

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

King County v. Express Scripts, Inc., Express Scripts Administrators, LLC, Medco Health Solutions, Inc., Merck-Medco, ESI Mail Order Processing, Inc., ESI Mail Pharmacy Service, Inc., Express Scripts Pharmacy, Inc., Express Scripts Specialty Distribution Services, Inc., OptumInsight, Inc., OptumInsight Life Sciences, Inc., The Lewin Group, Inc., Ingenix Pharmaceutical Services, Inc., Ingenix, Inc., OptumRx, Inc., and Optum, Inc.

King County v. Express Scripts · No. 2:24-cv-00049-BJR · Decided November 24, 2025

SUMMARY

The United States District Court for the Western District of Washington granted King County’s motion to strike specified affirmative defenses asserted by Optum and ESI entities in the County’s opioid-related public nuisance action. The court struck defenses concerning offsets, indemnification, reservation of additional defenses, res judicata, collateral estoppel, and compensation for injuries to individual drug users. The court concluded that the defenses were immaterial, insufficiently pleaded, or legally unavailable on the record presented.

CASE DETAILS

COURT	United States District Court for the Western District of Washington
WRITING FOR THE COURT	Barbara Jacobs Rothstein
JURISDICTION	United States District Court for the Western District of Washington
DECIDED	November 24, 2025
DOCKET	2:24-cv-00049-BJR
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 12(f) to strike specified affirmative defenses asserted by the Optum and ESI defendants.
STANDARD OF REVIEW	Under Rule 12(f), the court considers whether a pleading contains an insufficient, redundant, or immaterial defense, viewing the pleading in the light most favorable to the nonmoving party. Motions to strike are

	disfavored and generally granted only when it is clear that the challenged matter could have no possible bearing on the litigation.
PRECEDENTIAL VALUE	unpublished district court order; precedential status not identified
PARTIES	King County

TOPICS

affirmative defenses pleadings res judicata civil procedure

PRACTICE AREAS

civil procedure torts remedies health law

QUESTIONS PRESENTED

1. Whether the defendants' affirmative defenses concerning compensation received by individual drug users were relevant to the County's public-nuisance claim.
2. Whether a purported reservation of the right to assert additional defenses based on future developments in related litigation is a proper affirmative defense.
3. Whether broadly worded defenses seeking reductions for funding or benefits received from non-County sources provided fair notice.
4. Whether the res judicata or collateral-estoppel defense was sufficiently pleaded and legally viable where the identified prior actions did not involve the defendants, did not include King County as a party in one action, and did not establish privity.
5. Whether an indemnification-based offset defense was sufficiently pleaded when it did not identify the type of indemnification, its calculation, or its relationship to the County's claim.

HOLDINGS

1. Affirmative defenses asserting that the County's recovery must be reduced based on compensation received by individual drug users are immaterial because the County's public-nuisance claim is brought on the County's own behalf in its sovereign capacity, not on behalf of individual residents.
2. A reservation of the right to assert additional affirmative defenses is not itself an affirmative defense; additional defenses must be asserted through a properly filed motion to amend.
3. An affirmative defense is insufficient when its overbroad wording fails to give the plaintiff fair notice of the nature and grounds of the defense.
4. A res judicata or collateral-estoppel defense must identify the prior action on which it is based, and the defense fails where the identified actions do not involve the defendants, do not include the relevant plaintiff as a party, and do not establish the required privity.
5. An indemnification-based offset defense is insufficient when it does not specify the type of indemnification, how the offset would be calculated, or how the indemnification relates to the plaintiff's

claim.

KEY QUOTATIONS

“The function of a motion to strike is “to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial.”” (at 2)

“However, the mere “‘reservation of affirmative defenses’ is not an affirmative defense.”” (at 5)

“To satisfy the fair notice standard, an affirmative defense of res judicata or collateral estoppel must, at a minimum, reference any prior action upon which the defense is predicated.” (at 7)

FACTUAL BACKGROUND

King County alleges that the defendant pharmacy benefit managers, mail-order pharmacies, and related entities played a central role in perpetuating the national opioid epidemic, creating a public nuisance in the County. The defendants asserted numerous affirmative defenses, including defenses based on prior compensation, pending related litigation, offsets or funding received from non-County sources, res judicata or collateral estoppel, and indemnification. The challenged defenses were either unrelated to the County’s sovereign public-nuisance claim, improperly reserved unspecified future defenses, insufficiently pleaded to provide fair notice, or legally unavailable on the facts identified by defendants.

PROCEDURAL HISTORY

King County brought a public-nuisance action alleging that the defendants, including pharmacy benefit managers and related entities, contributed to the opioid epidemic in the County. After defendants asserted more than ninety affirmative defenses, the County moved to strike four defenses asserted by Optum and four asserted by ESI. The district court granted the motion and struck the specified defenses.

DISPOSITION

other

CASES CITED

- Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010)
- Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993)
- Gaines v. AT&T Mobility Servs., LLC, 424 F. Supp. 3d 1004, 1014 (S.D. Cal. 2019)
- Griffin v. Gomez, 2010 WL 4704448, at *4 (N.D. Cal. Nov. 12, 2010)
- Cholakyan v. Mercedes-Benz USA, LLC, 796 F. Supp. 2d 1220, 1245 (C.D. Cal. 2011)
- E.E.O.C. v. Timeless Invs., Inc., 734 F. Supp. 2d 1035, 1055 (E.D. Cal. 2010)
- Ohio Sec. Ins. Co. v. Garage Plus Storage Aviation LLC, 600 F. Supp. 3d 1164, 1171 (W.D. Wash. 2022)
- Johnson v. Providence Health & Servs., No. C17-1779, 2018 WL 2289331, at *3 (W.D. Wash. May 18, 2018)
- Sec. People, Inc. v. Classic Woodworking, LLC, 2005 WL 645592, at *2-3 (N.D. Cal. Mar. 21, 2005)
- Wyshak v. City Nat’l Bank, 607 F.2d 824, 827 (9th Cir. 1979)

- Conley v. Gibson, 355 U.S. 41, 47 (1957)
- Allen v. McCurry, 449 U.S. 90, 94 (1980)
- Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759, 763 (1995)
- Davis v. Hollywood and Ivar, LLC, No. 221CV01235, 2021 WL 4816823, at *7 (C.D. Cal. Aug. 30, 2021)
- Annunziato v. Guthrie, CV 20-11592, 2021 WL 5015496, at *8 (C.D. Cal. Oct. 26, 2021)
- Gibraltar, LLC v. DMS Flowers, LLC, No. 1:24-CV-00174, 2025 WL 2208137, at *4 (E.D. Cal. Aug. 4, 2025)

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