

Corporate Governance and the Parable of the EpiPen:

An analysis of Mylan's EpiPen Pricing Crisis

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Abstract

After Mylan N.V. acquired the EpiPen in 2007, it aggressively raised the price of the life-saving medical device and the compensation of its CEO. By August 2016, the price increases resulted in a backlash. Congress asked Mylan to justify the price increases. At the congressional hearing, Mylan doubled down on its position. This case study examines the importance of corporate governance in ensuring fairness to *all* stakeholders and building trust and credibility for corporations. In conclusion, it poses questions about what corporate communication professionals and CEOs could do to better align corporate decisions with corporate governance and ethical principles.

1.0 | Overview

In the summer of 2016, the Mylan EpiPen pricing crisis broke into public consciousness and for months dominated public discourse about the importance of governance, transparency and ethics in business and society. It brought a renewed focus on corporate governance, the system of checks and balances that seeks to make corporate boards and management accountable and ensure that they operate in the interest of their stakeholders (Ragas & Culp, 2014). The crisis also brought attention to the potential impact of governance on stakeholders of public corporations and challenged Mylan to defend its corporate governance principles. Known for its leadership in the global generics and specialty pharma sector, Mylan N.V. is a pharmaceutical company that prides itself on its vision of setting new standards in health, improving access to life-saving medications and maintaining an enduring commitment to excellence in corporate governance (Mylan.com, 2015).

In 2007, Mylan acquired the EpiPen, a medical device that is used to treat anaphylactic shock or life-threatening allergic reactions (Czarnecki, 2016). After the acquisition, the company became known for its marketing drive to create awareness about the dangers of allergic reactions and for its lobbying efforts to make the EpiPen available in every home and school. However, in August 2016, Mylan came under public scrutiny after users of the EpiPen and their families began to speak up about the constantly rising price of the life-saving drug. Between 2007 and 2016 the price of a 2-pack EpiPen rose from \$100 to over \$600 (Ramsey, 2016). Executive compensation at Mylan also rose, with the salary of Heather Bresch, its CEO, rising by 670% to \$18.9 million in 2015 (Maremont, 2016).

The situation led to a congressional hearing and the company's CEO, Heather Bresch, was invited to present the position of her company on the price increases. In response, Mylan maintained its stance on the fairness of the price increases but announced that it would offer a generic version of the EpiPen at \$300 per pen and give a discount to families who cannot afford the drug based on their family income levels (Bomey, 2016). Meanwhile, the EpiPen crisis and the resultant Congressional hearing had already put a searchlight on Mylan's corporate governance standards, especially in relation to fair pricing, transparency, disclosure, fair competition, executive compensation and generally acceptable accounting principles. So how well did Mylan fare in keeping its corporate decisions in alignment with its corporate governance policy? The following case study analyzes the important role of corporate governance in sustaining trust, credibility, accountability, and profitability for Mylan and its potential effects on the company's relationship with its various stakeholders.

1.1 | Company History with EpiPen

Mylan was established in 1961, when two US Army colleagues, Milan "Mike" Puskar and Don Panoz decided to start selling medical supplies to doctors and pharmacists from the back of a Pontiac car in White Sulphur Springs, Virginia. From those humble beginnings, Mylan has come a long way. Today, it is a leader in the global generics and specialty

pharmaceutical sector with sales operations in over 165 countries and territories. Originally known as Milan, the company grew to become a global player with a 35,000-strong workforce that strives to provide access to high quality medicine to over 7 billion people across the globe (Mylan.com, 2015). It has 39 manufacturing facilities in 10 countries and offers several name brand medications as well as over 1,400 generic pharmaceuticals (Mylan.com, 2015).

One of Mylan's most recognized specialty products is the EpiPen (epinephrine injection, USP), an auto-injector which is used in cases of emergency life-threatening allergic reactions or anaphylaxis. The device was first invented for use by the military, EpiPen was first approved by the Food and Drug Administration (FDA) in 1987 (Ramsey, 2016). After multiple change of hands, it was acquired by Mylan in 2007 from Merck KGaA. At the time, the EpiPen logged \$200 million in revenue (Koons & Langreth, 2015). When new federal guidelines were set in place in 2010, Mylan stopped the sales of single pens and switched to twin-packs. Up to that point, 35% of patients were prescribed single EpiPens. The U.S. FDA also changed the label rules so that EpiPen could be marketed to anyone at risk of an anaphylaxis reaction, rather than just those with a history of it. This was a major benefit to those at risk and is also was an easy method for Mylan to get the word out about the EpiPen.

1.2 | Mylan's Mission, Vision and CSR Stance

In its mission statement, Mylan emphasizes its commitment to setting new standards in healthcare, social responsibility, service excellence, improved access to medicines and global leadership in innovation. It states, "Doing what's right is sacred to us. We behave responsibly, even when nobody's looking. We set high standards from which we never back down. This uncompromising ethical stance helps to keep our products pure, our workers safe and the environment clean" (Mylan.com, 2015). Speaking about Mylan's corporate social responsibility (CSR), its CEO, Heather Bresch said, "We weigh every decision we make with the utmost care, asking ourselves how it might affect all of our stakeholders, including patients, customers, employees, communities, vendors, creditors and investors. Indeed, chances are that you, or someone you care about, has a stake in Mylan's success" (Mylan, 2015a).

According to its CSR report, Mylan says it performs audits to ensure that its governance processes are in line with the company's policies, laws and regulations, and it evaluates the implementation and maintenance of such policies while looking for opportunities for improvement. Mylan has several programs set in place for monitoring business activity. Mylan routes all contracts dealing with healthcare providers and government officials to its Office of Global Compliance (OGC) and legal department to conduct due diligence on behalf of the parties involved (Mylan, 2015b). It provides vendors that "may interact with government officials on [their] behalf with anti-corruption training. Since 2007, Mylan employees and third parties have completed more than 20,000 anti-corruption training sessions" (Mylan, 2015a, p. 11, para 4).

1.3 | Corporate Governance

The Securities and Exchange Commission (SEC), describes corporate governance as “the framework of rules and practices that reflect and define the responsibilities and the appropriate level of accountability of a company’s decision makers – both the directors elected by the shareholders and the managers selected by the directors. That framework, [which] may include rules and regulations, the corporate charter and bylaws, formal policies, as well as customs and other processes that determines the leadership, organization, and direction of a corporate enterprise” (US Securities and Exchange Commission, 2014, para. 9). Governance is reflected in a company’s guiding policies, mission, vision, culture and character. It also involves maintaining a balance between the interests of a company and its many stakeholders which include shareholders, management, customers, suppliers, financiers, government and the community (Investopedia.com, 2016a).

Mylan is a public company incorporated in the Netherlands and traded on the NASDAQ Global Select market. It has an elaborate corporate governance system in place. While the company conducts daily operations from its corporate headquarters in Canonsburg, Pennsylvania, it is also under the oversight of an independent 13-member Board of Directors based in the UK where the board holds its official meetings. The board is headed by Robert J. Coury who serves as Chairman. Each director on the board is elected every year by shareholders. Mylan has very detailed corporate governance policies which are enshrined in written charters formulated by its seven board committees. The charters cover areas like audit, finance, compensation, governance and science and technology (Mylan, 2015b).

Like many other companies in its category, Mylan has a clearly laid out code of business conduct and ethics for its top management executives and employees. The code focuses on critical areas, which include quality and safety of products, accuracy and integrity of data books and records, fraud and corruption, conflicts of interests from personal and family business arrangements, global trade compliance, fair competition, pricing and antitrust issues and public disclosure. Mylan’s code of ethics for its Chief Executive Officer, Chief Financial Officer and Controller, reiterates that such officers should (1) engage in honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (2) promote the making of full, fair, accurate and timely disclosure in reports and documents that the company files with the Securities and Exchange Commission (SEC); and (3) comply with all applicable governmental laws, rules and regulations (Mylan, 2015c).

Mylan also espouses a strong commitment to fair competition, pricing and antitrust laws. In its code of business conduct and ethics, it notes that antitrust and fair competition laws and regulations serve the purpose of preserving fair, honest and vigorous competition in the marketplace. It expresses full commitment to abiding by laws that help prevent monopolization of markets, abuse of dominant market position, unfair business practices and discriminatory pricing (Mylan, 2015d). The company equally enjoins its employees to be honest and transparent in areas of corporate governance such as the keeping of accurate data, books and records and stipulates that they must “accurately enter all assets, liabilities,

revenues and expenses of Mylan (sic) in the company's regular books, records and other standard financial documents" (Mylan, 2015d, p. 16, para.1).

In its compensation policy, adopted in February 2015, Mylan empowers its board of directors to set compensation levels for executive and non-executive directors with the aim of attracting and retaining highly qualified individuals and to incentivize performance and shareholder value creation. Base salaries may be based on individual performance, expected future performance, peer company practices and experience. There are also allowances for short term and long term incentive compensation based on performance, operational or financial measures (Mylan, 2015e). There appears to be no executive "clawback" provisions in the policy. A clawback is an action where an organization takes back money that has already been disbursed to an employee, sometimes with added penalty. Companies sometimes write clawback provisions into executive contracts to allow them to recoup bonuses in the event of any misconduct (not necessarily by the executive) that leads to losses or makes the company revise its financial performance (Investopedia.com, 2016b).

However, it is important to note that in 2014, Mylan announced an incentive program to reward more than 100 employees and executives in order to drive aggressive profit targets. Worth about \$82 million to the company's top five executives, the plan was aimed at doubling Mylan's adjusted per-share earnings over a 5-year period ending in 2018 (Maremont, 2016a).

1.4 | Corporate Reputation

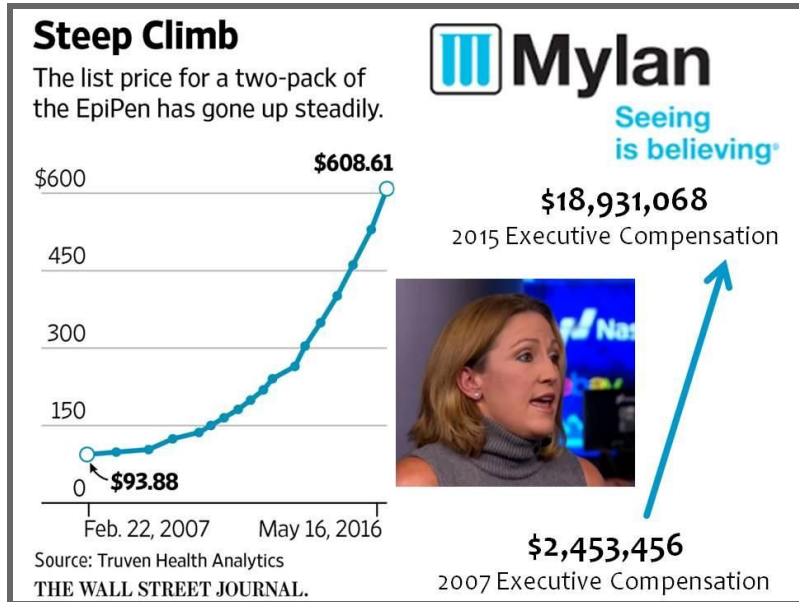
Corporate reputation is "an overall assessment of an organization using a company's various dimensions as the evaluative criteria" (Ragas & Culp, 2014, p.125). Such dimensions include products and services, innovation, financial performance, corporate governance and social responsibility. Compliance with corporate governance and ethical standards, as demonstrated by Mylan in its policy documents, is usually intended to reduce "agency costs" and increase responsiveness to stakeholder concerns. Ultimately, corporate governance and social responsibility should help reduce operational risks, while enhancing a company's reputation among its key stakeholders. These include employees, investors, shareholders, government, regulatory agencies and consumers of its products. To build a good reputation, professed corporate positions must be matched with action in what Ragas and Culp (2014) refer to as a "confluence of words and deeds" (p.130).

2.0 | The EpiPen Pricing Crisis

2.1 | A History of EpiPen Price Increases

The history of EpiPen price increases spans almost a decade. While Mylan is well known for its remarkable marketing efforts to create awareness about the dangers of allergic reactions and anaphylactic shock, the company also increased EpiPen prices at least 15 times between 2009 and 2016 (Egan, 2016). The pricing issue hit a crescendo in

August, 2016 when Mylan came under public scrutiny after users of the EpiPen and their families began to speak up about the consistently rising prices of the life-saving drug. When Mylan acquired the EpiPen in 2007, it was returning profits of about \$200 million a year. As of 2016, with about 90% of the market share for epinephrine devices, EpiPen makes more than \$1.1 billion a year and its price has risen from \$100 in 2007 to \$600 in 2016 (Ramsey, 2016). Executive compensation at Mylan has also risen, with the pay of Heather Bresch, its CEO, increasing from \$9 million in 2013 to \$18.9 million in 2015 (Maremont, 2016a).



Source: The Wall Street Journal, 2016

2.2 | Family Ties

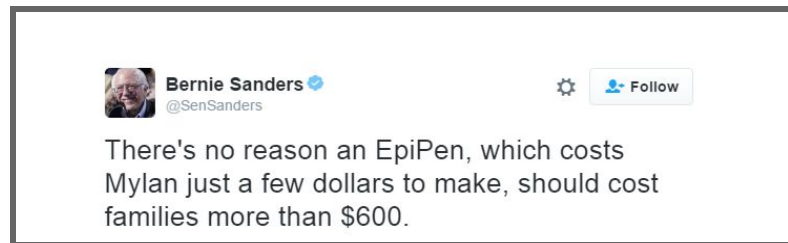
In 2012, Mylan CEO, Heather Bresch, launched a full marketing and advocacy campaign geared towards schools as part of an effort to raise awareness and increase EpiPen sales. Bresch, the daughter of Senator Joe Manchin (D-WV), worked with lawmakers to have EpiPens stocked in schools and public places. The campaign was supported by Gayle Manchin, President of the National State Boards of Education, who led an unprecedented effort to get schools to purchase the devices so as to protect school children who suffer from allergic reactions. Gayle Manchin is the mother of Heather Bresch. She was appointed to the West Virginia Education Board in 2007 by her husband, Senator Joe Manchin (D-WV); an appointment which paved the way for her to become the head of the association in 2012 (O'Donnell, 2016).

On November 13, 2013, President Obama signed the School Access to Emergency Epinephrine Act, which “provides financial incentives to schools that keep epinephrine auto-injectors on hand” (Rimler, 2016, para.18). While the

bill does not mention EpiPen specifically, Mylan faced scrutiny from stakeholders and politicians due to its dominance of the market and a lack of competition from other auto-injector brands (Almendrala, 2016).

2.3 | Recent Timeline of the EpiPen Crisis

August 18, 2016: Senator Bernie Sanders (D-VT), tweets about an NBC news story regarding the 400% price increase of Mylan's EpiPen over the past seven years amidst consumer discontent (Czarnecki, 2016).



Source: Twitter.com, 2016

August 22, 2016: The New York Times picks up the story and publishes an article titled, "EpiPen Price Sparks Concern for Allergy Sufferers" (Parker-Pope & Rabkin Peachman, 2016).

Senator Amy Klobuchar (D-MN), whose daughter suffers from anaphylaxis, asked the Senate Judiciary Committee and FTC to investigate the price increases on the EpiPen (Hulse, 2016).

Senators Chuck Grassley (R-IA) and Richard Blumenthal (D-CT) write open letters addressed to Mylan. After multiple concerned Connecticut residents contacted his office, Blumenthal says, "I was shocked and dismayed to discover that the price of your product, which has not been improved upon in any obvious or significant way, has skyrocketed by 480% since 2009" (Blumenthal, 2016, para. 2).

August 24, 2016: Presidential candidate, Hillary Clinton takes to Facebook calling the price increase "outrageous" and saying "it's wrong when drug companies to put profits ahead of patients".

Bloomberg publishes an article titled, "The Senator's Daughter Who Raised Prices on the EpiPen," bringing to light that Mylan CEO, Heather Bresch, is the daughter of Senator Joe Manchin (D-WV) (Edney & House, 2016).

Members of Congress question Mylan on its decision to spend \$4 million to lobby for a bill that gave schools an incentive to get EpiPens, resulting in a 22.5% profit increase (Maslow, 2016).

Mylan stock drops by 6.2% (Edney & House, 2016).

August 25, 2016: Bresch does an interview with CNBC Squawk Box where she attempts to give a rationale for the price increase. During the interview, Bresch puts the blame on the structure of the healthcare industry which she says is in a crisis and needs to be fixed. She announces that Mylan will raise its maximum co-pay assistance program from \$100 to \$300. Mylan also issued a press release (Mylan, 2015f).

Democratic presidential nominee, Hillary Clinton, says the rebate is not enough because it will result in EpiPen costs being “passed on through higher insurance premiums” (Mangan & Balakrishnan, 2016, para. 6).

August 30, 2016: Senator Elizabeth Warren (D-MA) and other senators send a letter to Mylan. In the letter, the Senate raised questions about the price of the EpiPen and its effect on Americans who could not afford the price increase. They also questioned the increase in Mylan CEO’s compensation. The senators say the discount program is a well-defined industry tactic to keep costs high as the burden of the high prices are eventually passed to consumers in the form of higher insurance premiums. (Warren, Sanders, Leahy et al., 2016).

August 31, 2016: CNN Money investigates Mylan’s financials and finds a substantial 2014 bonus plan for Bresch (\$28 million) and top executives if Mylan achieves its profit and share goals (Isidore, 2016).

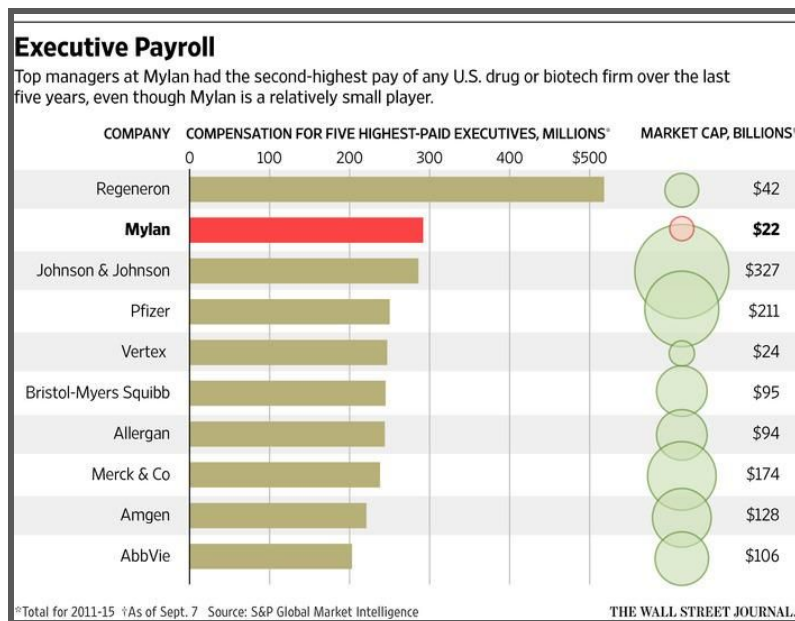
September 6, 2016: New York Attorney, Eric Schneiderman announces the beginning of his investigation of Mylan for breaking antitrust laws by “insert[ing] potentially anticompetitive terms” into sales contracts with schools. The week prior, subpoenas were issued for company information (NBCNewYork.com, 2016, para. 4).

2.4 | Governmental Response

On September 21, 2016, Heather Bresch was sworn in to testify before the House Oversight and Reform Committee. In her prepared testimony, Bresch said, “Looking back, I wish we had better anticipated the magnitude and acceleration of the rising financial issues for a growing minority of patients who may have ended up paying the full [list] price or more. We never intended this” (Lopez & Ramsey, 2016, para. 4). During further questioning, Bresch used poster boards to show that Mylan makes a profit of \$275 on each 2-pack of EpiPens with a profit margin of about \$50 per pen.

The low profit margin, she explained, was due to the number of middlemen involved between the list price and the profit that Mylan gets at the end of the transaction. The committee members found the figures hard to believe. "If I could sum up this hearing, it would be that the numbers don't add up," Rep. Elijah Cummings said toward the end of the hearing (Ramsey, 2016, para 4).

Further attention was drawn to the fact that family had influenced the EpiPen markets. Democratic Rep. Tammy Duckworth of Illinois, who had earlier written to the US Attorney General to question the EpiPen schools program, alleged during her questioning that Bresch intentionally created a monopoly by using her mother's influence to ensure that schools across the country are required to buy EpiPens. Bresch repeatedly denied the allegations, saying suggestions that her mother was involved in lobbying efforts are inappropriate (Radnofsky, 2016a). Bresch was also questioned about her compensation which had increased from \$2.4 million in 2007 to \$18.9 million in 2015. Florida Republican John Mica asked her about her compensation. "About \$18 million," she said, quietly. "Sounds like you're doing pretty well out of this," he replies. Is that high or low for industry peers, he wondered. "It's in the middle," she says, also quietly (Radnofsky, 2016b, para. 2).



Source: The Wall Street Journal

Bresch was questioned further on the price hikes by the committee. She responded by saying the company made profits far less than what the list price of \$605 might suggest. "We believe it was a fair price, and we now just lowered it by half," she said (Rockoff, Radnofsky & Hernandez, 2016, para. 3). "I am a very conservative and pro-business Republican,

but I am sickened by what I've heard," Rep. John Duncan (R-TN) said (para.5). Rep. Gerald Connolly (D-VA) said if he relied solely on Ms. Bresch's testimony, he would think "what humanitarians" those at Mylan are. "You virtually have a monopoly, and used it to your advantage; but unfortunately, it is at the expense of people who need it" (para 6).

On September 26, 2016, the Wall Street Journal published a report revealing that the figures Mylan presented to Congress as profits on the EpiPen included taxes applied at the statutory corporate tax rate of 37.5%, which was five times more than Mylan's actual overall tax rate of 7.4% for 2015. This means that Mylan's profits on each 2-pack of the EpiPen was \$166, a figure that is 60% higher than the \$100 and \$50 per pen figure it earlier gave to Congress (Maremont, 2016b).

On October 7, 2016, Mylan agreed to pay \$465 million to the U.S. Department of Justice to settle the allegations made by senators and federal health officials that it overcharged Medicaid, the government assistance program for low-income families, by wrongly classifying the EpiPen as a generic product instead of brand name to avoid additional taxes (Walker, 2016). In its form 8-K filed with the Securities and Exchange Commission, Mylan stated that the settlement did "not provide for any wrongdoing on the part of Mylan Inc. or any of its affiliated entities or personnel." It also announced that it expects adjusted diluted earnings per ordinary share (EPS) of between \$4.70 - \$4.90 as compared to the previous full year guidance of \$4.85 - \$5.15 per share (US Securities and Exchange Commission, 2016).

3.0 | Outtakes

3.1 | Mylan's Social Media Response

Mylan and CEO Heather Bresch took a minimalistic approach to communicating about the EpiPen price increase. There is no mention of the Congressional hearing on either Mylan or Bresch's Twitter or Facebook accounts, nor an explanation for the price increase. On August 25, 2016, Mylan tweeted about Bresch's interview with CNBC Squawk Box and put out press releases on PRNewswire announcing the "Immediate Action" it plans to take on expanding on already existing assistance programs to make EpiPens more available to those who do not have the money to afford the medicine (Mylan, 2016f). A few days later, on August 29, 2016 Mylan put out a press release on PRNewswire announcing that its \$300 generic EpiPen, would be offered at more than a 50% discount, and be on the market soon (Mylan, 2016g). On October 7, 2016 Mylan put out a third press release on PRNewswire saying the company had agreed to pay the \$465 million settlement on the Medicaid rebate classification for the EpiPen (Mylan, 2016h).

3.2 | Public Response

Revelations from the Congressional hearing was met with outrage by the public. On Twitter, some questioned Mylan's justification for the price increases and wondered why a device that delivers only \$1 worth of drugs to patients could cost over \$600. Some pointed to the potential impact of the lifesaving drug on patients who could not afford it, while others wondered why the EpiPen which costs \$290 in Canada could cost \$620 in the United States. In a tweet, Senator

Bernie Sanders alleged that Mylan engaged in corporate inversion to reduce the taxes it pays in the US. Its decision to offer a generic version was also seen as a preemptive strike against Teva Pharmaceuticals, a company set to launch its generic version of epinephrine in 2017 (Bomey, 2016).



Source: Twitter.com, 2016

The situation also gave rise to public petitions. Some angry consumers took to Facebook and created a page titled, “Fire the Wicked Witch of Mylan Pharmaceutical Heather Bresch Today.” The page shares multiple articles dating back to the beginning of the crisis on August 25, 2016. On August 27, 2016, the user of the page shared a petition asking followers to request that President Obama get the “FDA to strip Mylan’s monopoly over EpiPen”. So far, the petition has been signed by more than 50,000 people. The goal is to obtain more than 100,000 signatures.

3.3 | DIY “EpiPencil”

In response to the EpiPen price increase, people started posting their own DIY “hacks” such as the “EpiPencil”, which is a makeshift EpiPen. However, makeshift cures can be very dangerous and is an unregulated practice. Unable to afford the EpiPen, some users felt driven to desperation and researched for alternatives which include injecting epinephrine right from a vial. Almost all medical professionals advise against this practice since it requires a steady hand and can result in overdose or infection. Also, pharmaceutical hacking groups such as the Four Thieves Vinegar Collective who created the EpiPencil, encouraged people to make their own devices at home.

The EpiPencil is created with an auto-injector from an off-the-shelf diabetes test, a needle, syringe, and epinephrine, which can be obtained through a prescription for those who have severe allergies. This practice can result in product contamination and result in a giant abscess in the muscles, said Yvette d’Entremont, a former chemist (Weill, 2016, para 11).

3.4 | Class Action Lawsuits

On Tuesday, September 6, Cincinnati, Ohio resident, Linda Bates filed a class action lawsuit against Mylan, claiming that the price increase for the EpiPen was in violation of Ohio’s consumer protection law. Bates, who sought to

represent individuals in Ohio who purchased EpiPens from 2007, said, “The outrageous, unconscionable and immoral high prices set by Defendant is nothing more than price gouging” (Pierson, 2016, para. 6). The lawsuit says the price increase is in violation of the Ohio Consumer Sales Practice Act, which prohibits “unconscionable’ acts in connection with consumer transactions, including taking advantage of a consumer’s ‘physical infirmities’” (Pierson, 2016, para. 7). Another class action lawsuit was filed in August in a federal court in Michigan accusing Mylan of price gouging by selling EpiPens only in two packs instead of individually (Pierson, 2016). Among other recent plaintiffs, Bronstein, Gewirtz & Grossman LLC also filed a class action lawsuit on behalf of shareholders who bought Mylan shares between February 21, 2012 and October 5, 2016. The lawsuit alleged, among other charges, that Mylan failed to disclose that it “paid Medicaid significantly lower EpiPen rebates than legally required” and “knowingly and systemically overcharged Medicaid for EpiPens in violation of federal law” (yahoo.finance.com, 2016, para 5).

4.0 | Outcomes

4.1 | Stock Market Reaction

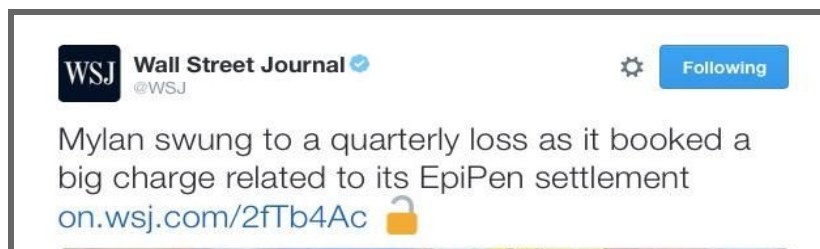
The reaction of the stock market to the crisis was almost immediate. Mylan stock value dropped from a high of \$48.53 on August 8, 2016, to a low of \$34.14 on November 3, 2016. The stock value picked up slightly to reach \$38.44 per share on November 14, 2016 but has dropped again to \$37.38 per share by December 29, 2016. There were also corresponding rises and drops in trading volumes.



Source: Nasdaq.com, 2016

4.2 | Business and Social Impact

Given the outcomes outlined above such as falling stock prices, the filing of class action lawsuits and the development of DIY-EpiPens, it is evident that the crisis is already making an impact on Mylan's bottom-line and on society. In terms of direct financial costs, Mylan has lost \$465 million which it agreed to pay in a settlement with the Department of Justice for overcharging Medicaid due to its misclassification of brand name EpiPens. On November 9, 2016, Mylan posted a third quarter loss of \$119.8 million, or 23 cents a share, compared with a profit of \$428.6 million, or 83 cents a share during the same period in 2015. Shareholders took a hit as adjusted earnings fell to \$1.38 a share. Sales were down 4% as wholesalers cut back purchases in anticipation of the introduction of a \$300 generic EpiPen (Steele & Rockoff, 2016). This outcome translates not only into huge losses in stock value and reduction in operating capital, it also resulted in lower earnings for shareholders. From a social perspective, the crisis also created a risk for the millions of patients who might turn to makeshift cures, hacks and dangerous DIY-EpiPens because of rising prices.



Source: Twitter.com, 2016

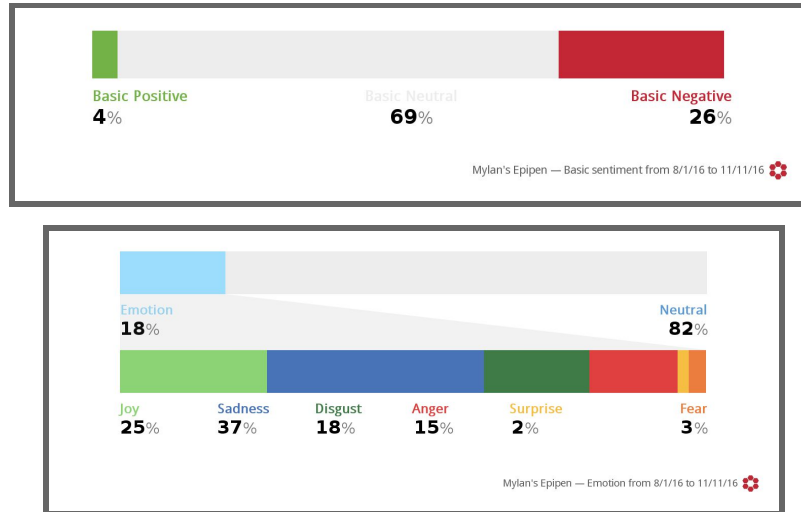
4.3 | Corporate Governance and Reputational Impact

The handling of the Congressional hearing by Mylan CEO, Bresch and her team raises questions about the consistency between Mylan's professed corporate governance policies and its actual corporate actions and decisions. The company presented conflicting figures about its profits to the committee, raising doubts about its integrity, transparency, and adherence to generally accepted accounting principles. Congress also raised questions about fair pricing, conflicts of interest with family about its lobbying activities, anticompetitive practices and the connection between high prices, and the rising compensation of its top executives. These are allegations which the CEO struggled to defend even though policies to prevent such situations are enshrined in the company's corporate governance handbook.

The results of a sentiment analysis conducted with Crimson Hexagon, a social media monitoring and analytics tool, showed that the Mylan EpiPen price increase received on average about 4% basic positive, 69% neutral, and 26% basic negative sentiment on social media during the height of the crisis. Additionally, the results from the emotion analysis

conducted, surprisingly show that 82% of emotions recorded are neutral. However, out of the 18% remaining, about 75% are negative emotions ranging from sadness, disgust and anger to fear and surprise (forsight.crimsonhexagon.com, 2016).

Sentiment + Emotion Analysis



Source: Crimson Hexagon, 2016

Given the reaction from Congress and the public, the EpiPen crisis is certainly not without an effect on Mylan's corporate reputation. Because the company had to go before Congress to defend allegations leveled against it, questions were raised about trust, transparency, accountability and credibility. In comparison to its peers in the pharmaceutical industry, Mylan was not included in the 2016 Harris Interactive's Reputation Quotient (RQ) Poll or by the Reputation Institute's 2016 Global RepTrak 100 for top companies for the best reputation in the world. It was, however, ranked 21st in the SyncForce Top 50 for global pharma companies, a ranking based on sales in 2015.

The EpiPen pricing crisis may have moved the needle in the perception of Americans about corporate governance in the healthcare industry and strengthened the idea that action needs to be taken to assert more control over the sector through legislation and regulation. In a HealthDay/Harris poll conducted online among 2,100 Americans aged 18 and over between October 12-15, 2016, most respondents said they favored price caps and were in support of Medicare's right to negotiate the cost of drugs. Eighty one percent support control caps on drugs and medical devices compared to 73% in 2015, while 74% expressed support for Medicare to negotiate prices for all insurers, a jump from 66% in 2015. Many also agree with some common criticisms of the pharma industry. Ninety percent agree that "raising the prices of life-saving medications is taking advantage of consumers" and that "pharmaceutical companies make too much money off

of life-saving medications." Eighty-eight percent also agree that "pharmaceutical industries have too much freedom to set prices for life-saving medications" (Thompson, 2016, para. 12). "The very large majorities of people who support tough government measures to rein in drug prices – including government price controls and drug importation – have become even larger," said Humphrey Taylor, chairman emeritus of The Harris Poll" (Thompson, 2016, para. 4).

5.0 | Conclusion

Mylan's EpiPen pricing crisis points to the powerful link between corporate governance policies and executive action in corporate organizations. A look at Mylan's corporate governance presents a picture of a company that is very aware of the virtues of good governance and social responsibility. Its policy on corporate governance took cognizance of critical governance areas such as board independence and accountability, board diversity, shareholder voting rights in director elections and determination of board and executive compensation. As laid out on its website, Mylan's very detailed corporate governance policy emphasizes its commitment to fair competition, transparency, disclosure, avoidance of conflicts of interest by its top executives and adherence to the best accounting, data recording and product pricing standards. All these policies are intended to reduce executive overreach and ensure that Mylan's management operates in the best interest of all its stakeholders.

Despite its policy intentions, executive decisions leading to the EpiPen pricing crisis still brought Mylan before Congress to explain its corporate governance practices, especially its focus on setting high prices which consumers of the EpiPen could not afford, and constant increases in executive compensation. The sharpest turning point seemed to occur in 2014, when Mylan decided to move its tax address overseas to reduce its taxes and executed an \$82 million executive bonus policy tied to the achievement of an aggressive profit target – a 100% increase in Mylan's adjusted per-share earnings over a 5-year period ending in 2018 (Maremont, 2016a). The resultant effect was a substantial increase in both prices and executive compensation. The Congressional investigation exposed the company to charges relating to greed, anti-competitive or monopolistic practices, lack of transparency and disclosure, crony capitalism and doubts about its accounting and product pricing methods.

5.1 | Looking Ahead

The outcome of the Congressional hearing appears to have created doubts about Mylan's corporate reputation and integrity, suggesting that there are still holes in its corporate governance policies which only Mylan can fill in. The company has incurred high agency costs due to the \$465 million settlement it reached with the Department of Justice for overcharging Medicaid, and it faces several potentially costly class action lawsuits across the country. Mylan has not agreed to lower the list price of the EpiPen, and with the new generic product set to be on the market in 2017, there is more potential for increased revenue for the company. So far, Mylan's CEO and other top executives have not been

sanctioned for the company's financial losses, or received official cutbacks on their high salaries and bonuses because the company does not have a clear clawback policy. This raises several questions: Who is deserving of the blame – Mylan or the healthcare system? How can shareholders and the public ensure that corporations are committed to good corporate governance policies? Has Mylan hurt its shareholders and consumers despite its broad corporate governance policies? What roles should legislators and regulators play in the future to prevent anticompetitive activities in the pharma industry and dis-incentivize price increases for life-saving medications?

On December 7, 2016, Mylan announced a plan to restructure and cut less than 10% of its global workforce as it integrates its acquisitions. The company said in a filing that it would implement the restructuring programs in certain locations due to its acquisition of Sweden's Meda in August, 2016, and Abbott Laboratories specialty and generic business earlier in 2015. The company promised to disclose the details of the cost cutting efforts as it finalizes the plans. As of December 6, 2016, Mylan's shares have fallen by 25% since the crisis broke in August (Pierson & Grover, 2016). Although there appears to be no clear connection between the disclosure on restructuring and the EpiPen pricing crisis, competitors in the pharma industry and other corporations would do well to take a cue from the crisis.

From a communications perspective, the crisis raises questions about the important role of corporate communication professionals in ensuring that corporate actions are in alignment with corporate governance principles. Could Mylan have gone beyond meeting basic legal requirements and done more to balance its corporate decisions with its corporate governance ideals? Do Chief Communication Officers (CCOs) need more powers or access to be able to exert greater influence in the C-Suite? Do CEOs and other top corporate executives need to listen more to the advice of CCOs when taking day-to-day corporate decisions? Is there a need for practitioners and academics to collaborate more to develop a measurement standard or a corporate governance barometer that could help corporate communicators and CEOs to internally assess their corporate decisions and actions against desired corporate governance principles?

CCOs are often considered to be strategic communication counselors to CEO's and the C-Suite. They promote shared values and aim for the Best Achievable Outcomes (BAOs) for all stakeholders (Harrison & Muhlberg, 2014). The lessons from the EpiPen crisis will hopefully add some value to the discourse on the important role that corporate communication professionals should play within corporations in a more social and connected world. The case is a parable of sorts that might make CEOs better realize the need to work more closely with CCOs and bring them into the C-Suite as they define, activate and align corporate governance, corporate strategy, and ethical ideals. It might also help to foster better understanding by CEOs about the potential impact of corporate decisions not only on their bottom lines but on stakeholders, and on the survival of the companies they lead.

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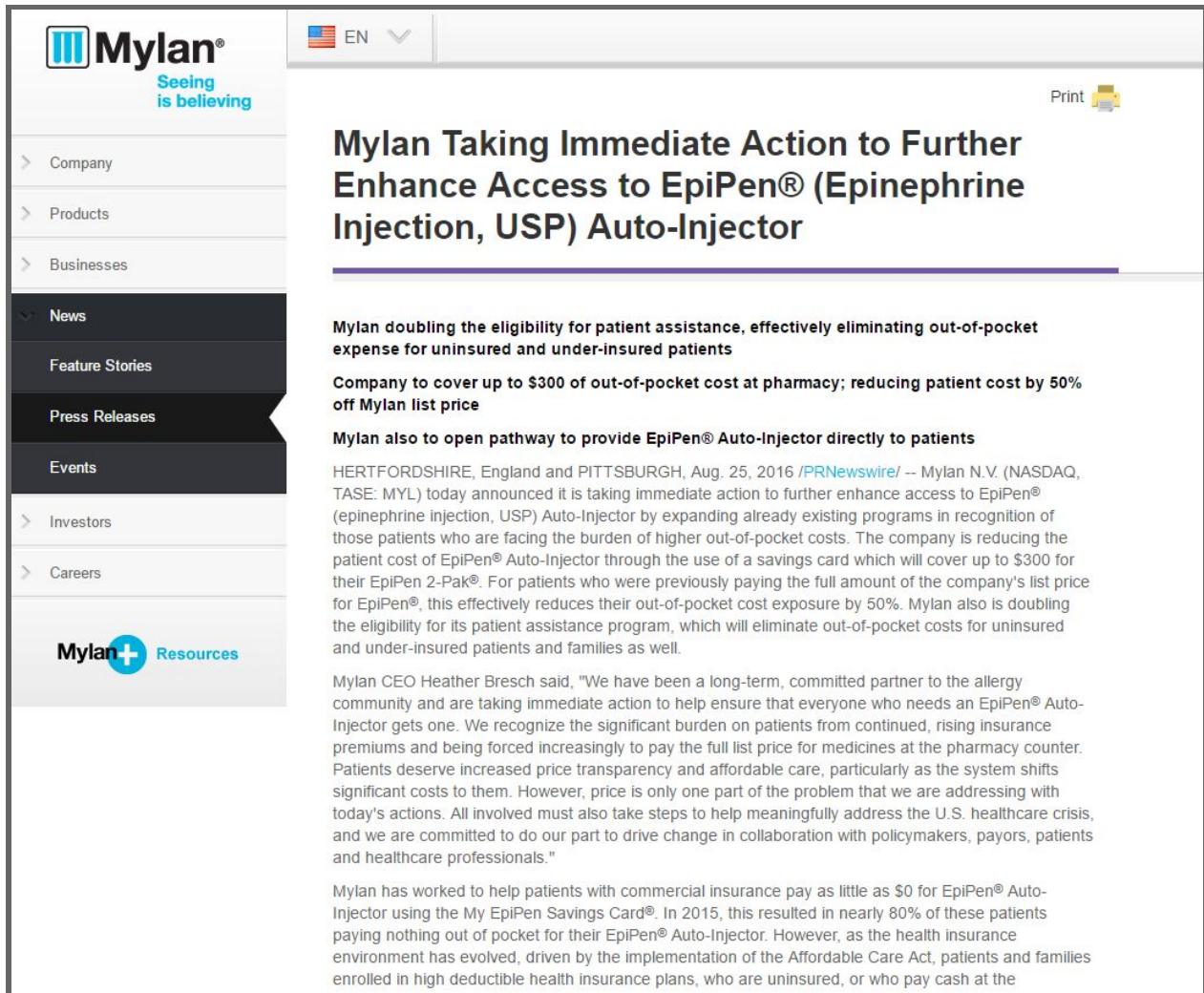
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Appendix A

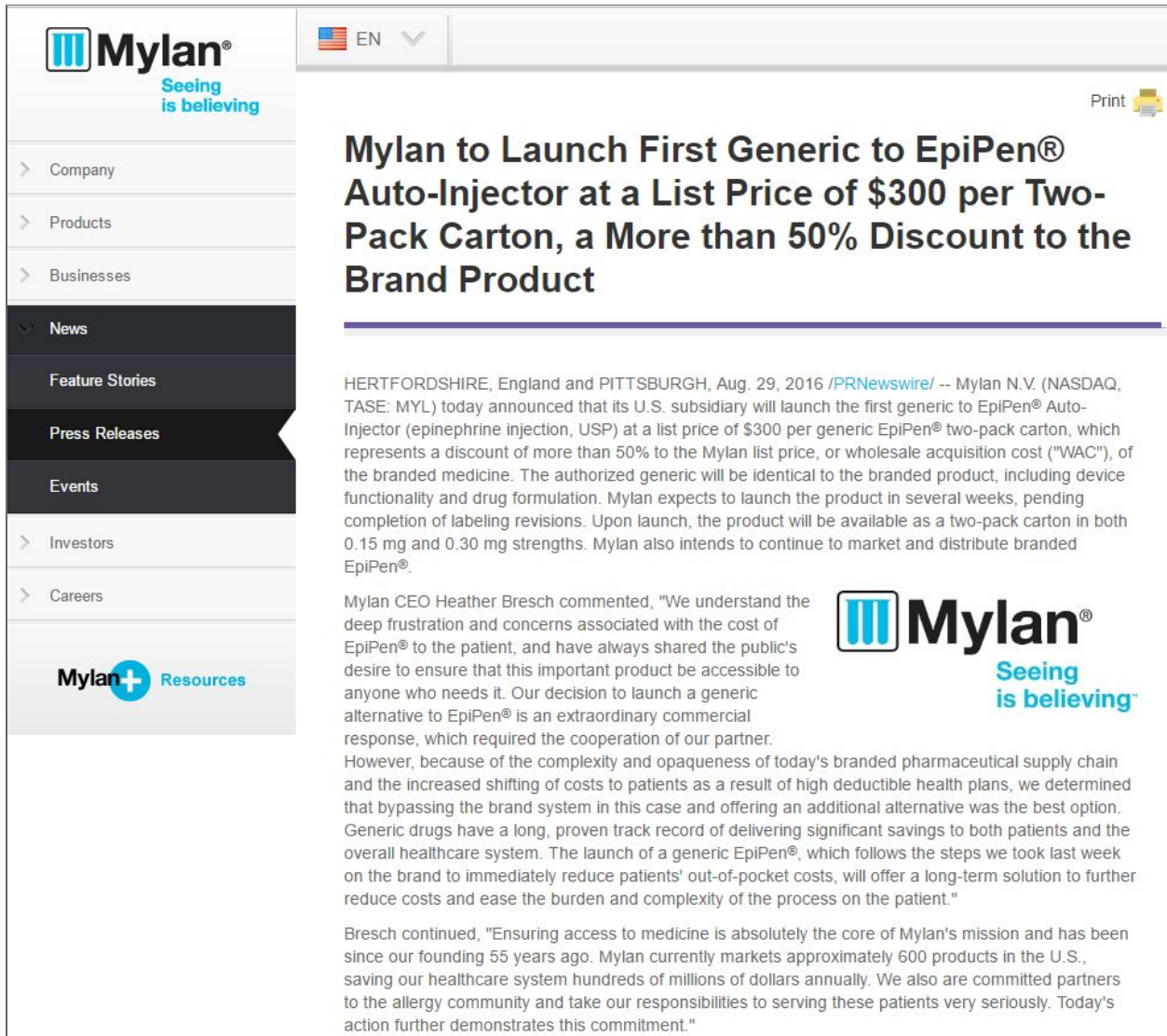


The screenshot shows the Mylan website interface. At the top left is the Mylan logo with the tagline "Seeing is believing". To the right of the logo is a language selector showing "EN" with a dropdown arrow. Further right is a "Print" button with a printer icon. Below the logo is a navigation menu with categories: Company, Products, Businesses, News (selected), Feature Stories, Press Releases, Events, Investors, and Careers. At the bottom of the menu is the "Mylan+ Resources" logo. The main content area features a headline: "Mylan Taking Immediate Action to Further Enhance Access to EpiPen® (Epinephrine Injection, USP) Auto-Injector". Below the headline are three sub-headlines: "Mylan doubling the eligibility for patient assistance, effectively eliminating out-of-pocket expense for uninsured and under-insured patients", "Company to cover up to \$300 of out-of-pocket cost at pharmacy; reducing patient cost by 50% off Mylan list price", and "Mylan also to open pathway to provide EpiPen® Auto-Injector directly to patients". The main text of the article begins with "HERTFORDSHIRE, England and PITTSBURGH, Aug. 25, 2016 /PRNewswire/ -- Mylan N.V. (NASDAQ, TASE: MYL) today announced it is taking immediate action to further enhance access to EpiPen® (epinephrine injection, USP) Auto-Injector by expanding already existing programs in recognition of those patients who are facing the burden of higher out-of-pocket costs. The company is reducing the patient cost of EpiPen® Auto-Injector through the use of a savings card which will cover up to \$300 for their EpiPen 2-Pak®. For patients who were previously paying the full amount of the company's list price for EpiPen®, this effectively reduces their out-of-pocket cost exposure by 50%. Mylan also is doubling the eligibility for its patient assistance program, which will eliminate out-of-pocket costs for uninsured and under-insured patients and families as well. Mylan CEO Heather Bresch said, "We have been a long-term, committed partner to the allergy community and are taking immediate action to help ensure that everyone who needs an EpiPen® Auto-Injector gets one. We recognize the significant burden on patients from continued, rising insurance premiums and being forced increasingly to pay the full list price for medicines at the pharmacy counter. Patients deserve increased price transparency and affordable care, particularly as the system shifts significant costs to them. However, price is only one part of the problem that we are addressing with today's actions. All involved must also take steps to help meaningfully address the U.S. healthcare crisis, and we are committed to do our part to drive change in collaboration with policymakers, payors, patients and healthcare professionals." Mylan has worked to help patients with commercial insurance pay as little as \$0 for EpiPen® Auto-Injector using the My EpiPen Savings Card®. In 2015, this resulted in nearly 80% of these patients paying nothing out of pocket for their EpiPen® Auto-Injector. However, as the health insurance environment has evolved, driven by the implementation of the Affordable Care Act, patients and families enrolled in high deductible health insurance plans, who are uninsured, or who pay cash at the

Source: Mylan, 2016f



ARTHUR W. PAGE SOCIETY



The screenshot shows a web page from Mylan's corporate website. On the left is a navigation menu with categories like Company, Products, Businesses, News, Feature Stories, Press Releases, Events, Investors, and Careers. The main content area features a headline: "Mylan to Launch First Generic to EpiPen® Auto-Injector at a List Price of \$300 per Two-Pack Carton, a More than 50% Discount to the Brand Product". Below the headline is a "Print" button. The body text of the press release is as follows:

HERTFORDSHIRE, England and PITTSBURGH, Aug. 29, 2016 /PRNewswire/ -- Mylan N.V. (NASDAQ, TASE: MYL) today announced that its U.S. subsidiary will launch the first generic to EpiPen® Auto-Injector (epinephrine injection, USP) at a list price of \$300 per generic EpiPen® two-pack carton, which represents a discount of more than 50% to the Mylan list price, or wholesale acquisition cost ("WAC"), of the branded medicine. The authorized generic will be identical to the branded product, including device functionality and drug formulation. Mylan expects to launch the product in several weeks, pending completion of labeling revisions. Upon launch, the product will be available as a two-pack carton in both 0.15 mg and 0.30 mg strengths. Mylan also intends to continue to market and distribute branded EpiPen®.

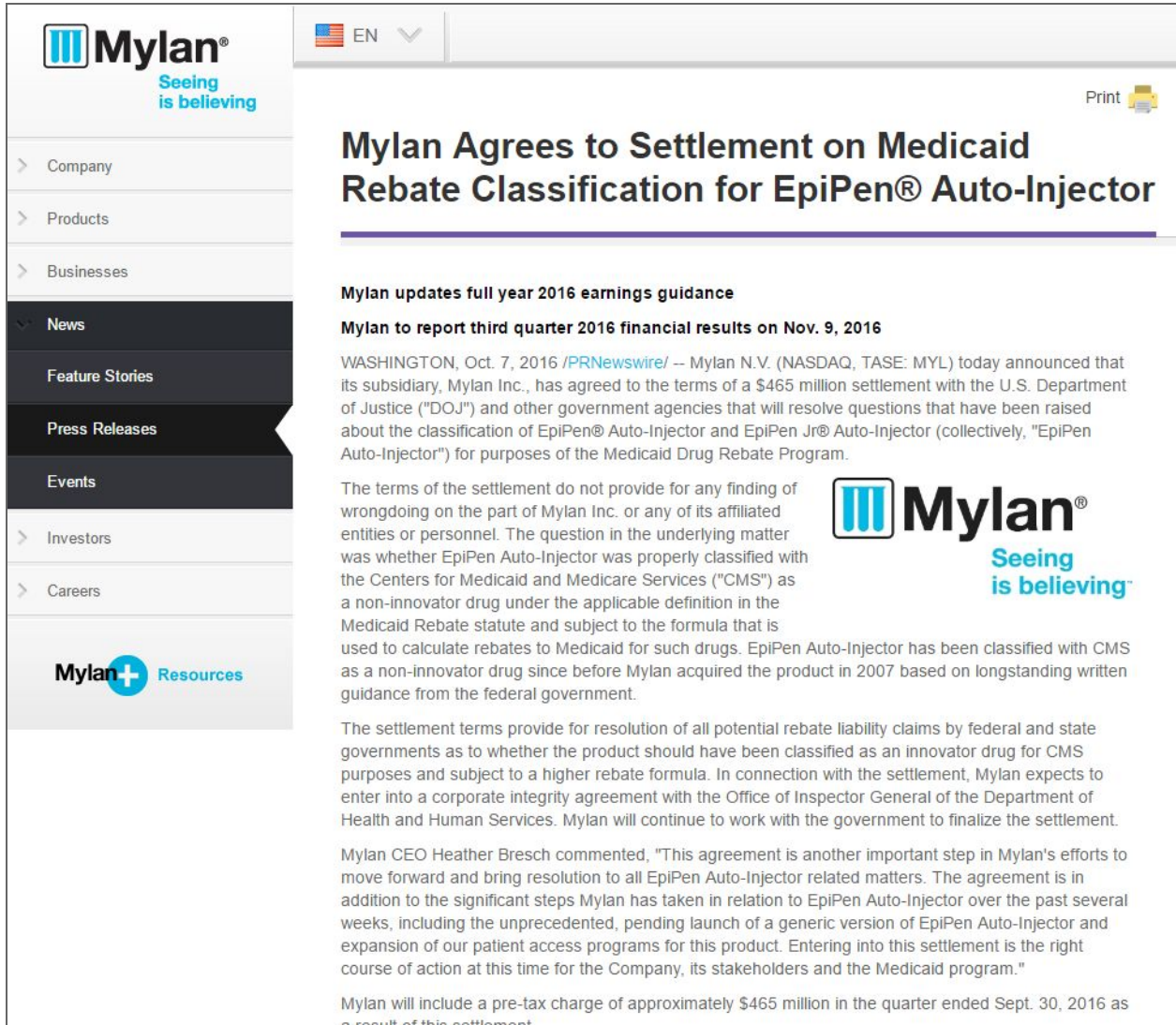
Mylan CEO Heather Bresch commented, "We understand the deep frustration and concerns associated with the cost of EpiPen® to the patient, and have always shared the public's desire to ensure that this important product be accessible to anyone who needs it. Our decision to launch a generic alternative to EpiPen® is an extraordinary commercial response, which required the cooperation of our partner. However, because of the complexity and opaqueness of today's branded pharmaceutical supply chain and the increased shifting of costs to patients as a result of high deductible health plans, we determined that bypassing the brand system in this case and offering an additional alternative was the best option. Generic drugs have a long, proven track record of delivering significant savings to both patients and the overall healthcare system. The launch of a generic EpiPen®, which follows the steps we took last week on the brand to immediately reduce patients' out-of-pocket costs, will offer a long-term solution to further reduce costs and ease the burden and complexity of the process on the patient."

Bresch continued, "Ensuring access to medicine is absolutely the core of Mylan's mission and has been since our founding 55 years ago. Mylan currently markets approximately 600 products in the U.S., saving our healthcare system hundreds of millions of dollars annually. We also are committed partners to the allergy community and take our responsibilities to serving these patients very seriously. Today's action further demonstrates this commitment."

Source: Mylan, 2015g



ARTHUR W. PAGE SOCIETY



The screenshot shows the Mylan website interface. On the left is a navigation menu with categories: Company, Products, Businesses, News (highlighted), Feature Stories, Press Releases, Events, Investors, and Careers. Below the menu is a 'Mylan+ Resources' section. The main content area features the Mylan logo and tagline 'Seeing is believing' at the top left, a language selector 'EN' with a dropdown arrow, and a 'Print' button at the top right. The headline reads 'Mylan Agrees to Settlement on Medicaid Rebate Classification for EpiPen® Auto-Injector'. Below the headline are two sub-headlines: 'Mylan updates full year 2016 earnings guidance' and 'Mylan to report third quarter 2016 financial results on Nov. 9, 2016'. The main text begins with 'WASHINGTON, Oct. 7, 2016 /PRNewswire/ -- Mylan N.V. (NASDAQ, TASE: MYL) today announced that its subsidiary, Mylan Inc., has agreed to the terms of a \$465 million settlement with the U.S. Department of Justice ("DOJ") and other government agencies that will resolve questions that have been raised about the classification of EpiPen® Auto-Injector and EpiPen Jr® Auto-Injector (collectively, "EpiPen Auto-Injector") for purposes of the Medicaid Drug Rebate Program.' A second Mylan logo and tagline are placed to the right of the text. The text continues: 'The terms of the settlement do not provide for any finding of wrongdoing on the part of Mylan Inc. or any of its affiliated entities or personnel. The question in the underlying matter was whether EpiPen Auto-Injector was properly classified with the Centers for Medicaid and Medicare Services ("CMS") as a non-innovator drug under the applicable definition in the Medicaid Rebate statute and subject to the formula that is used to calculate rebates to Medicaid for such drugs. EpiPen Auto-Injector has been classified with CMS as a non-innovator drug since before Mylan acquired the product in 2007 based on longstanding written guidance from the federal government.' The text then discusses the settlement terms regarding liability claims and CMS classification, and includes a quote from Mylan CEO Heather Bresch. It concludes with the statement: 'Mylan will include a pre-tax charge of approximately \$465 million in the quarter ended Sept. 30, 2016 as a result of this settlement.'

Source: Mylan, 2015h



ARTHUR W. PAGE SOCIETY

Appendix D

 **Sen. Tammy Baldwin**  @SenatorBaldwin · 12h
The American people deserve answers from **#Mylan**. baldwin.senate.gov/press-releases...

  1  2 





 **Andrea Marvin CBS12**  @2AndreaMarvin · Nov 4
Generic drugmakers **#Teva** and **#Mylan**, both w/ offices in FL, are being investigated by the feds for conspiring to keep prices high. @CBS12

  2  


 Taye Diggs and 1 other follow


 **Cher Thorsen** @EcoBravoBlog · 1h
#Mylan's #EpiPen response is weak PR spin. Tell them to take REAL steps to drop the price of this crucial medicine! [actionnetwork.org/petitions/stop ...](http://actionnetwork.org/petitions/stop...)





 **Bernie Sanders**  @SenSanders  

Mylan's greed is apparently limitless. They didn't just raise the price of EpiPens 500%, they also dodge U.S. taxes.


 **Another reason to hate Mylan, which jacked up the price of...**
The pharmaceutical company Mylan has been taking on a boatload of vituperation — and rightfully so — for a 500% hike in the price of its lifesaving EpiPen injector, which reverses alle...
latimes.com

RETWEETS 1,834 LIKES 2,555 

9:13 AM - 24 Aug 2016

  1.8K  2.6K 

Source: Twitter.com



Obama: Bust Up The EpiPen Monopoly

Target: Barack Obama, President, United States of America


More than 100,000 of us demanded Mylan drop the price of EpiPen. And last week Mylan responded to consumer outrage with a claim that they're making EpiPen affordable for people who can't afford it. But under the surface, the company didn't actually change the price at all. The price cuts only apply to some underinsured consumers, who will get a \$300 savings card. Everyone else, including anyone receiving Medicare or Medicaid, continues to pay the outrageous \$600 price tag.

The American taxpayer funded the creation of the EpiPen, which was developed for the armed forces as the "ComboPen." And now Mylan has turned this life-saving device into a cash cow.

President Obama and the FDA have the authority to bust up the EpiPen monopoly. So Other98 is joining up with our friends at CREDO and Social Security Works to demand they do it. Add your name and tell President Obama to rein in these drug prices.

Mylan's announcement shows that Big Pharma is in full damage-control mode. With an increasing outcry against skyrocketing prices, Mylan is likely hoping to take the heat off the monopoly system that allows companies like Mylan to make obscene profits off live-saving medicines in the first place.

53,171 Signatures Collected



Only 49,229 more until our goal of 102,400

Sign This Petition

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Source: Actionnetwork.org