# ﻿The Opioid Settlement and Controversy Over CEO

**Reminder**

* Case 7: “The Opioid Settlement and Controversy over CEO Pay at AmerisourceBergen”
  + Shareholder activism and proxy contests, presented on **Jan 2, 2025**

**Your 20~30-minute presentation should cover:**

* **Basic background of the case**
  + Your analyses of the governance challenge or debate
  + Your novel thoughts on the potential improvement\solution
* **Materials:**
  + Case materials (can be found on our course website)
  + You can conduct your own investigation to supplement it

## Summary of the Case: The Opioid Settlement and Controversy over CEO Pay at AmerisourceBergen

### 1. Background

* **AmerisourceBergen's Role**:  
  AmerisourceBergen (ABC) is one of the top three pharmaceutical distributors in the U.S., playing a central role in supplying opioids. While opioids account for less than 2% of its revenue, ABC has been heavily criticized for its role in the opioid epidemic due to alleged lapses in monitoring and reporting suspicious orders.
* **The Opioid Crisis**:  
  Starting in the 1990s, the opioid epidemic led to widespread addiction and over 500,000 deaths in the U.S. from 2000 to 2017. Distributors like ABC were accused of failing to prevent "pill mill" operations that diverted opioids for non-medical use.

### 2. Governance Challenges

* **The $6.6 Billion Settlement**:
  + In 2021, ABC joined a $26 billion settlement with Johnson & Johnson, McKesson, and Cardinal Health to resolve litigation related to the opioid crisis. ABC’s share was $6.6 billion.
  + Criticism centered on ABC’s role in enabling the crisis by not adequately enforcing anti-diversion measures.
  + Stakeholders questioned the adequacy of ABC’s compliance program, which had reported only a fraction of suspicious orders over the years.
* **CEO Pay Controversy**:
  + Despite the costly settlement, ABC’s board approved a $3 million pay increase for CEO Steven Collis in 2021, raising his total compensation to $14.3 million.
  + Activist shareholders, including the Investors for Opioid and Pharmaceutical Accountability (IOPA), strongly opposed the package, arguing that Collis should be held accountable for ABC’s role in the crisis.
* **Board and Governance Issues**:
  + Critics pointed out deficiencies in ABC’s governance, including a lack of independent board leadership (Collis served as both CEO and Chairman) and limited transparency on compliance failures.
  + Shareholder resolutions in prior years (2018-2020) called for stronger governance reforms, such as independent chairmanship, clawback disclosures, and better risk oversight reporting.

### 3. Shareholder Activism

* Activist groups like the Teamsters and IOPA played a significant role in pushing for governance reforms.
* Key shareholder demands included:
  + Appointing an independent board chair.
  + Ensuring that legal and compliance costs are included in executive pay metrics.
  + Introducing bonus deferrals to account for long-term risks.
* Most shareholder resolutions received moderate support but failed to drive major changes in ABC’s governance practices.

### 4. Compliance and Risk Oversight

* **Failures in Compliance**:
  + ABC’s anti-diversion program, despite improvements after a 2007 DEA settlement, remained criticized for being reactive and inconsistent.
  + Internal audits highlighted issues like insufficient training and documentation, poor threshold management, and lax enforcement of suspicious order monitoring.
* **Litigation Fallout**:
  + Multiple lawsuits accused ABC of ignoring red flags and continuing shipments despite suspicious activity.

### 5. Settlement Terms and Ongoing Debate

* The $26 billion settlement aimed to resolve most litigation but imposed new regulatory requirements on distributors, including stricter monitoring and reporting.
* Debate continues over the adequacy of these measures, particularly in light of the governance and compensation controversies.

**Key Themes:**

* Accountability in corporate governance, particularly for boards overseeing crisis-prone industries.
* Balancing executive compensation with ethical and financial accountability.
* The role of shareholder activism in driving change.

# Here are the key points to develop for your presentation:

## 1. Case Background

* **Company Overview**:
  + AmerisourceBergen's role as a major drug distributor in the U.S.
  + Financial highlights and the significance of opioids in its revenue.
* **Opioid Crisis Context**:
  + Overview of the opioid epidemic and its societal impact (e.g., addiction rates, economic costs).
  + AmerisourceBergen's alleged failures in monitoring and reporting suspicious orders.

## 2. Governance Challenge or Debate

* **The Settlement**:
  + $6.6 billion settlement as part of a $26 billion industry-wide deal.
  + Criticism from stakeholders regarding accountability and the company's role in the crisis.
* **CEO Compensation Controversy**:
  + Shareholder activism against the pay raise for CEO Steven Collis despite legal and financial challenges.
  + Arguments for and against the pay package by the board and shareholder groups.
* **Board Oversight and Accountability**:
  + Analysis of the governance mechanisms (e.g., board independence, risk oversight committees).
  + Shareholder resolutions highlighting governance issues like lack of independent board leadership and legal cost exclusions from executive bonuses.

## 3. Proposed Improvements and Novel Insights

* **Governance Improvements**:
  + Recommendations for strengthening board accountability (e.g., independent chairman, improved reporting).
  + Enhancements to compliance programs to prevent future crises.
* **CEO Compensation Reforms**:
  + Linking pay more explicitly to risk management and compliance outcomes.
  + Introducing bonus deferral or clawback mechanisms tied to legal and regulatory performance.
* **Shareholder Engagement**:
  + Building trust through transparency and proactive engagement with activist investors.
* **Broader Lessons**:
  + Addressing the balance between corporate profitability and ethical responsibilities.
  + Suggestions for industry-wide changes to prevent similar crises.

**Format Suggestion:**

1. **Introduction**: Case overview and relevance.
2. **Core Analysis**: Governance challenges with evidence from the case.
3. **Solutions**: Practical recommendations with a focus on originality.
4. **Conclusion**: Summarize key takeaways and insights.

# Detailed Summary

## The Drug Distribution Industry and AmerisourceBergen Corporation

**1. Overview of the Drug Distribution Industry**

* **Role of Distributors**:

The drug distribution industry serves as the intermediary between pharmaceutical manufacturers and healthcare providers, including hospitals, clinics, and pharmacies.

* **Market Dynamics**:
  + The industry experienced growth due to factors such as aging populations, increasing access to healthcare, advanced medical technologies, and innovations in IT systems.
  + Despite over 10,000 distributors in the U.S., the market is highly consolidated, with the "Big Three" (AmerisourceBergen, McKesson, and Cardinal Health) controlling about 92% of the market, including approximately 45% of the opioid distribution market.
  + Collectively, these three firms generated significant revenues, with each ranking among the top 15 of the Fortune 500 by sales in 2021.

**2. AmerisourceBergen Corporation**

* **Corporate Overview**:
  + Established in 1907 by Lucien Napoleon Brunswig as the Brunswig Drug Company in Los Angeles.
  + By 2021, AmerisourceBergen (ABC), incorporated in Delaware and listed on the New York Stock Exchange, became the second-largest drug distributor in the U.S., with revenue of $182 billion in fiscal year 2020.
* **Operations and Offerings**:
  + ABC distributes brand-name and generic pharmaceuticals, over-the-counter healthcare products, and home healthcare supplies.
  + The company also provides ancillary services such as data analytics, consulting, logistics, pharmacy automation, and packaging solutions, generating an additional $8 billion in revenue.
  + Opioids represented less than 2% of ABC’s revenue.
* **Shareholding Structure**:
  + As of January 2021, the ten largest shareholders owned 55% of the company.
  + Walgreens Boots Alliance, the largest shareholder, held a 28% stake due to a strategic partnership initiated in 2013.

**3. Leadership and Governance**

* **CEO Steven H. Collis**:
  + Collis, a native of South Africa, joined ABC in 1994 and became CEO in 2011 after holding several leadership roles.
  + Under his leadership, ABC’s revenue grew by over 80%, and its workforce expanded to over 21,000 employees across 50+ countries.
  + Major acquisitions included Walgreens Boots Alliance’s healthcare solution arm and MWI Veterinary Supply.
* **Board of Directors**:
  + The board comprised ten members with an average tenure of nearly ten years.
  + The board was divided into six committees: executive, audit, compensation and succession planning, compliance and risk, finance, and governance, sustainability, and corporate responsibility.
  + While most committees were chaired by independent directors, the executive committee was led by Collis.

### Exhibit Analysis (1,2,3)

* **Exhibit 1**: Shows ABC’s historical financial performance, emphasizing its consistent revenue growth despite industry challenges.
* **Exhibit 2**: Compares stock price performance of the "Big Three" distributors to the S&P 500, highlighting their relative financial resilience.
* **Exhibit 3**: Lists the top ten shareholders of ABC, showing the dominance of institutional and strategic investors like Walgreens.

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## The Opioid Epidemic ﻿

**1. Origins of the Crisis**

* **Shift in Pain Management (1990s-2000s)**:
  + Influential organizations like the World Health Organization and the American Pain Society advocated for aggressive pain management, claiming pain was undertreated.
  + Regulatory changes reduced scrutiny on opioid prescribers, enabling a surge in prescriptions.
  + By 2000, the Joint Commission published pain management standards, further institutionalizing opioids as a primary treatment option.
* **Aggressive Marketing by Manufacturers**:
  + Purdue Pharma, the maker of OxyContin, spearheaded a significant marketing campaign from 1996 to 2001, more than doubling its sales force and hosting promotional events for healthcare professionals.
  + Physicians were incentivized with branded items, conferences, and free samples, leading to a rapid increase in opioid prescriptions.

**2. Escalation of the Crisis**

* **Prescription Trends**:
  + OxyContin prescriptions grew from 670,000 in 1997 to 6.2 million by 2002.
  + The peak of opioid prescriptions in the U.S. occurred in 2012, with 255 million prescriptions dispensed (81 prescriptions per 100 people). By 2019, prescriptions declined to 153 million.
* **Health and Societal Impacts**:
  + Studies revealed that 80% of heroin users began with misusing prescription opioids.
  + Chronic opioid use led to negative effects such as addiction, hyperalgesia (increased sensitivity to pain), psychological issues, and respiratory depression.
  + The crisis strained societal systems, including foster care, and decreased workforce participation.
  + The estimated economic burden of the opioid crisis was $179 billion in 2018, covering healthcare costs, lost productivity, and law enforcement expenses.

**3. Governmental and Legal Responses**

* **Role of "Pill Mills"**:
  + Clinics and pharmacies dubbed "pill mills" distributed large quantities of opioids, contributing to misuse and addiction.
  + Investigations revealed egregious practices, such as one pharmacy in West Virginia receiving millions of pills in a town with only a few hundred residents.
* **Federal Action**:
  + In 2017, the U.S. government declared the opioid epidemic a public health emergency.
  + Regulatory bodies like the DEA and Department of Justice struggled to effectively control the distribution of opioids, often relying on self-regulation by distributors.
  + Changes to reporting systems (e.g., the ARCOS database in 2009) aimed to improve oversight, but challenges persisted, particularly in sharing information across distributors.

**4. AmerisourceBergen’s Role in the Epidemic**

* **Distributors’ Failures**:
  + ABC and other distributors were accused of inadequately monitoring and reporting suspicious orders.
  + A 2016 investigative report exposed the scale of the problem, showing millions of pills flooding into small towns with high overdose rates.
  + Inconsistent reporting of suspicious orders highlighted lapses in internal controls. For example, ABC reported hundreds of suspicious orders in some years but only a few in others, despite shipping millions of doses.

### Exhibit 4

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## Governmental Regulations of Opioid Distribution ﻿

**1. The Controlled Substances Act (CSA) of 1970**

* The CSA required distributors to:
  + Maintain “effective controls” against diversion of controlled substances into unauthorized channels.
  + Design and operate systems to detect and report suspicious orders of controlled substances, such as unusually large or frequent orders.
* **Know-Your-Customer Requirement**:
  + Distributors were obligated to verify that recipients (e.g., pharmacies) were properly registered with the DEA to handle controlled substances.

**2. DEA’s Oversight and Challenges**

* **Increased Monitoring**:
  + Starting in 2005, the DEA intensified its focus on distributors, emphasizing due diligence and reporting of suspicious orders.
  + Distributors were reminded that they could not simply rely on the DEA registration of a buyer but had to investigate unusual circumstances proactively.
* **Electronic Reporting System (ARCOS)**:
  + In 2009, the DEA introduced the Automated Reports and Consolidated Orders System (ARCOS), an electronic database for tracking controlled substances.
  + However, ARCOS did not allow distributors to view aggregated data for individual pharmacies across all suppliers until 2019, limiting its effectiveness.

**3. Erosion of DEA’s Enforcement Power**

* **Industry Resistance and Legislative Influence**:
  + Distributors and industry groups began lobbying efforts to push back against DEA enforcement activities.
  + The *Ensuring Patient Access and Effective Drug Enforcement Act* (2016):
    - This legislation, heavily influenced by lobbying from distributors, raised the evidentiary standard for the DEA to suspend operations of companies failing to comply with regulations.
    - Critics, including former DEA officials, argued that the law significantly weakened enforcement capabilities.
* **Decline in Enforcement Actions**:
  + Between 2011 and 2016, DEA actions against opioid distributors plummeted, including:
    - A drop in immediate suspension orders from 65 in 2011 to just 9 in 2016.
    - Fewer prosecutions by the Department of Justice (DOJ) for violations in opioid distribution.

**4. Industry’s Self-Regulation**

* **Compliance Programs**:
  + The DEA primarily relied on distributors’ self-regulation and self-reporting of suspicious orders.
  + Weaknesses in this approach became apparent as inconsistent reporting and enforcement were uncovered during litigation and investigations.

**5. Impacts of Regulatory Gaps**

* **Delayed Actions Against Diversion**:
  + Distributors often fulfilled suspicious orders without reporting them until after shipments were made.
  + Enforcement actions were hampered by a lack of timely data sharing and fragmented oversight across distributors.

## Amerisource Bergen’s Opioid Sales Practices and Diversion Control Program

**1. Pre-2007 Diversion Control Practices**

* **Limited Monitoring**:
  + AmerisourceBergen’s (ABC) early diversion control relied on basic due diligence, such as verifying customer licenses and DEA registrations.
  + Suspicious orders were identified manually by distribution center staff with little formalized oversight.
* **Regulatory Failures**:
  + In 2007, a DEA investigation found ABC’s Orlando, Florida distribution center had failed to maintain effective controls, resulting in diversion of controlled substances.
  + As part of a settlement, ABC admitted to lapses in its systems and agreed to overhaul its diversion control practices.

**2. Post-2007 Overhaul**

* **Enhanced Diversion Control Program (DCP)**:
  + ABC implemented daily DEA reporting of controlled substance sales.
  + The company introduced a new Order Monitoring Program (OMP), including dedicated employees for regulatory oversight and training programs for identifying suspicious orders.
* **Threshold-Based Monitoring**:
  + Each customer was assigned monthly thresholds for opioid orders, set at 300% of the average order volume for similar customers.
  + Orders exceeding thresholds were flagged for review by Corporate Security and Regulatory Affairs (CSRA).
* **Challenges in Execution**:
  + Customers could see their thresholds before 2012, allowing them to manipulate order sizes to avoid detection.
  + Customers with multiple accounts under the same DEA number could bypass thresholds by distributing orders across accounts.

**3. Ongoing Issues and Litigation (Post-2007)**

* **Inconsistent Reporting and Enforcement**:
  + ABC reported suspicious orders to the DEA but, in some cases, continued shipping flagged orders instead of holding or canceling them.
  + Year-to-year variation in the number of reported suspicious orders highlighted systemic inconsistencies.
* **Audits Highlight Weaknesses**:
  + Internal audits noted unclear roles, inconsistent documentation, and inadequate training for staff responsible for investigating suspicious orders.
  + ABC’s compliance systems suffered from fragmented tracking and limited access to comprehensive data.
* **Litigation Examples**:
  + In Tennessee, ABC onboarded customers without site visits and allowed orders that exceeded thresholds.
  + Sales teams were found coaching customers on how to complete due diligence forms to avoid raising red flags.

**4. Improvements in 2015**

* **Adoption of Technological Tools**:
  + ABC incorporated data-driven analytics to automate the flagging and blocking of suspicious orders.
  + The approval process for new customers became more stringent, with oversight by the Director of Diversion Control.
* **Training and Awareness**:
  + Sales associates were trained to identify "red flag" customers (e.g., those with high cash transactions or suspicious premises).
  + However, some irregularities persisted, such as a lack of cohesive and updated training programs.

**5. Creation of Compliance and Risk Committees (2019)**

* ABC established a Compliance and Risk Committee within the Board of Directors.
* Responsibilities included oversight of regulatory compliance, risk management programs, and quarterly reporting on compliance issues.

**6. Operational Dilemmas**

* ABC faced challenges in balancing regulatory compliance with providing essential medications:
  + The company expressed concerns about being treated as a de facto law enforcement entity.
  + Some pharmacies sued ABC for refusing to fulfill opioid orders, highlighting the tension between legal compliance and customer obligations.

## ﻿Challenges to Diversion Control ﻿

**1. Operational and Legal Dilemmas**

* **Termination of Pharmacy Contracts**:
  + In 2018, ABC ended its relationship with an independent pharmacy in Alaska where opioids accounted for 25%-50% of ordered doses.
  + The pharmacy sued ABC, claiming breach of contract, and the court ordered ABC to continue supplying until the contract’s expiration.
  + ABC commented that this case illustrated the legal and ethical tightrope distributors faced between preventing opioid diversion and ensuring access to medications.
* **Philosophical Predicament**:
  + CEO Steven Collis expressed frustration over ABC’s role as an intermediary accused of enabling the crisis while lacking authority over clinical decisions.
  + Collis argued that ceasing opioid distribution altogether would conflict with ABC’s purpose of ensuring access to FDA-approved medications prescribed by licensed physicians.

**2. Criticism of ABC’s Culture**

* **Insensitive Internal Communications**:
  + Internal emails revealed a dismissive attitude toward the opioid crisis:
    - A 2011 email included parody lyrics referring to opioid abuse (“Pillbillies”).
    - Other messages mocked patients affected by the crisis, showing a lack of corporate empathy.
  + These emails surfaced in legal proceedings, damaging ABC’s public image and raising concerns about its compliance culture.

**3. Balancing Compliance and Business Obligations**

* ABC faced competing pressures:
  + Regulators and plaintiffs demanded stricter anti-diversion measures.
  + Pharmacies and healthcare providers expected consistent and timely delivery of medications.
  + ABC’s leadership emphasized that distributors should not function as enforcement or regulatory agencies.
* **Impact on Patient Care**:
  + Senior VP Chris Zimmerman highlighted that stopping orders labeled “suspicious” could inadvertently harm patients who rely on legitimate prescriptions.

**4. Public and Stakeholder Perception**

* ABC’s efforts to mitigate opioid abuse were overshadowed by evidence of operational failures and cultural insensitivity.
* Legal cases and leaked communications reinforced perceptions that ABC prioritized profit over ethical responsibility.

## Litigation, and Settlements

**1. Rise of Opioid Lawsuits**

* **Early Lawsuits**:
  + The first notable case against ABC occurred in 2012, when West Virginia filed a lawsuit accusing the company of failing to prevent diversion of opioids and benefiting from the resulting crisis.
  + In 2016, ABC settled this case for $16 million, a relatively small amount compared to later settlements.
* **Multi-District Litigation (MDL)**:
  + By 2017, over 2,600 lawsuits were consolidated into an MDL involving cities, counties, and tribal sovereigns across all 50 states.
  + Additional lawsuits were filed by state attorneys general, accusing distributors of violating the Controlled Substances Act (CSA) and state laws.
* **Key Allegations**:
  + ABC was accused of:
    - Failing to report and halt suspicious orders.
    - Using flawed monitoring systems that allowed excessive shipments.
    - Continuing to ship flagged orders despite reporting them as suspicious to the DEA.

**2. The Global Settlement (2021)**

* **Settlement Overview**:
  + ABC, along with McKesson, Cardinal Health, and Johnson & Johnson, agreed to a $26 billion settlement to resolve most lawsuits.
  + ABC’s share was $6.6 billion, payable over 18 years, with $1.1 billion in tax benefits.
* **Terms of the Settlement**:
  + The settlement included injunctive relief requiring distributors to:
    - Use data-driven systems to terminate customers with signs of opioid diversion.
    - Increase oversight of anti-diversion efforts by senior executives.
  + Johnson & Johnson agreed to exit the opioid business entirely.
* **Corporate Statement**:
  + ABC characterized the settlement as a way to mitigate legal uncertainty while continuing its operations. The company also expressed concern about the financial burden and regulatory obligations imposed by the settlement.

**3. Past Legal Issues and Settlements**

* **Misbranding and Kickback Scandal**:
  + Prior to the opioid crisis, ABC faced litigation for repackaging cancer drugs without FDA approval and providing kickbacks to physicians.
  + This resulted in criminal and civil settlements totaling $885 million between 2017 and 2018.
  + These past issues added to stakeholder concerns about ABC’s governance and ethical practices.

**4. Challenges in Legal Defense**

* **Sealed Documents**:
  + Many legal documents from opioid-related lawsuits remain sealed, limiting public scrutiny of ABC’s internal practices.
  + Available documents highlighted inconsistent reporting of suspicious orders and inadequate compliance efforts.
* **Internal Failures**:
  + Audits and complaints revealed that ABC:
    - Allowed orders above threshold limits.
    - Provided insufficient training on compliance.
    - Failed to document or investigate irregularities adequately.

**5. Criticisms of the Settlement**

* Stakeholders and activists argued the settlement failed to:
  + Adequately hold executives accountable for the crisis.
  + Prevent future lapses in governance and compliance.

### Exhibit 5 Excerpts from Independent Evaluation Report on Amerisource’s OMP as of 2015:

**1. Strengths of the CSRA (Corporate Security and Regulatory Affairs) Team**

* **Knowledgeable Staff**:
  + The CSRA team members demonstrated strong expertise in their subject areas.
  + However, the effectiveness of this expertise was undermined by unclear roles and responsibilities.

**2. Key Challenges Identified**

* **Role Clarity and Scope**:
  + Ambiguity in the roles and responsibilities of CSRA personnel led to inefficiencies, with team members performing tasks outside their purview.
  + Poor role delineation caused duplication of efforts and confusion, especially in compliance-related activities.
* **Insufficient Training**:
  + Most CSRA personnel lacked formalized training, relying instead on brief, informal onboarding.
  + The absence of structured, role-specific training hindered staff’s ability to adopt a proactive compliance approach and interpret activities through a risk management lens.
* **Decentralized and Reactive Operations**:
  + CSRA functioned reactively, often described as "putting out fires," making it difficult to focus on long-term improvements or strategic initiatives.
  + Compliance activities were often decentralized, resulting in inconsistent documentation, reporting, and tracking of compliance issues.
* **Resource Constraints**:
  + CSRA staff struggled to manage a high volume of administrative and compliance responsibilities.
  + Limited personnel, coupled with insufficient support and expertise, exacerbated the workload challenges.

**3. Impact of Organizational Practices**

* **Disconnected Compliance Initiatives**:
  + Centralized support functions (e.g., Customer Care, Human Resources) often failed to account for the downstream burden on compliance staff, leading to delays and inconsistent information.
  + CSRA was not adequately involved in operational decisions, limiting its ability to anticipate and address potential compliance risks.
* **Lack of Proactive Processes**:
  + There was an over-reliance on past practices, with limited efforts to evolve systems and processes to meet growing demands.

**4. Documentation and Technology Gaps**

* **Manual Processes**:
  + Heavy reliance on manual processes and paperwork made compliance activities time-consuming and prone to inefficiencies.
  + Decentralized tracking and documentation resulted in limited visibility into workloads and activities, creating risks of "management by intuition" rather than data-driven decisions.
* **Technology Deficiencies**:
  + The lack of an integrated matter management system hindered effective tracking, reporting, and workflow management.
  + CSRA personnel often relied on self-developed tools, leading to inconsistent reporting standards.

**5. Specific Risks in the OMP**

* **Order Review Responsibilities**:
  + No clear policy defined which distribution center associates were responsible for reviewing flagged orders.
  + Although all associates with access to the OMP system were trained, the lack of consistency in assigning order review responsibilities presented a significant risk to DEA compliance.
* **Investigation Processes**:
  + While processes for conducting investigations existed, they suffered from:
    - Poorly defined roles and responsibilities.
    - Inadequate guidance for documenting investigations.
    - A lack of formal training for investigators.

**6. Recommendations from the Report**

* **Training and Standardization**:
  + Develop formal, role-specific training programs focusing on regulatory compliance and risk management.
  + Standardize roles, responsibilities, and procedures to avoid overlaps and ensure accountability.
* **Improved Technology**:
  + Implement integrated management systems to streamline compliance tracking, reporting, and workflows.
* **Proactive Approaches**:
  + Shift from reactive to proactive compliance strategies by redefining CSRA’s role and engaging the team in operational planning.
  + Clarify ownership of compliance activities to ensure seamless execution across departments.

### Exhibit 6 Selected Instances Provided by Informers or Plaintiffs to Support Allegations Against Amerisource’s Diversion Control Program (Excerpts from Investigative Reports or Legal Documents)

**1. Incentivizing High Risk Customer Behavior**

* **Internal Email (August 2013)**:
  + AmerisourceBergen’s regional managers encouraged sales teams to grow relationships with “low-volume” accounts that purchased disproportionately high quantities of Schedule II controlled substances (C2s).
  + Sales teams were instructed to advise these customers on managing their C2 purchases to reduce risks of regulatory scrutiny, suggesting that business growth was prioritized over compliance.
  + This practice implied a focus on maximizing sales to high-risk accounts while attempting to avoid detection.

**2. Neglect of Obvious Red Flags**

* **Jabo’s Pharmacy (Tennessee)**:
  + AmerisourceBergen continued supplying opioids to this pharmacy despite an internal investigator being solicited in the parking lot to buy Oxy 30 tablets, a drug it had distributed to the pharmacy.
  + This incident showcases a failure to terminate relationships with high-risk customers even after direct evidence of diversion.

**3. Persistent Distribution to Problematic Pharmacies**

* **Exemplar Pharmacy 1 (Orange County, NY)**:
  + The pharmacy ranked at or above the 99th percentile in the state for opioid orders and total opioid weight.
  + A significant percentage of its prescriptions (10% from 2014-2016) were written by prescribers later indicted or convicted for opioid-related offenses.
  + While Amerisource initially reported hundreds of suspicious order reports (SORs) for this pharmacy in 2013 and 2014, reporting dropped significantly over subsequent years, even as the pharmacy remained a high-risk customer.
  + By 2018, Amerisource continued to be the pharmacy’s primary opioid distributor despite its track record.

**4. Inconsistent Reporting Across States**

* **Missouri (2012-2017)**:
  + AmerisourceBergen reported just **224 suspicious orders** to the DEA over this six-year period, compared to McKesson’s **16,714 reports** during the same timeframe.
  + This disparity highlights Amerisource’s lax reporting practices relative to its peers, raising questions about the effectiveness of its compliance systems and its commitment to regulatory obligations.

**5. Broader Patterns of Mismanagement**

* Evidence from these cases demonstrates:
  + **Failure to Act on Red Flags**: Amerisource did not terminate or adequately investigate relationships with customers showing clear signs of diversion.
  + **Focus on Sales Over Compliance**: Internal communication emphasized maintaining customer relationships even at the expense of regulatory risks.
  + **Inconsistent Monitoring and Reporting**: While SORs were filed for some high-risk customers, reporting dwindled over time despite continued distribution of opioids to problematic pharmacies.

**Implications for Governance**

* These findings underscore systemic failures in AmerisourceBergen’s compliance program and governance structures:
  + **Compliance Overlooked**: Sales priorities overshadowed regulatory obligations, exposing the company to legal and reputational risks.
  + **Weak Internal Controls**: Decentralized processes and inconsistent training likely contributed to the inadequate response to red flags.
  + **Accountability Gaps**: Lack of clear leadership and accountability for diversion control led to repeated violations and regulatory scrutiny.

### Exhibit 7

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Shareholder Activism on the Opioid

**1. Emergence of Shareholder Activism**

* **Teamsters Union’s Role**:
  + The International Brotherhood of Teamsters became an early advocate for change, driven by personal stories from members affected by the opioid crisis.
  + Starting in 2017, the union initiated public campaigns, wrote letters, and held protests to demand governance reforms from major opioid distributors, including AmerisourceBergen (ABC).
* **Formation of IOPA (Investors for Opioid and Pharmaceutical Accountability)**:
  + A coalition of institutional investors, unions, and pension funds managing over $4 trillion in assets joined forces to pressure companies in the opioid supply chain.
  + The coalition’s goals included improving risk management, holding boards accountable, and increasing transparency in executive compensation and political lobbying.

**2. Key Shareholder Proposals at ABC**

* **2018**:
  + **Independent Chairman**:
    - A resolution sought to separate the roles of CEO and chairman to enhance board oversight.
    - The proposal received 33% of votes (45% excluding Walgreens' significant voting stake).
    - Despite rejecting the resolution, the board pledged to appoint an independent chairman following the next CEO transition.
  + **Clawback Disclosure**:
    - Advocated expanded disclosure of clawback policies for all senior executives, not just named executive officers.
    - Received 34% of votes (46% excluding Walgreens).
    - The board adopted a narrower policy later in 2018.
  + **Board Risk Report**:
    - Proposed a report detailing the board’s oversight of opioid distribution risks since 2012.
    - Gained 41% of votes (55% excluding Walgreens).
    - The board subsequently published a general risk report without retrospective details.
* **2019**:
  + **Legal Costs in Incentive Compensation**:
    - Called for inclusion of legal costs in performance metrics for executive bonuses.
    - The proposal received only 12% of votes (16% excluding Walgreens).
* **2020**:
  + **Bonus Deferral Policy**:
    - Suggested deferring part of annual bonuses to allow for adjustments based on late-arriving risk information.
    - Gained 35% of votes (49% excluding Walgreens).

**3. IOPA’s Broader Influence**

* **Engagement Beyond ABC**:
  + Between 2017 and 2019, IOPA engaged with 20 public companies involved in the opioid supply chain.
  + 26 of the 52 shareholder resolutions filed were settled before a vote, including demands for improved board oversight, clawback policies, and lobbying disclosures.
* **Notable Wins**:
  + SEC rulings favored IOPA’s proposals at ABC and Walgreens, ensuring resolutions on risk oversight were included in proxy statements.
  + Companies like McKesson and CVS adopted risk reporting policies without waiting for shareholder votes.

**4. Limitations of Activism at ABC**

* **Walgreens’ Influence**:
  + As a major shareholder (28%), Walgreens often voted with management, diluting the impact of activist proposals.
  + Excluding Walgreens’ stake, shareholder support for proposals was consistently higher but insufficient for mandatory adoption.
* **Board Resistance**:
  + The board frequently rejected proposals, citing existing practices or concerns about the feasibility of shareholder demands.

**5. Activist Recommendations for Governance Reforms**

* Proposals from IOPA and other groups emphasized:
  + Appointing independent board chairs.
  + Transparent reporting on opioid-related risks and compliance failures.
  + Aligning executive compensation with legal and ethical responsibilities.

### Exhibit 8

**Immagine che contiene testo, schermata, numero, menu

Descrizione generata automaticamente**

## Pay Controversy in 2021

**1. Context of CEO Pay Increase**

* **Steven Collis’s Compensation**:
  + In January 2021, AmerisourceBergen disclosed in its proxy statement that CEO Steven Collis would receive a $3 million raise, bringing his total compensation to $14.3 million, a 26% increase from the previous year.
  + The raise was attributed to his performance in managing the company during the COVID-19 pandemic and completing the $6.6 billion opioid settlement.
* **Backdrop of the Opioid Settlement**:
  + The announcement came shortly after ABC agreed to the $6.6 billion settlement for its role in the opioid epidemic.
  + Many stakeholders argued that Collis, as a long-serving executive, bore significant responsibility for the mismanagement that contributed to the crisis.

**2. Shareholder Activism Against Pay Package**

* **Criticism from IOPA and Activists**:
  + The coalition Investors for Opioid and Pharmaceutical Accountability (IOPA) issued letters urging shareholders to reject the proposed pay package.
  + Activists argued that rewarding Collis with a pay increase despite the legal and reputational damage caused by the opioid settlement was inappropriate.
* **Key Arguments Against the Pay Raise**:
  + Collis’s tenure overlapped with critical years of compliance failures in opioid monitoring.
  + The exclusion of legal and settlement costs from compensation metrics undermined accountability.
  + The raise sent a negative signal about the board’s commitment to aligning pay with corporate performance and ethical considerations.

**3. Defense by the Board of Directors**

* **Rationale for the Compensation**:
  + The board justified the raise by emphasizing Collis’s leadership during a challenging year, including navigating the pandemic, securing the settlement, and maintaining financial performance.
  + The compensation committee stated that excluding certain legal costs from performance metrics was standard practice to avoid penalizing executives for historical issues.
* **Call for Shareholder Support**:
  + The board urged shareholders to approve the pay package, citing its consistency with previous years and market norms.

**4. Outcome of the Say-on-Pay Vote**

* **Shareholder Vote Results**:
  + A significant number of shareholders opposed the pay package, with approximately 48% voting against it.
  + While the package narrowly passed, the unusually high opposition underscored growing dissatisfaction with executive accountability at ABC.

**5. Broader Implications**

* **Stakeholder Trust**:
  + The controversy highlighted tensions between ABC’s board and its shareholders over governance practices.
  + Critics pointed to the pay raise as evidence of insufficient oversight and a lack of alignment with stakeholder concerns.
* **Future Reforms**:
  + Activists continued to push for reforms in executive compensation, including:
    - Inclusion of legal and compliance costs in performance metrics.
    - Adoption of clawback and bonus deferral policies to align pay with long-term outcomes.

### Exhibit 9

Immagine che contiene testo, schermata, numero, Carattere

Descrizione generata automaticamente

### Exhibit 10

Immagine che contiene testo, schermata, Carattere, numero

Descrizione generata automaticamente

### Exhibit 11 Connecticut and Rhode Island State Treasurers’ Letter

**Key Criticisms of AmerisourceBergen’s Compensation Practices**

1. **Exclusion of Opioid Charge from Incentive Metrics**:
   * The treasurers criticized the Compensation Committee for excluding the $6.6 billion opioid litigation charge from the metrics used to determine executive incentives.
   * This exclusion led to significantly above-target payouts for executives, despite the charge causing the company’s largest-ever loss and erasing over a decade of cumulative earnings under CEO Steven Collis’s tenure.
2. **CEO Steven Collis’s Pay Increase**:
   * Collis’s compensation rose 26% to $14.3 million in fiscal 2020, despite the financial impact of the opioid settlement.
   * The treasurers argued that incentive awards should not be treated as entitlements and that rewarding Collis reflected poorly on ABC’s culture and accountability.
3. **Impact on Long-Term Shareholder Value**:
   * The treasurers, representing the Investors for Opioid and Pharmaceutical Accountability (IOPA), expressed concern that these actions undermined shareholder value and had broader societal implications.
   * They emphasized that the company’s persistent compliance failures, including inadequate monitoring and reporting of suspicious opioid orders, had devastating societal consequences.
4. **Case Study of Compliance Failures**:
   * The letter referenced a 2018 House Energy and Commerce Committee investigation into “pill dumping” in West Virginia, where ABC supplied a pharmacy in Oceana, WV, despite glaring red flags.
   * Two of the top prescribing physicians for this pharmacy were located hours away, yet the company continued its distribution, contributing to the highest prescription overdose death rate in the nation.
5. **Misaligned Executive Incentives**:
   * The treasurers highlighted that:
     + **Short-Term Incentives**: The $6.6 billion charge was excluded from earnings metrics, turning a record loss into a recalculated profit, leading to a 127% payout of Collis’s annual bonus ($2.5 million).
     + **Long-Term Incentives**: Performance share units (PSUs) for 2018-2020 paid out at 186% of target, delivering $10 million to Collis. Adjusting metrics to include the opioid charge would have resulted in payouts below thresholds for both earnings and return on invested capital (ROIC).
6. **Call for Accountability**:
   * The treasurers rejected boilerplate justifications for excluding legal settlements, particularly given Collis’s decade-long tenure and his direct involvement in overseeing practices leading to the crisis.
   * They argued that long-tenured executives must share responsibility for the billions in costs and societal harm caused by ABC’s opioid distribution practices.

**Key Takeaway:**

The treasurers urged shareholders to vote against ABC’s 2021 “say on pay” proposal, criticizing the board for a lack of accountability, failure to align executive compensation with ethical considerations, and ignoring the long-term damage caused by the opioid crisis.

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### Exhibit 12 Excerpt of Amerisource Compensation Committee’s Supplementary Letter to Proxy Statemen

﻿**Defense of Compensation Practices**

1. **Pay-for-Performance Philosophy**:
   * The Committee stated that 72% of CEO Collis’s 2020 total compensation was performance-based, aligning with shareholder outcomes.
   * Citing proxy advisors ISS and Glass Lewis, they argued that Collis’s pay was below median levels relative to peers, reflecting strong pay-for-performance alignment.
2. **Use of Adjusted Metrics**:
   * Non-GAAP metrics like adjusted EPS and adjusted operating income were used to reward executive performance.
   * The Committee justified excluding litigation-related charges, claiming these adjustments align compensation with operational results rather than “unusual, unpredictable” events.
3. **Long-Term Shareholder Returns**:
   * ABC’s total shareholder return (TSR) for fiscal 2018-2020 was +24%, outperforming peers McKesson (+0.2%) and Cardinal Health (-21%).
   * The Committee argued that excluding the opioid charge ensured executives were focused on long-term value creation without fear of personal financial penalties.
4. **Response to Shareholder Proposal on Litigation Costs (2019)**:
   * A 2019 shareholder proposal to include litigation costs in incentive metrics was rejected by 88% of voting shareholders.
   * The Committee cited this support as validation of their approach to excluding the opioid charge.
5. **2020 Performance Amid Crises**:
   * The Committee highlighted management’s effective response to COVID-19, including employee support, business resilience, and commitments to customers.
   * They argued this performance justified incentive payouts, emphasizing the broader operational achievements during the pandemic.
6. **No Negative Discretion**:
   * The Committee decided not to use negative discretion to reduce payouts, arguing that excluding the opioid charge ensured alignment with shareholder value creation and industry standards.

**Key Takeaway:**

The Compensation Committee defended its decisions as consistent with market practices and necessary to maintain executive focus on delivering long-term shareholder value, while emphasizing positive business outcomes during fiscal 2020.

## Conclusion

**1. Summary of Key Issues**

* **Opioid Crisis Responsibility**:
  + AmerisourceBergen’s role in the opioid epidemic highlighted significant failures in compliance and diversion control, culminating in a $6.6 billion settlement.
  + The crisis exposed systemic governance weaknesses, including insufficient oversight and inconsistent enforcement of anti-diversion measures.
* **CEO Pay Controversy**:
  + The decision to award a $3 million pay increase to CEO Steven Collis amid the settlement’s fallout fueled shareholder dissatisfaction and activism.
  + Critics argued that executive pay failed to reflect accountability for past mismanagement, sparking debates about governance reforms and ethical corporate leadership.

**2. Broader Governance Challenges**

* **Shareholder Activism**:
  + Stakeholders, particularly IOPA, played a key role in pushing for governance changes.
  + Proposals for independent board leadership, clawback policies, and improved risk oversight gained partial traction but faced resistance.
* **Board Accountability**:
  + The board’s actions, including defending the CEO’s pay and resisting more stringent oversight reforms, were seen as misaligned with stakeholder expectations.
  + Governance shortcomings raised concerns about the board’s ability to navigate complex crises effectively.

**3. Implications for Corporate Governance**

* **Lessons Learned**:
  + Effective compliance and risk management are essential for mitigating reputational and financial damage.
  + Aligning executive compensation with ethical and long-term performance metrics is critical for restoring trust.
* **Path Forward**:
  + Companies like AmerisourceBergen must balance profitability with ethical responsibilities, particularly in high-stakes industries like healthcare.
  + Transparency, proactive stakeholder engagement, and stronger governance structures are necessary to rebuild credibility and ensure sustainable growth.

**4. Reflection on Stakeholder Expectations**

* The case underscores the increasing influence of shareholders in holding boards accountable for corporate decisions.
* It also highlights the importance of aligning corporate governance with broader societal values, especially in industries with significant public health impacts.