

King to Pay \$124 Mln to Settle Fraud Claim, U.S. Says (Update2)
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(Adds company comment on SEC probe in 12th paragraph.)

By Cary O'Reilly

Nov. 1 (Bloomberg) -- King Pharmaceuticals Inc., the maker of drugs including Altace heart pills, agreed to pay \$124 million to settle claims it overcharged Medicaid programs for its products.

The Bristol, Tennessee-based company underpaid drug rebates owed the federal government and states participating in the Medicaid Rebate Program from 1994 through 2002, Patrick L.

Meehan, the U.S. attorney in Philadelphia, said in a statement.

The Justice Department is seeking to make sure pharmaceutical companies that supply Medicaid, the government health program for the poor, sell products at the same price they charge commercial customers. In July 2004, Schering-Plough Corp. agreed to pay \$293 million in civil penalties in connection with pricing of its top-selling allergy drug Claritin.

``Settlements like this should convince manufacturers that their drug price reporting to Medicaid must be accurate and complete,'' Meehan said. ``They must understand that overcharging government customers for drugs has an impact on every taxpayer.''

The settlement includes a corporate integrity agreement that requires King to establish policies to ensure accurate reporting of so-called average manufacturer prices and best-price figures for Medicaid supply contracts, Meehan said,

Those figures are used to calculate a quarterly rebate that manufacturers make to state Medicaid programs. They are also used to determine the ceiling prices for drugs purchased under federal plans, and by agencies such as the Veterans Administration and entities subsidized by the Public Health Service.

If approved by U.S. Judge Marvin Katz in Philadelphia, ``the agreements will fully resolve these matters,'' King said.

Price Calculations

Once it became aware of the allegations against it, King investigated its pricing practices for Altace and other drugs, Meehan said. The company hired an accounting firm to review each drug sale and recalculated drug prices for the eight-year period.

``Unlike prior settlements, which involved the misreporting of prices relating to a specific transaction or drug, this settlement is unique because King agreed to redo its pricing on its entire product line'' over several years, Meehan said.

The settlement includes \$62.1 million for underpayments to Medicaid between 1994 and 2002 and an equal amount to cover interest, costs and penalties, the company said. That's less than 1 percent of King's total revenue during that period.

``None of these issues resulted from intentional misconduct,'' company spokesman James Green said, adding that King has cooperated with the government since first being informed of a Securities and Exchange Commission inquiry. The SEC probe is continuing, though no charges are expected, he said.

``The staff of the SEC has advised King that it has determined not to recommend enforcement action,'' Green said.

False Claims Act

The investigation and civil settlement stem from allegations brought by a former employee of King in a whistleblower complaint.

Edward Bogart, formerly director of contracts and national accounts for King, filed an action under the federal False Claims Act, the Justice Department said. He brought similar claims in 13 states and the District of Columbia.

The False Claims Act allows individuals to sue for fraud on behalf of the government and be rewarded with part of any money recovered. The Justice Department investigates and decides whether to join the suit. The U.S. and Bogart haven't reached agreement on his share of the settlement.

Samuel Boyd, an attorney with Boyd & Associates who represented Bogart, said the act allows individuals to receive as much as 25 percent of what the government recovers, though he expects a court hearing to decide the exact whistleblower share.

'Never Work Again'

Bogart's share of the settlement ``will be significant, but it will come at great personal cost,''' Boyd said in an interview. ``He may never work in this industry again. There's some sort of innate fear of whistleblowers.''

Shares of King, which had net income of \$20.5 million on sales of \$462.9 million in the second quarter, rose 3 cents to \$15.44 in New York Stock Exchange composite trading today. They have risen 25 percent this year.

The case is U.S. v. King, 03-1538, U.S. District Court for the Eastern District of Pennsylvania.

--Editors: Aarons, Carter, Pickering.

Story illustration: To view the settlement agreement, which includes a corporate integrity agreement, see

<http://www.usdoj.gov/usao/pae/News/Pr/2005/oct/oct05.html>.

To see a chart of King's earnings by quarter, see {KG US <Equity> CH2 Q <GO>}. For a menu of Bloomberg legal resources, see {BLAW <GO>}. To read today's top legal news, see {TLAW <GO>}.

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