

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMERISOURCEBERGEN CORPORATION,
a New Jersey corporation, dba
Bergen Brunswig Corporation, aka
BBC; AMERISOURCEBERGEN DRUG
CORPORATION; MEDICAL INITIATIVES,
INC., aka Oncology Supply; ASD
SPECIALTY HEALTHCARE, INC.,

Plaintiffs-Appellants,

v.

DIALYSIST WEST, INC., an Arizona
corporation,

Defendant-Appellee,

v.

AMERX INC., a Florida corporation;
CSG DISTRIBUTORS, a Tennessee
company; PREMIER MEDICAL
DISTRIBUTORS, INC.,

Third-party-Defendants.

No. 04-15595
D.C. No.
CV-02-01472-JWS
District of
Arizona, Phoenix
**ORDER
AMENDING
OPINION**

Filed April 24, 2006

Before: Jerome Farris, A. Wallace Tashima, and
Consuelo M. Callahan, Circuit Judges.

ORDER

The opinion filed on March 22, 2006 is amended as follows: on slip opinion page 3046, lines 10-16, the following sentences are deleted: "AmerisourceBergen contends, however that the contracts for sale of Epogen and other drugs

were not separate contracts. Because the Vendor Agreement signed by Dialysist West permits AmerisourceBergen to return any goods to Dialysist West for “full credit,” AmerisourceBergen believes it was justified in applying the credit it held for the counterfeit Epogen purchases against its outstanding debts.”

The following sentences are added on slip opinion page 3046, at line 10: “AmerisourceBergen concedes that the contracts for sale of Epogen and the other drugs were separate contracts. But because the Vendor Agreement signed by Dialysist West permits AmerisourceBergen to return any goods to Dialysist West for “full credit,” AmerisourceBergen believes it was justified in applying the credit it held for the counterfeit Epogen purchases against its outstanding debts.”

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