

The New York Times[®]
Reprints

This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers [here](#) or use the "Reprints" tool that appears next to any article. Visit www.nytreprints.com for samples and additional information. [Order a reprint of this article now.](#)



October 24, 2011

Amgen to Pay \$780 Million to Settle Suits on Its Sales

By **ANDREW POLLACK**

Amgen said Monday that it had set aside \$780 million to settle various federal and state investigations and whistle-blower lawsuits accusing it of illegal sales and marketing tactics.

Amgen said it had reached an agreement in principle to settle criminal and civil investigations that had been under way for several years by the United States attorney offices in Brooklyn and Seattle.

The company said a settlement, which it expected to be concluded in three to four months, would also resolve state **Medicaid** investigations and 10 whistle-blower lawsuits. It is not clear if the company will plead guilty to any criminal charges.

Most of the whistle-blower lawsuits remain under seal, but Amgen has said in regulatory filings that the lawsuits “allege that Amgen engaged in a wide variety of illegal marketing practices.”

The federal investigations, according to Amgen, seem to involve marketing, pricing and dosing of its **anemia** drugs, Aranesp and Epogen, and its dissemination of information about clinical trials on the safety and efficacy of those drugs. Numerous current and former executives have received civil and grand jury subpoenas, the company has said.

One whistle-blower lawsuit that was unsealed accuses the company of overfilling vials of Aranesp, essentially providing doctors with free amounts of the drug to give patients and then charge to **Medicare**, Medicaid or private insurers.

The lawsuit said that Amgen tried to persuade doctors to use Aranesp, rather than Procrit, a

rival drug sold by Johnson & Johnson, by pointing to the extra profits the doctors could make by using the overfill and billing for it.

The lawsuit was filed by Kassie Westmoreland, a former Amgen sales representative and Aranesp product manager. The federal government declined to join the lawsuit, but more than a dozen states did join, including New York and California. Ms. Westmoreland would be entitled to part of any settlement under whistle-blower statutes.

In the past, Amgen has said the accusations were without merit.

During depositions in the case, five former Amgen executives invoked the Fifth Amendment against self-incrimination, according to court documents.

That case was scheduled to go to trial in the United States District Court in Boston on Oct. 17, but the trial was then called off, apparently because a settlement was near.

“We are very encouraged by the agreement in principle and will comment further at the appropriate time,” lawyers for Ms. Westmoreland said.

Amgen, the world’s largest biotechnology company, revealed the agreement in its [earnings announcement for the third quarter](#). It said the charge for the settlement reduced its third-quarter earnings by 77 cents a share after taxes.

The settlement and the charge did not seem to interest investors. In the company’s conference call on Monday, no analyst asked a question about it.

Excluding the legal charge and some other special items, Amgen reported that earnings for the quarter increased 3 percent, to \$1.40 a share, compared with the third quarter of 2010. Revenue also increased 3 percent, to \$3.94 billion.

The company slightly raised its guidance for both revenue and earnings for 2011 as a whole. And it said it would increase its buyback of shares.

Sales of most Amgen products rose in the quarter. But sales of its anemia drugs, Aranesp and Epogen, continued to fall, in part because the Food and Drug Administration issued new safety warnings about the drugs in June. Over the last few years, studies have shown that high doses

of the drugs can raise the risk of heart attacks and other problems.

Sales of Aranesp fell 4 percent in the quarter to \$600 million. Sales of Epogen, which is used only by **dialysis** clinics, fell 27 percent, to \$476 million. Medicare has changed the way it pays for dialysis to remove what had been a profit incentive for dialysis clinics to overuse Epogen.