

**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.

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**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

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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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