

DOW JONES, A NEWS CORP COMPANY

DJIA **26430.57** -0.21% ▼

S&P 500 **2880.34** -0.14% ▼

Nasdaq **7738.02** 0.03% ▲

U.S. 10 Yr **6/32 Yield** 3.207% ▲

Crude Oil **74.67** 0.51% ▲

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<https://www.wsj.com/articles/former-amersourcebergen-exec-blew-whistle-that-led-to-settlement-1538441841>

## BUSINESS

# Former AmerisourceBergen Exec Blew Whistle That Led to Settlement

The drug wholesale company has agreed to pay \$625 million to resolve civil liability under the False Claims Act



AmerisourceBergen, which is based in Chesterbrook, Pa., has agreed to a \$625 million settlement to resolve civil liability under the False Claims Act. PHOTO: KRISTOFFER TRIPPLAAR/SIPA USA/ASSOCIATED PRESS

By *Samuel Rubinfeld and Micah Maidenberg*

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The former chief operating officer of an AmerisourceBergen Corp. [ABC -0.41% ▼](#) unit said he revealed information that led to the company's \$625 million settlement with federal and state authorities over allegations that the firm distributed adulterated and misbranded pharmaceuticals.

Michael Mullen spoke up internally, which led to his termination, and he then alerted law enforcement, said his lawyer, Bob Thomas, co-founder of the Whistleblower Law Collaborative, a Boston-based law firm that handles whistleblower cases. Mr. Mullen's complaint was unsealed on Monday in federal court.

AmerisourceBergen, which is based in Chesterbrook, Pa., agreed to the settlement, announced on Monday, to resolve civil liability under the False Claims Act. A subsidiary separately pleaded guilty in September 2017, agreeing then to pay \$260 million in fines and forfeitures.

The company, one of the largest U.S. drug wholesalers, said in a statement it has acknowledged some of its practices at the subsidiaries were inconsistent with AmerisourceBergen's approach to corporate compliance. It added that it has entered into a new corporate integrity agreement, which confirms its commitment to compliance.

A representative of AmerisourceBergen didn't reply on Monday to a request for comment about Mr. Mullen's claims. The company responded via email on Tuesday, after an earlier version of this article was published, disputing the cause of Mr. Mullen's termination. "Michael Mullen was not fired by AmerisourceBergen for being a whistleblower," Lauren Esposito, a company spokeswoman, said in the statement.

The claims against the company arose from its repackaging and distribution of prefilled syringes between 2001 and 2014 that weren't approved for sale or use by the Federal Drug

Administration, prosecutors said. The syringes contained supportive drugs for cancer patients undergoing chemotherapy treatment.

- Drug Distributor AmerisourceBergen Names New Finance Chief (Sept. 10)

At an Alabama subsidiary, vials were emptied, with the contents pooled into plastic containers; then the drug, including the “overfill,” was extracted and repackaged into syringes, the company admitted in court documents. Overfill refers to the amount of extra drug beyond the labeled dose contained in a vial.

By harvesting the overfill, the company was able to create more doses than it bought from the original vial manufacturers and avoid opening some of the vials, prosecutors said. The company retained the unopened vials and then sold them to other customers, and to a subsidiary for resale, prosecutors said.

The Alabama-based subsidiary, which prosecutors say AmerisourceBergen had falsely told physician clients was a pharmacy, produced thousands of syringes daily, and eventually more than one million a year. The syringes were sold throughout the U.S., prosecutors said.

The scheme enabled the company to bill multiple health-care providers for the same vial of drug, causing some of them to bill the federal government more than once for the same vial. It also enabled the company to increase its market share by offering various discounts.

The settlement, prosecutors said, also resolved allegations that the company gave kickbacks to physicians to buy drugs through the pre-filled syringes program. The kickbacks, which weren’t identifiable on an invoice as specific to AmerisourceBergen products, came in the form of pharmacy credits to doctors.

Mr. Mullen, according to his lawyer, detailed the overfill scheme and identified executives, including former and current chief executives of the company, who knew about the oncology business model and regulatory issues.

He and three others will share about \$99 million in a whistleblower award, the lawyer said. Mr. Mullen was the first to come forward; the other tipsters corroborated his allegations, his lawyer said.

The company had previously set aside the funds to settle the case, according to a securities filing. Shares of AmerisourceBergen rose 0.6% to \$92.79 on Monday.

Forty-three states and the federal government will share in the payment from the company, according to a statement from the office of New York Attorney General Barbara Underwood.

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