AMERISOURCEBERGEN CORP
Form 10-Q
August 08, 2011

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

þ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

FOR THE QUARTERLY PERIOD ENDED June 30, 2011

OR

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

FOR THE TRANSITION PERIOD FROM _________ TO _________

Commission file number 1-16671

AMERISOURCEBERGEN CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**23-3079390**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
1300 Morris Drive, Chesterbrook, PA	**19087-5594**
(Address of principal executive offices)	(Zip Code)

(610) 727-7000

(Registrant s telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes þ No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes þ No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company (as defined in Rule 12b-2 of the Exchange Act).

Large accelerated filer þ Accelerated filer o Non-accelerated filer o Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes o No þ

The number of shares of common stock of AmerisourceBergen Corporation outstanding as of July 31, 2011 was 269,256,615.

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PART I. FINANCIAL INFORMATION
ITEM I. Financial Statements (Unaudited)
AMERISOURCEBERGEN CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

(in thousands, except share and per share data)	**June 30, 2011 (Unaudited)**	**September 30, 2010**
ASSETS		
Current assets:		
Cash and cash equivalents	$ 2,000,453	$ 1,658,182
Accounts receivable, less allowances for returns and doubtful accounts: $367,640 at June 30, 2011 and $366,477 at September 30, 2010	3,907,112	3,827,484
Merchandise inventories	5,157,796	5,210,098
Prepaid expenses and other	55,944	52,586
Total current assets	11,121,305	10,748,350
Property and equipment, at cost:		
Land	36,040	36,407
Buildings and improvements	310,637	307,448
Machinery, equipment and other	957,426	841,586
Total property and equipment	1,304,103	1,185,441
Less accumulated depreciation	(542,115)	(473,729)
Property and equipment, net	761,988	711,712
Goodwill and other intangible assets	2,843,931	2,845,343
Other assets	128,505	129,438
TOTAL ASSETS	$ 14,855,729	$ 14,434,843
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	$ 8,893,332	$ 8,833,285
Accrued expenses and other	332,426	369,016
Current portion of long-term debt	175	422
Deferred income taxes	781,852	703,621
Total current liabilities	10,007,785	9,906,344
Long-term debt, net of current portion	1,361,889	1,343,158
Other liabilities	282,975	231,044

Stockholders equity:		
Common stock, $0.01 par value authorized: 600,000,000 shares; issued and outstanding: 495,835,322 shares and 272,049,949 shares at June 30, 2011, respectively, and 489,831,248 shares and 277,521,183 shares at September 30, 2010, respectively	4,958	4,898
Additional paid-in capital	4,058,941	3,899,381
Retained earnings	3,939,044	3,465,886
Accumulated other comprehensive loss	(22,488)	(42,536)
	7,980,455	7,327,629
Treasury stock, at cost: 223,785,373 shares at June 30, 2011 and 212,310,065 shares at September 30, 2010	(4,777,375)	(4,373,332)
Total stockholders equity	3,203,080	2,954,297
TOTAL LIABILITIES AND STOCKHOLDERS EQUITY	$ 14,855,729	$ 14,434,843

See notes to consolidated financial statements.

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AMERISOURCEBERGEN CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

(in thousands, except per share data)	Three months ended June 30, 2011	Three months ended June 30, 2010	Nine months ended June 30, 2011	Nine months ended June 30, 2010
Revenue	$ 20,161,022	$ 19,602,120	$ 59,809,888	$ 58,238,606
Cost of goods sold	19,507,441	19,013,750	57,888,739	56,474,798
Gross profit	653,581	588,370	1,921,149	1,763,808
Operating expenses:				
Distribution, selling, and administrative	308,806	289,288	882,971	849,018
Depreciation	23,578	17,556	66,758	50,815
Amortization	4,038	4,069	12,246	12,294
Facility consolidations, employee severance and other		(4,397)		(4,482)
Intangible asset impairments				700
Operating income	317,159	281,854	959,174	855,463
Other loss (income)	62	488	(1,747)	1,033
Interest expense, net	18,605	17,901	56,805	54,447
Income before income taxes	298,492	263,465	904,116	799,983
Income taxes	114,073	100,260	344,816	304,463
Net income	$ 184,419	$ 163,205	$ 559,300	$ 495,520
Earnings per share:				
Basic	$ 0.67	$ 0.58	$ 2.04	$ 1.75
Diluted	$ 0.66	$ 0.57	$ 2.00	$ 1.72
Weighted average common shares outstanding:				
Basic	273,492	281,195	274,484	283,390
Diluted	279,015	286,693	279,837	288,412
Cash dividends declared per share of common stock	$ 0.115	$ 0.08	$ 0.315	$ 0.24

See notes to consolidated financial statements.

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AMERISOURCEBERGEN CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

(in thousands)	Nine months ended June 30, 2011	2010
OPERATING ACTIVITIES		
Net income	$ 559,300	$ 495,520
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation, including amounts charged to cost of goods sold	76,397	60,358
Amortization, including amounts charged to interest expense	15,865	16,043
Provision for doubtful accounts	27,729	30,560
Provision for deferred income taxes	122,233	60,688
Share-based compensation	21,608	24,119
Loss on disposal of property and equipment	584	1,414
Other	3,747	1,537
Changes in operating assets and liabilities:		
Accounts receivable	(93,630)	3,453
Merchandise inventories	55,899	(127,927)
Prepaid expenses and other assets	(2,431)	19,582
Accounts payable, accrued expenses, and income taxes	26,593	(25,511)
Other liabilities	(6,049)	(445)
NET CASH PROVIDED BY OPERATING ACTIVITIES	807,845	559,391
INVESTING ACTIVITIES		
Capital expenditures	(127,473)	(132,302)
Other	876	143
NET CASH USED IN INVESTING ACTIVITIES	(126,597)	(132,159)
FINANCING ACTIVITIES		
Long-term debt borrowings		396,696
Borrowings under revolving and securitization credit facilities	684,306	780,691
Repayments under revolving and securitization credit facilities	(667,105)	(997,411)
Purchases of common stock	(400,253)	(350,262)
Exercises of stock options, including excess tax benefits of $34,585 and $19,996 in fiscal 2011 and 2010, respectively	138,130	122,715
Cash dividends on common stock	(86,920)	(68,306)
Debt issuance costs and other	(7,135)	(10,007)
NET CASH USED IN FINANCING ACTIVITIES	(338,977)	(125,884)
INCREASE IN CASH AND CASH EQUIVALENTS	342,271	301,348
Cash and cash equivalents at beginning of period	1,658,182	1,009,368

CASH AND CASH EQUIVALENTS AT END OF PERIOD	$ 2,000,453	$ 1,310,716

See notes to consolidated financial statements.

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AMERISOURCEBERGEN CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

Note 1. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying financial statements present the consolidated financial position, results of operations and cash flows of AmerisourceBergen Corporation and its wholly owned subsidiaries (the Company) as of the dates and for the periods indicated. All intercompany accounts and transactions have been eliminated in consolidation.

The accompanying unaudited consolidated financial statements have been prepared in conformity with U.S. generally accepted accounting principles (GAAP) for interim financial information, the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. In the opinion of management, all adjustments (consisting only of normal recurring accruals, except as otherwise disclosed herein) considered necessary to present fairly the financial position as of June 30, 2011 and the results of operations and cash flows for the interim periods ended June 30, 2011 and 2010 have been included. Certain information and footnote disclosures normally included in financial statements presented in accordance with U.S. GAAP, but which are not required for interim reporting purposes, have been omitted. The accompanying unaudited consolidated financial statements should be read in conjunction with the financial statements and notes thereto included in the Company s Annual Report on Form 10-K for the fiscal year ended September 30, 2010.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect amounts reported in the financial statements and accompanying notes. Actual amounts could differ from these estimated amounts.

The Company has four operating segments, which include the operations of AmerisourceBergen Drug Corporation (ABDC), AmerisourceBergen Specialty Group (ABSG), AmerisourceBergen Consulting Services (ABCS), and AmerisourceBergen Packaging Group (ABPG). The Company has aggregated the operating results of all of its operating segments into one reportable segment, Pharmaceutical Distribution, which represents the consolidated operating results of the Company. The businesses of the Pharmaceutical Distribution operating segments are similar in that they service both healthcare providers and pharmaceutical manufacturers in the pharmaceutical supply channel.

Note 2. Income Taxes

The Company files income tax returns in U.S. federal and state jurisdictions as well as various foreign jurisdictions. In fiscal 2010, the U.S. Internal Revenue Service (IRS) completed its examination of the Company s U.S. federal income tax returns for fiscal 2006, 2007 and 2008. No significant adjustments were made resulting from the IRS examination.

In fiscal 2011, the Canada Revenue Service completed its examination of the Canadian federal income tax returns for fiscal 2007 and 2008 and no significant adjustments were made resulting from the examination.

As of June 30, 2011, the Company had unrecognized tax benefits, defined as the aggregate tax effect of differences between tax return positions and the benefits recognized in the Company s financial statements, of $49.3 million ($33.5 million net of federal benefit, which, if recognized, would reduce income tax expense). Included in this amount is $11.5 million of interest and penalties, which the Company records in income tax expense. During the nine months ended June 30, 2011, unrecognized tax benefits decreased by $6.6 million. During the next 12 months, it is reasonably possible that audit resolutions and the expiration of statutes of limitations could result in a reduction of unrecognized tax benefits by approximately $4.7 million.

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Note 3. Goodwill and Other Intangible Assets

Following is a summary of the changes in the carrying value of goodwill for the nine months ended June 30, 2011 (in thousands):

Goodwill at September 30, 2010	$ 2,544,367
Foreign currency translation	6,663
Goodwill at June 30, 2011	$ 2,551,030

Following is a summary of other intangible assets (in thousands):

	June 30, 2011			September 30, 2010		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Indefinite-lived intangibles-trade names	$ 238,947	$	$ 238,947	$ 238,355	$	$ 238,355
Finite-lived intangibles:						
Customer relationships	122,946	(78,810)	44,136	121,940	(69,207)	52,733
Other	39,224	(29,406)	9,818	36,330	(26,442)	9,888
Total other intangible assets	$ 401,117	$ (108,216)	$ 292,901	$ 396,625	$ (95,649)	$ 300,976

Amortization expense for other intangible assets was $12.2 million and $12.3 million in the nine months ended June 30, 2011 and 2010, respectively. Amortization expense for other intangible assets is estimated to be $16.7 million in fiscal 2011, $14.4 million in fiscal 2012, $12.2 million in fiscal 2013, $8.6 million in fiscal 2014, $4.1 million in fiscal 2015, and $10.2 million thereafter.

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AMERISOURCEBERGEN CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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Note 4. Debt

Debt consisted of the following (in thousands):

	June 30, 2011	September 30, 2010
Blanco revolving credit facility at 1.19% and 2.26%, respectively, due 2012	$ 55,000	$ 55,000
Receivables securitization facility due 2014		
Multi-currency revolving credit facility at 3.30% and 3.00%, respectively, due 2015	19,099	907
$392,326, 5 5/8% senior notes due 2012	391,917	391,682
$500,000, 5 7/8% senior notes due 2015	498,756	498,568
$400,000, 4 7/8% senior notes due 2019	397,117	396,915
Other	175	508
Total debt	1,362,064	1,343,580
Less current portion	175	422
Total, net of current portion	$ 1,361,889	$ 1,343,158

In March 2011, the Company entered into a new multi-currency senior unsecured revolving credit facility for $700 million, which expires in March 2015, (the Multi-Currency Revolving Credit Facility) with a syndicate of lenders. Interest on borrowings under the Multi-Currency Revolving Credit Facility accrues at specified rates based on the Company s debt rating and ranges from 87.5 basis points to 192.5 basis points over LIBOR/EURIBOR/Bankers Acceptance Stamping Fee, as applicable (130 basis points over LIBOR/EURIBOR/Bankers Acceptance Stamping Fee at June 30, 2011). Additionally, interest on borrowings denominated in Canadian dollars may accrue at the greater of the Canadian prime rate plus 30 basis points or the CDOR rate. The Company pays facility fees to maintain the availability under the Multi-Currency Revolving Credit Facility at specified rates based on the Company s debt rating, ranging from 12.5 basis points to 32.5 basis points, annually, of the total commitment (20 basis points at June 30, 2011). The Company may choose to repay or reduce its commitments under the Multi-Currency Revolving Credit Facility at any time. The Multi-Currency Revolving Credit Facility contains covenants, including compliance with a financial leverage ratio test, as well as others that impose limitations on, among other things, indebtedness of excluded subsidiaries and asset sales.

In April 2011, the Company amended its $700 million receivables securitization facility (Receivables Securitization Facility), which now expires in April 2014. The Company continues to have available to it an accordion feature whereby the commitment on the Receivables Securitization Facility may be increased by up to $250 million, subject to lender approval, for seasonal needs during the December and March quarters. Interest rates are based on prevailing market rates for short-term commercial paper or LIBOR plus a program fee of 90 basis points. The Company pays an unused fee of 45 basis points, annually, to maintain the availability under the Receivables Securitization Facility. At June 30, 2011, there were no borrowings outstanding under the Receivables Securitization Facility. The Receivables Securitization Facility contains similar covenants to the Multi-Currency Revolving Credit Facility.

In April 2011, the Company amended the Blanco revolving credit facility (the Blanco Credit Facility) to extend the maturity date to April 2012. Borrowings under the Blanco Credit Facility are guaranteed by the Company. Interest on borrowings under the Blanco Credit Facility accrues at specific rates based on the Company s debt rating (100 basis points over LIBOR at June 30, 2011). The Blanco Credit Facility is not classified in the current portion of long-term debt on the consolidated balance sheet at June 30, 2011 because the Company has both the ability and intent to refinance it on a long-term basis.

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AMERISOURCEBERGEN CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

Note 5. Stockholders Equity and Earnings per Share

The following table illustrates comprehensive income for the three and nine months ended June 30, 2011 and 2010 (in thousands):

	Three months ended June 30,		Nine months ended June 30,	
	2011	**2010**	**2011**	**2010**
Net income	$ 184,419	$ 163,205	$ 559,300	$ 495,520
Foreign currency translation adjustments and other	4,219	(11,866)	20,048	(4,063)
Comprehensive income	$ 188,638	$ 151,339	$ 579,348	$ 491,457

In November 2009, the Company s board of directors increased the quarterly cash dividend by 33% from $0.06 per share to $0.08 per share. In November 2010, the Company s board of directors authorized another increase in the quarterly cash dividend by 25% to $0.10 per share. In May 2011, the Company s board of directors increased the quarterly cash dividend again by 15% to $0.115 per share.

In November 2009, the Company s board of directors authorized a program allowing the Company to purchase up to $500 million of its outstanding shares of common stock, subject to market conditions. During the fiscal year ended September 30, 2010, the Company purchased 14.4 million shares under this program for a total of $401.9 million. During the three months ended December 31, 2010, the Company purchased 3.2 million shares for $98.1 million to complete its authorization under this program.

In September 2010, the Company s board of directors authorized a new program allowing the Company to purchase up to $500 million of its outstanding shares of common stock, subject to market conditions. During the nine months ended June 30, 2011, the Company purchased 8.2 million shares for $301.9 million under the new program.

Basic earnings per share is computed on the basis of the weighted average number of shares of common stock outstanding during the periods presented. Diluted earnings per share is computed on the basis of the weighted average number of shares of common stock outstanding during the periods presented plus the dilutive effect of stock options, restricted stock, and restricted stock units.

	Three months ended June 30,		Nine months ended June 30,	
(in thousands)	**2011**	**2010**	**2011**	**2010**
Weighted average common shares outstanding basic	273,492	281,195	274,484	283,390
Effect of dilutive securities: stock options, restricted stock, and restricted stock units	5,523	5,498	5,353	5,022
Weighted average common shares outstanding diluted	279,015	286,693	279,837	288,412

The potentially dilutive stock options that were antidilutive for the three months ended June 30, 2011 and 2010 were 3.3 million and 3.6 million, respectively, and for the nine months ended June 30, 2011 and 2010 were 1.6 million.

AMERISOURCEBERGEN CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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Note 6. Legal Matters and Contingencies

In the ordinary course of its business, the Company becomes involved in lawsuits, administrative proceedings, government subpoenas, and government investigations, including antitrust, commercial, environmental, product liability, intellectual property, regulatory, employment discrimination, and other matters. Significant damages or penalties may be sought from the Company in some matters, and some matters may require years for the Company to resolve. The Company establishes reserves based on its periodic assessment of estimates of probable losses; however, there can be no assurance that an adverse resolution of one or more matters during any subsequent reporting period will not have a material adverse effect on the Company s results of operations for that period or on the Company s financial condition.

Ontario Ministry of Health and Long-Term Care Civil Rebate Payment Order and Civil Complaint

On April 27, 2009, the Ontario Ministry of Health and Long-Term Care (OMH) notified the Company s Canadian subsidiary, AmerisourceBergen Canada Corporation (ABCC), that it had entered a Rebate Payment Order requiring ABCC to pay C$5.8 million to the Ontario Ministry of Finance. OMH maintains that it has reasonable grounds to believe that ABCC accepted rebates, directly or indirectly, in violation of the Ontario Drug Interchangeability and Dispensing Fee Act. OMH at the same time announced similar rebate payment orders against other wholesalers, generic manufacturers, pharmacies, and individuals. ABCC was cooperating fully with OMH prior to the entry of the Order by responding fully to requests for information and/or documents and will continue to cooperate. ABCC filed an appeal of the Order pursuant to OMH procedures in May 2009. In addition, on the same day that the Order was issued, OMH notified ABCC that it had filed a civil complaint with Health Canada (department of the Canadian government responsible for national public health) against ABCC for potential violations of the Canadian Food and Drug Act. Health Canada subsequently conducted an audit of ABCC, and ABCC has cooperated fully with Health Canada in the conduct of the audit. The Company has met several times, including most recently in April 2011, with representatives of OMH to present its position on the Rebate Payment Order. Although the Company believes that ABCC has not violated the relevant statutes and regulations and has conducted its business consistent with widespread industry practices, the Company cannot predict the outcome of these matters.

Qui Tam Matter

On October 30, 2009, 14 states (including New York and Florida) and the District of Columbia filed a complaint (the Intervention Complaint) in the United States District Court for the District of Massachusetts (the Federal District Court) naming Amgen Inc. as well as two business units of AmerisourceBergen Specialty Group, AmerisourceBergen Specialty Group, and AmerisourceBergen Corporation as defendants. The Intervention Complaint was filed to intervene in a pending civil case against the defendants filed under the qui tam provisions of the federal and various state civil False Claims Acts (the Original Qui Tam Complaint). The qui tam provisions permit a private person, known as a relator (i.e. whistleblower), to file civil actions under these statutes on behalf of the federal and state governments. The relator in the Original Complaint is a former Amgen employee. The Office of the New York Attorney General is leading the intervention on behalf of the state governments.

The Original Qui Tam Complaint was initially filed under seal. On January 21, 2009, the Company learned that the United States Attorney for the Eastern District of New York (the DOJ) was investigating allegations in a sealed civil complaint filed in the Federal District Court under the qui tam provisions of the federal civil False Claims Act. In February 2009, the Company received a redacted copy of the then current version of the Original Qui Tam Complaint, pursuant to a court order. However, the Company was never served with the Original Qui Tam Complaint. Relator initially filed the action on or about June 5, 2006 and a first amendment thereto on or about July 2, 2007. On May 18, 2009, the Federal District Court extended the time period for federal and state government authorities to conduct their respective investigations and to decide whether to intervene in the civil action. On September 1, 2009, 14 states and the District of Columbia filed notices of their intent to intervene. The 14 states and the District of Columbia were given leave by the Federal District Court to file a complaint within 60 days, or by October 30, 2009. The DOJ filed a notice that it was not intervening as of September 1, 2009, but stated that its investigation is continuing. The Company has received subpoenas for records issued by the DOJ in connection with its investigation. The Company has been cooperating with the DOJ and is producing records in response to the subpoenas.

AMERISOURCEBERGEN CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

Both the Intervention Complaint and the Original Qui Tam Complaint, as amended on October 30, 2009, allege that from 2002 through 2009, Amgen and two of the Company s business units offered remuneration to medical providers in violation of federal and state health laws to increase purchases and prescriptions of Amgen s anemia drug, Aranesp. Specifically with regard to the Company s business units, the complaints allege that ASD Specialty Healthcare, Inc., which is a distributor of pharmaceuticals to physician practices (ASD), and International Nephrology Network, which was a business name for one of the Company s subsidiaries and a group purchasing organization for nephrologists and nephrology practices (INN), conspired with Amgen to promote Aranesp in violation of federal and state health laws. The complaints further allege that the defendants caused medical providers to submit to state Medicaid programs false certifications and false claims for payment for Aranesp. According to the complaints, the latter conduct allegedly violated state civil False Claims Acts and constituted fraud and unjust enrichment. The Original Qui Tam Complaint, as amended, also alleges that the defendants caused medical providers to submit to other federal health programs, including Medicare, false certifications and false claims for payment for Aranesp.

On December 17, 2009, the states and the relator both filed amended complaints. The State of Texas, which was not one of the original 14 states intervening in the action, joined in the amended complaint. Between January 20, 2010 and February 23, 2010, the States of Florida, Texas, New Hampshire, Louisiana, Nevada and Delaware filed notices to voluntarily dismiss the Intervention Complaint, leaving 9 states and the District of Columbia as intervenors. On February 1, 2010, the Company filed a motion to dismiss the complaints. Amgen, Inc. filed a motion to dismiss as well. On April 23, 2010, the Federal District Court issued a written opinion and order dismissing the Original Qui Tam Complaint, as amended, and the Intervention Complaint. Five states California, Illinois, Indiana, Massachusetts, and New York filed notices of appeal to the U.S. Court of Appeals for the First Circuit (the First Circuit) and the relator filed a notice of appeal to the First Circuit on behalf of Georgia and New Mexico. On July 15, 2010, the First Circuit issued an order requiring the Federal District Court to provide a written statement explaining why a final judgment was entered with respect to the states in order for the First Circuit to determine whether to allow the appeals to proceed, and the Federal District Court complied with the order. The appeals were consolidated and briefing of the appeals was completed on February 16, 2011. The First Circuit heard oral argument on the appeals on April 6, 2011.

On July 22, 2011, the First Circuit reversed in part and affirmed in part the district court s dismissal of the plaintiff state intervenors claims. The First Circuit reversed the dismissal of plaintiffs claims under the state False Claims Act statutes in California, Illinois, Indiana, Massachusetts, New Mexico, and New York, on the grounds that these plaintiff states had adequately alleged in their complaints claims under their respective state False Claims Act statutes sufficient to survive a motion to dismiss. The First Circuit affirmed the district court s dismissal of the claims brought by the relator on behalf of Georgia on the grounds that the plaintiffs complaint did not adequately allege that medical providers submitted false certifications and false claims for payment for Aransesp to Georgia s Medicaid program.

The relator also sought and received permission from the Federal District Court to file a further amended complaint with respect to claims brought on behalf of the United States (the Fourth Amended Complaint). On May 27, 2010, the relator filed a Fourth Amended Complaint with the Federal District Court, which names ASD and INN, along with Amgen, as defendants. The Fourth Amended Complaint contains many of the same allegations contained in the relator s prior complaints, but adds a count based on allegations that conduct by ASD, INN, and Amgen caused healthcare providers to submit false claims because it is alleged that the healthcare providers billed the government for amounts of Aranesp that were either not administered or administered, but medically unnecessary. On June 28, 2010, the Company and Amgen filed motions to dismiss the Fourth Amended Complaint. The motions to dismiss were denied following a hearing on July 21, 2010. The Company filed a Motion for Judgment on the Pleadings on February 18, 2011. The Motion was denied following a hearing on March 24, 2011. The Company, Amgen, and Relator filed Motions for Partial Summary Judgment on March 1, 2011. The Court heard oral argument on those motions on April 11, 2011. Those motions were denied by the Court. This matter is scheduled to go to trial in October 2011.

The Company has learned that there are both prior and subsequent filings in another feder