clause 5.1(iii) and as noted by Lord Hoffmann, this choice of a more restricted clause should be '*respected'* by this Court.

33. This aspect of the *'relevant background'* is further highlighted by the fact that, when it came to the 2016 Policy, the parties negotiated an originating cause clause, rather than an event clause. This is clear from Clauses 5.2 and 3.51 of the 2016 Policy, which state that:

> "5.2 A Single Claim shall attach to the Policy only if the notice of the first Claim, Investigation or other matter giving rise to a claim under a policy, that became such Single Claim, was given by the Insured during the Policy Period."

> "3.51. Single Claim means all Claims or Investigations or other matters **giving rise to a Claim under this Policy that relates to the same originating source or cause or the same underlying source or cause**, regardless of whether such Claims, Investigations or other matters giving rise to a claim under this Policy involve the same or different claimants, Insureds, events, or legal causes of action".

34. This aggregation clause provides that the unifying factor for the aggregation of disparate claims is that they *arise from the same originating/underlying cause or source*. This is to be contrasted with the aggregation clause, with which this Court is concerned, in Clause 5.1(iii) of the 2014 Policy, in which the unifying factor is more restricted as the claims must *arise from similar or related wrongful acts.* This contrast between these two clauses highlights that it is the nature of the wrongful acts, not their underlying cause, which is the unifying factor in this case, and which will determine whether it is appropriate for them to be aggregated into one loss and so for the insurer's one year limit to apply to the claims.

35. Thus, in this case, this Court does *not* have to determine whether the wrongful acts forming the basis for the subsequent claims (in the Roofers Complaint, the Keinan Complaint,

the Amended Roofers Complaint and the Carmignac Complaint) arise from the *same cause or the same underlying source* as the claims in the Mylan Counterclaim e.g. do all the wrongful acts arise from rejecting the Mylan Offer. Indeed, in this regard, counsel for Perrigo accepted that if Clause 5.1(iii) were an originating cause clause, rather than an event clause, there would be a basis for aggregating back the Roofers Complaint, the Amended Roofers Complaint and the Carmignac Complaint to the 2014 Policy, as they, like the Mylan Counterclaim, all arose from the desire to have the Mylan Offer rejected.

36. To summarise this caselaw, all of this is *'relevant background'* to concluding what the parties in this case would reasonably have understood the expression '*similar or related'* in Clause 5.1(iii) to mean. This is because it is clear to this Court that Clause 5.1(iii) is an event clause, rather than an originating cause clause. It is also clear from the caselaw, that this Court must determine whether the wrongful acts to be compared, are similar or related, not as those terms are generally understood in the English language, but as those terms are understood in the context of an aggregation clause in an insurance policy, where the parties have deliberately chosen an 'event' clause rather than an 'originating cause' clause. This choice was made by the parties in light of the very significant differences between those clauses, including the fact that the cost to an insured of an 'event' clause would be expected to be more. It is important therefore to bear in mind that the parties did not choose an originating cause clause that would have been '*less constricted'* or '*as broad as one could possibly wish'*. Instead, they opted for the more restricted and less broad 'event' clause. This is because, unlike an originating cause clause, an event clause does not have the '*widest possible effect'* and it does not open *'up the widest possible search for a unifying factor'* in order to achieve a '*limit of the insurer's liability per claim'*.

37. Finally, in the context of aggregation clauses generally, reference should be made to *Woodman* case at para [22]. There, in the context of an aggregation clause, where the unifying

event was '*a series of related matters or transactions*', Lord Toulson noted that the determination by a court of whether transactions are related is an '*acutely fact sensitive exercise'*. He also observed that it involves *'an exercise of judgment, not a reformulation of the clause to be construed and applied*'. While his comments were in the context of related transactions, rather than related wrongful acts, this Court cannot see any reason in principle for them not also being applicable to this Court's consideration of 'similar or related' wrongful acts. However, before undertaking this '*exercise of judgment'* as part of this '*acutely fact-sensitive exercise',* it is necessary first to consider the treatment of the terms 'similar' and 'related' in other cases involving aggregation clauses.

Meaning of 'similar' and 'related' when used in aggregation clauses

38. In the *Woodman* case at para [22], Lord Toulson considered the meaning of the word *'related'* when it is used in an aggregation clause. He held that:

> "Use of the word 'related' implies that there must be some interconnection between the matters or transactions, or in other words that they must in some way fit together […]"

39. As regards what is meant by '*similar*' when it is used in an aggregation clause, Teare J. held in *AIG Europe Ltd* at para [30] that:

> "[T]he requisite degree of similarity must be a real or substantial degree of similarity as opposed to a fanciful or insubstantial degree of similarity. This is not adding words which are not to be found in the clause. Rather it is construing the adjective 'similar' which is found in the clause."

40. While Teare J.'s conclusion, regarding whether the claims should be aggregated, was reversed on appeal, it is important to note that Teare J.'s finding on what was meant by similarity was not challenged on appeal. However, while definitions of 'similar' and 'related'

are of some assistance, what is more helpful is the conclusions which have been reached in other cases where those terms are used in 'event' aggregation clauses.

41. In that case, a company called Midas wished to develop holiday homes in Turkey and Morocco for which purpose it engaged the International Law Partnership LLP ("**TILP**"), which was insured by AIG. Investors' monies were not to be paid over by an escrow agent to Midas until the promised level of security was in place. However, the investors' monies were lost and it was claimed that *if* TILP had put in place the appropriate level of security this would not have happened. The relevant aggregation clause provided that all claims which were *'similar acts or omissions in a series of related matters or transactions'* were to be regarded as one claim.

42. At para [31] of his judgment, Teare J. held that the Turkish and Moroccan claims '*were not identical, but they do not have to be*' and he held that there was a '*real and substantial degree of similarity'* between them. On this basis he held that they '*arose out of similar acts or omissions'* and so were to be aggregated.

43. Although undoubtedly there could be said to be a degree of similarity between the two sets of acts, the Supreme Court held that were not sufficiently similar to be subject to aggregation under that 'event' aggregation clause. This is because in *Woodman*, Lord Toulson concluded at para [27] that the Turkish and the Moroccan claims could not be aggregated together as they '*related to different sites, and the different groups of investors were protected by different deeds of trust over different assets.'*

44. The English High Court case of *Discovery Land Company LLC & Ors v Axis Speciality Europe SE* [2023] EWHC 779 (Comm), is another case where superficially similar or related acts were held not to be sufficiently similar or related for the purposes of an 'event' aggregation clause. In that case, there were two insurance claims against a firm of solicitors. One related to the wrongful withdrawal by the solicitor (Mr. Jones) of surplus funds from an account

belonging to the solicitor's firm, for the purchase of Taymouth Castle (called the 'Surplus Funds Claim'). The other claim was the wrongful withdrawal of funds by that same solicitor arising from a fraudulent loan which had been obtained as a result of security provided by Taymouth Castle (called the 'Dragonfly Claim'). The issue was whether these two claims were to be aggregated pursuant to an aggregation clause, which provided that all claims would be regarded as one claim if they were:

> *"(c) one series of related acts or omissions'[or]*
>
> *(e) similar acts or omissions in a series of related matters or transactions"*

45. Knowles J. relied on Teare J.'s clarification of the meaning of the word *'similar'* when used in aggregation clauses in *AIG Europe Ltd*, and at para. [162] he stated that:

> "AXIS says that 'the surplus funds claim was founded on a misappropriation of funds paid by the client, whereas the Dragonfly Claim was founded on the misappropriation of funds raised by granting a security over property owned by the client **is a distinction without a real difference**'. I respectfully consider that the difficulty with that proposition is that the distinction which is present in this case is not revealed by that choice and generality of summary. I agree with the Claimants that AXIS's submission **that both Claims involved 'thefts of closely connected clients' money by Mr Jones' ignores the detail between the two**. In relation to the Surplus Funds Claim the act or omission giving rise to the claim under the policy was the wrongful release of money from the client account, whereas in the Dragonfly Loan Claim the act or omission was, 9 months later, the wrongful arrangement of a facility and charge, drawn down under the facility and then release from the client account. (Emphasis added)

46. This case starkly highlights that the meaning, of 'related' and 'similar' in an everyday context, is very different from its meaning in the context of an aggregation clause. This is

because at a '*high level of generality',* to use the expression used by Knowles J. at para [159], the acts were clearly related or similar, i.e. they both involved the misappropriation of client funds in the context of the same property (Taymouth Caste). In everyday language it is indeed difficult to disagree with the submissions in that case that the distinction between stealing a client's funds paid in by that client, on the one hand, and stealing clients' funds raised by granting security over a client's property, on the other hand, is a distinction without any real difference. Accordingly, in everyday language, these two acts are similar or related.

47. However, *for the purposes of an event aggregation clause* in an insurance contract, it is a distinction with a difference, because these two wrongful acts were held by the English High Court not to be similar or related. Thus, in that case wrongfully releasing money from a client account was not sufficiently related to another instance of wrongfully releasing money from a client account (after the wrongful arrangement of a loan facility), even though they both involved the misappropriation by a solicitor of his clients' funds.

48. The case of *Bishop of Leeds and another v Dixon Coles & Gill and another* [2022] EWCA Civ 1211 is another claim in which superficially similar or related acts were held not to be similar or related for the purposes of an event aggregation clause. It involved claims against a solicitor (Mrs. Box), who had carried out numerous thefts of clients' moneys over a long period of time and on a grand scale. The insurance policy contained a monetary limit for any one claim. It also contained an aggregation clause, which provided that all claims were to be regarded as one claim if they arose from any of the following limbs:

> 'one act or omission,
>
> one series of related acts or omissions,
>
> the same act or omission in a series of related matters of transactions,
>
> similar acts or omissions in a series of related matters or transactions.'

At para [61], Nugee LJ stated:

> "In the present case the effect of Limbs 1 and 2 of the aggregation clause is that the claims have to result from either one act or omission, or from a series of related acts or omissions. It is accepted by Mr Pooles that Mrs Box's dishonesty is not itself an act, and that the acts or omissions are her individual thefts. The question is whether they are sufficiently related to be a series for the purpose of the clause; and that question turns on what the relevant unifying factor is. That, according to Lord Hoffmann, is to be found in the language of the aggregation clause."

49. At paragraph [72] he states:

> "[Mrs Box's thefts] are not the very same act, repeated a number of times. They are no doubt similar acts, all flowing from her dishonesty; **but this is not enough to make them a series of related act for the purposes of aggregation**." (Emphasis added)

50. This case therefore highlights, as the *Discovery* case does, that while two thefts of clients' moneys by the same solicitor might in everyday language be said to be related or similar acts, because, *inter alia*, they flow from dishonesty, it is a very different matter where the interpretation of 'similar' or 'related' is '*for the purposes of aggregation'* under the terms of an event aggregation clause.

51. A case which provides an example of a factor which can make wrongful acts similar or related for the purposes of an event aggregation clause is the Australian case of *Bank of Queensland v AIG Australia Limited* [2019] NSWCA 190, in which the clause provided that *'claims arising out of, based upon or attributable to one or a series of related wrongful acts'* were deemed to be a single claim.

52. The case concerned the Bank of Queensland ("**Bank**"), which, through an intermediary, DDH, operated 'Money Market Deposit Accounts' for its clients. The clients appointed SFP as

their financial planner, and SFP, through DDH, arranged those deposits for those clients. Unauthorised withdrawals were made from the deposits by SFP and the clients sought to recover their losses from the Bank as they claimed that the Bank's agent (DDH) knew that SFP was operating a Ponzi scheme.

53. The New South Wales Court of Appeal held that the wrongful acts were related for the purposes of the aggregation clause. This was because each claim against the Bank was based on its vicarious liability for the wrongful acts of its agent in paying out the monies out of the client account. In particular, it was held that the unifying factor rendering all of the wrongful acts 'related' was the fact that all of the wrongful acts were engaged in by the Bank, while it was deemed to have known, through its agent, of SFP's fraudulent Ponzi scheme.

54. In this context, it is relevant to noted that in the *Bishop of Leeds* case, the dishonest acts (the thefts by the solicitor) could be said to be *'related'* as a matter of ordinary language, but not *'related'* such as to aggregate under an insurance policy with an event aggregation clause. In contrast, in the *Bank of Queensland* case, the opposite conclusion is reached, where the dishonest appropriation of monies is held to be *'related'* such as to aggregate under an insurance policy, because of the knowledge of the Bank (through its agent) that the funds were being misappropriated.

55. At para [13] Bathurst CJ noted that the acts must not only be wrongful but the '*acts themselves must be related or interconnected*'. He was clearly conscious of the important difference between an event clause, in that case, and other cases involving originating cause clauses, since he referred at paragraph [14] to the judgment of Lord Mustill in *Axa Reinsurance (UK) plc v Field* [1996] 2 Lloyd's Rep 233 (relied upon in the *Lloyds* case) and noted that the courts have been '*astute in this area to distinguish between clauses where the unifying factor is an act or where it is a cause*'. This is also clear from paragraph [16] where he referred to the *Lloyds* case and noted that:

> "As both Lord Hoffmann and Lord Hobhouse pointed out in the passages from the speeches cited by MacFarlan JA, the **unifying act required by the aggregation clause was to be found in the acts or omissions not the cause of the acts or omissions"** (Emphasis added)

He continued at para [26] that:

> "[E]ach claim was attributable to a Wrongful Act by the agent in paying money out of the claimant's individual "Money Market Deposit Account" to the client's financial planner [SFP] **with knowledge that the financial planner** was using the funds received in a fraudulent Ponzi scheme. **In making the payments with that knowledge**, the agent was alleged to have breached its contractual and fiduciary obligations for which [the Bank] was said to be vicariously liable." (Emphasis added)

He concluded at para. [28]:

> "Further, the circumstances in which the payments were made were such as to constitute them 'related Wrongful Acts'. Each of the claimants had the same financial planner, a representative of which was an authorised signatory on each of the claimants' 'Money Market Deposit Account[s]'. The breach in each case was identical, namely, **making the payment with knowledge of the fraudulent activities** of the financial planner. In the circumstances, the Wrongful Acts were related Wrongful Acts for the purpose of the clause." (Emphasis added)

MacFarlan JA agreed that the wrongful acts were 'related'. It is relevant to note that little or nothing turned on the fact that the aggregation clause states that the wrongful acts should be a *'series'* of related wrongful acts. This is because at paragraph [94], he states that:

> "the use of the word "serious" in the aggregation,/disaggregation provision in the present Policy adds little, if anything to the concept of relatedness of the acts which is

integral to the provision. In the context of the present dispute, I read it, at most, as emphasising the need for the relent relevant acts to be "related"".

56. For this reason, the aggregation clause in the *Bank of Queensland* is the closest to the wording in Clause 5.1(iii) of any of the cases opened to the Court. This is also clear from para [102]:

> "The aggregation clause in the present case is not an explicitly cause-based clause similar to the clauses under consideration in the *Cox* and *Municipal* decisions to which Lord Hoffmann referred. Nor however is it, as the clause in *Lloyds TSB* was found to be, devoid of an indication as to the connecting factor that would make the Insureds' acts "related" (whether as part of a "series" or otherwise) for the purposes of clause. An identification of a sufficient connecting factor is in my view to be found in the present clause's reference to **Wrongful** Acts. Whilst in *Lloyds TSB* the acts certainly had to be wrongful in order to be relevant to the claim for indemnity, the aggregation clause did not refer to their wrongfulness. The present clause does however do that. Moreover it does not use the somewhat clumsy expression used in the *Lloyds TSB* clause of a "related series of acts or omissions" but more clearly identifies the relevant question as **whether the Wrongful Acts are related**." (Emphasis added)

At para [59] he states that:

> "[T]he Insurers contend that [the Bank]'s alleged Knowledge of Fraud is not a unifying factor which it is permissible to consider in determining whether the Wrongful Acts are 'related'".

However, he clearly rejected the argument that the Bank's knowledge of the fraud was not a unifying factor, since he found that, because of this knowledge, they were related. This is clear from para [103] where he concludes that:

"In my opinion, the fact that all of the Wrongful Acts alleged in the [amended statement of claim] are alleged to have been wrongful (albeit in the case of some acts, inter alia) **on the basis** that they were engaged in by [the Bank] as part of SFP's Ponzi scheme **with knowledge** of SFP's fraud **is a unifying factor rendering them related** for the purposes of the aggregation clause". (Emphasis added)

57. It is clear from the foregoing caselaw that the expressions 'similar' and 'related' are to be very carefully interpreted in the context of event aggregation clauses, as their meaning is different than their general meaning in a dictionary. Thus, while one might have thought that a claim that a bank's agent's release of funds to a Ponzi scheme is *per se* related to another claim that the same bank's agent released funds to a Ponzi scheme, this is not the case in the context of an event aggregation clause. Something more is required to make them related for the purposes of an event aggregation clause. Accordingly, for two wrongful acts of placing investments into a Ponzi scheme to be related in the *Bank of Queensland* case, it is the knowledge of the agent that the funds were being invested in a Ponzi scheme, which is the unifying factor. In contrast, where there is no equivalent unifying factor, the dishonest acts by solicitors regarding their clients in the *Bishop of Leeds* case and in the *Discovery* case were not sufficiently related to each other to lead to aggregation under the event aggregation clause in that case. It is clear therefore that the expressions 'related' and 'similar' are restrictively interpreted as unifying factors when used in event aggregation clauses.

ARE THE WRONGFUL ACTS IN THIS CASE SIMILAR OR RELATED?

58. The wrongful acts which Perrigo is alleged to have committed, which are first in time, are set out in the Mylan Counterclaim. This was duly notified by Perrigo to Chubb when the

2014 Policy was in force. Accordingly, there is no dispute that insurance coverage is being provided by Chubb to Perrigo under the terms of the 2014 Policy for that claim. It is useful at this juncture to set out once again the aggregation clause in Clause 5.1(iii):

> *"If a single Wrongful Act or act or a series of related Wrongful Acts or acts give rise to a claim under this Policy then all claims made after the expiry of this Policy arising out of* ***such similar or related Wrongful Acts*** *or acts shall be treated as though first made during this Policy Period."* (Emphasis added)

Section 3.37 defines Wrongful Act since it provides that:

> *"Wrongful Act means any proposed or alleged, breach of trust, error, omission, misstatement, misleading statement, neglect or breach of duty or any other matter claimed against an Insured whilst acting in the capacity of an Insured, including but not limited to any violation of the Companies Act 1990, the Company Law Enforcement Act 2001, Sarbanes-Oxley Act of 2002 or any equivalent law, rule or regulation in any other jurisdiction, any matter claimed against an Insured solely by reason of their capacity as an Insured, and an Employment Related Wrongful Act."*

59. The key issue therefore in this case is whether the wrongful acts which form the basis of subsequent claims (i.e. the Roofers Complaint, the Keinan Complaint, the Amended Roofers Complaint and the Carmignac Complaint), which were notified by Perrigo to Chubb, are similar or related to the wrongful acts, which form the basis of the Mylan Counterclaim. If they are, they are aggregated back to the 2014 Policy, and do not need to be considered under the terms of the 2015 Policy and/or the 2016 Policy.

60. The first step in this analysis is to consider the nature of the wrongful acts which form the basis of the Mylan Counterclaim.

Mylan Counterclaim

61. The relevant details of the Mylan Counterclaim are set out at para 8.1 *et seq* of the Agreed Statement of Facts. In brief, the wrongful acts arose from the failed hostile takeover of Perrigo by Mylan. The Deadline for the acceptance of the Mylan Offer by Perrigo shareholders was 13 November 2015, by which date an insufficient number of shareholders had accepted the offer, leading to its rejection.

62. Prior to that date however, Perrigo had, on 17 September 2015, filed an action in the US against Mylan alleging that Mylan had misrepresented certain issues to Perrigo's shareholders in order to *persuade them to accept Mylan's Offer* for their shares. Mylan responded on 22 September 2015 by filing a counterclaim to Perrigo's complaint (the Mylan Counterclaim) seeking injunctive relief against Perrigo to halt certain misrepresentations, which Mylan alleged Perrigo was making to Perrigo shareholders regarding Mylan's Offer, in order to *persuade them to reject Mylan's Offer*.

63. In the Mylan Counterclaim, the wrongful acts alleged by Mylan against Perrigo are that, in order to defeat the Mylan Offer, four categories of misrepresentations were made by Perrigo in breach of s 14(e) of the Securities Exchange Act 1934, i.e.

(i) It misrepresented that the tender offer premium contained in the Mylan Offer undervalued Perrigo ("**Offer Value Misrepresentation**").

(ii) It falsely claimed that the Mylan Offer was dilutive rather than accretive for Perrigo shareholders ("**Dilutive Misrepresentation**").

(iii) It falsely claimed that Mylan's largest shareholder, Abbott, did not support the takeover attempt ("**Abbot Misrepresenation**").

(iv) It misrepresented the potential synergies of the combination of Mylan and Perrigo ("**Synergy Misrepresentation**")

64. On 30 September 2015, Perrigo notified the Mylan Counterclaim to the 2014 Policy (since that policy was in force from 18 December 2014 to 18 December 2015). Much depends

in this case therefore on whether the subsequent wrongful acts (which form the basis of the Roofers Complaint, the Keinan Complaint, the Amended Roofers Complaint and the Carmignac Complaint) are similar or related to any of the foregoing wrongful acts (i) to (iv) in the Mylan Counterclaim, i.e. the Offer Value Misrepresentation, the Dilutive Misrepresentation, the Abbot Misrepresentation or the Synergy Misrepresentation.

A.THE ROOFERS COMPLAINT

65. The first in time of the four complaints, subsequent to the Mylan Counterclaim, is the Roofers Complaint, which is set out in para 9.1 *et seq* of the Agreed Statement of Facts. This is a class action taken in the US by Perrigo shareholders seeking damages from Perrigo. It was filed on 18 May, 2016 against Perrigo and Mr. Joseph Papa (Perrigo's then Chairman and Chief Executive Officer) alleging:

(a) a breach of section 10(b) of the Securities Exchange Act 1934 brought on behalf of purchasers of shares in Perrigo between 21 April 2015 (the day the Perrigo Board rejected the Mylan Offer) and 11 May 2016, and

(b) a breach of section 14(e) Of the Securities Exchange Act 1934 brought on behalf of investors in Perrigo shares as of the Deadline of 13 November 2015.

66. On 6 June 2016 this claim was notified by Perrigo to the 2014 Policy and the 2015 Policy. Chubb claims that the wrongful acts in the Roofers Complaint are '*similar or related'* to the wrongful acts in the Mylan Counterclaim (which, it is agreed, are covered by the 2014 Policy). Chubb therefore claims that the Roofers Complaint is, to use the words of Clause 5.1(iii), to '*be treated as though first made'* during the period covered by the 2014 Policy, and so is only covered by the 2014 Policy.

Do dissimilarities between *the claims* mean *wrongful acts* are not 'similar or related'

67. In claiming that the wrongful acts in the Roofers Complaint are not similar or related to the wrongful acts in the Mylan Counterclaim, Perrigo points to the dissimilarities between the two claims.

68. For example, Perrigo points out that the Roofers Complaint is a class-action taken by shareholders against their company (Perrigo), while the Mylan Counterclaim is a claim for injunctive relief between Perrigo and a third party company, Mylan; that the Roofers Complaint alleges breaches of a different section of the Securities Exchange Act 1934 (s. 10(b)) than that alleged in the Mylan Counterclaim (s. 14(e)); that the Roofers Complaint seeks damages, as distinct from injunctive relief in the Mylan Counterclaim.

69. At this juncture, it is also appropriate to note that in relation to the other claims (the Amended Roofers Complaint, the Keinan Complaint and the Carmignac Complaint), Perrigo points to other dissimilarities between those claims and the Mylan Counterclaim. For example the different time period in those class actions (e.g. the Carmignac Complaint covers the period up to May 2016) on the one hand, and the time period relevant to the Mylan Offer/Mylan Counterclaim (i.e. from the date the offer was originally announced on 6 April 2015 to its rejection on 13 November, 2015), on the other hand. Similarly, Perrigo points out that some of the later claims have different defendants from the Mylan Counterclaim (e.g. in the Keinan Complaint the firm Ernst &Young LLP, which is not a party to the Mylan Counterclaim, is a co-defendant with Perrigo).

70. However, it seems to this Court that these and other dissimilarities *between the complaints* are not determinative of the task of this Court. This is because this Court's task is to compare *the wrongful acts*, not the consequences of the wrongful acts, such as the statutory breaches which were alleged arising from those wrongful acts, or the nature of the proceedings/claims which arise from the wrongful acts, or the parties being sued *etc.* This is

because the aggregation clause refers to the similarity or relatedness of wrongful acts, and as pointed out in the *Lloyds* case, the wording of the aggregation clause is *'critical'*.

Thus, the focus of the analysis has to be on the alleged wrongful acts.

Comparing the nature of the wrongful acts

71. The wrongful acts which form the basis of the Roofers Complaint are set out in the Agreed Statement of Facts. It is clear from that document that it is claimed that in order to persuade Perrigo shareholders to reject the Mylan Offer the following allegedly wrongful acts were committed by Perrigo, i.e. that:

(i) it misrepresented that Mylan's offer substantially undervalued Perrigo; ("**Value of Offer Misrepresentation**")

(ii) it misrepresented that Perrigo would be able to achieve 5%-10% in organic growth as a stand-alone company; ("**Organic Growth Misrepresentation**")

(iii) it misrepresented that Perrigo was experiencing serious issues integrating the Omega acquisition. ("**Omega Integration Misrepresentation**")

The relevance or irrelevance of the purpose of the wrongful acts?

72. Counsel for Chubb stated that, when comparing the wrongful acts, which form the basis of the claims (in particular, the Roofers Complaint, the Amended Roofers Complaint and the Carmignac Complaint), and comparing them to the wrongful acts in the Mylan Counterclaim, that:

> *"*The core, the simple fact remains that all of the misrepresentations, all the wrongful acts, are those which are said to have been made for **the purpose of inducing shareholders to reject the Mylan tender offer**. They all have that in common. And if that is so, that *per se* must take (sic) them similar, or at the very least, related." (Emphasis added)

Counsel for Perrigo rejected this submission that two wrongful acts are *per se* similar or related for the purpose an event aggregation clause, if they are made for the same purpose. This Court agrees with Perrigo that just because two acts are made with the same purpose does not *per se* mean that they are similar or related for the purposes of an event aggregation clause, such as Clause 5.1(iii). This is because it is clear from the caselaw that the terms 'similar' and 'related', *when used in an event aggregation clause,* are narrowly interpreted. Thus, as Lord Mustill makes clear, an event is something which happens at a particular time, at a particular place, in particular way. Therefore, as we are dealing with an event aggregation clause, the wrongful acts, which are 'events' happen at particular times, places and in a particular way, and it is these events which must be compared to see if they are similar or related, not the purpose of those events or acts. An originating cause clause is very different and as Lord Mustill pointed out, it is much less restricted than an event clause. The *Discovery* case highlights this point. It illustrates that just because two wrongful acts, such as stealing by a solicitor from a client, are made with the same purpose (to financially benefit a solicitor) does not make them similar or related for the purposes of an event aggregation clause.

73. Chubb also made the following written submission, *albeit* in the context of Clause 5.2 of the 2016 Policy, which is an originating cause clause, regarding the similarities between the Mylan Counterclaim and the subsequent claims.:

> "As mentioned previously, the introductory statements contained in the complaints demonstrate that they flow from the wrongful actions taken by Perrigo and senior officers with a view to defeating the Mylan takeover. This is the essence of the Mylan counterclaim. **The subsequent claims have the same underlying source *albeit* that they contain different material facts** said to give rise to their respective causes of action." (Emphasis added)

This submission, while made in a different context, nonetheless does not assist Chubb in its claim, under Clause 5.3(iii), that the subsequent claims should not be aggregated back to the 2014 Policy. This is because, Clause 5.1(iii) of the 2014 Policy is an event clause, not an originating cause clause and so the fact that the subsequent claims have the same underlying source as the Mylan Counterclaim, is not determinative of this issue.

74. Equally however, this Court does not agree with the claim that appeared to be made by Perrigo that in determining whether two or more wrongful acts are similar or related, the purpose behind those wrongful acts is irrelevant to that determination. As already noted in the context of the *Woodman* case, when dealing with whether an act is similar or related for the purposes of an event aggregation clause, one is dealing with an '*acutely fact-sensitive exercise'*. For this reason, all the facts have the potential to impact upon the Court's conclusion that, when looked at '*in the round'*, the wrongful acts are/are not similar or related. Indeed, just as the presence of a common purpose could be a factor, *albeit* not determinative, in concluding that two wrongful acts *are* similar or related, so too the absence of a common purpose could be a factor, *albeit* not determinative, in concluding that two wrongful acts *are not* similar or related.

75. Another argument pursued by Perrigo regarding the purpose of the alleged wrongful acts is that there is nothing wrongful about seeking to persuade shareholders to reject a takeover bid, which is of course correct. On this basis, and since one is determining whether two *wrongful* acts are similar or related, it argued that this militates against a finding that two sets of wrongful acts, in pursuit of this *lawful* aim, could be similar or related *wrongful* acts. However, this Court does not agree. This is because, just as it is not determinative (of whether wrongful acts are similar or related) that two wrongful acts have the same purpose, equally it is not determinative that the purpose which is being pursued is lawful or not lawful. The focus is on the nature of the acts, not their purpose, or whether that purpose is lawful or unlawful.

76. Perrigo also sought to emphasise that 'dishonesty' is not an act or an event, when one is dealing with an event aggregation clause. Thus, it seemed to be claiming that simply because two acts are both dishonest does not make them similar or related acts or 'events' for the purposes of an 'event' aggregation clause, on the basis that dishonesty is not an 'event'. It is true that dishonesty is not an act or event. This is evidenced by the *Discovery* case, since it involved two dishonest acts of theft which were held *not* to be '*one series of related acts*' or '*similar acts or omissions in a related series'*. However, while dishonesty *per se* does not make two wrongful acts similar or related for the purposes of an aggregation clause, the nature of the dishonest *acts* can be a factor in contributing to a conclusion that two wrongful acts are similar or related for the purposes of an event aggregation clause. This is because this is a very fact-intensive and fact specific analysis and it requires a judgment call to be made on an assessment of all the facts and circumstances.

77. In order to deal with the wrongful acts in the order in which they are alleged, it is proposed firstly to look at the first wrongful act in the Roofers Complaint, i.e. the Value of Offer Misrepresentation.

Wrongful act (i) in the Roofers Complaint – Value of Offer Misrepresentation

78. It is necessary to compare wrongful act (i) in the Roofers Complaint (Value of Offer Misrepresentation) and wrongful act (i) in the Mylan Counterclaim (Offer Value Misrepresentation). The former wrongful act is the claim that Perrigo falsely told investors that the Mylan Offer substantially undervalued Perrigo, while the latter wrongful act is the claim that Perrigo gave misleading statements regarding the size of the exchange offer premium for the shares under the terms of the Mylan Offer. On their face, these two wrongful acts are similar and related and it is difficult to see any distinction between them. In particular, this Court does not accept the attempts at distinction made by Perrigo in its written submissions, that the wrongful acts are not similar or related, because there was a *'different focus'* to the wrongful

acts in the Roofers Complaint than the wrongful acts in the Mylan Counterclaim (e.g. it is a damages claim in the Roofers Complaint v. injunctive relief in the Mylan Counterclaim, and that it was brought by different classes of shareholders in the Roofers Complaint v. brought by Mylan in the Mylan Counterclaim). This is because, as already noted, it is clear from the wording of Clause 5.1(iii) that the focus must be on the nature of the wrongful acts and not their consequences or the form of the proceedings.

79. When one looks at the nature of these two wrongful acts, it seems to this Court to be very clear that there is a *'real or substantial degree of similarity'* between the misrepresentation in the Roofers Complaint, that the Mylan Offer '*substantially undervalues Perrrigo and its growth prospects'* (from para 9.5 of the Agreed Statement of Facts), and the misrepresentation in the Mylan Counterclaim, that Perrigo '*inundated its shareholders with false and misleading statements regarding (i) the size of the exchange offer premium*' (from para 8.3 of the Agreed Statement of Facts).

80. On this basis, it seems beyond doubt to this Court that wrongful act (i) in the Roofers Complaint aggregates back to the 2014 Policy.

The remaining wrongful acts

81. Before continuing with an analysis of each of the remaining wrongful acts, it is proposed to consider four of the those wrongful acts collectively, i.e. the Organic Growth Misrepresentation, Omega Integration Misrepresentation (which are contained in the Roofers Complaint) and the Collusive Pricing Misrepresentation and the Tysabri Accounting Misrepresentation (both of which are contained in the Amended Roofers Complaint, with the latter wrongful act alone contained in the Keinan Complaint). These four wrongful acts also feature in the Israeli Electric Complaint, which is set out at para 9.97 of the Agreed Statement of Facts. That is a class action against Perrigo taken by its shareholders, who had purchased shares in the Tel Aviv Stock Exchange. That complaint does not have to be directly considered

in this case, since the four wrongful acts which form the basis of that complaint feature in the Roofers Complaint and in the Amended Roofers Complaint. Accordingly, whatever conclusion is reached regarding the Roofers Complaint and the Amended Roofers Complaint will determine whether the wrongful acts forming the basis of the Israeli Electric Complaint are aggregated back to the 2014 Policy or not. However, the reason for referring to the Israeli Electric Complaint is because it considers the nature of these four wrongful acts, bearing in mind that it is the nature of those four wrongful acts which have to be compared with the wrongful acts forming the basis of the Mylan Counterclaim, to see if they are similar or related.

82. For this reason, it is helpful to consider how the plaintiffs in the Israeli Electric Complaint classified these four wrongful acts. As noted at para 9.101 of the Agreed Statement of Facts, the plaintiffs in the Israeli Electric Complaint claim that those four wrongful acts are '*inextricably linked'*. In the proceedings, they call these four wrongful acts 'avenues' and go on to state that:

> *"Some of the avenues were created by Perrigo for imaginary and fictional profit forecasts, some* ***concealed the true value of Perrigo's*** *assets, and some created hidden potential liabilities for Perrigo (in the form of fines and return of profits)."*
>
> *"However, the four avenues together concealed the company's true state from the investors, and presented deceptive and inflated presentations regarding the company's work so that investors would reject Mylan's purchase offer"* (Emphasis added)

It seems to this Court that this gets to the very essence of the four wrongful acts of Organic Growth Misrepresentation, Omega Integration Misrepresentation, Collusive Pricing Misrepresentation and Tysabri Accounting Misrepresentation, namely that their essential nature is the wrongful inflating of the true value of the company.

83. Thus, in considering whether wrongful acts (ii) and (iii) in the Roofers Complaint (i.e. Organic Growth Representation and Omega Integration Representation), and later in the judgment, whether the two other wrongful acts (Collusive Pricing Misrepresentation and Tysabri Accounting Misrepresentation), are similar or related to the Mylan Counterclaim wrongful acts, it is helpful to bear in mind that the essence of the nature of these four wrongful acts is inflating the company's value.

Wrongful act (ii) in the Roofers Complaint – Organic Growth Misrepresentation

84. The first one to consider is wrongful act (ii) in the Roofers Complaint (the Organic Growth Misrepresentation), namely that, in order to persuade Perrigo shareholders to reject the Mylan Offer, Perrigo allegedly misrepresented that it would be able to achieve 5%-10% in organic growth as a stand-alone company i.e. without any synergies arising from the takeover by Mylan.

85. The question is whether this Organic Growth Misrepresentation is similar or related to any of the wrongful acts, (i) to (iv) in the Mylan Counterclaim, i.e. the Offer Value Misrepresentation, the Dilutive Misrepresentation, the Abbot Misrepresentation or the Synergy Misrepresentation.

86. It has been observed that, while as a matter of ordinary English, two acts could be regarded as similar or related if they have the same objective, it is important to note that the fact that two sets of wrongful acts are alleged to be for the same purpose (defeating the Mylan Offer) is not a determinative factor in assessing whether wrongful act (ii) in the Roofers Complaint is similar or related to the any of wrongful acts (i) to (iv) of the Mylan Counterclaim. This is because, as already noted, one is dealing with an event clause, not an originating cause clause.

87. Looking therefore at *the nature of the acts* themselves, it has been noted that the very essence of the Organic Growth Misrepresentation, an allegedly false misrepresentation that a

company would achieve a 5%-10% organic growth, could be described as the wrongful act of inflating the company's value. This is its nature irrespective of whether it is to increase its share price or indeed to stave off a takeover.

88. This wrongful act is not, in this Court's view, similar or related to the wrongful acts in the Mylan Counterclaim, i.e. the Offer Value Misrepresentation, the Dilutive Misrepresentation, the Abbot Misrepresentation or the Synergy Misrepresentation. This is because these are all very specific wrongful acts confined to their own very specific facts.

89. Firstly, the Offer Value Misrepresentation is a claim that the premium which the Mylan Offer would give to shareholders was only 14% above Perrigo's unaffected share price. This is very different in nature from a claim that Perrigo will achieve 5%-10% organic growth as a standalone company.

90. Secondly, the Dilutive Misrepresentation claims that the Mylan Offer would have a dilutive, rather than accretive, effect on the earnings per share of Perrigo. This again is a very specific claim and is different in nature from a claim that Perrigo will achieve 5%-10% organic growth as a standalone company.

91. Thirdly, the Abbot Misrepresentation, that Abbot did not support the takeover attempt claim, is even more starkly different in nature from a claim that Perrigo will achieve 5%-10% organic growth as a standalone company. The former wrongful act is a misrepresentation of a third party's state of mind, while the latter wrongful act relates to the financial performance of Perrigo. Bearing in mind how strict the interpretation is given to terms such as similar and related in event aggregation clauses, it is difficult to make any argument that these two wrongful acts are similar or related, particularly when one bears in mind that the purpose of the wrongful acts is not determinative of whether two wrongful acts are similar or related in an event aggregation clause.

92. Fourthly, there is the Synergy Misrepresentation, i.e. that Mylan was wrong to claim that it would achieve the same synergies with Perrigo, whether it was a 100% shareholder or a 50% plus shareholder. This is not sufficiently similar or related to a claim that Perrigo will achieve 5%-10% organic growth as a standalone company (when one bears in mind the strict interpretation of words such as 'similar' or 'related' in an event clause). They deal with two very distinct wrongful acts, the former wrongful act concerns the synergies which a particular company, Mylan, would have with Perrigo, whereas the latter does not deal with the synergies which Perrigo would have with another company, Mylan or any other company. Rather it deals with the distinct issue of what growth Perrigo would achieve as a standalone company.

93. The difference between the Organic Growth Misrepresentation and the wrongful acts in the Mylan Counterclaim becomes even clearer when one considers the caselaw on how '*unifying concepts'* in event aggregation clauses (*albeit* that the unifying concepts in the clauses in those cases is not the same as the unifying concept in Section 5.1(iii)) e.g. the cases, to which reference has been made, to the acts of a solicitor stealing from a client being held not to be sufficiently connected with other acts of that solicitor stealing from a client, so as to be subject to an aggregation clause.

94. For the foregoing reasons therefore, this wrongful act (Organic Growth Misrepresentation) is not similar or related to the wrongful acts in the Mylan Counterclaim and so it does not aggregate back to the 2014 Policy.

Wrongful act (iii) in the Roofers Complaint – Omega Integration Misrepresentation

95. Wrongful act (iii) in the Roofers Complaint is that, in order to persuade Perrigo shareholders to reject the Mylan Offer, it misrepresented that Perrigo was experiencing serious issues integrating the Omega acquisition – the Omega Integration Misrepresentation.

96. The issue is whether this wrongful act is similar or related to any of the wrongful acts in the Mylan Counterclaim, i.e. the Offer Value Misrepresentation, the Dilutive Misrepresentation, the Abbot Misrepresentation or the Synergy Misrepresentation.

97. As with wrongful act (ii) in the Roofers Complaint, looking at the nature of this wrongful act (iii), it seems to this Court that a representation that Perrigo was not experiencing serious issues integrating the Omega acquisition (when it allegedly was) can be described, as the wrongful act of inflating the company's value, irrespective of the purpose, e.g. whether to increase its share price or defeat the Mylan Offer.

98. This is a very fact specific wrongful act, relating as it does to the integration of the Omega acquisition into the business of Perrigo. For the purposes of a comparison this Omega Integration Misrepresentation with the wrongful acts in the Mylan Counterclaim, the relevant details of the Offer Value Misrepresentation, the Dilutive Misrepresentation, the Abbot Misrepresentation or the Synergy Misrepresentation have already been set out (when dealing with the Organic Growth Misrepresentation). It is not proposed to set them out again and for very similar reasons to those outlined in relation to the Organic Growth Misrepresentation, which it is not proposed to repeat, this very fact specific wrongful act of Omega Integration Misrepresentation (that Perrigo was not experiencing difficulties integrating Omega into its business, when it allegedly was) is not similar or related to any of these four wrongful acts in the Mylan Counterclaim.

99. Accordingly, this wrongful act (Omega Integration Misrepresentation) does not aggregate back to the 2014 Policy.

Splicing of wrongful acts to different policy periods

100. One of the arguments made by Chubb against aggregating wrongful acts back to the 2014 Policy was that it might lead to a 'splicing' of wrongful acts in a claim between different policies. Because of this Court's conclusion that wrongful act (i) in the Roofers Complaint is aggregated back to the 2014 Policy, while wrongful acts (ii) and (iii) are not, this is exactly what is happening. However, it was suggested, on behalf of Chubb in its written submissionsat para 47, that it is wrong to 'splice' the wrongful acts in a claim between different policy periods, as the claim as a whole should attach to a particular policy period.

101. It is this Court's view that once again the language of the aggregation clause is critical, and in this regard, the reference in that clause is to wrongful acts, not to 'claims' or 'complaints' or 'court proceedings' being deemed to be covered by a particular policy period. On this basis, this Court cannot see any basis for the suggestion that a claim or proceedings cannot be spliced between different policy periods, in the sense that some wrongful acts are covered by one policy and other wrongful acts are covered by a different policy.

102. Although not determinative, but nonetheless in support of this conclusion is the fact that in practice Chubb appears to engage in 'splicing' of claims. This is because one issue which this Court did not have to consider was *one* of the five wrongful acts contained in the 2019 Derivative Complaint, namely the Tysabri Tax Liability Claim. The other four wrongful acts in the 2019 Derivative Complaint are the Omega Integration Representation and the Organic Growth Misrepresentation, which are the same as wrongful acts (ii) and (iii) in the Roofers Complaint, and the Collusion Pricing Misrepresentation and the Tysabri Accounting Misrepresentation, which are the same as the wrongful acts (iii) and (iv) in the Amended Roofers Complaint. This Court must decide whether those four wrongful acts aggregate back to the 2014 Policy.

103. However, what is relevant to note at this juncture is that this Court is not being asked by Chubb to determine whether the Tysabri Tax Liability Claim, which is part of the 2019 Derivative Complaint, is to be aggregated back to the 2014 Policy. This is because Chubb has confirmed coverage for the Tysabri Tax Liability Claim under the 2017 Policy. If Chubb were to be successful in its claim that the other four wrongful acts in the 2019 Derivative Complaint were to be aggregated back to the 2014 Policy, then this would involve the splicing of one wrongful act in that complaint from the other four wrongful acts. This illustrates therefore that in practice Chubb does not interpret the policy documentation as requiring the claim/complaint/proceedings as a whole to be aggregated back to a policy, but rather that Chubb itself engages in splicing of wrongful acts within a claim/complaint.

B. THE KEINAN COMPLAINT

104. The next claim in time, which has to be considered by this Court, is the Keinan Complaint, as it was filed on 28 March 2017. It is dealt with at para 9.54 *et seq* of the Agreed Statement of Facts.

Tysabri Accounting Misrepresentation

105. There is just one wrongful act in the Keinan Complaint and that is the claim that Perrigo recorded the royalty stream from the Tysabri drug in a manner which wrongfully inflated the income stream ("**Tysabri Accounting Misrepresentation**"). In doing so, it is alleged that Perrigo wrongfully inflated the value of the company. The class of shareholders in this class action is the purchasers of shares between 6 February 2014 and 21 March 2017, which is much wider than the time period relevant to the Mylan Counterclaim from 6 April 2015 to 13 November 2015. However, as previously noted, this is not determinative, since the key issue remains whether the wrongful acts in the Keinan Complaint are similar or related to those in the Mylan Counterclaim.

106. On 19 April 2017, the Keinan Complaint was notified by Perrigo to the 2016 Policy (since that policy was in force between 18 December 2016 and 18 December 2017). However, Chubb claims that the wrongful act, i.e. the Tysabri Accounting Misrepresentation is similar or related to the wrongful acts in the Mylan Counterclaim.

107. As is clear from para 9.57 of the Agreed Statement of Facts, it is an agreed fact between the parties that the allegations made in the Keinan Complaint *'related solely to Perrigo's treatment of Tysabri royalty stream during the years 2014 to 2017'.* Thus, it is to be noted that, unlike the Mylan Counterclaim, the Keinan Complaint does not allege that the alleged wrongful inflation of Perrigo's value (resulting from the treatment of that royalty stream) was made in order to dissuade shareholders in Perrigo from accepting the Mylan offer. As noted hereunder, in the Roofers Amended Complaint (below), it is pleaded that this very same wrongful act (the Tysabri Accounting Misrepresentation) was done in order to persuade Perrigo shareholders to reject the Mylan Offer. However, as previously noted, the presence or absence of this common purpose between the Tysabri Accounting Misrepresentation and the wrongful acts in the Mylan Counterclaim is not determinative of their alleged similarity or relatedness. Thus, the absence of a common purpose (in this instance, between the wrongful act in the Keinan Complaint and wrongful act in the Mylan Counterclaim) is also not determinative of their alleged similarity or relatedness..

108. The key issue is the nature of the wrongful acts themselves and in particular whether the Tysabri Accounting Misrepresentation is similar or related to any of the wrongful acts in the Mylan Counterclaim, i.e. the Offer Value Misrepresentation, the Dilutive Misrepresentation, the Abbot Misrepresentation or the Synergy Misrepresentation. These four wrongful acts have already been described in the context of the consideration of wrongful act (ii) in the Roofers Complaint - the Organic Growth Misrepresentation.

109. As with wrongful act (ii) in the Roofers Complaint, looking at the nature of the act itself, it seems to this Court that allegedly mistreating the accounting of the royalty stream from Tysabri can be described, as previously noted, as the wrongful act of inflating the company's value, irrespective of the purpose, e.g. whether to increase its share price or defeat a takeover.

110. This is a very fact specific wrongful act, relating as it does to the accounting treatment of royalty income. For very similar reasons to those outlined in relation to the Organic Growth Misrepresentation in the Roofers Complaint, which it is not proposed to repeat, this very fact-specific wrongful act is not similar or related to the Offer Value Misrepresentation, the Dilutive Misrepresentation, the Abbot Misrepresentation or the Synergy Misrepresentation wrongful acts in the Mylan Counterclaim.

111. Indeed, once one bears in mind that the purpose of the Tysabri Accounting Misrepresentation (even if it were for made to reject the Mylan Offer) is not determinative, one can see quite clearly that this wrongful act regarding a drug's royalty stream is very different in nature to say a misrepresentation about whether Abbot supports the Mylan Offer (and indeed to the nature of the Offer Value Misrepresentation, the Dilutive Misrepresentation and the Synergy Misrepresentation – which are set out in the context of the Organic Growth Misrepresentation) Thus, the Tysabri Accounting Misrepresentation is not aggregated back to the 2014 Policy.

C. THE AMENDED ROOFERS COMPLAINT

112. As is clear from the para 9.23 *et seq* of the Agreed Statement of Facts, the press release issued by counsel for the plaintiffs in the Roofers Complaint triggered a 60-day period under the Securities Exchange Act 1934 for other potential plaintiffs and counsel to seek to replace the Roofers Pension Fund as plaintiff. This led, on 10th February 2017, to the replacement, of

the Roofers Pension Fund as plaintiffs, by the Perrigo Institutional Investor Group and to an amended complaint under the same case number being filed on 21 June 2017.

113. The class of investors in that class action was expanded to investors who acquired shares in Perrigo on the New York Stock Exchange and the Tel Aviv Stock Exchange (the latter exchange was not in the original Roofers Complaint) between 21 April 2015 (the original date in the Roofers Complaint) to 3 May 2017 (extended from the original date of 11 May 2016 in the Roofers Complaint). In addition, the Amended Roofers Complaint alleged violations of s 20(a) of the Securities Exchange Act 1934 (which was not contained in the Roofers Complaint).

114. However, as previously noted, these dissimilarities between the Amended Roofers Complaint and the Mylan Counterclaim are not determinative of the key issue in this case. This is because the key issue is whether the wrongful acts in the Amended Roofers Complaint are similar or related to the wrongful acts in the Mylan Counterclaim, not whether the two sets of proceedings are similar or related.

115. The Amended Roofers Claim was notified by Perrigo to the 2014 Policy, the 2015 Policy and the 2016 Policy. However, Chubb claim that all the wrongful acts in the Amended Roofers Complaint are similar or related to the wrongful acts in the Mylan Complaint and so Chubb claims that they aggregate back to the 2014 Policy only.

116. The Amended Roofers Complaint itself is set out at para 9.63 *et seq* of the Agreed Statement of Facts. It provides that Perrigo misrepresented that, in order to discourage shareholders in Perrigo from accepting Mylan's offer, Perrigo was allegedly guilty of:

- the Organic Growth Misrepresentation (which is the same as wrongful act (ii) in the Roofers Complaint). For this reason, it will not be aggregated back to the 2014 Policy.
- the Omega Integration Misrepresentation (which is the same as wrongful act (iii) in the Roofers Complaint). For this reason, it will not be aggregated back to the 2014 Policy.

- hiding the collusive pricing of generic drugs which inflated Perrigo's profits ("**Collusive Pricing Misrepresentation**"), which wrongful act appears for the first time in Amended Roofers Complaint.
- accounting mistreatment of the Tysabri Royalty Stream which inflated Perrigo's profits ("**Tysabri Accounting Misrepresentation**"), which although not in the Roofers Complaint, was included in the Amended Roofers Complaint, after it first appeared in the Keinan Complaint. In the Keinan Complaint, it is not alleged that Tysabri Accounting Misrepresentation was for the purpose of defeating the Mylan Offer. However, in the Amended Roofers Complaint, it is alleged that the Tysabri Accounting Misrepresentation was for the purpose of defeating the Mylan Offer. Nonetheless, as already noted, when comparing this wrongful act with the Mylan Counterclaim wrongful acts (which were for the purpose of defeating the Mylan Offer), the purpose behind two sets of wrongful acts is not determinative of whether they are similar or related. One must consider the nature of the wrongful act itself and it has been held that the Tysabri Accounting Misrepresentation in the Keinan Complaint is not similar or related to the wrongful acts in the Mylan Counterclaim. For this reason, the Tysabri Accounting Misrepresentation in the Roofers Amended Complaint is also held not to be similar or related to the wrongful acts in the Mylan Counterclaim. The additional factor that it is alleged by the plaintiffs in the Roofers Amended Complaint to have been made in order to reject the Mylan Offer is not sufficient for this Court to conclude that it is similar or related to any of the wrongful acts making up the Mylan Counterclaim. Accordingly, it will not be aggregated back to the 2014 Policy.

117. This therefore leaves for determination whether the Collusive Pricing Misrepresentation is similar or related to any of the wrongful acts (i) to (iv) in the Mylan Counterclaim.

Collusive Pricing Misrepresentation

118. Looking at the nature of Collusive Pricing Misrepresentation, it has been observed (when considering the Israeli Electric Complaint) that the essence of this wrongful act is that it inflated the company's value.

119. This is a very fact specific wrongful act. It is that Perrigo hid the fact that results in its most profitable division, Generic RX, were significantly inflated by illegal price-fixing. The wrongful acts to which it has to be compared have been described in the context of the consideration of wrongful act (ii) in the Roofers Complaint (Organic Growth Misrepresentation). For very similar reasons to those outlined in relation to the Organic Growth Misrepresentation in the Roofers Complaint, which it is not proposed to repeat, this very fact-specific wrongful act of Collusive Pricing Misrepresentation (relating as it does to the collusive pricing of generic medicines) is not similar or related to the Offer Value Misrepresentation, the Dilutive Misrepresentation, the Abbot Misrepresentation or the Synergy Misrepresentation wrongful acts in the Mylan Counterclaim. Accordingly, this wrongful act of Collusive Pricing Misrepresentation is not aggregated back to the 2014 Policy.

D. THE CARMIGNAC COMPLAINT

120. Where a class action is filed in the US, it is possible for shareholders to opt-out and instead to file their own complaint. One of these was the Carmignac Complaint, which was filed on 1 November 2017, against Perrigo and three directors and officers of Perrigo alleging violations of ss. 10(b) (and Rule 10b-5), 18 and 20(a) of the Securities Exchange Act of 1934. The relevant period of the complaint is 21 April 2015 to 26 April 2016.

121. On the 7 November 2017, the Carmignac Complaint was notified by Perrigo to the 2014 Policy, the 2015 Policy and the 2016 Policy. For its part, Chubb claims that the wrongful acts alleged in the Carmignac Complaint are similar or related to the wrongful acts in the Mylan Complaint and so the Carmignac Complaint aggregates back to the 2014 Policy.

122. A summary of the Carmignac Complaint is set out at para 10.1 *et seq*. of the Agreed Statement of Facts and therein it is noted that that the series of misleading statements of which Carmignac complains were made by Perrigo in an effort to fend off the Mylan takeover. However, as previously noted, the purpose of the two sets of wrongful acts, to be compared, is not determinative of whether they are similar or related in the context of an event aggregation clause.

123. Save for the claims of wrongdoing regarding pricing pressures in the generic drug industry impacting upon Perrigo's Generic Rx unit ("**Pricing Pressures Misrepresentations**"), the wrongful acts in the Carmignac Complaint are the same as those set out in the Roofers Complaint and in the Amended Roofers Complaint.

124. Thus, since this Court has concluded that it is possible for there to be splicing of wrongful acts between different policy periods, all the wrongful acts in the Carmignac Complaint, save for the Pricing Pressures Misrepresentations, will be dealt with in the same manner as they are dealt with in the Roofers Complaint and in the Amended Roofers Complaint.

Pricing Pressures Misrepresentation

125. As regards the Pricing Pressures Misrepresentation, the Carmignac Complaint claims that Perrigo falsely stated that it had the ability to withstand pricing pressures in the generic drug industry. As is clear from the Agreed Statement of Facts, these pressures resulted from increased competition and regulatory scrutiny in the US generic drug industry and in particular an acceleration of generic drug approvals by the Federal Food and Drug Administration, which resulted in downward pricing. The Carmignac Complaint asserts that Perrigo was aware that the generic drug market was under pricing pressure following investigations by US state bodies beginning in late 2014 and also that Perrigo was aware that it was one of the companies under scrutiny at the Department of Justice. Notwithstanding all of this, the Carmignac Complaint

alleges that on 22 October 2015, Mr. Joseph Papa, the Perrigo CEO wrongfully stated that Perrigo's total strategy for pricing was '*to keep pricing flat to up slightly'*. The Carmignac Complaint also alleges that on22 October 2015,, Ms. Judy Brown, a director of Perrigo, wrongfully stated that nearly all of Perrigo's revenues '*are insulated from the current pricing drama'*. The Carmignac Complaint claims that by January/February 2016, Perrigo could no longer conceal that the increase competition had negatively impacted Perrigo's financial performance thus forcing the company to slash its earnings guidance. Then on 2 May 2017, the Department of Justice executed search warrants at Perrigo's offices in connection with its investigation into collusion in the generic drug industry.

126. The only issue to be considered in the Carmignac Complaint therefore is whether the alleged wrongful act of Pricing Pressures Misrepresentation is similar or related to wrongful acts (i) to (iv) in the Mylan Counterclaim, i.e. the Offer Value Misrepresentation, the Dilutive Misrepresentation, the Abbot Misrepresentation or the Synergies Misrepresentation.

127. It seems to this Court that, like the Organic Growth Misrepresentation, Omega Integration Misrepresentation, Collusive Pricing Misrepresentation and the Tysabri Accounting Misrepresentation, the essence of this wrongful act of Pricing Pressure Misrepresentation is wrongfully inflating the company's value.

128. This is a very fact specific wrongful act, relating as it does to the pricing pressures in the generic drugs market. The wrongful acts to which it has to be compared have been described in the context of the consideration of wrongful act (ii) in the Roofers Complaint (the Organic Growth Misrepresentation). For very similar reasons to those outlined in relation to the Organic Growth Misrepresentation in the Roofers Complaint, which it is not proposed to repeat, this very fact-specific wrongful act of Pricing Pressures Misrepresentation which resulted from investigations beginning in 2014 is not similar or related to the Offer Value Misrepresentation, the Dilutive Misrepresentation, the Abbot Misrepresentation or the Synergy Misrepresentation

wrongful acts in the Mylan Counterclaim. Accordingly, the Pricing Pressures Misrepresentation does not aggregate back to the 2014 Policy.

E. THE 2019 DERIVATIVE COMPLAINT

129. The issue that arises for determination regarding the 2019 Derivative Complaint is not whether it is similar or related to the Mylan Counterclaim, but rather whether under the terms of the relevant policy, Chubb is required to cover this claim. This is because Chubb says a derivative action in the US, by its very nature, is not a claim against a company and the policy only provides cover for claims against the company.

Is a derivative action a 'claim against the company' under the policy?

130. As set out at paragraph [12.1] *et seq* of the Agreed Statement of Facts, Mr Krueger, a Perrigo shareholder, filed a derivative action in the US against Perrigo as a nominal defendant on 2 October, 2019. Mr Paul Saunders, a US Lawyer, on behalf of Chubb, gave expert evidence on US law on this issue. This evidence was not contested by Mr. Howard Suskin, the US legal expert on behalf of Perrigo. Based on this evidence, it is clear that this 2019 Derivative Complaint sought to authorise Mr. Krueger to pursue claims on behalf of Perrigo against various directors and former directors of Perrigo for breach of their fiduciary duties and unjust enrichment and for breaches of s. 14(a) and s. 29 (b) of the Securities Exchange Act 1934. In particular, the 2019 Derivative Complaint alleges that the directors and former directors of Perrigo made inadequate public disclosures, as a result of the Omega Integration Misrepresentation, the Organic Growth Misrepresentation, Collusive Pricing Misrepresentation and the Tysabri Accounting Misrepresentation. These four same claims were made in the Amended Roofers Complaint.

131. Cover was sought by Perrigo for these claims under the terms of the Endorsement to the 2014 Policy. Section 1 of the Endorsement contains the insuring agreement and it states:

> "The cover provided under this Policy is extended to pay on behalf of the Company 100% Loss of the Company **arising from any Securities Claim** first made against the Company after the Effective Date and during the Policy Period (or Discovery Period if applicable) for any Wrongful Act committed by the Company." (Emphasis added)

This section of the policy provides a definition of Securities Claim in Section 2.4 of the Endorsement, which states:

> *"Securities Claim shall mean any Claim, other than an administrative or regulatory proceeding made against, or an investigation of, the Company alleging the violation of Securities laws of any country which is:*
>
> *(i) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell any Securities of the Company; or*
>
> *(ii) brought by a holder of Securities of the Company,* ***whether directly or on behalf of the Company****.*
>
> *Securities Claim shall not include an Employment Related Wrongful Act alleging or arising out of the loss of or failure to receive stock or stock options."* (Emphasis added)

132. While the foregoing definition of Securities Claim is contained in the Endorsement, the policy as a whole also contains a general definition of Securities Claim at Section 3.33, which states:

> Securities Claim means any Claim which, in whole or in part, is:
>
> (i) brought by one or more securities holders of the Company, in their capacity

as such, **including derivative actions brought by one or more shareholders to**

enforce a right of the Company; or

(ii) alleging a violation of any federal, state, local or foreign regulation, rule or statute regulating securities, including but not limited to the purchase or sale of, or offer to purchase or sell, or solicitation of any offer to purchase or sell, any securities issued by the Company, whether such purchase, sale, offer or solicitation involves a transaction with the Company or occurs in the open market, including any such Claim brought by the Securities and Exchange Commission or any other claimant.

Securities Claim shall not include a civil, criminal, administrative or regulatory investigation of a Company unless such investigation is continuously maintained against an Insured." (Emphasis added)

133. It is to be noted that this general definition specifically refers to derivative actions, by stating that they are included within the meaning of a Securities Claim, while the definition in the Endorsement does not states whether derivative actions are included or excluded from the meaning of a Securities Claim. Chubb claims, *inter alia*, that the failure to expressly include derivative actions in the definition of Securities Claim in the Endorsement, means that Chubb is not obliged to cover Perrigo for the 2019 Derivative Complaint.

134. Chubb claims that the 2019 Derivative Complaint makes no allegation of a violation of securities laws *against Perrigo* and is therefore not a securities claim against Perrigo, as it is a derivative action in which Perrigo is nominally a defendant. In this regard, expert evidence was provided that the wrongful acts were committed by directors of Perrigo, and that Perrigo should have pursued the directors to recover damages for the company. Mr. Kreuger's claim is based on him being forced, because of Perrigo's failure to pursue the directors, to take the action

whereby he seeks authority from the court to pursue claims *on behalf of* Perrigo. For its part, Chubb points out that Perrigo is the victim, rather than the perpetrator, of the wrongdoing in this claim and in this sense, this derivative action is not a claim against the company, for which it should have to provide insurance cover.

135. However, it seems to this Court that the wording of the endorsement was captures a derivative action – in particular the expression '*whether directly or on behalf of the Company'*. This is because it is clear that this derivative action, to quote the expert evidence, is '*for the benefit of the company in question'*, in this case Perrigo. This expert evidence makes clear that the company is being sued as a nominal defendant, not because of a wrongdoing it committed itself, but because of its failure to pursue other wrongdoers (the directors). Nonetheless, it is being sued, *albeit* as a nominal defendant. It is also to be noted that the claim which is being brought on the company's behalf is a securities claim since the claim alleges a breach of the Securities Exchange Act 1934 was committed by the directors. It also seems clear that as a nominal defendant in litigation, the company will have legal costs. Accordingly, it seems to this Court that that those legal costs should be covered by the insurance policy, since it is a securities claim brought on behalf of the company.

136. It is relevant to note that it was open to Chubb, in the definition of Securities Claim in the Endorsement, to specifically refer to derivative actions, as was done in the general definition, and to exclude derivative actions against the company from coverage, if it so wished. However, this was not done. Instead, the language in the Endorsement refers to claims, not just against a company, but also on *'behalf of'* a company. Accordingly, this Court concludes that this derivative action is covered by the policy.

F. SPECIFIC MATTER EXCLSUION ENDORSEMENT

137. Chubb claims that by reason of the Specific Matters Exclusion Endorsement in the 2016 policy, that the 2016 Policy (which is effective from 18 December 2016 to 18 December 2017) does not provide cover for the Amended Roofers Complaint.

138. This endorsement reads as follows:

> *"SPECIFIC MATTERS EXCLUSION ENDORSEMENT*
>
> It is hereby understood and agreed that **the Insurer shall not be liable to make any payment for Loss based on, arising from or attributable to the following Claims**:
>
> (1) the Complaint for Violations of the Federal Securities Laws in ***Roofers' Pension Fund v. Papa and Perrigo Company PLC,*** **Case No. 2:16-cv-02805** in the United States District Court for the District of New Jersey; the Statement of Claim in *Schweiger and Gavrieli v. Perrigo Company PLC, Papa, Brlas, Hendrickson, Coucke, and Kunkle,* Public Case No. 43897-05-16 in the District Court (Economic Department) of Tel Aviv-Jaffa, Israel; the Complaint for Violation I Federal Securities Laws in *AMI - Government Employees Provident Fund Management Company Ltd v. Papa and Perrigo Company P LC*, Case No. 1: 16-cv-04 752 in the United States District Court for the Southern District of New York; and the Complaint filed in *Wilson v. Papa and Perrigo Company PLC*, Case No. 2:16-cv-04358 in the United States District Court for the District of New Jersey [….]
>
> In all events only if coverage for such Loss is accepted under [the 2014 Policy] or [the 2015 Policy]." (Emphasis added)

139. This endorsement is dated 21st December 2016. The Roofers Complaint was notified six months previously (on 6 June 2016) by Perrigo to the 2014 Policy and the 2015 Policy, and

it was not disputed that Chubb accepted the Roofers Complaint for coverage under the 2014 Policy or the 2015 Policy, so as to satisfy the proviso in the final sentence of this endorsement.

140. Under the terms of this endorsement therefore, Chubb specifically excludes the Roofers Complaint from being covered by the 2016 Policy. Then on 21 June 2017, i.e. six months after the 2016 Policy was agreed, the Amended Roofers Complaint was filed. On 29 June 2017, Perrigo notified the Amended Roofers Complaint to the 2014 Policy, the 2015 Policy and the 2016 Policy. In light of the above endorsement, which provides that the Roofers Complaint is excluded from coverage under the 2016 Policy, Chubb claims that the *Amended* Roofers Complaint is also excluded from coverage under the 2016 Policy.

141. In this regard, Chubb relies in particular on the fact that the Amended Roofers Complaint has the same record number as the Roofers Complaint, since it is an amendment of that complaint, and thus appears to be arguing that the Roofers Complaint and the Amended Roofers Complaint are one and the same, for the purposes of the endorsement. Thus, Chubb claims that the reference in the exclusion to the Roofers Complaint, and in particular the record number, should be taken as meaning that complaint, as amended. On this basis, Chubb claims the wrongful acts contained in the Amended Roofers Complaint, that are *not* contained in the Roofers Complaint, are also excluded from coverage under the 2016 Policy. As a result, Chubb claims that the Amended Roofers Complaint falls to be covered by the 2014 Policy, as it is aggregated back to that policy..

142. In particular, since the Amended Roofers Complaint contains two additional claims not contained in the Roofers Complaint i.e. the Collusive Pricing Misrepresentation and the Tysabri Accounting Misrepresentation, Chubb is claiming that these alleged wrongful acts are excluded from coverage under the 2016 Policy.

143. It is clear from the judgement of McDonald J in the High Court case of *Brushfield Ltd (T/A The Clarence Street Hotel) v Arachas Corporate Brokers Ltd and AXA Insurance DAC* [2021] IEHC 263 at para [110]; [2022] Lloyd's Law Reports 638 at p 654 that:

> "Where an insurer seeks to rely upon an exemption clause or exclusion clause in a policy, the insurer will bear the onus of establishing that the relevant exclusionary exemption applies [….]
>
> > 'The law is that the Insurance Company must bring their case **clearly and unambiguously** within the exception under which they claim benefit, and if there is any ambiguity, it must be given against them on the principle of contra preferentes'" (Emphasis added)
>
> (quoting from *General Omnibus Co Ltd v. London General Insurance Co Ltd* [1936] I.R. 596 which was relied upon by the Supreme Court in *Analog Devices BV v. Zurich Insurance Company* [2005] 1 I.R. 274.)

144. Since we are dealing here with an exclusion clause for the benefit of the insurance company, there is an onus on Chubb to establish clearly and unambiguously that the reference to the Roofers Complaint includes the additional alleged wrongful acts contained in the Amended Roofers Complaint.

145. Chubb's position is that any new wrongful acts contained in the Amended Roofers Complaint are not covered by the 2016 Policy. The logic of Chubb's position is that, no matter how different these new wrongful acts are from the original wrongful acts they are not covered by the 2016 Policy, because they are, *inter alia*, made under the same record number. In this regard, the Collusive Pricing Misrepresentation and Tysabri Accounting Misrepresentation in the Amended Roofers Complaint are certainly different from Value of Offer Misrepresentation, Organic Growth Misrepresentation and Omega Integration Misrepresentation in the Roofers

Complaint. It seems to this Court that the starting point is that Chubb agreed to provide insurance cover to Perrigo for claims against the company made during the term of the 2016 Policy. The Collusive Pricing Misrepresentation and Tysabri Accounting Misrepresentation are claims against Perrigo, which had not been made previously. In addition, Chubb excluded the Roofers Complaint from cover under the 2016 Policy i.e. the Value of Offer Misrepresentation, Organic Growth Misrepresentation and Omega Integration Misrepresentation If the intention of the insurer was to exclude all new wrongful acts which might be added to an existing claim, regardless of how different they are from the existing wrongful acts in the claim, then this should have been spelt out in the wording. This is because, despite the requirement that any exclusion be clear and ambiguous, it is not clear to this Court that this is the effect of the simple use of a record number in the Specific Matters Exclusion Endorsement. In particular, the insurance policy could have provided that the exclusion applied to the Roofers Complaint *as amended*, but it did not do so. It simply referred to the Roofers Complaint with its record number and Chubb now seeks to argue that this reference means that, not just the Roofers Complaint, but also any amendment to the Roofers Complaint, is excluded from coverage under the 2016 Policy.

146. For this reason, this Court concludes that the specific matters exclusion endorsement does not cover the Amended Roofers Complaint. In particular it concludes that the additional wrongful acts contained in the Amended Roofers Complaint, which are not contained in the Roofers Complaint are not subject to that exclusion.

CONCLUSION

147. This case is a good example of the saving of court time, in the public interest and for the benefit of the parties (as it can lead to quicker judgments), which can be achieved by litigants finalising an Agreed Statement of Facts.

148. Based on the Agreed Statement of Facts in this case, and the submissions made by the parties during the hearing, this Court believes that it has reached conclusions on all relevant issues, i.e.

- The Value of Offer Misrepresentation in the Roofers Complaint *is aggregated back* to the 2014 Policy as it is similar or related to the wrongful acts in the Mylan Counterclaim
- All other wrongful acts in the Keinan Complaint, the Amended Roofers Complaint and the Carmignac Complaint are not similar or related to the wrongful acts in the Mylan Counterclaim and so *are not aggregated back* to the 2014 Policy.
- The 2019 Derivative Complaint *is covered by* the Endorsement to the 2014 Policy, since although Perrigo is only nominally a defendant, this derivative action is a claim made *'on behalf of'* Perrigo, as contemplated by that policy.
- The exclusion of the Roofers Complaint from coverage under the 2016 Policy *does not extend to excluding* the Amended Roofers Complaint from coverage.

Accordingly, it is hoped that the parties will be able to reach agreement on the form of any order. For this reason, this Court orders the parties to engage with each other to see if agreement can be reached regarding all outstanding matters, without the need for further court time, with the terms of any draft court order to be provided to the Registrar. However, in light of the complexity of the underlying factual background, this case will be provisionally put in for mention a week from the delivery of this judgment at 10.45 am (with liberty to the parties to notify the Registrar, if such a listing proves to be unnecessary).

APPENDIX: AGREED STATEMENT OF FACTS

THE HIGH COURT
COMMERCIAL
2021 No. 3571P
(2021 No. 76 COM)
BETWEEN:

CHUBB EUROPEAN GROUP SE (FORMERLY ACE EUROPEAN GROUP LIMITED);
AIG EUROPE SA (FORMERLY AIG EUROPE LIMITED);
AXIS SPECIALTY EUROPE SE;
ALLIANZ GLOBAL CORPORATE & SPECIALTY SE;
ALLIED WORLD ASSURANCE COMPANY (EUROPE) DESIGNATED ACTIVITY COMPANY (FORMERLY ALLIED WORLD ASSURANCE COMPANY (EUROPE) LIMITED);
LIBERTY MUTUAL INSURANCE EUROPE SE (FORMERLY LIBERTY MUTUAL INSURANCE EUROPE LIMITED);
XL INSURANCE COMPANY SE;
ZURICH INSURANCE PLC;
QBE EUROPE SA/NV (FORMERLY QBE INSURANCE (EUROPE) LIMITED);
AND
LLOYD'S INSURANCE COMPANY SA

Plaintiffs

-and-

PERRIGO COMPANY PLC; JOSEPH PAPA; JUDY BROWN; MARC COUCKE; LAURIE BRLAS; JACQUALYN A FOUSE; ELLEN R HOFFING; MICHAEL R JANDERNOA; DONAL O'CONNOR; GARY COHEN; HERMAN MORRIS JR; GERALD K KUNKLE JR; JOHN HENDRICKSON; RONALD WINOWIECKI; DOUGLAS BOOTHE; DAVID GIBBONS; AND RAN GOTTFRIED

Defendants

AGREED STATEMENT OF FACTS

This Agreed Statement of Facts sets out the common background to the matters that are the subject of dispute in these Proceedings. The fact that the Agreed Statement of Facts does not refer to a document or a fact that is not contained within this document, does not affect a party's right to refer to such fact or document at the hearing of this matter. The Agreed Statement of Facts is not, therefore, exhaustive and nor does it represent the totality of the facts to be relied on by any party.

This Agreed Statement of Facts sets out the allegations made in the underlying proceedings / Complaints at sections 5 to 6 and 8 to 12. The allegations and truth of these allegations are denied by the Defendants and a significant number of the allegations have already been dismissed, as is outlined in further detail below.

1 **The Parties**

The Insurers

1.1 The Plaintiff Insurers ("**Insurers**") are various company and Lloyd's market insurers subscribing to certain of Perrigo Company Plc's Directors' and Officers' Liability and Company Reimbursement insurance programmes for the following periods:

(a) 18 December 2014 to 18 December 2015 (the **"2014 Policy");**

(b) 18 December 2015 to 18 December 2016 (the **"2015 Policy");** and

(c) 18 December 2016 to 18 December 2017 (the **"2016 Policy"**)

(together, the **"Policies"** and each a **"Policy").**[1]

1.2 Some of the Insurers also subscribe to Perrigo Company Plc's Directors' and Officers' Liability and Company Reimbursement insurance programmes for 18 December 2017 to 18 December 2018 (the "**2017 Policy**") and 18 December 2018 to 18 December 2019 (the "**2018 Policy**"), which are referred to in the Statement of Claim and to which some of the underlying third party claims that are the subject of these proceedings (the "**Proceedings**") were notified. However, no relief is sought by the First Named Defendant in respect of the 2017 Policy and 2018 Policy and, therefore, it is only the Policies that are the subject of a dispute in these Proceedings.

The Defendants

Perrigo

1.3 The First Named Defendant, Perrigo Company PLC ("**Perrigo**"), is an Irish-based public limited company that develops, manufactures and markets consumer and pharmaceutical goods worldwide.

1.4 Perrigo's shares trade on the New York Stock Exchange ("**NYSE**") under the symbol PRGO.

1.5 Perrigo's shares traded on the Tel Aviv Stock Exchange ("**TASE**") pursuant to a dual-listing arrangement up until 23 February 2022 when Perrigo delisted the company's ordinary shares from trading on TASE following the divestment of its Israeli-based operations in 2021. All ordinary shares that were traded on TASE were transferred to the NYSE where they continue to be traded.

The Individual Defendants

1.6 The Second to Seventeenth Named Defendants (the **"Individual Defendants"**) are former and current directors and officers of Perrigo.

1.7 The Second to Twelfth Named Defendants and the Fifteenth to Seventeenth Named Defendants are each insureds under the 2014 Policy, 2015 Policy and 2016 Policy.

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[1] Copies of the primary layer wording for the Policies are at Tabs 1 - 3 of the Core Documents – Book One - Policies.

1.8 The Thirteenth and Fourteenth Named Defendants are each insureds under the 2016 Policy.

1.9 The Individual Defendants are not taking an active role in these Proceedings having acknowledged that they will be bound by any decision of this Court.[2]

2 The Policies

2.1 Each of the Policies is comprised of a primary layer of insurance and seven excess layers of insurance. The primary and excess layers of insurance comprising a policy are together often referred to as a "tower" of insurance. The Insurers participating on each layer of each of the Policies are set out in the following table, along with their percentage share of the relevant layer in parentheses and the limit of indemnity for each layer:

	Limit of Liability (US$)	2014 POLICY	2015 POLICY	2016 POLICY
Primary	10 million	Chubb European Group SE (100%)	Chubb European Group SE (100%)	Chubb European Group SE (100%)
1st Excess	10 million	AIG Europe SA (100%)	AIG Europe SA (100%)	AIG Europe SA (100%)
2nd Excess	10 million	AXIS Specialty Group SE (100%)	AXIS Specialty Group SE (100%)	AXIS Specialty Group SE (100%)
3rd Excess	10 million	Allianz Global Corporate & Specialty SE (100%)	Allianz Global Corporate & Specialty SE (100%)	Allianz Global Corporate & Specialty SE (100%)
4th Excess	10 million	Allied World Assurance Company (Europe) DAC (100%)	Allied World Assurance Company (Europe) DAC (100%)	Allied World Assurance Company (Europe) DAC (100%)
5th Excess	25 million	Liberty Mutual Insurance Europe SE (50%) XL Insurance Company SE (50%)	Lloyd's Insurance Company SA ("Liberty Syndicate 4472") (50%) XL Insurance Company SE (50%)	Lloyd's Insurance Company SA ("Liberty Syndicate 4472") (50%) XL Insurance Company SE (50%)

[2] Paragraph 3(b) of the Defence of the Individual Defendants dated 19 December 2021.

6th Excess	25 million	Lloyd's Insurance Company SA ("Starr Syndicate 1919") (60%) ("WRB Syndicate 1967") (40%)	Lloyd's Insurance Company SA ("Starr Syndicate 1919") (60%) ("WRB Syndicate 1967") (40%)	Lloyd's Insurance Company SA ("Starr Syndicate 1919") (60%) ("WRB Syndicate 1967") (40%)
7th Excess	25 million	Zurich Insurance PLC[3] (60%) QBE (Europe) SA/NV (40%)	Zurich Insurance PLC (60%) QBE (Europe) SA/NV (40%)	Zurich Insurance PLC (40%) QBE (Europe) SA/NV (60%)

2.2 The insurers subscribing to the 2014 Policy, 2015 Policy and 2016 Policy are the same and they participate in the same proportions on each of those Policies, save for the seventh excess layer on the 2016 Policy where the proportions underwritten by each of Zurich Insurance PLC and QBE (Europe) SA/NV are reversed from the previous two policies.

2.3 The Lloyd's Syndicates subscribing to:

(a) the sixth excess layer of the 2014 Policy (namely, Starr Managing Agents Limited for Syndicate 1919 as Lead Underwriter of Consortium 9885 and W.R. Berkley Syndicate Management Limited for and on behalf of Syndicate 1967 at Lloyd's of London); and

(b) the fifth and sixth excess layers of the 2015 Policy and 2016 Policy (namely, Starr Managing Agents Limited for Syndicate 1919 as Lead Underwriter of Consortium 9885, W.R. Berkley Syndicate Management Limited for and on behalf of Syndicate 1967 and Liberty Managing Agency Limited for and on behalf of Syndicate 4472 at Lloyd's of London)

transferred their shares to Lloyd's Insurance Company SA, the Tenth Named Plaintiff (**"LIC"**), pursuant to the Order of Mr Justice Snowden dated 25 November 2020 of the High Court of Justice, Business and Property Courts of England and Wales, Companies Court (ChD) following the departure of the United Kingdom from the European Union. The transferred shares were then severally reinsured by LIC to the relevant members of Lloyd's of London who had, or who have assumed responsibility, for the policies originally underwritten.

2.4 Each Policy or "tower" had an aggregate limit of liability of US$125 million.

[3] The Eighth Named Plaintiff, Zurich Insurance PLC, was recently reorganised as a result of the United Kingdom leaving the European Union. This reorganisation included the transfer of the whole business (excluding certain business specified in the insurance business transfer scheme as Excluded Assets, Excluded Contracts, Excluded Liabilities or Excluded Policies) of the UK Branch of Zurich Insurance PLC to Zurich Insurance Company Limited (a public limited company incorporated in Switzerland) using an insurance business transfer scheme under Part VII of the Financial Services and Markets Act 2000. The transfer was sanctioned by the High Court of England and Wales on 3 November 2022 and took effect on 1 January 2023. The Order included the transfer of Zurich Insurance PLC's interests (including all rights, benefits and powers) in respect of and arising from its participation in the Seventh Excess Layer of each of the 2014 Policy, 2015 Policy and 2016 Policy to Zurich Insurance Company Limited. The Order provides that any judicial proceedings by, against, in relation to or in respect of which Zurich Insurance PLC is a party shall be continued by Zurich Insurance Company Limited. It is the Plaintiffs' intention to bring this required change to the attention of the Court at an appropriate opportunity and seek to have the title of the Proceedings amended accordingly.

2.5 Each Policy or "tower" applied in excess of a self-insured retention. For Securities Claims (defined in each of the Policies), the retention is US$2.5 million for each of the 2014 Policy and 2015 Policy, and US$7.5 million for the 2016 Policy.

2.6 For claims under Insuring Agreement B[4], the retention is US$1 million for the 2014 Policy and 2015 Policy, and US$7.5 million for the 2016 Policy.

2.7 The 2014 Policy and the 2015 Policy were both underwritten on Chubb European Group SE's (**"Chubb"**) standard form Elite IV directors' and officers' liability insurance policy wording. The 2014 Policy and the 2015 Policy both also contained an "*Entity Cover for Securities Claims Endorsements (DRP)*" (the **"Entity Endorsement"**) which extended cover to Perrigo to pay 100% Loss of Perrigo arising from any Securities Claim first made against Perrigo after the effective date of the policy and during the policy period for any Wrongful Act (as defined in the Entity Endorsement) committed by Perrigo.

2.8 The 2016 Policy was underwritten on Chubb's standard form Elite V directors' and officers' liability insurance policy wording. The 2016 Policy also provided cover for Perrigo to pay on behalf of Perrigo all Loss resulting from a Securities Claim first made during the policy period.

2.9 All of the Policies were placed via Perrigo's insurance broker, Willis Towers Watson (**"Willis"**).

2.10 The excess layer insurers of each Policy provided cover on the basis of an excess layer wording, which followed the wording of the primary layer and included provisions dealing with the erosion of any underlying limits of insurance, amongst other things. The excess layers of the Policies substantially follow the primary layer wording. For the purpose of these Proceedings, they can be taken to be identical.

2.11 With regard to aggregating claims:

(a) the Elite IV wording (used in the 2014 Policy and 2015 Policy) provided at Clause 5.1(iii):

"If a single Wrongful Act or act or a series of related Wrongful Act or acts give rise to a claim under this Policy then all claims made after the expiry of this Policy arising out of such similar or related Wrongful Acts or acts shall be treated as though first made during this Policy Period."

(b) the Elite V wording (used in the 2016 Policy) provided at Clause 5.2:

"*A Single Claim shall attach to the Policy only if the notice of the first Claim, Investigation or other matter giving rise to a claim under a policy, that became such Single Claim, was given by the Insured during the Policy Period*".

2.12 Clause 3.51 of the 2016 Policy provides that a Single Claim "*means all Claims or Investigations or other matters giving rise to a claim under this Policy that relate to the same originating source or cause or the same underlying source or cause, regardless of whether such Claims,*

[4] Insuring Agreement B provides that "the Insurer will pay to or on behalf of the Company all Loss resulting from a Claim first made during the Policy Period against an Insured where the Company pays such Loss". Insuring Agreement B provides cover for claims falling under the jurisdiction of the courts in the United States of America or settled by compromise in the United States of America alleging, *inter alia*, violation of any of the provisions of the Securities Act 1933, the Securities Exchange Act 1934 or any similar federal or state law or any common law relating thereto subject to a maximum limit of indemnity of US$1,000,000 as well claims falling anywhere in the world other than the United States of America alleging, *inter alia*, violation of any securities laws or provisions common or statutory subject to a maximum limit of indemnity US$1,000,000.

Investigations or other matters giving rise to a claim under this Policy involve the same or different claimants, Insureds, events or legal causes of action."

2.13 The entity or "Side C" cover provided for in the Entity Endorsement to the 2014 Policy and the 2015 Policy (that used the Elite IV wording) was provided in the main body of the wording of the 2016 Policy, rather than by endorsement.

2.14 The 2016 Policy also contained a Specific Matters Exclusion Endorsement which provided as follows:

"*It is hereby understood and agreed that the Insurer shall not be liable to make any payment for Loss based on, arising from or attributable to the following Claims:*

(1) the Complaint for Violations of the Federal Securities Laws in *Roofers' Pension Fund v. Papa and Perrigo Company PLC*, Case No. 2:16-cv-*02805*, in the United States District Court for the District of New Jersey; the Statement of Claim in *Schweiger and Gavrieli v. Perrigo Company PLC, Papa, Brlas, Hendrickson, Coucke and Kunkle,* Public Case No. 43897-05-16 in the District Court (Economic Department) of Tel Aviv-Jaffa, Israel; the Complaint for Violation of the Federal Securities Laws in *AMI – Government Employees Provident Fund Management Company Ltd v. Papa and Perrigo Company PLC*, Case No. 1:16-cv-04752 in the United States District Court for the Southern District of New York*;* and the Complaint filed in *Wilson v. Papa and Perrigo Company PLC, Case No. 2:16-cv-04358* in the United States District Court for the District of New Jersey*;*

(2) the Counterclaims for Declaratory and Injunctive Relief asserted by Mylan N.V. in *Perrigo Company PLC v. Mylan N.V.,* Case No. 15-CV-7341 in the United States District for the Southern District of New York;

(3) *The Complaint in Apothecus Pharmaceutical Corp v. Hendrickson, Needham and Perrigo Company PLC, Index No 605710/2016 in the Supreme Court of the State of New York, County of Nassau, and removed as Case No. 2:16-cv-04932 in the United States DistrictCourt [sic] for the Eastern District of New York;*

In all events only if coverage for such Loss is accepted under Policy No. 26867P14 (IEDRNA07063) or Policy No. 26867P15 (IEDRNA07063).

3 The 2013 Elan Transaction

3.1 In December 2013, Perrigo Company (a Michigan corporation) acquired (merged with) an Irish company, Elan plc (**"Elan"**), by way of a "reverse tax inversion", upon which Elan changed its name to that of the First Named Defendant, Perrigo. Elan's assets included a stream of royalty payments for Tysabri, a treatment for multiple sclerosis, which was manufactured and sold by another company, Biogen Inc (**"Biogen"**).[5]

[5] Page 4 and 5, Background of Perrigo's memorandum of law in support of motion to dismiss Amended Roofers Complaint/Roofers 2. See Tab 6 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

4 The 2015 Omega Transaction

4.1 On 30 March 2015, Perrigo bought the shares of Omega Pharma Invest NV (**"Omega"**) from Alychlo NV (**"Alychlo"**) and Holdco I BE NV (**"Holdco"**) in a transaction valued at €3.9 billion.

4.2 Omega focused on name brand products and had a decentralised structure, functioning as a separate company in each of the regions in which it operated.

4.3 Alychlo is a Belgian company with activities primarily in European countries controlled by Marc Coucke. After the Omega acquisition, Marc Coucke became an employee of Perrigo and responsible for Perrigo's Branded Healthcare Unit, which included the Omega business. Marc Coucke was later elected to the Perrigo board at the Annual General Meeting in November 2015. Marc Coucke left Perrigo in April 2016. He also ceased being a Perrigo board member at that time.

5 The Mylan Offers during 2015

5.1 On 6 April 2015, Mylan NV (**"Mylan"**) made a non-binding proposal to Perrigo CEO Joseph Papa to acquire Perrigo for a combination of cash and Mylan ordinary shares.[6]

5.2 Mylan publicly announced the proposal two days later.[7]

5.3 On 21 April 2015, Perrigo's board of directors recommended to Perrigo's shareholders not to tender to that initial proposal, issuing a press release stating that Mylan's proposal undervalued Perrigo and its growth prospects and would *"deny Perrigo shareholders the full benefits of Perrigo's durable competitive position and compelling growth strategy, which is reflected in the Company's three-year organic net sales compound annual growth rate (CAGR) goal for calendar 2014 to 2017 of 5-10%"*. The statement also asserted that Mylan's proposal did *"not take into account the full benefits of the Omega Pharma Acquisition"*.[8]

5.4 Mylan twice modified its proposal during April 2015.[9]

5.5 On 24 April 2015, Mylan issued a Rule 2.5 announcement under the Irish Takeover Rules signalling its intention to make a hostile bid for Perrigo and clarified its offer to be US$60 cash plus 2.2 Mylan shares for each Perrigo share, provided 80% of the Perrigo shares were tendered and provided that Mylan's shareholders approved making the offer. As part of its announcement[10], Mylan claimed *"combining Perrigo and Mylan will yield $800 million in annual "Operational Synergies"."*

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6 Paragraph 14 of the Mylan Counterclaim. See Tab 2 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

7 Paragraph 15 of the Mylan Counterclaim.

8 Perrigo press release dated 21 April 2015. See Tab 19 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

9 Paragraphs 16 and 17 of the Mylan Counterclaim.

10 Paragraph 16 of the Mylan Counterclaim & Synergy Statement, contained in documents filed as part of Rule 2.5 announcement. See Tab 10 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

5.6 Also on 24 April 2015, Perrigo's board announced it recommended that Perrigo shareholders not tender to the new unsolicited offer from Mylan.[11]

5.7 On 29 April 2015, Mylan made a further raised bid of US$75 in cash plus 2.3 Mylan shares for each Perrigo share, provided 80% of the Perrigo shares were tendered and provided Mylan's shareholders approved making the offer. Mylan reserved the right to reduce this amount to greater than 50%.[12]

5.8 In general, if 80% of shares were tendered, Mylan could close the offer and buy out the remaining shareholders at the same price, thus acquiring full control of the company. If less than 80% were tendered, the offer would fail unless Mylan modified the 80% requirement.[13]

5.9 On 29 April 2015, Perrigo's board recommended to Perrigo's shareholders not to tender into Mylan's second raised bid.[14]

5.10 Also on 29 April 2015, Perrigo filed its quarterly report for the quarter ending March 2015 which recorded the Tysabri royalty stream as having *a value of "$5.8 billion, which is being amortized over a useful life of 20 years"* [15] (i.e. it is a depreciating asset).

5.11 On 5 May 2015, Mylan filed a registration statement on Form S-4 in anticipation of commencing an "exchange offer" based on the terms of its most recent proposal to Perrigo shareholders.[16]

5.12 On 6 August 2015, Perrigo held an investor presentation and repeated that the Mylan offer "*significantly undervalues Perrigo*" and "*dilutes Perrigo's growth and premium valuation.*"[17]

5.13 On 13 August 2015, Mylan announced that it was lowering the percentage of Perrigo shares required to close the tender to just over 50 % from its original April 2015 proposals of 80%.[18]

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[11] Form 8-K dated 24 April 2015. See Tab 21 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

[12] Mylan Press release dated 24 April 2015 (Tab 10 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts), Mylan Press release dated 29 April 2015 (Tab 11 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts) and paragraph 17, Mylan Counterclaim.

[13] Paragraph 24 of the Perrigo Complaint and paragraph 17 of the Mylan Counterclaim. See Perrigo Complaint at Tab 1 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

[14] Paragraph 17 of the Mylan Counterclaim and based on Mylan's unaffected price of $55.31 per share on 10 March 2015 - Perrigo press release dated 29 April 2015. See Tab 22 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

[15] Form 10-Q filed with the SEC 29 April 2015. See Tab 23 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

[16] Paragraph 18 of the Mylan Counterclaim and Form S-4 dated 5 May 2015. See Tab 12 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

[17] Perrigo Schedule 14D-9 filed on 6 August 2015, p. 18 (slide 16 of Exhibit 99.1 to Schedule 14D-9). See Tab 24 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

[18] Mylan Press release dated 13 August 2015 and paragraphs 20 and 32 of the Mylan Counterclaim. See Tab 13 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

5.14 Perrigo issued a press release in response to Mylan's announcement dated 13 August 2015 in which Joseph Papa stated: "*Mylan already proposed a dilutive deal that substantially undervalues Perrigo; today's announcement makes it even worse*".[19]

5.15 The following day, 14 August 2015, Mylan filed a complaint with the Irish Takeover Panel, alleging that statements made in Perrigo's press release dated 13 August 2015 were misleading.[20]

5.16 On 20 August 2015, Mylan stated that in the controlled-subsidiary scenario and with regard to the public stock exchanges it deals with in both NYSE and TASE, it "*intends to cause the delisting of Perrigo's ordinary shares from NYSE and TASE as soon after consummation of the offer as is practicable*".[21]

5.17 On 25 August 2015, Mylan issued a public statement commenting on "*the misleading statements made by Perrigo Company plc (NYSE: PRGO; TASE) in relation to Mylans [sic] offer to acquire Perrigo*".[22]

5.18 Also on 25 August 2015, the Irish Takeover Panel agreed with Mylan's complaint of 14 August 2015 and ordered Perrigo to clarify "*that it was referring to the dilutive effect on Mylan shareholders*".[23]

5.19 Mylan held an extraordinary general meeting of Mylan shareholders on 28 August 2015 and obtained the approval of Mylan's own shareholders for Mylan to pursue a tender offer for Perrigo as previously publicly announced.[24]

5.20 On 8 September 2015, Mylan CEO, Robert Coury stated[25] that the path to take control of Perrigo was very straightforward and stated that Mylan believed it would not impact their ability to realise their projected synergies, to utilise cash flow efficiently across the Mylan-Perrigo combination, or to maintain their credit rating, stating that "*We have experience operating companies in such a (synergies) scenario and are very comfortable that we will achieve the right outcome*".

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19 Paragraph 32 of the Mylan Counterclaim.

20 Irish Takeover Panel Press Release dated 25 August 2015 (Tab 35 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts) and Paragraphs 32 and 33 of the Mylan Counterclaim.

21 SEC Schedule 14A Proxy Statement Supplement for a Mylan extraordinary general meeting of Mylan shareholders pursuant to the U.S. Securities Exchange Act 1934 filed on 20 August 2015. See Tab 14 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

22 Mylan Form 425 dated 25 August 2015. See Tab 15 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

23 Irish Takeover Panel Announcement dated 25 August 2015 and paragraph 32 of the Mylan Counterclaim. Paragraph 34 of the Mylan Counterclaim also states the Irish Takeover Panel ordered Perrigo to clarify that it was actually "*referring to the dilutive effect on Mylan shareholders*" and not Perrigo shareholders. (See further at paragraph 8.2 (b) (ii) below).

24 Paragraph 21 of the Mylan Counterclaim.

25 Letter from Mylan CEO, Robert Coury to Perrigo CEO, Joseph Papa dated 8 September 2015. See Tab 26 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts

5.21 On 14 September 2015, Mylan made a specific tender (the **"Offer to Exchange"/"Tender Offer"**) to acquire all outstanding Perrigo shares, provided that more than 50% of Perrigo shares were tendered on or before the tender date.[26]

5.22 Under the terms of the Tender Offer, Perrigo shareholders would receive US$75 in cash and 2.3 Mylan ordinary shares for each Perrigo ordinary share and Perrigo shareholders would own approximately 40% of the combined company upon completion of the transaction (if all Perrigo shares were tendered).[27]

5.23 In offering materials which accompanied the Tender Offer, Mylan made available to Perrigo shareholders a Schedule TO and a Prospectus/Tender Offer.

5.24 Mylan stated in the Schedule TO and the Prospectus/Tender Offer that "*based on its prior experience integrating other acquired companies, including [Matrix], which Mylan acquired less than 100% of in 2007 and operated as a controlled subsidiary until 2015, that it can successfully manage the additional risks*" (of operating Perrigo as a controlled subsidiary) and that "*the combination can realize the anticipated operational synergies from the offer*".[28]

5.25 The Tender Offer had a deadline of 13 November 2015 (the **"Deadline"**).

5.26 On 17 September 2015, Perrigo's CEO issued a letter to its shareholders urging them to reject Mylan's Tender Offer and stated that the letter reflected the unanimous recommendation of the Perrigo Board.[29]

5.27 On 10 November 2015, Mylan issued a statement valuing its existing offer of 2.3 Mylan shares plus $75 cash at approximately $179 per Perrigo share.[30]

5.28 As at the Deadline, Mylan's Tender Offer failed as less than 50% of Perrigo shares were tendered (only approximately 40% were tendered).

6 The Perrigo Complaint against Mylan

6.1 On 17 September 2015, Perrigo filed an action against Mylan in the U.S. District Court for the Southern District of New York (the **"Perrigo Complaint"**) alleging that Mylan had misrepresented certain issues to Perrigo's shareholders in an attempt to persuade the Perrigo shareholders to tender their shares thereby giving Mylan control.[31]

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[26] Paragraph 22 of the Mylan Counterclaim.

[27] Mylan press release dated 14 September 2015. See Tab 16 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

[28] Schedule TO and Prospectus / Tender Offer issued in connection with Mylan's formal launch of the tender offer under SEC rules. See Tab 17 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

[29] Paragraph 44 of the Mylan Counterclaim.

[30] Mylan press release 10 November 2015 valued its offer of 2.3 Mylan shares plus $75 as worth approximately $179 per share of Perrigo. See Tab 18 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

[31] Paragraph 57 of the Perrigo Complaint.

6.2 The Perrigo Complaint sought injunctive and declaratory relief on the basis that Mylan's offering materials and other statements made in connection with the tender offer were materially false and misleading and in violation of Section 14(e) of the Securities Exchange Act 1934.

6.3 It further sought an order directing Mylan to make corrective disclosures.

6.4 Perrigo further alleged that Mylan threatened to delist Perrigo's shares from all public stock exchanges if Mylan obtained more than 50% of Perrigo shares but not enough Perrigo shares were tendered into the Tender Offer for Mylan to have total control of Perrigo. [32]

6.5 The misleading statements which Perrigo alleged Mylan made were as follows:

(a) Mylan's Synergy Statement

On 24 April 2015, Mylan claimed in a "*Synergy Statement*" (contained in the Irish Takeover Rule 2.5 disclosure) publicly filed with the Securities Exchange Commission (the "**SEC**") that *"the combination [of Mylan and Perrigo] will result in at least $800 million of annual pre-tax operational synergies by the end of year four following the consummation of the offer"*.[33]

On 14 August 2015, Mylan CEO, Robert Coury, issued a press release in which he stated *"We remain firm that we expect at least $800 million of annual pre-tax operational synergies by the end of year four."*[34]

(b) Schedule TO and Prospectus / Tender Offer (Filed with the SEC) and provided to Perrigo shareholders, also publicly available) by Mylan

On 14 September 2015, Mylan stated in the offering materials which accompanied the formal launch of the tender offer that "*based on its prior experience integrating other acquired companies, including [Matrix], which Mylan acquired less than 100% of in 2007 and operated as a controlled subsidiary until 2015, that it can successfully manage the additional risks*"[35] *of operating Perrigo as a controlled subsidiary and "the combination can realize the anticipated operational synergies from the offer"*[36]. It further stated "*Mylan shareholders may not realize the full financial benefits of operational synergies" in the controlled-subsidiary scenario because such "financial benefits may be shared by the minority shareholders of Perrigo.*"[37]

(c) Letter from Mylan CEO, Robert Coury to Perrigo dated 8 September 2015

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32 Paragraphs 3, 10, and 11 of the Perrigo Complaint.

33 Paragraph 25 of the Perrigo Complaint.

34 Paragraph 42 of the Perrigo Complaint.

35 Paragraph 74 of the Perrigo Complaint.

36 Paragraph 74 of the Perrigo Complaint.

37 Paragraph 57 of the Perrigo Complaint.

On 8 September 2015, in a letter to Perrigo's CEO, Coury stated that Mylan's "*experience operating companies in* [the above (paragraph (b)] *scenario*" made Mylan "*very comfortable*" that it would achieve "*the right outcome*" [i.e. its synergies estimate].[38]

(d) Mylan's supplemental proxy filing to the SEC

On 20 August 2015, Mylan stated in a supplementary proxy filing to the shareholders that if it acquired more than 50% but less than 80% of Perrigo shares on the tender offer, "*Mylan said that it might operate Perrigo as a controlled subsidiary" for the foreseeable future.*[39]

On 20 August 2015, in a supplemental proxy filing, Mylan stated that in the controlled-subsidiary scenario it "*intends to cause*" Perrigo to "*delist its shares from public stock exchanges as soon after consummation of the offer as is practicable*".[40]

Mylan further disclosed that this did "*not change any of Mylan's key assumptions regarding the categories of operational synergies available or the potential opportunity within each category*" and therefore "*Mylan continues to believe that the offer will result in at least $800 million of annual pre-tax operational synergies by the end of the year four following consummation of the offer*".[41]

7 Perrigo's Submissions to the Irish Takeover Panel

7.1 Perrigo filed submissions to the Irish Takeover Panel alleging that Mylan failed to make a lawful offer by 14 September 2015 in breach of the Irish Takeover Act 1997.[42]

7.2 On 25 September 2015, the Panel rejected Perrigo's application.

8 The Mylan Counterclaim

8.1 On 22 September 2015, Mylan filed a counterclaim to the Perrigo Complaint, alleging that Perrigo made false and misleading statements in its investor PowerPoint presentation, Form Schedule 14D-9 filed with the SEC on 17 September 2015 (the "**Perrigo Investor Presentation**")[43] and in Joseph Papa's "*media comments*"[44], which Mylan described as a "*two front attack to prevent the success of Mylan's offer to acquire Perrigo*"[45]. Mylan sought declaratory and injunctive relief requiring Perrigo to correct "*these serious misstatements to*

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38 Paragraph 54 of the Perrigo Complaint.

39 Paragraph 43 of the Perrigo Complaint.

40 Paragraph 48 of the Perrigo Complaint.

41 Paragraph 57 of the Perrigo Complaint.

42 Irish Takeover Panel Press release, 13 October 2015. See Tab 36 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

43 See Tab 27 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts

44 Paragraph 5 of the Mylan Counterclaim, Schedule 14D-9 and CNBC transcript of Joseph Papa interview with David Faber on "Squawk on the Street" dated 17 September 2015 at Tabs 2, 27 and 37 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

45 Paragraph 4 of the Mylan Counterclaim.

allow Perrigo shareholders to vote on the Mylan transaction with the facts in hand" (the "**Mylan Counterclaim**").[46]

8.2 The Mylan Counterclaim was against Perrigo and alleged that Perrigo violated Section 14(e) of the Securities Exchange Act 1934.

8.3 Mylan alleged that through the Perrigo Investor Presentation and Joseph Papa's media comments, Perrigo "*inundated its shareholders with false and misleading statements regarding (i) the size of the exchange offer premium; (ii) the allegedly dilutive, rather than accretive, nature of the transaction for Perrigo's shareholders; (iii) the views of Mylan's largest shareholder [Abbott Laboratories] and (iv) Mylan's representations concerning the potential synergies of a combined company*".[47]

8.4 The misrepresentations which Mylan alleged Perrigo made were as follows:

(a) The size of the Tender Offer Premium undervalued Perrigo

Mylan alleged that Perrigo and Joseph Papa made false and misleading statements in violation of Section 14(e) of the Securities Exchange Act 1934 regarding the value of the Mylan offer by stating that Mylan's Tender Offer undervalued Perrigo.

(i) In the Perrigo Investor Presentation, Perrigo represented that Mylan's Tender Offer was, at best, a premium of 14% above Perrigo's unaffected share price.

(ii) Perrigo also stated in the Perrigo Investor Presentation that "*Mylan's Offer Substantially Undervalues Perrigo*" and was an "Attempt to Steal Perrigo" that "*Mylan's grossly inadequate offer is nothing more than an attempt to steal Perrigo.*"[48]

(b) The Mylan transaction was dilutive rather than accretive for Perrigo shareholders

Mylan alleged that Perrigo made false and misleading statements in violation of Section 14(e) of the Securities Exchange Act 1934 regarding the allegedly dilutive, rather than accretive, nature of the transaction for Perrigo's shareholders.

(i) On 13 August 2015, Perrigo issued a press release in which (then-CEO) Joseph Papa stated that Mylan "*proposed a dilutive deal that substantially undervalues Perrigo.*"[49]

(ii) On 24 August 2015, the Irish Takeover Panel ruled in respect of Mylan's complaint regarding the above (and other statements) that Perrigo's misstatement breached the Irish takeover rules and ordered Perrigo to clarify "*that it was referring to the dilutive effect on Mylan shareholders*", not Perrigo shareholders.[50]

(iii) Mr. Papa appeared on CNBC's "Squawk on the Street" on 17 September 2015 and said, "*We think that the math, the financial math, is very strong in our case. Dilutive premium,*

[46] Paragraph 7 of the Mylan Counterclaim.

[47] Paragraph 5 of the Mylan Counterclaim.

[48] Paragraph 27 of the Mylan Counterclaim.

[49] Paragraph 32 of the Mylan Counterclaim.

[50] Paragraphs 33 and 34 of the Mylan Counterclaim.

I'm sorry, dilutive transaction on the growth rate, it's going to be dilutive to our earnings per share".[51]

(iv) Perrigo also stated in the Perrigo Investor Presentation that if Mylan's synergy targets were missed, "*the deal will be even more dilutive to adjusted EPS and more financially unattractive.*"[52]

(c) Abbott's shareholding in Mylan

Mylan alleged that Perrigo made misleading statements in violation of Section 14(e) of the Securities Exchange Act 1934 to the effect that Abbott – then Mylan's largest shareholder[53] - did not support the takeover attempt: In the Perrigo Investor Presentation, recommending the rejection on the Tender Offer, Perrigo created the false impression that Mylan's shareholders disapproved of Mylan's offer and were seeking to sell their shares as a result of the announcement of the Tender Offer. Perrigo attributed the quotation "*Let Me Out*" to "*Mylan's Largest Shareholders*".[54]

In the Perrigo Investor Presentation, Perrigo[55]

(i) quoted Miles White, Abbott CEO as saying in July 2015, "*...We [Abbott] don't have [an] intention long-term of being shareholders in Mylan*"; and

(ii) stated "*Mylan's largest shareholder [Abbott] has voted with its feet, seeking an exit by registering all their shares for sale.*"

(d) Mylan's representations concerning the potential synergies of a combined company

Mylan also alleged that in the Perrigo Investor Presentation, Perrigo made misleading statements about Mylan's representations relating to the synergies that would result from the takeover in violation of Section 14(e) of the Securities Exchange Act 1934:

(i) in the Perrigo Investor Presentation, Perrigo reported that: "*Mylan would like shareholders to believe it can achieve the exact same synergies* [between Mylan and Perrigo] *regardless of whether Perrigo is a 100%-owned subsidiary with no minority shareholders or a controlled subsidiary with minority shareholders*" and that "*this is simply not credible, as evidenced by the assessments of numerous third-party observers*";[56] and

(ii) that with respect to such assessments of third-party observers, "*[t]he Perrigo Board is not alone in believing that Mylan's consummation of the Offer without having received*

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51 Paragraph 35 of the Mylan Counterclaim.

52 Paragraph 36 of the Mylan Counterclaim.

53 Owner of approximately 14.2% of Mylan's shares – paragraph 40 of the Mylan Counterclaim.

54 Paragraph 39 of the Mylan Counterclaim.

55 Paragraphs 40 and 42 of the Mylan Counterclaim.

56 Paragraph 44 of the Mylan Counterclaim.

acceptances in respect of 80% of the outstanding Perrigo Ordinary Shares would destroy value."[57]

8.5 On 30 September 2015, Perrigo notified the Mylan Counterclaim to the 2014 Policy.

8.6 On 29 October 2015, the District Court denied both Perrigo's and Mylan's requests for injunctive relief.[58] Following the failure of Mylan's Tender Offer and after the Deadline, on 20 November 2015, a joint stipulation of voluntary dismissal was issued in respect of the legal proceedings encompassing the Perrigo Complaint and the Mylan Counterclaim.

8.7 On 8 December 2015, Perrigo's insurance broker, Willis, advised Chubb to close their file in respect of the Mylan Counterclaim.[59]

9 The Shareholders' Securities Actions

The Roofers Complaint/Roofers 1[60]

9.1 On 18 May 2016, Roofers' Pension Fund filed a federal securities class action in the US District Court for New Jersey (**"DNJ"**) against Perrigo and Joseph Papa (the **"Roofers Complaint/Roofers 1"**).

9.2 The Roofers Complaint/Roofers 1 was a securities class action brought on behalf of:[61]

(a) purchasers of Perrigo stock between 21 April 2015 (the day the Perrigo Board publicly rejected Mylan's offer to purchase Perrigo made on 8 April 2015) and 11 May 2016 (defined as the "Class Period" in the Roofers Complaint/Roofers 1) – who assert a Section 10(b) claim;

(b) investors in Perrigo common stock as of 13 November 2015 (i.e. the Deadline) - who assert a Section 14(e) claim.

9.3 The Roofers Complaint/Roofers 1 was made against Perrigo and Joseph Papa alleging violations of Sections 10(b) (and related SEC Rule 10b-5) and 14(e) of the Securities Exchange Act 1934 and against Joseph Papa (as a "controlling person") only under Section 20(a) of the Securities Exchange Act 1934.[62]

9.4 It was asserted in the Roofers Complaint/Roofers 1 that *"In the spring of 2014, Perrigo's executives engaged in informal discussions with competing OTC pharmaceutical manufacturer, Mylan, regarding a potential merger of the two companies. Those conversations, which were*

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57 Paragraph 45 of the Mylan Counterclaim.

58 Memorandum and Order signed 29 October 2015, *Perrigo Company plc v Mylan NV*, Not Reported. See Tab 3 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

59 See Tab 38 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

60 Referred to by Perrigo in its Defence and Counterclaim as "Roofers 1". See Tab 1 of Core Documents – Book 2 – Securities Actions Complaints, Shareholder Demand Letter and Derivative Complaint.

61 Paragraphs 1 and 42 of the Roofers Complaint/Roofers 1.

62 Paragraph 1 of the Roofers Complaint/Roofers 1.

not publicly disclosed at the time, were preliminary and never rose to the level of a formal agreement or offer."[63]

9.5 It was alleged in the Roofers Complaint/Roofers 1 that on 21 April 2015, Perrigo falsely told investors that the Mylan proposal of 8 April 2015 "*substantially undervalues Perrigo and its growth prospects*" and that the same Mylan proposal, "*does not take into account the full benefits of the Omega Pharma acquisition*"[64]. The Roofers Complaint/Roofers 1 alleged that "*over the next six months, Perrigo continued to engage in a public campaign to convince shareholders to reject Mylan's proposal. As additional reasons to reject Mylan's offer, Perrigo cited the 5-10% in organic revenue growth that it would achieve as a standalone company, as well as significant synergies from Perrigo's March 2015 acquisition of … Omega Pharma NV … among other things*".[65]

9.6 The Roofers Complaint/Roofers 1 alleged in a summary fashion that these Perrigo's statements (described in paragraph 9.5 above opposing Mylan's proposals) were "*materially false and misleading*" and caused "*a majority of Perrigo's shareholders to reject Mylan's offer*"[66]. It was further alleged that "*[i]n truth, Perrigo knew, or recklessly disregarded that: (1) Mylan's offer did not undervalue Perrigo; (2) Perrigo would not be able to achieve 5%-10% organic growth as a standalone company; (3) [Perrigo's] 'durable and competitive position and durable growth strategy' was rapidly deteriorating; and (4) Perrigo was experiencing serious issues integrating the Omega acquisition and significantly overpaid for Omega's business*".[67]

9.7 The Roofers Complaint/Roofers 1 alleged that "*[c]onvinced by Perrigo's strong opposition to Mylan's tender offer, on November 13, 2015, the majority of [Perrigo's] shareholders declined to tender their shares making the tender offer a failure and cause the price of Perrigo shares to decline by 6% from $156.55 per share to $146.90 per share*".[68]

9.8 The Roofers Complaint/Roofers 1 provided more detail of alleged misrepresentations made by Perrigo or on Perrigo's behalf under the heading "*Perrigo misrepresents the strength of its business to defend against Mylan's proposal*".[69] The Roofers Complaint/Roofers 1 alleged that on 21 April 2015, Perrigo issued a press release stating that Mylan's bid: "*substantially undervalues Perrigo and its growth prospects*",[70] "*would deny Perrigo shareholders the full benefits of Perrigo's durable competitive position and compelling growth strategy*"; and "*does not take into account the full benefits of the Omega Pharma acquisition*" as a reason for rejecting Mylan's offer".[71]

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63 Paragraph 17 of the Roofers Complaint/Roofers 1.

64 Paragraph 3 of the Roofers Complaint/Roofers 1.

65 Paragraph 3 of the Roofers Complaint/Roofers 1.

66 Paragraph 4 of the Roofers Complaint/Roofers 1.

67 Paragraph 4 of the Roofers Complaint/Roofers 1.

68 Paragraph 5 of the Roofers Complaint/Roofers 1 (apparently referencing the share price drop on the day the tender offer failed).

69 Page 7 of the Roofers Complaint/Roofers 1.

70 Paragraph 20 of the Roofers Complaint/Roofers 1.

71 Paragraph 20 of the Roofers Complaint/Roofers 1.

9.9 The Roofers Complaint/Roofers 1 alleged that these statements and omissions were materially false and misleading because Perrigo knew, or recklessly disregarded that: "*(1) Mylan's offer did not undervalue Perrigo; (2) [Perrigo's] 'durable and competitive position and durable growth strategy' was rapidly deteriorating; and (3) Perrigo was experiencing serious issues integrating the Omega acquisition and significantly overpaid for Omega's business*".[72]

9.10 The Roofers Complaint/Roofers 1 further alleged that over the six months from April 2015, "*Perrigo engaged in public campaign to convince its shareholders to reject Mylan's proposal. In support of its position …. [Perrigo] cited strong organic growth … and told shareholders that Perrigo had better prospects as a stand-alone company*".[73]

9.11 The Roofers Complaint/Roofers 1 further alleged that on 6 May 2015, at the Deutsche Bank Healthcare conference, Joseph Papa "*continued to tout his 'standalone case for the Perrigo Company' through which Perrigo would grow revenue 5% to 10% per year organically*" and that he "*lauded the 'tremendous revenue synergies" that will come from integrating Omega into its business*".[74]

9.12 The Roofers Complaint/Roofers 1 alleged that these statements and omissions were "materially false and misleading because Perrigo knew, or recklessly disregarded that: "*(1) Mylan's offer did not undervalue Perrigo; (2) Perrigo would not be able to achieve 5%-10% organic growth as a standalone company; and (3) Perrigo was experiencing serious issues integrating the Omega acquisition and significantly overpaid for Omega's business*"."[75]

9.13 The Roofers Complaint/Roofers 1 further alleged that on 2 June 2015 at the Jeffries Global Healthcare Conference, Joseph Papa "*implored investors to consider Perrigo's 'long-term standalone strategy*' which '*can create value for our shareholders*' when deciding whether to tender their shares to Mylan and further stated that "*Omega and Perrigo together were well positioned*" to achieve a "*5% to 10% growth rate" and "characterized the Omega acquisition as 'immediately accretive'*".[76]

9.14 The Roofers Complaint/Roofers 1 alleged that these statements and omissions were "materially false and misleading because Perrigo knew, or recklessly disregarded that: "*(1) Mylan's offer did not undervalue Perrigo; (2) Perrigo would not be able to achieve 5%-10% organic growth as a standalone company; and (3) Perrigo was experiencing serious issues integrating the Omega acquisition and significantly overpaid for Omega's business*"."[77]

9.15 The Roofers Complaint/Roofers 1 further alleged that during a conference call with analysts and investors to discuss Perrigo's earnings and operations, Mr Papa "continued to tout the recent Omega acquisition as a key driver of [Perrigo's] future success as a stand-alone company"[78], He stated that Omega was: "*tremendously important to our future*" and touted *the*

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[72] Paragraph 21 of the Roofers Complaint/Roofers 1.

[73] Paragraph 23 of the Roofers Complaint/Roofers 1.

[74] Paragraph 24 of the Roofers Complaint/Roofers 1.

[75] Paragraph 25 of the Roofers Complaint/Roofers 1.

[76] Paragraph 26 of the Roofers Complaint/Roofers 1.

[77] Paragraph 27 of the Roofers Complaint/Roofers 1.

[78] Paragraph 28 of the Roofers Complaint/Roofers 1.

"revenue synergies and the costs of goods sold synergies in Omega"; and that Perrigo "*delivered on our Omega integration plan"* and "*achieved great operational efficiencies and productivity improvement*". *Mr Papa also assured investors of Perrigo's "continued focus on providing highly transparent financial and operational results".*[79]

9.16 The Roofers Complaint/Roofers 1 alleged that these statements and omissions were "*materially false and misleading because Perrigo knew, or recklessly disregarded that: (1) Mylan's offer did not undervalue Perrigo; (2) [Perrigo]had not provided 'highly transparent financial and operational results'; and (3) Perrigo was experiencing serious issues integrating the Omega acquisition and significantly overpaid for Omega's business".*[80]

9.17 The Roofers Complaint/Roofers 1 further alleged that, after Mylan officially commenced its tender offer on 14 September 2015[81], on 17 September 2015, during a conference call with industry analysts and investors when recommending Perrigo shareholders to reject Mylan's tender offer, Joseph Papa stated that Mylan's "*current offer on the table is not even in the right Zip Code, when compared to Perrigo's stand-alone value*", and that the "*Omega transaction … has done outstanding*". The Roofers Complaint/Roofers 1 also alleged that Mr Papa touted that Perrigo has "*consistently demonstrated* [its] *ability to execute on value-accretive deals*" including "*expansive acquisitions like Omega and is consistent in [its] drive to deliver shareholder value through inorganic growth*"[82]. In addition the Roofers Complaint/Roofers 1 alleged that Mr Papa assured investors that "[i]*n one year, when you look at Perrigo, you will see a bigger, stronger company delivering value well above Mylan's offer today".*[83]

9.18 The Roofers Complaint/Roofers 1 alleged that these statements were *"materially false and misleading because Perrigo knew, or recklessly disregarded that: (1) Mylan's offer did not undervalue Perrigo; (2) Perrigo would not be able to achieve 5%-10% organic growth as a standalone company; (3) [Perrigo's] 'durable and competitive position and durable growth strategy' was rapidly deteriorating; and (4) Perrigo was experiencing serious issues integrating the Omega acquisition and significantly overpaid for Omega's business".*[84]

9.19 It further alleged that also on 17 September 2015, Perrigo filed the Perrigo Complaint against Mylan "*in an effort to further convince Perrigo investors to reject the tender offer*" by "*accusing Mylan of misrepresenting the proposed benefits of a merger with Mylan*".[85]

9.20 The Roofers Complaint/Roofers 1 alleged that during the Class Period, Perrigo and Mr Papa made misleading statements and omissions and engaged in a scheme to deceive the market, which artificially inflated the price of Perrigo common stock and operated as a fraud or deceit on the Class.[86]

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79 Paragraph 28 of the Roofers Complaint/Roofers 1.

80 Paragraph 29 of the Roofers Complaint/Roofers 1.

81 Paragraph 30 of the Roofers Complaint/Roofers 1.

82 Paragraph 27 of the Roofers Complaint/Roofers 1.

83 Paragraph 31 of the Roofers Complaint/Roofers 1.

84 Paragraph 32 of the Roofers Complaint/Roofers 1.

85 Paragraph 33 of the Roofers Complaint/Roofers 1.

86 Paragraph 41 of the Roofers Complaint/Roofers 1.

9.21 In addition, the Roofers Complaint/Roofers 1 alleged that during the Class Period, Perrigo and Mr Papa made additional false and misleading statements in response to the Mylan tender offer that had the effect of dissuading investors from tendering their shares and causing the tender to fail, resulting in the decline of Perrigo's common stock price.[87]

Notification of Mylan Counterclaim to Insurers

9.22 On 6 June 2016, the Roofers Complaint/Roofers 1 was notified by Perrigo, via its broker, Willis, to the 2014 Policy and the 2015 Policy.[88]

Change of Lead Plaintiff and Lead Counsel

9.23 The press release that had issued by counsel for the Roofer's Pension Fund when it filed the Roofers Complaint/Roofers 1 on 18 May 2016[89] triggered a further 60-day period under the Securities Exchange Act 1934 for other potential lead plaintiffs (and counsel) to file papers (or a separate law suit) seeking to replace Roofer's Pension Fund as plaintiff. Accordingly, competing lead plaintiffs and counsel filed papers in the DNJ court during July and August 2016.

9.24 On 10 February 2017, the DNJ court replaced the Roofers Pension Fund as lead plaintiff and approved new lead counsel for the class action but within the same proceedings in accordance with the provisions of the Securities Exchange Act 1934. The Court appointed the self-named institutional plaintiffs, Perrigo Institutional Investor Group ("**PIIG**"), and consolidated all US securities actions up to that point.[90] An order to this effect was issued on 14 February 2017.

9.25 Although Roofers Pension Fund was no longer the plaintiff, the same lawyers that represented Roofers Pension Fund - joined by another law firm, Pomerantz, who had represented the Plaintiffs in the AMI Complaint (see paragraph 9.36 below) - were appointed as the lead counsel to the putative class.

9.26 Counsel for plaintiffs and counsel for defendants conferred during March 2017 and proposed a scheduling order (later approved by the court) that required plaintiffs to file any amended complaint[91] by the later of 60 days after the 22 March Order or 30 days after Perrigo filed its CY 2016 Form 10-K. The Amended Roofers Complaint (or Roofers 2 as referred to in the Defence and Counterclaim on behalf of Perrigo in these Proceedings) was filed on 21 June 2017 – see paragraph 9.63 below.

The Schweiger Complaint in Israel

9.27 On 22 May 2016, holders of Perrigo's shares acquired on the TASE in Israel filed a putative securities class action in the District Court of Tel Aviv-Jaffa against Perrigo and five individual defendants (Joseph Papa, Laurie Brlas, John Hendrickson, Marc Coucke and Gary Kunkle)

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87 Paragraph 41 of the Roofers Complaint/Roofers 1.

88 See Tab 1 of the Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements .

89 See Tab 39 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

90 See Tab 4 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

91 Under US Federal Rule of Civil Procedure 15(a)(1), plaintiffs can freely amend the complaint at least once so long as the opposing party has not answered or filed a motion to dismiss. See Court Order at Tab 5 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

alleging violations of Sections 10(b) (and SEC Rule 10b-5) and 14(e) of the Securities Exchange Act 1934 against all defendants and Section 20(a) of the Securities Exchange Act 1934 against Papa. The plaintiffs also alleged violations of Israeli Securities Law, 5728-1968 and the Israeli Companies Law, 5759-1999 against all defendants: Schweiger et al v Perrigo Company plc, et al (the "**Schweiger Complaint**").[92]

9.28 The class in the Schweiger Complaint comprised the holders of Perrigo shares who had acquired the shares on TASE and held them as of 13 November 2015 (the date of Mylan's Tender Offer) and/or those who acquired shares of Perrigo on the TASE during the "Deception Period", being from 21 April 2015 (after trading closing time) to 15 May 2016 (before trading opening time) and concerned a "*long series of misleading publications and representations*" made during the period, "*which were intended to serve a specific goal of the Defendants (rejection of the Tender Offer which was under consideration)*".[93] The Schweiger Complaint referred to and exhibited the Roofers Complaint/Roofers 1.

9.29 The Schweiger Complaint alleged that: the Defendants published and represented that Mylan Tender Offer was an offer which "*substantially undervalue[s] Perrigo and its growth prospect*" and should therefore be rejected by Perrigo shareholders; and that "*the Defendants presented and published misleading data with respect to Perrigo's business affairs in order help convince the shareholders to reject the Tender Offer and that, as part of this, the "Defendants published, inter alia, that the acquisition of Omega Pharma NV ... was highly successful, and was creating a great deal of synergy and value for [Perrigo]; that [Perrigo's] business operations were sustainable and well-positioned in terms of competition, and that [Perrigo's] revenues would organically increase by 5-10% (without additional acquisitions)*".[94]

9.30 The Schweiger Complaint (at paragraph 6(H) (1)-(3)) pleaded many of the same alleged misstatements as made in the Roofers Complaint/Roofers 1. The Schweiger Complaint also referred to an additional misstatement at paragraph 6(H) (4).

9.31 The misstatements or publications alleged were:

(a) "*On May 6 2015, at a Deutsche Bank Healthcare conference, [Joseph Papa] asserted that [Perrigo] would achieve organic growth of 5 to 10% per year as an independent company. {Papa} emphasised the tremendous value which was expected due to the synergies which would result from the integration with Omega*".[95]

(b) "*On August 5, 2015, in a conference call, [Papa] clarified the tremendous value involved in the acquisition of Omega, explained the synergies, and affirmed that [Perrigo] had 'delivered on our Omega integration plan' and "achieved great operational efficiencies and productivity improvement"*".[96]

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92 See Tab 2 of Core Documents – Book 2 – Securities Actions Complaints, Shareholder Demand Letter and Derivative Complaint.

93 Page 1, paragraphs 1 and 2 of the Schweiger Complaint.

94 Page 2, paragraphs 2(A) and (B) of the Schweiger Complaint.

95 Page 5, paragraph 6(H) part (1) of the Schweiger Complaint.

96 Page 5, paragraph 6(H) part (2) of the Schweiger Complaint.

(c) *"On September 17, 2015, in a conference call, [Papa] clarified the representations and asserted the following:*

"the current offer on the table is not even in the right Zip Code, when compared to Perrigo's stand-alone value". [97]

"Omega transaction that, as you have seen in the last quarterly report, has done outstanding".[98]

(d) *"On October 22, 2015, the Company made additional representations, and the CEO continued to praise the Omega acquisition transaction:"*

"…Omega is exactly in the same place that our consumer healthcare US business was eight years ago, nine years ago, a great business" and also stated that by bolting on additional products to the particular category "we can drive significantly the leverage in our Omega capabilities" and further commenting that Perrigo think that will "drive tremendous bottom line for Omega.""[99]

9.32 The Schweiger Complaint alleged that these Perrigo publications and representations were misleading, incorrect, and some were even opposite of the truth and caused most of the shareholders to reject the Tender Offer and also caused many investors to acquire Perrigo shares.[100]

9.33 The Schweiger Complaint alleged that "*in practice, the Defendants were aware and/or rashly ignored and/or should have known that:*

(1) Mylan's Tender Offer did not undervalue the Company (and certainly did not significantly undervalue the Company).

(2) [Perrigo's] competitive standing is not well-established and sustainable. The opposite is actually true- significant competitive pressures began harming [Perrigo's] competitive standing.

Due to the foregoing inter alia [Perrigo] will be unable to present organic growth of 5%-10% per year.

(3) In contrast to the declarations regarding the successful integration of Omega's business operations [Perrigo] encountered many difficulties in integrating Omega's business operations in a manner which required the implementation of highly significant write downs amounting to hundreds of millions of USD and it became evident that [Perrigo] had overvalued Omega's business operations before [Perrigo's] acquisition of Omega."[101]

Notification of Schweiger Complaint to Insurers

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97 Page 5, paragraph 6(H) part (3)(A) of the Schweiger Complaint.

98 Page 5, paragraph 6(H) part (3)(B) of the Schweiger Complaint.

99 Page 5, paragraph 6(H) part (4) of the Schweiger Complaint.

100 Paragraph 6(I) of the Schweiger Complaint.

101 Paragraph 6(I) of the Schweiger Complaint.

9.34 On 30 June 2016, the Schweiger Complaint was notified by Perrigo, via its broker, Willis, to the 2014 Policy and 2015 Policy.

Stay and withdrawal of Schweiger Complaint

9.35 The Schweiger Complaint was initially stayed and later, in 2017, withdrawn in favour of the Israel Electric Corporation Employees' Education Fund lawsuit (see paragraph 9.104 below).

AMI Complaint

9.36 On 21 June 2016, AMI Government Employees Provident Fund Management Company filed a class action in US District Court for the Southern District of New York ("**SDNY**") against Perrigo and Papa on behalf of all investors who purchased or otherwise acquired Perrigo shares between 21 April 2015 and 11 May 2016 and also on behalf of all investors who owned Perrigo common stock as of 13 November 2015[102] (being the deadline by which Perrigo investors were required to tender their shares in connection with the Mylan Tender Offer) (the "**AMI Complaint**").

9.37 The AMI Complaint claimed that Perrigo made materially false and misleading statements regarding the company's business, operational and compliance policies in connection with the Mylan takeover bid, which were also in violation of Sections 10(b)(and SEC Rule 10b-5), 14(e) and 20(a) of the Securities Exchange Act 1934.

9.38 Specifically, in the six months after Mylan's initial offers to acquire Perrigo, first made in April 2015, Perrigo publicly urged its shareholders to reject Mylan's offer with reference to the 5% to 10% annual organic growth that Perrigo would achieve as a standalone entity and the synergies of its acquisition of Omega.[103] The Complaint further stated that on 13 November 2015, swayed by Perrigo's public opposition to Mylan's offer, the majority of Perrigo's shareholders declined to tender their shares, causing the failure of the Tender Offer.[104]

9.39 The AMI Complaint maintained that as a result of the alleged misstatements referenced in the Complaint, Perrigo investors rejected the Mylan Offer which resulted in the decline of Perrigo's stock price and caused a loss to Perrigo investors.

9.40 The AMI Complaint alleged that Perrigo and Joseph Papa (on behalf of Perrigo) intentionally, fraudulently, falsely or misleadingly stated that the Mylan offer undervalued Perrigo when compared to Perrigo's stand-alone value[105] and "*would deny Perrigo shareholders the full benefits of Perrigo's durable competitive position and compelling growth strategy*"[106] in circumstances where:

(a) The Omega integration was a success (i.e. Omega Integration).

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102 Paragraph 1 of the AMI Complaint. See Tab 3 of Core Documents – Book 2 – Securities Actions Complaints, Shareholder Demand Letter and Derivative Complaint.

103 Paragraph 4 of the AMI Complaint.

104 Paragraph 5 of the AMI Complaint.

105 Paragraph 31 of the AMI Complaint.

106 Paragraph 24 of the AMI Complaint.

(b) Perrigo would be able to achieve 5-10% organic growth as a standalone company (i.e. Organic Growth).

9.41 Specifically, the AMI Complaint contended that the defendants to the AMI Complaint made false and/or misleading statements and/or failed to disclose that: "*(i) Perrigo as a standalone entity would be unable to achieve organic revenue growth of 5% to 10%; (i) Perrigo's competitive position and growth strategy were not "durable" but were in fact eroding, (iii) Perrigo was facing serious issues integrating the Omega acquisition into the Company and had significantly overpaid for Omega; (iv) for the foregoing reasons, among others, Mylan's offer did not undervalue Perrigo; and (v) as a result of the foregoing, Perrigo's public statements were materially false and misleading at all relevant times.*"[107]

9.42 In this context, the AMI Complaint referred to the following alleged misstatements:

(a) On 21 April 2015, Perrigo issued a press release stating that Mylan's bid "*substantially undervalues Perrigo and its growth prospects*"[108] and that the Mylan offer "*does not take into account the full benefits of the Omega Pharma acquisition.*"[109]

(b) In the same press release, it was stated that the Mylan offer "*would deny Perrigo shareholders the full benefits of Perrigo's durable competitive position and compelling growth strategy*".[110]

(c) On 6 May 2015, at the Deutsche Bank Healthcare conference, Joseph Papa spoke of the "*tremendous revenue synergies*" that Perrigo would gain from integrating Omega into its business.[111] At this same conference, Joseph Papa also projected that Perrigo would achieve organic revenue growth of 5 to 10% per year.[112]

(d) On 2 June 2015, at the Jeffries Global Healthcare Conference, Joseph Papa once again cited the benefits of the Omega acquisition which he described as "*immediately accretive*".[113] Joseph Papa also asked investors to consider Perrigo's "*long-term standalone strategy*" which he claimed would "*create value for our shareholders*" and further underlined the benefits of the integration with Omega which he described as "*immediately accretive*", again projecting 5% to 10% annual growth rate for Perrigo.[114] Additionally, Joseph Papa advised the Perrigo investors to consider Perrigo's "*long-term standalone strategy*", which he claimed would "*create value for [Perrigo's] shareholders.*"[115]

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107 Paragraph 6 of the AMI Complaint.

108 Paragraph 24 of the AMI Complaint.

109 Paragraph 24 of the AMI Complaint.

110 Paragraph 24 of the AMI Complaint.

111 Paragraph 27 of the AMI Complaint.

112 Paragraph 27 of the AMI Complaint.

113 Paragraph 28 of the AMI Complaint.

114 Paragraph 28 of the AMI Complaint.

115 Paragraph 28 of the AMI Complaint.

(e) On 5 August 2015, Perrigo (Joseph Papa) hosted a conference call with investors and analysts to discuss Perrigo's financial and operating results for the quarter ended 30 June 2015, Joseph Papa declared the Omega acquisition to be a key driver of Perrigo's success and further stated that Omega and its purported revenue synergies are *"tremendously important to [Perrigo's] future"*; and told investors and analysts that Perrigo had *"delivered on our Omega integration plan" and "achieved great operational efficiencies and productivity improvement"*.[116]

(f) On 17 September 2015, during a conference call with industry analysts and investors Joseph Papa stated:

Mylan's offer is "*not even in the right Zip Code, when compared to Perrigo's stand-alone value.", and further stated that "[i]n one year, when you look at Perrigo, you will see a bigger, stronger company delivering value well above Mylan's offer today.*"[117]

(g) On this conference call Papa also reiterated the purported success of the Omega acquisition, which he characterized as "*outstanding*" and an example of Perrigo's ability to "*consistently… execute on value-accretive deals*".[118]

Notification of AMI Complaint to Insurers

9.43 On 30 June 2016, the AMI Complaint was notified by Perrigo, via its broker, Willis, to the 2014 and 2015 Policy.

Withdrawal of AMI Complaint

9.44 On 12 July 2016, AMI withdrew its class action voluntarily and without prejudice.

Wilson Complaint

9.45 On 18 July 2016, Michael Wilson filed a class action in the United States District Court for the District of New Jersey against Perrigo on behalf of all investors who were involved in put option trades for Perrigo shares between April 2015 and 11 May 2016[119] (the "**Wilson Complaint**").

9.46 Wilson claimed that Perrigo made materially false and misleading statements regarding the company's business, operational and compliance policies in connection with the Mylan takeover bid, which were in violation of Sections 10(b)(and SEC Rule 10b-5) and 20(a) of the Securities Exchange Act 1934.

9.47 Specifically, in the six months after Mylan's initial offers to acquire Perrigo, first made in April 2015, Perrigo publicly urged its shareholders to reject Mylan's offer. Perrigo cited as reasons the 5% to 10% annual organic growth that Perrigo would achieve as a standalone entity and

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116 Paragraph 29 of the AMI Complaint.

117 Paragraph 31 of the AMI Complaint.

118 Paragraph 31 of the AMI Complaint.

119 See Tab 4 of Core Documents – Book 2 – Securities Actions Complaints, Shareholder Demand Letter and Derivative Complaint.

the synergies of its acquisition of Omega.[120] The Complaint further stated that on 13 November 2015, swayed by Perrigo's public opposition to Mylan's offer, the majority of the Perrigo's shareholders declined to tender their shares, causing the failure of the tender offer.[121]

9.48 The Wilson Complaint maintained that as a result of the alleged misstatements referenced in the Complaint, Perrigo investors rejected the Mylan offer leading to a resulting decline in the market value of Perrigo's securities and a significant loss to those persons who were involved in put option trades in Perrigo shares between 21 April 2015 and 11 May 2016.

9.49 The Wilson Complaint claimed that Perrigo and Joseph Papa (on behalf of Perrigo) fraudulently[122] and falsely stated that the Mylan offer undervalued Perrigo when compared to Perrigo's stand-alone value[123] and "*would deny Perrigo shareholders the full benefits of Perrigo's durable competitive position and compelling growth strategy.*"[124] in circumstances where:

(a) The Omega integration was a success (i.e. Omega Integration).

(b) Perrigo would be able to achieve 5-10% organic growth as a standalone company (i.e. Organic Growth).

9.50 Specifically, the Wilson Complaint contends that the defendants to the AMI Complaint made false and/or misleading statements and/or failed to disclose that: "*(i) Perrigo as a standalone entity would be unable to achieve organic revenue growth of 5% to 10%; (i) Perrigo's competitive position and growth strategy were not "durable" but were in fact eroding, (iii) Perrigo was facing serious issues integrating the Omega acquisition into the Company and had significantly overpaid for Omega; (iv) for the foregoing reasons, among others, Mylan's offer did no undervalue Perrigo; and (v) as a result of the foregoing, Perrigo's public statements were materially false and misleading at all relevant times.*"

9.51 In this context, the Wilson Complaint referred to the following alleged misstatements:

(a) On 21 April 2015, Perrigo issued a press release stating that Mylan's bid "*substantially undervalues Perrigo and its growth prospects*"[125] and that the Mylan offer "*does not take into account the full benefits of the Omega Pharma acquisition.*"[126]

(b) In the same press release it was stated that the Mylan offer "*would deny Perrigo shareholders the full benefits of Perrigo's durable competitive position and compelling growth strategy*".[127]

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120 Paragraph 4 of the Wilson Complaint.

121 Paragraph 5 of the Wilson Complaint.

122 Paragraph 57 of the Wilson Complaint.

123 Paragraph 29 of the Wilson Complaint.

124 Paragraph 21 of the Wilson Complaint.

125 Paragraph 21 of the Wilson Complaint.

126 Paragraph 21 of the Wilson Complaint.

127 Paragraph 21 of the Wilson Complaint.

(c) On 6 May 2015, at the Deutsche Bank Healthcare conference, Joseph Papa spoke of the "*tremendous revenue synergies*" that Perrigo would gain from integrating Omega into its business[128] and projected that Perrigo would attain organic revenue growth of 5 to 10% per year.[129]

(d) On 2 June 2015 at the Jeffries Global Healthcare Conference, Joseph Papa cited the benefits of the Omega acquisition which he described as *"immediately accretive"*[130] and advised investors to consider Perrigo's "*long-term standalone strategy*" which he claimed would "*create value for [Perrigo's] shareholders*" and further commented on the benefits of the integration with Omega which he described as "*immediately accretive*", while again projecting 5% to 10% annual growth rate for Perrigo.[131] Joseph Papa further advised that the Perrigo investors to consider Perrigo's "*long-term standalone strategy*", which he claimed would *"create value for [Perrigo's] shareholders."*[132]

(e) On 5 August 2015, Perrigo (Joseph Papa) hosted a conference call with investors and analysts to discuss Perrigo's financial and operating results for the quarter ended 30 June 2015, Joseph Papa touted the Omega acquisition to be a key driver of Perrigo's success and further stated that Omega and its purported revenue synergies are *"tremendously important to [Perrigo's] future";* and posited to investors and analysts that Perrigo had *"delivered on our Omega integration plan" and "achieved great operational efficiencies and productivity improvement".*[133]

(f) On 17 September 2015, during a conference call with industry analysts and investors Joseph Papa described Mylan's offer as *"not even in the right Zip Code, when compared to Perrigo's stand-alone value.",* and further stated that *"[i]n one year, when you look at Perrigo, you will see a bigger, stronger company delivering value well above Mylan's offer."*[134] On this conference call, Papa also stated the Omega acquisition is *"outstanding"* and further commented that the acquisition is an example of Perrigo's ability to *"consistently…execute on value-accretive deals."*[135]

Notification of Wilson Complaint to Insurers

9.52 On 3 August 2016, the Wilson Complaint was notified by Perrigo, via its broker, Willis, to the 2014 Policy and 2015 Policy.

Consolidation of Wilson Complaint with Roofers Complaint/Roofers 1

9.53 The Wilson Complaint was consolidated with the Roofers Complaint/Roofers 1.

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128 Paragraph 24 of the Wilson Complaint.

129 Paragraph 24 of the Wilson Complaint.

130 Paragraph 25 of the Wilson Complaint.

131 Paragraph 25 of the Wilson Complaint.

132 Paragraph 25 of the Wilson Complaint.

133 Paragraph 26 of the Wilson Complaint.

134 Paragraph 29 of the Wilson Complaint.

135 Paragraph 29 of the Wilson Complaint.

Keinan Complaint

9.54 On 29 March 2017, Eyal Keinan, a Perrigo shareholder, filed a motion to approve his claim as a class action against Perrigo and Ernst & Young LLP (Perrigo's independent auditor) in the Tel-Aviv-Jaffa District Court. (the **"Keinan Complaint"**[136]).

9.55 The Keinan Complaint alleged breaches by Perrigo of Israeli Securities Law, 5728-1968.

9.56 It also pleaded in the alternative, that should US law apply, the plaintiffs had causes of action under Sections 10(b)[137] of the Securities Exchange Act 1934 and Sections 11 and 12 of the Securities Act 1933. The Keinan Complaint asserted that the Securities Act 1933 and the Securities Exchange Act 1934 applied to purchasers of Perrigo shares on TASE or shares in dual listed companies.[138] The Keinan Complaint asserted that Israeli Securities Law applies U.S. securities law to Israeli share purchases of Perrigo shares on TASE because Perrigo is a dual listed company whose primary listing is on a U.S. exchange.)[139]

9.57 The allegations made in the Keinan Complaint related solely to Perrigo's treatment of the Tysabri royalty stream during the years 2014 to 2017.

9.58 The Keinan Complaint alleged that as a result of recording the Tysabri royalty stream (and another asset acquired from Elan – Prialt) as an intangible asset, Perrigo recorded income in its financial statements which it should not have recorded in the way that Perrigo did.

9.59 The represented class were purchasers of Perrigo shares between 6 February 2014 and 21 March 2017.

9.60 The Keinan Complaint alleged:

(a) *"Perrigo's financial reports are misleading, including by virtue of the way in which income has been recognized in a manner contrary to accounting principles"*[140]

Keinan alleges that Perrigo's financial statements published between 6 February 2014 and November 2016[141], reported that the revenue arising from the Tysabri royalty stream as though the royalty stream was an intangible asset[142]. Keinan alleged this treatment was erroneous and that the royalty stream was a financial asset and that meant the income should be reported in a different manner.[143]

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136 See Tab 5 of Core Documents – Book 2 – Securities Actions Complaints, Shareholder Demand Letter and Derivative Complaint.

137 The unofficial English translation of the Keinan Complaint provided by Perrigo to Insurers refers to Section 10(1), however, the Hebrew pleading refers to Section 10(b).

138 Paragraphs 48 – 64 of the Keinan Complaint.

139 Paragraphs 48 – 64 of the Keinan Complaint.

140 Paragraphs 8 – 39 of the Keinan Complaint.

141 Being the first periodic report after completing the acquisition of Elan.

142 Paragraph 22 of the Keinan Complaint.

143 Paragraph 41 of the Keinan Complaint.

(b) *"The accounting treatment of the rights to the stream of royalties was fundamentally flawed and caused Perrigo's profits to be inflated".*[144]

Keinan alleged that as a result of recording the Tysabri royalty stream as an intangible asset, Perrigo recorded income in its financial statements published between 6 February 2014 and November 2016, which it should not have recorded in the way that Perrigo did. This in turn caused the operating profit recorded in Perrigo's audited financial statements for 2014, 2015 and the first nine months of 2016 to be distorted by approximately $5.1 billion and in the non-audited GAAP statements, by approximately US$875 million.[145]

Further, the EY Auditor's report attached to Perrigo's audited financial statements for FY 2014, FY 2015 and for the audited stub period ending 31 December 2015 contained the following [fraudulent] misstatements:

(c) *"In our opinion, [Perrigo] maintained in all material aspects, effective, internal control over financial reporting…In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Perrigo Company PLC"* in accordance with US generally accepted accounting principles.[146]

Notification of Keinan Complaint to Insurers

9.61 On 19 April 2017, the Keinan Complaint was notified by Perrigo, via its broker, Willis, to the 2016 Policy.

9.62 Later in 2017 counsel for all three plaintiffs (in the Keinan Complaint, Schweiger Complaint and Israel Electric Complaint) negotiated a deal that combined all three cases together, and the cases were stayed in early 2018 while the Amended Roofers Complaint /Roofers 2proceeded in the DNJ.

Amended Roofers Complaint/Roofers 2[147]

9.63 On 21 June 2017, PIIG[148] filed an amended class action complaint within the proceedings referred to in these Proceedings as the Roofers Amended Complaint (or Roofers 2) and under the same case number, on behalf of all investors who purchased or otherwise acquired Perrigo shares on the NYSE and TASE between 21 April 2015 and 3 May 2017 (extending the end date of the Class period from 11 May 2016 in the Roofers Complaint/Roofers 1) alleging violations of Sections 10(b) (and SEC Rule 10b-5) of the Securities Exchange Act 1934 and also on behalf of all investors who owned Perrigo shares as of 13 November 2015 alleging violation of Section 14(e) of the Securities Exchange Act 1934. The Amended Roofers Complaint/Roofers 2 also

144 Paragraphs 40 – 47 of the Keinan Complaint.

145 Paragraphs 22 – 24 of the Keinan Complaint.

146 Paragraph 25 of the Keinan Complaint.

147 Referred to as Roofers 2 in Perrigo's Defence and Counterclaim. See Tab 6 of Core Documents – Book 2 – Securities Actions Complaints, Shareholder Demand Letter and Derivative Complaint.

148 The lead plaintiffs, who identified themselves as a group as "PIIG", were now several Israeli entities that invested in Perrigo stock through purchases on both the NYSE and TASE

alleged violations of Section 20(a) of the Securities Exchange Act 1934 against the directors of Perrigo.

9.64 In addition to Perrigo and Joseph Papa, the Amended Roofers Complaint/Roofers 2 added Laurie Brlas (chair of Perrigo's board of directors), Judy Brown (former executive), Gary M Cohen (director), Marc Coucke (co-founder, chairman and CEO of Omega), former directors Jacqualyn A Fouse, Ellen R Hoffing, Michael R Jandernoa, Gerald K Kunkle Jr and Herman Morris Jr, and director, Donal O'Connor as defendants.[149]

9.65 Under the heading "Summary of the Action", the Amended Roofers Complaint/Roofers 2, stated that the "*action arises from misrepresentations and omission that Defendants made to investors while fighting a hostile takeover and throughout the Class Period*". Further, PIIG alleged that "*[t]o discourage Perrigo shareholders from accepting Mylan's offer, Defendants repeatedly made materials misrepresentations and omission about four keys areas: (a) Perrigo's organic growth; (b) the integration of Perrigo's largest acquisition, Omega Pharma NV ("Omega"); (c) collusive pricing in Perrigo's most profitable division, generic drugs (which Perrigo called "Generic Rx" or sometimes just "RX"); and (d) the deteriorating value of Perrigo's largest financial asset, a royalty stream for the drug Tysabri*".[150]

9.66 The Amended Roofers Complaint/Roofers 2 repeated the Roofers Complaint/Roofers 1 allegations that Perrigo falsely or misleadingly stated that the Mylan offer undervalued Perrigo in circumstances where: (a) the Omega integration was a success and (b) that Perrigo would be able to achieve 5 - 10% organic growth as a standalone company.

9.67 The allegations concerning "collusive pricing" in Perrigo's Generic Rx division and the deteriorating value of Perrigo's largest financial asset, Tysabri, were new and were not made in the Roofers Complaint/Roofers 1.

9.68 The Amended Roofers Complaint/Roofers 2 asserted that "*to discourage Perrigo investors from tendering shares to Mylan, Defendants also issued an inflated profit forecast guiding investors to expect 2016 earnings of $9.30-$9.85, which Perrigo would later concede was not 'realistic'*".[151] Its further alleged that "*Perrigo and its directors issued aggressive and unrealistic forecast based upon assumptions that were not remotely accurate or objective. For example, they assumed an organic growth rate far higher than [Perrigo] had recently been able to achieve, assumed success in achieving Omega synergies despite knowledge of deep problems with the integration, and assumed that Perrigo could continue the collusive price hikes driving profits in its Generic Rex division even as generic drug pricing came under increased scrutiny*".[152]

9.69 The Amended Roofers Complaint/Roofers 2 further alleged that the "*Defendants touted synergies with Omega as central to Perrigo's growth claims, even though Defendants Papa, Brown and Coucke knew that there were deep problems with the Omega integration and the*

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149 Following the Judgment in the Motion to Dismiss dated 27 July 2018 the Amended Roofers Complaint/Roofers 2 was dismissed against all Defendants except for Perrigo, Joseph Papa and Judy Brown.

150 Paragraph 1 of the Amended Roofers Complaint/Roofers 2.

151 Paragraph 4 of the Amended Roofers Complaint/Roofers 2.

152 Paragraph 4 of the Amended Roofers Complaint/Roofers 2.

underlying assets".[153] It also alleged that the "*Defendants described the Omega acquisition as a key part of the 5%-10% organic growth they trumpeted in their opposition to Mylan's tender offer*" and referred to Form8-K filed on 22 October 2015 which stated that "*Perrigo's growth assumption for Omega was more than double the 3.2% organic growth that Omega's management had independently projected for 2013-2017 as part of its goodwill calculation*".[154]

9.70 It also alleged that "*[i]n their efforts to defeat the Mylan bid, the Defendants also hid the fact that results in Perrigo's' most profitable division, Generic Rx, were significantly inflated by illegal price-fixing*"[155] which ultimately became the subject of a raid by the FBI and an investigation by the Department of Justice (DOJ). This inflated the results from Perrigo's most profitable division, Generic Rx, by at least $858 million ("**Drug Price-Fixing**").[156]

9.71 The Amended Roofers Complaint/Roofers 2 further alleged that "*throughout the Class Period, Defendants falsely presented an inflated value for Perrigo's largest financial asset*".[157] It alleged that the value of the Tysabri royalty stream was stated at $5.8 billion, which was not the fair value of the asset (the "**Tysabri Accounting Treatment**").

9.72 PIIG alleged that the "*Defendants' misrepresentations and omissions served their purpose, defeating Mylan's' takeover bid*"[158] but that the "*truth soon began to emerge*" , with Perrigo reporting on 18 February 2016 fourth quarter 2015 revenue, profits and margins well below what Perrigo had led investors to believe it would achieve.[159] The Amended Roofers Complaint/Roofers 2 referred to a $185 million impairment charge in respect of Omega[160] and on 25 April 2016, Perrigo lowered its 2016 earnings guidance to "*$1.40 (at midpoint) less than claimed only three months earlier. [Perrigo] also reported that it expected first quarter 2016 earnings to be only $1.71-$1.77 per share, which it blamed on more competitive generic drug price fixing (the natural result of collusion becoming more difficult as regulators focused in on widespread price-fixing in the industry. Perrigo also stated that it was considering additional impairment charges for Omega, assets it touted to fend off the Mylan bid*".[161] On 12 May 2016, Perrigo announced another $467 million impairment charge for Omega.[162]

9.73 The Amended Roofers Complaint/Roofers 2 also asserted that on 27 February 2017 "*Perrigo stunned investors by announcing that it would sell the Tysabri royalty stream for only $2.2 billion … billions of dollars less than the asset had been recorded on Perrigo's books and presented*

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153 Paragraph 5 of the Amended Roofers Complaint/Roofers 2.

154 Paragraph 56 of the Amended Roofers Complaint/Roofers 2.

155 Paragraph 6 of the Amended Roofers Complaint/Roofers 2.

156 Paragraphs 27 – 45 and 85 – 97 of the Amended Roofers Complaint/Roofers 2.

157 Paragraph 7 of the Amended Roofers Complaint/Roofers 2.

158 Paragraph 8 of the Amended Roofers Complaint/Roofers 2.

159 Paragraph 9 of the Amended Roofers Complaint/Roofers 2.

160 Paragraph 9 of the Amended Roofers Complaint/Roofers 2.

161 Paragraph 11 of the Amended Roofers Complaint/Roofers 2.

162 Paragraph 12 of the Amended Roofers Complaint/Roofers 2.

to investors throughout the Class Period" and that this "deterioration would have been clear had Defendants simply followed GAAP and recorded the fair value of the asset each quarter".[163]

9.74 Also on 27 February 2017, Perrigo disclosed that "*it could not timely file its Annual report on Form 10K for 2016 because it needed to review historical revenue recognition practices for the royalty stream and other potential issues*".[164]

9.75 On 2 May 2017, Perrigo announced that its offices had been raided by the Department of Justice as part of a criminal price-fixing probe.[165]

9.76 PIIG alleged that "*Defendants' false and misleading statements caused Perrigo's stock to fall more than 62% and robbed investors of the opportunity to fairly evaluate and participate in a takeover offer worth more than twice the current share price*".[166]

9.77 Under the section headed "*E. To fend off Hostile Bid from Mylan, Defendants Inflate Growth Projections*"[167], PIIG alleged that Perrigo falsely told investors in a press release dated 21 April 2015 that Mylan's $205 bid "*substantially undervalues [Perrigo] and its growth prospects*" and that the offer "*does not take into account the full benefits of the Omega Pharma acquisition*".[168]

9.78 Further, PIIG alleged that in an investor presentation held on 21 April 2015, the "*Defendants ramped up their claims that an independent Perrigo was worth more than $205 because it had a 'durable competitive position' and ' a compelling growth strategy*".[169] It further allege that "*[i]n a slide entitled 'Proven Financial Track record', Defendants claimed that Perrigo … had 'the ability to keep delivering' growth in the 5-10% range*" and that for "*its Generic Rx division, Perrigo enhanced its hype even further, telling investors to expect growth in the 8-12% range*".[170]

9.79 PIIG asserted that Perrigo called its growth strategy "*base plus plus plus*" and that the "*base was the existing businesses with their inflated 5-10% growth projections*" and at the "*very top of the 'base plus plus plus' pyramid … was the projection of the 'Tysabri upside'*.[171]

9.80 PIID claimed that Perrigo's presentations on 21 April 2015 were "*also misleading with respect to generic drug pricing*" and that "*Papa falsely told investors that 'on the question of pricing, our goal on pricing has been the same goal, really for all the time, almost nine years I've been at Perrigo. What we seek to do on our pricing is keep pricing flat to up slightly'. In truth, Perrigo*

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163 Paragraph 18 of the Amended Roofers Complaint/Roofers 2.

164 Paragraph 19 of the Amended Roofers Complaint/Roofers 2.

165 Paragraph 21 of the Amended Roofers Complaint/Roofers 2.

166 Paragraph 23 of the Amended Roofers Complaint/Roofers 2.

167 Page 47 of the Amended Roofers Complaint/Roofers 2.

168 Paragraph 96 of the Amended Roofers Complaint/Roofers 2.

169 Paragraph 97 of the Amended Roofers Complaint/Roofers 2.

170 Paragraph 98 of the Amended Roofers Complaint/Roofers 2.

171 Paragraph 99 of the Amended Roofers Complaint/Roofers 2.

had massively spiked prices of many of its most important generic drugs by colluding with other generic manufacturers and/or joining prices fixed by existing illegal conspiracies".[172]

9.81 As regards Omega, PIIG asserted that the Defendants' presentation dated 21 April 2015 claimed the acquisition was "*accretive to Perrigo's organic growth profile*", while the Defendants knew that Omega management had modelled long-term organic growth of just 3.2%, well below the 5-10% range claimed by Perrigo.[173]

9.82 PIIF further allege that on 6 August 2015, Perrigo issued an investor presentation reiterating that organic growth rate targets remained intact and claiming to have a "*strategy for delivering 5-10% organic growth*", but that at the time: "*(a) Perrigo had not been able to consistently deliver organic growth in that range over the last six quarters; (b) Perrigo was having substantial problems integrating its largest acquisition, Omega; (c) Perrigo and other generic drug competitors were facing considerable headwinds as increasing scrutiny from regulators and customers made it more difficult to obtain supracompetitive pricing driving results in Perrigo's Generic Rx division; and (d) although masked by Perrigo's accounting violations, the fair value of Perrigo's largest financial asset, the Tysabri royalty stream, had already started to plummet*".[174]

9.83 Under the heading "*F. Defendants Hide Billions of Dollars of Deterioration in Perrigo's Largest Financial Asset by Violating GAAP*"[175] PIIG claimed that "*the royalty stream for Tysabri was Perrigo's largest financial asset and played an important role in the 'base plus plus plus' growth strategy [the] Defendants claimed as a basis to reject Mylan's takeover offer*".[176]

9.84 PIIG alleged that throughout the Class Period, Perrigo falsely reported that the value for he Tysabri royalty stream was $5.8 billion by treating its as an "intangible asset" rather than as a "financial asset" as it should have done in accordance with GAAP. [177]

9.85 PIIG claimed that investors did not learn of the losses to the Tysabri royalty stream until it was sold on 27 February 2017 "*for only $2.2 billion*"[178] and in May 2017 Perrigo restated its income by $1 billion "*to correct their GAAP violations*". [179]

9.86 "*Section V, Class Period Misrepresentations and Omissions*" of the Amended Roofers Complaint/Roofers 2 set out at:

(a) sub-section A, the alleged misrepresentations and omission in respect of "*Omega Integration and Overvaluation*".[180]

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172 Paragraph 100 of the Amended Roofers Complaint/Roofers 2.

173 Paragraph 101 of the Amended Roofers Complaint/Roofers 2.

174 Paragraph 105 of the Amended Roofers Complaint/Roofers 2.

175 Page 56 of the Amended Roofers Complaint/Roofers 2.

176 Paragraph 114 of the Amended Roofers Complaint/Roofers 2.

177 Paragraph 122 of the Amended Roofers Complaint/Roofers 2.

178 Paragraph 130 of the Amended Roofers Complaint/Roofers 2.

179 Paragraph 131 of the Amended Roofers Complaint/Roofers 2.

180 Paragraphs 132 - 150 of the Amended Roofers Complaint/Roofers 2.

(b) sub-section B , the alleged misrepresentations and omissions in respect of "*Inflated Organic Growth Claims*".[181]

(c) sub-section C, the alleged misrepresentations and omissions in respect of" *Anti-Competitive Practices in Generic Rx Division*"[182]. These included:

(i) On 21 April 2015[183], in a presentation to investors, Perrigo projected 8%-12% net sales growth for the Generic Rx division.

(ii) On 12 May 2015, at the Bank of America Merrill Lynch Health Care Conference, Joseph Papa (when asked about if Perrigo and another pharma company had together created a price strategy around a certain Rx product) stated: "*I'm not going to comment specifically on this particular product conflict....Obviously, it's a competitive market out there. There is always going to be - in a pricing world, somebody is going to gain a share, somebody is going to lose some share. I think, as a general rule, what I've tried to do with pricing at Perrigo in the eight years, nine years I've been a part of the company is to keep pricing flat to up slightly*".[184]

(iii) On 2 June 2015, at the Jeffries Global Health Care Conference, Joseph Papa stated "*..We're recognising that there is going to be some products in Rx that I'm going to have to decrease for competitive reasons as well as increase some. So what we try to do is take a holistic view across the entire portfolio and keep pricing flat to up slightly*".[185]

(iv) On 5 August 2015, during a conference call with industry analysts and investors regarding quarterly earnings, Joseph Papa stated " *On the generics and pricing environment, our team has done a great job at looking at the pricing...so across that portfolio, we think there's still opportunities to do pricing. We'll continue to look at it*".[186]

(v) On 13 August 2015, Perrigo filed an annual report[187] for FY 2015 which stated that the Generic Rx division "*operate*[d] *in a highly competitive environment*" and faced "*vigorous competition from other pharmaceutical companies that may threaten the commercial acceptance and pricing of our products*".

(vi) On 22 October 2015, in a conference call to investors and analysts to announce 2015 third quarter financial results, Joseph Papa stated "*Our total*

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181 Paragraphs 151 - 175 of the Amended Roofers Complaint/Roofers 2.

182 Paragraphs 176 - 204 of the Amended Roofers Complaint/Roofers 2.

183 Paragraph 172 of the Amended Roofers Complaint/Roofers 2 and presentation slides attached to Form 8-K. See Tab 20 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

184 Paragraph 180 of the Amended Roofers Complaint/Roofers 2.

185 Paragraph 180 of the Amended Roofers Complaint/Roofers 2.

186 Paragraph 182 of the Amended Roofers Complaint/Roofers 2.

187 Paragraph 184 of the Amended Roofers Complaint/Roofers 2 and Form 10-K for fiscal year ended 27 June 2015. See Tab 25 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

strategy for pricing as I have said I think on numerous calls is keep pricing flat to up slightly, which means that yes, some products we may attempt to raise price there, but in other products we're bringing the price way down".[188]

(vii) On 5 January 2016, at the Goldman Sachs Healthcare CEO's conference, Joseph Papa stated: *"My goal on pricing [since he started at Perrigo] ..trying to keep my pricing flat to up slightly. Now, to be clear, what that means is that I'm taking some products up and some products to meet competition, I'm taking them down…"*.[189]

(viii) On 18 February 2016, during an earnings conference call, Judy Brown and Joseph Papa allegedly separately made false / misleading statements to analysts and investors (when asked if segments of the generic area are seeing more pricing erosion and if this is expected in 2016):

a) JB (answering first part of question): "*…And pricing wise, we did see some pressure, give or take, in the total portfolio over the course of the year, approximately 1%";* and

b) JP (answering latter part of question): "*..And as we believe, that will give us a very high gross margin and operating margin, certainly as we think about the 2016 and beyond".*[190]

(d) Sub-section D, the Perrigo alleged misrepresentations and omissions in respect of the "*Declining Fair Value of Tysabri Royalty Stream*".[191] These included:

(i) Form 10-Q dated 29 April 2015 stated that the Tysabri royalty stream was an "*intangible asset*" and that its value was "$5.8 billion", which is being "*amortized over a useful life of 20 years*".[192]

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188 Paragraph 186 of the Amended Roofers Complaint/Roofers 2.

189 Paragraph 190 of the Amended Roofers Complaint/Roofers 2.

190 Paragraph 196 of the Amended Roofers Complaint/Roofers 2.

191 Paragraphs 205 to 224 of the Amended Roofers Complaint/Roofers 2.

192 Paragraph 205 of the Amended Roofers Complaint/Roofers 2.

(ii) The Financial Statements published on 13 August 2015[193], 22 October 2015[194], 2 November 2015[195], 25 February 2016[196], 16 May 2016[197], 10 August 2016[198], 10 November 2016[199] were allegedly false and misleading because they did not disclose the fair value of the Tysabri royalty stream.[200]

(iii) That Perrigo allegedly knew all along that the Tysabri royalty stream was a financial asset[201]: On 12 May 2016, during a conference call with investors, Perrigo CEO John Hendrickson expressly called the royalty stream a "*financial asset*". Nonetheless, Perrigo issued a press release on the same day, in which it failed to account for Tysabri as a financial asset or report its fair value in accordance with GAAP requirements. It was only in May 2017 that Perrigo announced that it had made an error in the accounting treatment of Tysabri.[202]

Notification of Amended Roofers Complaint/Roofers 2 to Insurers

9.87 On 29 June 2017, the Amended Roofers Complaint/Roofers 2 was notified by Perrigo, via its broker, Willis, to the 2014 Policy, 2015 and 2016 Policy.

Motion to Dismiss

9.88 The Defendants in the Amended Roofers Complaint/Roofers 2 filed motions to dismiss, which were fully briefed by the parties by November 2017.

9.89 On 27 July 2018, the DNJ court (Judge Arleo) decided the motions to dismiss. In her decision, Judge Arleo noted that PIIG contended that Perrigo:

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193 Annual form 10-K for fiscal year ending 27 June 2015, signed by defendant directors and Brown. See Tab 25 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

194 Perrigo press release announcing earnings for the third calendar quarter of 2015, made by the board of directors to shareholders. See Tab 28 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

195 Form 10-Q – quarterly report for quarter ending 26 September 2015 signed by Papa and Brown. See Tab 29 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

196 Form 10-KT – Financial result for stub period 2015, signed by Papa, Brown and director defendants. See Tab 30 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts

197 Form 10-Q – quarterly report for first quarter 2016, signed by Brown. See Tab 31 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

198 Form 10-Q – quarterly report for second quarter 2016, signed by Brown. See Tab 32 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

199 Form 10-Q – quarterly report for third quarter 2016, signed by Brown. See Tab 33 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

200 Paragraphs 207 - 224 of the Amended Roofers Complaint/Roofers 2.

201 Paragraphs 123 and 217 of the Amended Roofers Complaint/Roofers 2.

202 Paragraphs 123 and 217 of the Amended Roofers Complaint/Roofers 2.

(a) *"intentionally violated accounting rules in its treatment of a royalty stream it acquired prior to the Class Period and misrepresented the stream's value"* (Tysabri Accounting Treatment);[203]

(b) *"misrepresented the pricing policy and competitiveness of the company's generic division in order to hide a price fixing scheme that garnered them hundreds of millions of dollars in collusive revenue"* (Drug Price-Fixing);[204]

(c) *"inflated organic growth rates despite knowing that organic growth had slowed substantially in the quarters preceding the Class Period"* (Organic Growth);[205] and

(d) *"misrepresented the success of Perrigo's integration of Omega Pharma"* (Omega Integration).[206]

9.90 The court dismissed without prejudice all claims except those relating to generic drug price fixing and those relating to the allegation that Perrigo had misrepresented the success of Perrigo's integration of Omega.[207] The court also dismissed without prejudice most of the individual defendants, leaving only two individual defendants (Mr Papa and Ms Brown) alongside Perrigo.

Class certification

9.91 After class certification discovery and motions practice, on 14 November 2019, the court certified three (3) classes:

(a) those who purchased Perrigo shares on U.S. exchanges during the period 21 April 2015 to 2 May 2017 inclusive (Securities Exchange Act 1934 Section 10(b) class);

(b) those who purchased Perrigo shares on TASE during the period 21 April 2015 to 2 May 2017 inclusive (similar to the 10(b) class of US purchasers); and

(c) the Tender Offer class of Perrigo shareholders who owned Perrigo shares on 12 November 2015 to the tender offer deadline at 1 pm Dublin time on 13 November 2015.

Discovery

9.92 Fact and expert discovery on the merits in the Amended Roofers Complaint/Roofers 2 ended in January 2021.

Summary judgment

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203 Amended Roofers Complaint/Roofers 2, Opinion of Judge Arleo, dated 27 July 2018, Section I, Background, page 2. See Tab 7 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

204 Amended Roofers Complaint/Roofers 2, Opinion of Judge Arleo, dated 27 July 2018, Section I, Background, page 2

205 Amended Roofers Complaint/Roofers 2, Opinion of Judge Arleo, dated 27 July 2018, Section I, Background, page 2

206 Amended Roofers Complaint/Roofers 2, Opinion of Judge Arleo, dated 27 July 2018, Section I, Background, page 2

207 Amended Roofers Complaint/Roofers 2, Opinion of Judge Arleo, dated 27 July 2018, sections III.A.1.b and III.A.1d.

9.93 Summary judgment motions (and motions challenging plaintiffs' experts) in the Amended Roofers Complaint/Roofers 2 were fully briefed by July 2021. The court held oral argument on 6 April 2022.

9.94 On 6 July 2023 the court reassigned the case (again) to another district court judge.

9.95 An Opinion and Order on the summary judgment motions issued on 17 August 2023[208] entirely dismissed all the claims against Judy Brown, and dismissed all claims against Mr. Papa relating to alleged collusive drug pricing activities. With regard to the claims against Perrigo, the Opinion and Order reserved judgment regarding the allegations of anticompetitive behaviour in the generic drug division to allow the class plaintiffs to make a final submission on an issue known as "corporate scienter", but has indicated it is minded to dismiss these allegations as well. The only allegations that appear to have survived the summary judgment motions relate to certain of the alleged misstatements on the Omega integration because they involve a dispute as to fact which cannot be determined on a summary motion. However, the court also indicated that it would hold later hearings (known as *Daubert* motion hearings) on the Defendants' challenges to the plaintiffs' experts, which may further limit any remaining claims.

9.96 On 29 August 2023, the DNJ court issued an Order requiring a settlement conference before the magistrate judge in the Amended Roofers Complaint/Roofers 2 temporarily suspending the briefing and argument on the corporate scienter issue pending the outcome of the settlement conference.

Israel Electric Complaint

9.97 On 28 June 2017, Israel Electric Corporation Employees' Education Fund Ltd (**"Israel Electric"** or **"Education Fund"**) filed a motion to certify a class action in the District Court in Tel Aviv, Israel. [209]

9.98 A draft statement of claim was filed along with an opinion titled "*Expert Opinion: Liability and Pleading requirements in United States Courts Under the Securities Act of 1933 and the Securities Exchange Act 1934 submitted by Abraham I. Katsman*".[210]

9.99 The Israel Electric Complaint was brought against Perrigo, Joseph Papa, Judy Brown, Laurie Brlas, Gary Cohen, Mark Coucke, Jacqualyn Fouse, Ellen Hoffing, Michael Jandernoa, Gerald Kunkle Jnr, Donal O'Connor and Ernst & Young LLP . It alleged violations of Sections 10(b) (and SEC Rule 10b-5) and 14(e) of the Securities Exchange Act 1934 against all defendants to that complaint and Section 20(a) of the Securities Exchange Act 1934 against the eleven individual defendants to that complaint or, alternatively, violations or breaches under Israeli Securities Law, 5728-1968, the Israeli Companies Law, 5759-1999, the Torts Ordinance and the Israeli Contracts Law (General Section), 5733-1972.

9.100 The Israel Electric Complaint substantially copied the allegations made in the Amended Roofers Complaint/Roofers 2. Specifically, it alleged that in order to convince investors that Mylan's offer

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208 See Tabs 8 and 9 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

209 Some documents from 2017 onwards refer to the case as the Education Fund case and others refer to it as the Israel Electric case - depending in part in the manner in which the case name is translated from Hebrew into English.

210 See Tab 7 of Core Documents – Book 2 – Securities Actions Complaints, Shareholder Demand Letter and Derivative Complaint for a copy of the draft Statement of Claim and Tab 40 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts for a copy of the Expert Opinion of Abraham I. Katsman.

was "*a low offer that should be rejected they* [Perrigo and its senior officers] *presented the false misrepresentations, and omitted essential information related to the company.*"[211] It alleged that Perrigo (and the director defendants named in that complaint) did so through four avenues:

> "*Organic Growth Forecasts… Perrigo and its officers understood that they needed to present optimistic and encouraging growth forecasts for the investors to reject Mylan's purchase offer. Therefore, they claimed that the company was projected to present an organic growth rate of 5-10% every year*".[212]
>
> "*The Synergy and Integration Between Perrigo and Its Largest Acquisition, Omega.. In order to justify the optimistic growth forecasts, Perrigo and its officers warranted that the acquisition of Omega was successful, as if there was significant synergy between the parties, and as if the organic growth rate of Omega was expected to meet the goals set by Perrigo (5-10% per year).*"[213]
>
> "*Perrigo's Generic Division Profits that Stemmed from Improper and Forbidden Price Fixing with Its Competitors… Perrigo's generic pharmaceutical division was its most profitable division, and the Defendants presented a growth forecast for it that was higher than the forecast for the entire company, at a rate of 8-12% per year. In practice, the Defendants deceived the investors, and concealed from them that this division allegedly took part in improper and forbidden price fixing with competing companies.*"[214]
> "*Concealing the Decline in Value of the Company's Largest Financial Asset - the Royalties from the "Tysabri" Drug….. In practice, the Defendants deceived the investors, and concealed the significant reduction in value of this asset from them*".

9.101 The Israel Electric Complaint alleged: "***To be clear: these four avenues are inextricably linked.***"[215] "***Some of the avenues were created by Perrigo for imaginary and fictional profit forecasts, some concealed the true value of Perrigo's assets, and some created hidden potential liabilities for Perrigo (in the form of fines and return of profits).***"[216] "***However, the four avenues together concealed the company's true state from the investors, and presented deceptive and inflated presentations regarding the company's worth so that the investors would reject Mylan's purchase offer.***" (bold emphasis in the complaint)

9.102 On 12 July 2017, there was a Section 7 Motion filed by Education Fund to become lead plaintiffs and consolidate or in some other manner address other complaints already filed in Tel Aviv i.e. the Keinan Complaint and the Schweiger Complaints (the "**Israeli Complaints**").

9.103 On 21 July 2017, the Israel Electric Complaint was notified by Perrigo, via its broker, Willis, to the 2014 Policy, 2015 Policy and 2016 Policy.

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211 Paragraph 4 of the Israel Electric Statement of Claim.

212 Paragraph 4.1 of the Israel Electric Statement of Claim.

213 Paragraph 4.2 of the Israel Electric Statement of Claim.

214 Paragraph 4.3 of the Israel Electric Statement of Claim.

215 Paragraph 5 of the Israel Electric Statement of Claim.

216 Paragraph 6 of the Israel Electric Statement of Claim.

9.104 The Judge held a conference on the matter in November 2017 and ordered that the plaintiffs in the Israeli Complaints try to resolve the matter between them.

9.105 Counsel for all three plaintiffs (in the Keinan Complaint, Schweiger Complaint and Israel Electric Complaint) negotiated a deal that combined all three cases together, and the cases were stayed in early 2018 while the Amended Roofers Complaint proceeded in the DNJ.

10 Opt-out Complaints in the US

Carmignac Complaint[217]

10.1 On 1 November 2017, the first of twenty-two (22) opt-out securities complaints was filed, by Carmignac (an investment management company) against Perrigo and three directors and officers of Perrigo - Joseph Papa, Judy Brown and Marc Coucke - alleging violations of Sections 10(b) (and Rule 10b-5), 14(e), 18 of the Securities Exchange Act 1934 and Section 20(a) of the Securities Exchange Act 1934 as against defendants Papa, Brown and Coucke only (the **"Carmignac Complaint"**).

10.2 The Carmignac Complaint focused on the period Carmignac owned Perrigo shares between April 2015 and May 2016. This is because Carmignac sold its entire position in Perrigo by the end of May 2016.

10.3 The Carmignac Complaint repeated all the misstatements made in the Roofers Complaint/Roofers 1 and the Amended Roofers Complaint/Roofers 2. The Carmignac Complaint, inter alia, asserted that the "*case arose from a series of materially false or misleading statements made by Perrigo and its senior officers in an effort to fend off a hostile takeover attempt by one of its chief competitors, Mylan*".[218] The Carmignac Complaint further alleged that "[g]*iven what was at stake for* [the] *Defendants – the possibility that [Perrigo's] shareholders would flee from their investment in Perrigo and exchange their shares for the valuable consideration offered by Mylan thus ending [Perrigo as an independent company]* – [the] *Defendants had strong incentives to mislead the market about multiple aspects of Perrigo's then-existing business to stave off Mylan's bid.*"[219]

10.4 The Carmignac Complaint alleged that the defendants to the Complaint made "*numerous misrepresentations touting Perrigo's standalone value and growth prospects*". [220] The Carmignac Complaint specifically alleged that Perrigo falsely stated that it "*had the ability to withstand pricing pressures in the generic drug industry*"[221], referencing Perrigo's Generic Rx unit, and alleged that Perrigo knew it was not "*immune*" to pricing pressures, despite having

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217 Carmignac Complaint. See Tab 8 of Core Documents – Book 2 – Securities Actions Complaints, Shareholder Demand Letter and Derivative Complaint.

218 Paragraph 1 of the Carmignac Complaint.

219 Paragraph 1 of the Carmignac Complaint.

220 Paragraph 2 of the Carmignac Complaint.

221 Paragraph 2 of the Carmignac Complaint.

assured investors otherwise.[222] These pricing pressures, it is alleged, resulted from increased competition and regulatory scrutiny in the U.S. generic drug industry.[223]

10.5 Carmignac further alleged that in these respects and prior to and during the relevant period of the Carmignac Complaint (21 April 2015 through 26 April 2016), the Federal Food and Drug Administration had accelerated its approvals of new generic drugs to historic levels and that this "*acceleration of drug approvals led to a tsunami of new competitors and approved products in the generic drug markets, including products in direct competition with those owned by Perrigo, resulting in significant downward pricing and never-before-seen levels of newly approved generic drugs competing with existing brands (and previously approved generics).*"[224] The Carmignac Complaint alleged that, notwithstanding this increased competition, the Defendants either knew, or were recklessly blind to the fact, that the elevated pricing levels for generic prescription drugs manufactured by the Generic Rx unit, were unsustainable as new drug approvals accelerated at an unabated pace throughout 2015, yet, it alleged that, "*in an attempt to fend off the Mylan takeover at all costs*, [the] *Defendants insisted that Perrigo was immune to these sliding prices.*"[225]

10.6 The Carmignac Complaint asserted that the Defendants were aware that the generics prescription drug market was under pricing pressure following the commencement of industry-wide investigations of suspicious price hikes by Congress, the U.S. Department of Justice, and several State Attorney Generals beginning in late 2014. The Carmignac Complaint noted that these investigations had begun "*to reveal a reportedly broad, well-coordinated, and long running series of schemes to fix prices for a number of generic drugs.*"[226] Perrigo was one of the companies under scrutiny at the Department of Justice ("**DOJ**").[227] The Carmignac Complaint alleged that on 2 May 2017, "*the DOJ had executed search warrants at [Perrigo's] offices in connection with its investigation into collusion in the generic drug industry.*"[228] The Carmignac Complaint alleged that given the intense scrutiny of price inflation across the generic drug industry – coupled with the FDA's well-known and identifiable efforts to accelerate the approval of new generics to lower or end that inflation – the Defendants knew or recklessly disregarded the fact that the then-current pricing levels for the products of Perrigo's Generic Rx unit were unsustainable.[229] The Carmignac Complaint further alleged that, even as the Defendants were aware of these types of pricing pressures impacting the Rx business, Perrigo publicly and repeatedly denied that such pressures were having any impact on Perrigo.[230] In this regard, the Carmignac Complaint contended that during an earnings call held on 22 October 2015, Papa stated that Perrigo's "*total strategy for pricing… is to keep pricing flat to up slightly*" and that Perrigo's strategy was "*really the best place for the [Perrigo's] long,*

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222 Paragraph 27 of the Carmignac Complaint.

223 Paragraph 25 of the Carmignac Complaint.

224 Paragraph 26 of the Carmignac Complaint.

225 Paragraph 28 of the Carmignac Complaint.

226 Paragraph 136 of the Carmignac Complaint.

227 Paragraph 136 of the Carmignac Complaint.

228 Paragraph 137 of the Carmignac Complaint.

229 Paragraph 138 of the Carmignac Complaint.

230 Paragraph 139 of the Carmignac Complaint.

sustainable consistent approach to pricing...".[231] Carmignac alleged that Judy Brown stated that "*nearly all of {Perrigo's} revenues are insulated from the current pricing drama you see playing out in the pharmaceutical industry today.*"[232]

10.7 The Carmignac Complaint alleged that by "*January/February 2016, Perrigo could no longer conceal that this increased competition had already and would continue to negatively impact Perrigo's financial performance, forcing the Company to slash its earnings guidance.*"[233]

10.8 On 7 November 2017, the Carmignac Complaint was notified by Perrigo, via its broker, Willis, to the 2014 Policy, 2015 Policy and 2016 Policy.

10.9 Discovery has been completed in the Carmignac Complaint proceedings. However, by agreement of the parties, and as ordered by the Court on 7 January 2022, the Carmignac Complaint has been administratively closed pending the outcome of the summary judgment motions in the Amended Roofers Complaint/Roofers 2 and any further developments in that class action case.

Other Opt-out Complaints in the US

10.10 A further 21 opt out cases (private actions) (**"Opt-Out Complaints"**) were filed over the course of 2018, 2019, 2020, and 2021. A list of all the Opt-Out Complaints (including the Carmignac Complaint), indicating when they were notified to Insurers, and the causes of action alleged in each of them is attached at Schedule 1. Virtually all of the Opt-Out Complaints were filed as federal actions in DNJ and were handled by the same judge, Judge Arleo, who originally had responsibility for the Roofers Complaint/Roofers1 and the Amended Roofers Complaint/Roofers 2. The one exception is *Highfields Capital I LP & Ors v Perrigo Company PLC, Papa & Brown* (no.13 in Schedule 1) which initially was filed on 14 February 2019 in the federal court for the District of Massachusetts alleging violations of the Securities Exchange Act 1934 and breaches of Massachusetts Unfair Business Methods Law (chapter 93A, subsection 11) and Massachusetts common law claims of tortious interference with prospective economic advantage, common law fraud, negligent misrepresentation, and unjust enrichment. The federal court in Massachusetts ordered the Highfields Complaint on 10 March 2020 to be transferred to the DNJ to be heard with the other Opt-Out Complaints alleging violations of the Securities Exchange Act 1934. The Highfields plaintiffs later withdrew their original complaint on 4 June 2020. On the same day, the complaint was filed in the Commonwealth of Massachusetts Superior Court making the same allegations but omitting any claims based on federal law (violations of the Securities Exchange Act 1934) (no.22 in Schedule 1).

10.11 The Opt-Outs Complaints "*contain factual allegations and claims that are similar to some or all of the factual allegations and claims in the class actions* [Roofers Complaint/Roofers 1/Amended Roofers Complaint/Roofers 2]".[234]

10.12 The misstatements alleged in the Opt-Out Complaints are numerous and are set out in the Complaints. Between 7 November 2017 and 25 March 2021, the Opt-Out Complaints were

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231 Paragraph 157 of the Carmignac Complaint.

232 Paragraph 157 of the Carmignac Complaint.

233 Paragraph 157 of the Carmignac Complaint.

234 Page 115 of Perrigo's Form 10-K dated 28 February 2023. See Tab 34 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

notified to some or all of the 2014 Policy, 2015 Policy, 2016 Policy, 2017 Policy and 2018 Policy. No reliefs are sought by Perrigo in its Defence and Counterclaim in respect of the 2017 Policy and 2018 Policy. Therefore, and in circumstances where Insurers plead that the Perrigo Claims, including the Opt-Out Complaints, attach to the 2014 Policy, the fact that complaints have been notified to the 2017 Policy and 2018 Policy is moot.

11 The 2018 Shareholder Demand Letter

11.1 On 30 October 2018, Perrigo's board of directors received a shareholder demand letter from Scott+Scott, Attorneys at Law LLP relating to allegations raised in the Securities Actions (the **"Shareholder Demand Letter"**).[235]

11.2 The letter was sent on behalf of Ryan Krueger, a Perrigo shareholder, and demanded that Perrigo's board of directors initiate an action against certain Perrigo directors and former directors (being board members from 2006 to 2017, past and present) to recover damages for materially false and misleading statements and omissions made by those directors as well as various breaches of fiduciary duties.

11.3 Specifically, the Shareholder Demand Letter (at paragraph 3) alleged that, with either *"the active condonation or the neglectful lack of oversight by the Board"*, the current and former directors engaged in the following activities:

> *"(1) colluding with other generics manufacturers to allocate markets and fix prices on drugs, which temporarily inflated profits in violation of anti-trust laws, but has now led to regulatory scrutiny and long term loss of value;*
>
> *"(2) misleading Perrigo shareholders regarding the success of integration (and thus of long-term growth prospects) of Perrigo's acquisition, Omega";*
>
> *"(3) misleading Perrigo shareholders regarding its long-term organic growth prospects by conflating older high-growth years with recent low-growth years, and together, with the misrepresentations regarding Omega's growth, were done for the purpose of fending off a tender offer from Mylan N.V ("Mylan"), which misled Perrigo's shareholders into foregoing a value-adding transaction and led them to hold stock that has dropped by more than 50% since then"; and*
>
> *"(4) misleadingly categorising a financial asset, the royalty stream from multiple sclerosis drug Tysabri, and misleading investors into believing its fair value exceeded its carrying value, which eventually led to loss in investor confidence when Perrigo was forced by its auditors to restate almost four years' worth of financial statements in the amount of over $1 billion."*

11.4 On 7 November 2018, Fried Frank (Perrigo's US defence counsel) acknowledged receipt of the Shareholder Demand Letter.

11.5 On 29 January 2019, A&L Goodbody Solicitors, also acting on behalf of Perrigo, substantively responded to the Shareholder Demand Letter.[236] In their reply, A&L Goodbody Solicitors stated

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[235] See Tab 16 of Core Documents – Book 2 – Securities Actions Complaints, Shareholder Demand Letter and Derivative Complaint.

[236] See Tab 41 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

that the allegations made against Perrigo had already been made in the Securities Actions and the antitrust, multi-district litigation brought by private plaintiffs and US state attorneys general, captioned In re: Generic Pharms. Pricing Antitrust Litig., MDL 2724 (E.D. Pa.). A&L Goodbody Solicitors confirmed that they had been instructed that there had been no finding made against any of the defendants in those actions. On that basis, whilst reserving Perrigo's rights and those of its then current and former directors and officers in relation to the allegations made or arguments advanced in the Shareholder Demand Letter, A&L Goodbody Solicitors proposed not to comment any further on the allegations. A&L Goodbody Solicitors did, however, address the statements made in the Shareholder Demand Letter regarding Perrigo's internal affairs and in relation to governing law and jurisdiction. A&L Goodbody Solicitors stated that Perrigo's directors owed duties to Perrigo under Irish law and that Perrigo did not accept that the potential claims within the Shareholder Demand Letter were ones which were governed by the law of any US state, exclusively or at all, as the Shareholder Demand Letter contended. On that basis, A&L Goodbody Solicitors confirmed that no application in respect of the Shareholder Demand Letter should be brought before any court outside of Ireland without A&L Goodbody Solicitors' letter being brought to the attention of such court.

11.6 By letter of the same date (29 January 2019), Scott+Scott replied to A&L Goodbody Solicitors, copying in Fried Frank, stating that they disagreed with the assessments that Irish corporation law would apply or that US courts would not have jurisdiction over the claims made in the Shareholder Demand Letter. For reasons outlined in their letter, Scott+Scott concluded that Michigan law was the applicable law and that because 92 days had passed since the Shareholder Demand Letter was issued, their client intended to file an action to enforce the rights of Perrigo and its shareholders.[237]

Notification of the Shareholder Demand Letter to Insurers

11.7 The Shareholder Demand Letter was notified by Perrigo to the 2014 Policy, 2015 Policy, 2016 Policy and, on a "precautionary basis", to the 2017 Policy by way of Perrigo's letters dated 20 December 2018. In their letters notifying the Shareholder Demand Letter, Perrigo sought consent to the incurring of Defence Costs and/or Derivative Investigation Costs in connection with the Shareholder Demand Letter.

12 The 2019 Derivative Complaint

12.1 On 2 October 2019, Ryan Krueger, derivatively on behalf of Perrigo, filed a derivative action[238] in the US District Court for the District of New Jersey against Perrigo (as a nominal defendant) and various directors and former directors of Perrigo (including the second to fifteenth named Defendants to the within proceedings).

12.2 The defendants to the Derivative Complaint were current and former directors and executives of Perrigo, namely Bradley A. Alford, Rolf A. Classon, Adriana Karaboutis, Jeffrey B. Kindler, Donal O'Connor, Geoffrey M. Parker, Theodore R. Samuels, Jeffrey C. Smith, Laurie Brlas, Gary M. Cohen, Jacqualyn A. Fouse, Ellen R. Hoffing, Michael J. Jandernoa, Gerald K. Kunkle Jr, Herman Morris Jr, Murray S. Kessler, John T. Hendrickson, Joseph C. Papa, Judy L. Brown,

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237 See Tab 42 of the Core Documents – Book 4 – Documents Referred to in Agreed Statement of Facts.

238 See Tab 33 of Core Documents – Book 2 – Securities Actions Complaints, Shareholder Demand Letter and Derivative Complaint.

Ronald L. Winowiecki, Douglas S. Boothe and Marc Coucke. Consistent with US practice in derivative cases, Perrigo was named a nominal defendant.

12.3 The case was assigned to Judge Arleo.

12.4 The Derivative Complaint sought to authorise Mr Krueger to pursue claims on behalf of Perrigo against various directors and former directors of Perrigo (including the second to fifteenth named Defendants to the within proceedings) for breach of their fiduciary duties and for unjust enrichment, and against the former director Jeffrey C. Smith, and current CEO Murray J. Kessler for violations of Sections 14(a) (proxy statement disclosures and rescission of incentive compensation of current CEO) and 29(b) (disgorgement and rescission of contracts that violate securities laws) of the Securities Exchange Act 1934 and common law claims of breach of fiduciary duties, unjust enrichment (including seeking disgorgement).

12.5 The Derivative Complaint alleged that the following events indicated that various directors and former directors of Perrigo (including the second to fifteenth named Defendants to the within proceedings) in their respective capacities failed to exercise appropriate control over the management of Perrigo and made inadequate public disclosures concerning:

(a) Omega Integration;

(b) Organic Growth;

(c) Drug Price Fixing; and

(d) Tysabri Accounting Treatment.

12.6 The Derivative Complaint also made allegations against Donal O'Connor (the ninth named Defendant to these Proceedings) and Ronald Winowiecki (the fourteenth named Defendant to these Proceedings) (and other directors or officers of Perrigo who are not parties to these Proceedings) in respect of a fifth issue, being corporation tax liabilities purportedly owed by Perrigo to the Irish Revenue Commissioners arising from the sale of the Tysabri intellectual property rights to a company called Biogen, by Perrigo's predecessor, Elan, in 2013.

12.7 As regards the fifth issue, on 29 November 2018, a notice of amended assessment ("**the Notice**") was issued by the Irish Revenue Commissioners to Perrigo for the calendar year ended 31 December 2013 in respect of its tax liabilities. The Notice assessed a corporation tax liability against Elan in the amount of €1.6396 billion (the "**Tysabri Tax Liability Claim**").

12.8 The Notice was notified to the 2017 Policy as a notification of circumstances on 7 December 2018. On 20 December 2018, Perrigo disclosed the Notice to financial markets.

12.9 There was also a further claim in the Derivative Complaint relating to claims disclosed by Perrigo in April 2019 by US tax authorities. The Tysabri Tax Liability Claim and this additional April 2019 claim as well as the policy which responds to it (i.e. the 2017 Policy) is not in dispute in these Proceedings: Coverage was confirmed for the Tysabri Tax Liability Claim under the 2017 Policy subject to its limits, terms, conditions and exclusions.

12.10 Fried Frank Harris Shiver and Jacobson LLP ("**Fried Frank**") and Greenbaum Rowe Smith & Davis LLP ("**Greenbaum**") represented certain individual defendants and Perrigo in the Derivative Complaint. They took the principal role in defending the Derivative Complaint and applying to the Court to have the complaint dismissed.

Notification of the Derivative Complaint to Insurers

12.11 On 14 November 2019, the Derivative Complaint was notified by Perrigo, via its broker, Willis, to the 2014 Policy, 2015 Policy, 2016 Policy and the 2017 Policy.

Motion to Dismiss

12.12 The defendants to the Derivative Complaint filed motions to dismiss in early 2020, which were fully briefed. In August 2020, the court granted the motion to dismiss without prejudice (primarily on the ground the plaintiff did not show he had standing under Irish law). No appeal was brought, and the case ended.

13 Insurers' Coverage Correspondence

Mylan Counterclaim

13.1 Insurers of the 2014 Policy to which the Mylan Counterclaim was notified, did not issue a coverage position at the time in 2015 to Perrigo. The Mylan Counterclaim (and the Perrigo Complaint) were dismissed with prejudice on 29 October 2015 shortly after they were issued and on 8 December 2015 Willis informed Insurers to close their file. Perrigo was informed by letter dated 4 October 2016[239] from Chubb, the primary layer insurer of the 2014 Policy, that the Mylan Counterclaim satisfied the 2014 Policy's definition of a Securities Claim and, therefore, constituted a Claim which fell for cover under that policy when Chubb also communicated the coverage position for the Roofers Complaint/Roofers 1.

The Roofers Complaint/Roofers

13.2 Insurers' coverage position for the Roofers Complaint/Roofers 1 was set out in the Chubb letter to Perrigo dated 4 October 2016.[240] While the Roofers Complaint/Roofers 1 was made during the period of the 2015 Policy, Insurers took the position that it attached to the 2014 Policy and confirmed cover under the 2014 Policy in respect of Roofers Complaint/Roofers 1 for the reasons set out in the letter. In a further letter from Chubb to Willis dated 16 November 2016[241], Insurers reserved their rights in respect of the availability of coverage for the Roofers Complaint/Roofers 1 under the 2015 Policy, and any policy other than the 2014 Policy.

AMI Complaint, Wilson Complaint and Schweiger Complaint

13.3 Cover was similarly confirmed under the 2014 Policy for each of the AMI Complaint, Wilson Complaint and Schweiger Complaint in a letter to Perrigo dated 4 October 2016 for the reasons set out in the letter. In a further letter from Chubb to Willis dated 24 October 2016, Insurers reserved their rights in respect of the availability of coverage for the AMI Complaint, Wilson Complaint and Schweiger Complaint under the 2015 Policy and any policy other than the 2014 Policy.

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239 Letter from Chubb to Willis dated 4 October 2016. See Tab 32 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements .

240 This letter also provided Chubb's coverage position for the Schweiger Complaint, AMI Complaint and Wilson Complaint.

241 Letter from Chubb to Willis dated 16 November 2016. See Tab 33 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

Amended Roofers Complaint/Roofers 2

13.4 Insurers' coverage position for the Amended Roofers Complaint/Roofers 2 was set out in correspondence sent to Perrigo dated 7 July 2017.[242] While the Amended Roofers Complaint/Roofers 2 was made during the period of the 2016 Policy, Insurers took the position that it attached to the 2014 Policy and cover was confirmed under the 2014 Policy in respect of the Amended Roofers Complaint/Roofers 2 for the reasons set out in the letter. Insurers reserved all of their rights under and in respect of the 2014 Policy and any other policy (including the 2015 Policy and the 2016 Policy) to which the Amended Roofers Complaint/Roofers 2 had been, or may be, notified.

Keinan Complaint

13.5 The coverage position for the Keinan Complaint is set out in correspondence dated 12 June 2017 and 7 July 2017. Originally, Insurers considered the Keinan Complaint fell to the 2016 Policy.[243] However, Insurers changed their position in light of what they viewed as similar allegations concerning the Tysabri Accounting Treatment as alleged in the Amended Roofers Complaint/Roofers 2 (filed on 21 June 2017), after Insurers' original coverage position on 12 June, and stated to Perrigo that the Keinan Complaint fell to the 2014 Policy by reason of Condition 5.1(iii) of the 2014 Policy.[244] Insurers declined coverage under each of the 2015 Policy and 2016 Policy in respect of the Keinan Complaint for the reasons set out in the correspondence. The 7 July 2017 letter also stated that Insurers' rights under and in relation to the 2014 Policy, the 2015 Policy and the 2016 Policy were fully reserved in this respect.

Israel Electric Complaint

13.6 The coverage position for the Israel Electric Complaint is set out in correspondence dated 25 August 2017.[245] Insurers took the position that the Israel Electric Complaint fell to the 2014 Policy by reason of Condition 5.1(iii) of the 2014 Policy given that the matters complained of in the Israel Electric Complaint are similar or related to those that were alleged in the Mylan Counterclaim.

13.7 Insurers declined coverage under each of the 2015 Policy and 2016 Policy in respect of the Israel Electric Complaint by reason of the Specific Matters Exclusion Endorsement and Exclusion 4.3 of the 2015 Policy and the 2016 Policy. Insurers also reserved all of their rights in relation to the 2015 Policy, the 2016 Policy and/or any other policy to which Perrigo may have sought to notify the Israel Electric Complaint.

The Opt-out Complaints (including the Carmignac Complaint)

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242 Letter from Mayer Brown to Covington & Burling LLP dated 7 July 2023 .See Tab 36 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

243 Email from Chubb to Willis dated 12 June 2017. See Tab 34 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

244 Letter from Mayer Brown to Covington & Burling LLP dated 7 July 2023. See Tab 35 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

245 Letter from Mayer Brown to Covington & Burling LLP dated 25 August 2017. See Tab 37 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

13.8 The coverage position for the Opt-Out Complaints is set out in correspondence issued at various times between 16 January 2018 and 19 May 2021.[246] Coverage was declined under each of the 2015 Policy, 2016 Policy, 2017 Policy, and 2018 Policy in respect of the Opt-Out Complaints notified to those policies on the basis that Insurers contended that each of the Opt-Out Complaints attached to the 2014 Policy by reason of Condition 5.1(iii) of the 2014 Policy because allegedly wrongful acts relied upon in the Opt-Out Complaints arise out of similar or related Wrongful Acts or acts as those that were alleged in the Mylan Counterclaim. Insurers' rights were fully reserved in respect of the Opt-Out Complaints in each correspondence issued between 16 January 2018 and 19 May 2021.

The Shareholder Demand Letter

13.9 By letter dated 27 February 2019 from Kennedys Solicitors ("**Kennedys**") to Perrigo's counsel, Covington & Burling, preliminary coverage views with regard to the demands made in the Shareholder Demand Letter were set out.[247]

13.10 Insurers took the position that the Shareholder Demand Letter attached to, and fell for consideration under, the 2014 Policy alone (subject to the 2014 Policy's limits, terms, conditions and exclusions) on the basis that, in Insurers' view, the allegations and assertions made in the Shareholder Demand Letter were based upon, and related to, the same or similar matters as those complained of in the Mylan Counterclaim or that they arose out of similar or related wrongful acts as those that were alleged in the Mylan Counterclaim.

13.11 It was stated that because the allegations made in the Shareholder Demand Letter appeared to satisfy the definition of Shareholder Derivative Demand (as defined in the 2014 Policy), in accordance with clause 2.18 of the 2014 Policy, Insurers consented to Perrigo incurring "*Derivative Investigation Costs*", subject to the sub-limit of $250,000 on such costs. In the 27 February 2019 letter, Insurers reserved all rights at law and under and in respect of the 2014 Policy and any other policy (including the 2015 Policy, the 2016 Policy and the 2017 Policy) to which the Demand Letter had been, or may be, notified.

The Derivative Complaint

13.12 A letter dated 9 October 2020 from Kennedys to Willis sets out Insurers' coverage position for the Derivative Complaint.[248]

13.13 The correspondence explains that the Insurers considered that the allegations made in relation to Organic Growth, Omega Integration, Drug Price-Fixing and Tysabri Accounting Treatment are based upon, and relate to, the same or similar matters as those complained of in the Mylan Counterclaim and attach to the 2014 Policy. Cover was confirmed for the individual directors named as defendants to the Derivative Complaint under the 2014 Policy.

13.14 It was stated that Perrigo is named as a nominal defendant only and that because no claim, causes of actions or counts alleging Wrongful Acts are made against Perrigo as is required by the relevant insuring clauses and definitions of Securities Claims within the Entity Cover

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246 See Tabs 40 – 45, 47 - 51 and 53 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

247 See Tab 46 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

248 See Tab 54 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

Endorsement of the 2014 Policy and the 2017 Policy, Perrigo is not an Insured for the purposes of the Derivative Complaint. It was further stated that without prejudice to the position set out in paragraphs 13.13 to 13.14, it was appreciated that at the early stage of the proceedings, Fried Frank Harris Shriver and Jacobson LLP ("Fried Frank") and Greenbaum Rowe Smith & Davis LLP ("Greenbaum") (acting for Perrigo) had taken the principal role in defending the Derivative Complaint and applying to the Court to have the complaint dismissed. Therefore, and without prejudice to the coverage position as regards Perrigo, and without establishing any precedent on coverage for Perrigo, the active and certain excess layers of insurance on the 2014 Policy and the primary layer insurer on the 2017 Policy were agreeable to meet the reasonable costs of Fried Frank and Greenbaum that had been incurred in defending the claims concerning (1) Organic Growth, Omega Integration, Drug Price-Fixing and Tysabri Accounting Treatment (attaching to the 2014 Policy) and (2) the Tysabri Tax Liability Claim (attaching to the 2017 Policy) and made in the Derivative Complaint up to the dismissal of the complaint, subject to the position on claims attachment and allocation as set out in Kennedys' letter dated 9 October 2020. The 9 October 2020 letter reserved all Insurers' rights and defences under all of the Policies to which the Derivative Complaint was notified, including the 2014 Policy and the 2017 Policy, and applicable law.

14 Perrigo's Coverage Correspondence

The Roofers Complaint/Roofers 1 and the Schweiger Complaint, the AMI Complaint and the Wilson Complaint

14.1 Perrigo disagreed with Insurers' coverage position in relation to the Roofers Complaint/Roofers 1, the Schweiger Complaint, the AMI Complaint and the Wilson Complaint by letter dated 24 October 2016.[249] This correspondence stated that Perrigo continued to reserve, and did not waive, its right to seek coverage for "*the Complaints [the Roofers Complaint/Roofers 1, the Schweiger Complaint, the AMI Complaint and the Wilson Complaint] under any and all applicable policies and not just the 2014 Policy.*"

14.2 Further information on Perrigo's coverage position in relation to the Roofers Complaint/Roofers 1 was provided in a letter sent by Reed Smith on behalf of Perrigo to Insurers on 19 April 2021 (the "**Reed Smith Letter**").[250]

The Keinan Complaint and the Israel Electric Complaint

14.3 Perrigo disagreed with Insurers' revised coverage position in relation to the Keinan Complaint. Perrigo responded to Insurers' revised coverage position in relation to the Keinan Complaint on 23 August 2017.[251] This letter stated that Perrigo disagreed that coverage for the Keinan Complaint was excluded under the 2016 Policy and continued to reserve all rights under all applicable policies.

14.4 Perrigo reserved all rights under all applicable policies in relation to the Keinan Complaint.

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249 Letter from Perrigo to Chubb dated 24 October 2016. See Tab 56 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

250 Letter from Reed Smith LLP to Kennedys dated 19 April 2021. See Tab 74 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

251 Letter from Covington & Burling LLP to Mayer Brown dated 23 August 2017. See Tab 58 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

14.5 Perrigo responded to Insurers' coverage position in relation to the Israel Electric Complaint on 30 August 2017[252] and continued to reserve all rights under any and all potentially applicable policies in relation to the Israel Electric Complaint.

The Amended Roofers Complaint/Roofers 2

14.6 Perrigo disagreed with Insurers' coverage position in relation to the Amended Roofers' Complaint. Perrigo noted Insurers' coverage position in relation to the Amended Roofers' Complaint on 23 August 2017.[253] Perrigo continued to reserve all rights under any and all applicable policies in relation to the Amended Roofers Complaint/Roofers 2.

14.7 Perrigo's coverage position in relation to the Amended Roofers' Complaint/Roofers 2 was further addressed in the Reed Smith Letter.

The Opt-Out Complaints (including the Carmignac Complaint)

14.8 Perrigo did not accept Insurers' coverage position in relation to the Opt-Out Complaints. Perrigo noted each of Insurers' coverage position letters and emails in relation to each of the various Opt-Out Complaints. Each such correspondence from Perrigo to Insurers noting each coverage position stated that Perrigo continued to reserve all rights under any and all applicable policies[254].

The Shareholder Demand Letter

14.9 Perrigo noted Insurers' position that the Shareholder Demand Letter was covered under the 2014 Policy as a Shareholder Derivative Demand and subject to a $250,000 sublimit for such costs. Perrigo continued to reserve all rights under all potentially applicable policies and did not agree or acquiesce in Insurers' position.[255]

The Derivative Complaint

14.10 Perrigo noted Insurers' coverage position and continued to reserve all rights under and in connection with all potentially applicable policies and policy periods.[256]

15 Insurers' Response to the Reed Smith Letter

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252 Letter from Covington & Burling LLP to Mayer Brown dated 30 August 2017. See Tab 59 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

253 Letter from Covington & Burling LLP to Mayer Brown dated 23 August 2017. See Tab 58 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

254 Emails from Willis to AIG Europe dated 8 February 2018 and 2 March 2018;; Emails from Covington to Kennedys dated 23 November 2018, 5 December 2018, 15 April 2019, 25 April 2019 and 30 July 2019; Emails from Willis to Chubb dated 9 April 2019; Emails from Willis to Kennedys dated 13 July 2020 and 31 May 2021. Email from Willis to Kennedys dated 6 April 2021. Letter from Covington to Kennedys dated 8 March 2018. See Tabs 60 – 71 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

255 Letter from Covington & Burling LLP to Kennedys dated 1 April 2019. See Tab 72 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

256 Letter from Covington & Burling LLP to Kennedys dated 14 January 2021. See Tab 73 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.

15.1 After the institution of these Proceedings, Insurers issued a substantive response to the Reed Smith Letter on 21 May 2021[257] reiterating the coverage positions conveyed by Insurers from 2016 to that date.

End of document.

[257] Letter from Kennedys to Reed Smith LLP dated 21 May 2021. See Tab 55 of Core Documents – Book 3 – Notifications, Coverage Responses and Acknowledgements.