


<b>CIVIL ACTION COVER SHEET</b>	<b>DOCKET NUMBER</b> 2284CV02520	<b>Trial Court of Massachusetts The Superior Court</b>	
		<b>COUNTY</b> Suffolk Superior Court (Boston)	

<b>Plaintiff</b> Commonwealth of Massachusetts	<b>Defendant:</b> Express Scripts, Inc.
<b>ADDRESS:</b> Attorney General's Office One Ashburton Place, 18th Floor Boston, MA 02108	<b>ADDRESS:</b> One Express Way St. Louis, MO 63121
<b>Plaintiff Attorney:</b> Glenn Kaplan	<b>Defendant Attorney:</b> Sarah Hellman
<b>ADDRESS:</b> Attorney General's Office One Ashburton Place, 18th Floor Boston, MA 02108	<b>ADDRESS:</b> Husch Blackwell LLP 190 Carondelet Plaza, Suite 600 St. Louis, MO 63105-3433
<b>BBO:</b> 567308	<b>BBO:</b>

**TYPE OF ACTION AND TRACK DESIGNATION (see instructions section below)**

<b>CODE NO.</b> E99	<b>TYPE OF ACTION (specify)</b> Other Administrative Action	<b>TRACK</b> X	<b>HAS A JURY CLAIM BEEN MADE?</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
------------------------	--	-------------------	---

**\*If "Other" please describe:** \_\_\_\_\_

<b>Is there a claim under G.L. c. 93A?</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<b>Is there a class action under Mass. R. Civ. P. 23?</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
---	--

**STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A**

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

**TORT CLAIMS**

A. Documented medical expenses to date

1. Total hospital expenses	_____
2. Total doctor expenses	_____
3. Total chiropractic expenses	_____
4. Total physical therapy expenses	_____
5. Total other expenses (describe below)	_____
	_____
Subtotal (1-5):	<u>n/a</u>

B. Documented lost wages and compensation to date \_\_\_\_\_

C. Documented property damages to date \_\_\_\_\_

D. Reasonably anticipated future medical and hospital expenses \_\_\_\_\_

E. Reasonably anticipated lost wages \_\_\_\_\_

F. Other documented items of damages (describe below)

	_____
TOTAL (A-F):	<u>n/a</u>

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

n/a

**CONTRACT CLAIMS**

This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).

Item #	Detailed Description of Each Claim	Amount
1.	n/a	
Total		

Signature of Attorney/Unrepresented Plaintiff: X Glenn Kaplan Date: 11/7/2022

**RELATED ACTIONS:** Please provide the case number, case name, and county of any related actions pending in the Superior Court.

**CERTIFICATION PURSUANT TO SJC RULE 1:18**

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney/Unrepresented Plaintiff: X Glenn Kaplan Date: 11/7/2022

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPERIOR COURT  
DEP'T OF THE TRIAL COURT  
Civil Action No. 2284CV02520

---

**In the Matter of Express Scripts, Inc.**

---

ASSURANCE OF DISCONTINUANCE  
*PURSUANT TO M.G.L. CHAPTER 93A, § 5*

I. Introduction

The Office of Attorney General Maura Healey (“AGO”), is conducting an investigation pursuant to M.G.L. c. 93A, § 4 & 6 and M.G.L. c. 12, § 5C into the sale of prescription drugs at prices in excess of those allowable under Massachusetts workers' compensation laws and regulations (“the Investigation”). As part of the Investigation, the AGO has reviewed transactions involving Express Scripts, Inc. and its subsidiaries (“Express Scripts”), relating to its pharmacy benefit manager and pharmacy transactions.

Based on that review, the AGO alleges that Express Scripts billed and obtained payment for prescription drugs from payors of workers' compensation claims in excess of amounts permitted by Massachusetts laws and regulations. These alleged overcharges occurred on prescription drugs provided by pharmacies to workers' compensation insurance beneficiaries who utilized CVS, Walgreens, Rite Aid and other pharmacies in various MA locations such as: Springfield, Boston, Fall River, and Worcester.

In recognition of Express Scripts' cooperation with the Investigation, the AGO agrees to accept this Assurance of Discontinuance ("Assurance") on the terms and conditions contained herein. Express Scripts on behalf of itself and its subsidiaries, without admitting any facts, liability or any wrongdoing, in the interest of resolution of this matter and for settlement purposes only, agrees to accept this Assurance on the terms and conditions contained herein. This Assurance is made without trial or adjudication of any issue of fact or of law.

II. Terms of the Assurance of Discontinuance

1. Express Scripts shall make a payment totaling \$3,200,000, which may be used by the AGO in its sole discretion for education, consumer outreach, amelioration of consumer harm, and/or support for public interest programs and efforts regarding workers' compensation insurance, work-place injury prevention, rehabilitation, and prescription choices and management. A portion of Express Scripts' payment may also be allocated by the AGO, in its sole discretion, as attorneys' fees and investigative costs, and such allocated funds shall be directed to the Treasury's General Fund. The payment by Express Scripts shall be made to the AGO in accordance with check or wiring instructions provided by the AGO, and shall be delivered within ten (10) business days of the AGO providing such instructions.

2. For all Massachusetts workers' compensation prescription drug transactions processed by Express Scripts, Express Scripts shall ensure that such billings and payments comply with all relevant Massachusetts laws and regulations. To facilitate such compliance, Express Scripts shall develop a Compliance Pricing Protocol ("the Protocol"), set forth in a separate agreement between Express Scripts and the AGO. Express Scripts and the AGO shall work together in good faith to implement the Protocol within 90 days of the filing of this

Assurance. Should Express Scripts need additional time to implement the Protocol, the parties shall agree in writing to reasonable extension(s) of this 90-day period.

3. The AGO agrees that, subject to the provisions in the Protocol as well as paragraphs 5-6 below, any workers' compensation prescription drug transactions in Massachusetts priced in accordance with the Protocol shall be considered substantially in compliance with the requirements of this Assurance, and the AGO shall not bring an action against Express Scripts for its workers' compensation pricing/payment conduct regarding such transactions except as set forth in paragraphs 5 and 6 infra.

4. The Protocol shall be subject to change as necessary to remain in compliance with applicable Massachusetts laws and regulations concerning pricing for prescription drugs covered by workers' compensation insurance. Except as otherwise noted in the Protocol, any such changes to the Protocol shall only be made by Express Scripts (or any third party retained by Express Scripts) after review by the AGO to determine that such changes conform to the requirements of this Assurance and after written acceptance of those changes by the AGO.

5. Express Scripts shall fully cooperate with the AGO in implementing this Assurance. Upon request, and subject to the confidentiality provisions of G.L. c. 93A § 6, Express Scripts will provide the AGO (or any third-party auditor retained by the AGO) with data and documents sufficient to permit the AGO to verify Express Scripts' implementation of the Protocol. Should the AGO or its authorized auditor determine that a payor has overpaid Express Scripts for a workers' compensation prescription drug transaction, pursuant to the provisions of M.G.L. c. 152, 101 CMR 331.00, or other applicable governing law or regulation (an "AGO overcharge"), Express Scripts will either refund the AGO overcharge ("refund amounts") or, if Express Scripts contests in good faith the existence or amount of such AGO overcharge, provide

a written statement to the AGO setting forth the reasons for contesting such AGO overcharge. To the extent Express Scripts issues such refund amounts on or before ninety (90) days after the later of (i) the date on which the AGO initially notifies Express Scripts that the refund amount is required to be made, or (ii) if Express Scripts contests in writing the existence or amount of the AGO overcharge, the date on which the AGO makes a final determination in writing as to any owed refund amount, the AGO shall not seek to recover any additional amounts for such refunded AGO overcharge including multiples, penalties, attorneys' fees, or other costs.

6. By agreeing to bill and accept payments under the Protocol, Express Scripts is not agreeing, acknowledging, or admitting that the Protocol applies to, or is appropriate for, any prescription drug transactions other than those identified in the Protocol as Massachusetts workers' compensation prescription drug transactions. Nor is Express Scripts agreeing, acknowledging, or admitting that its past Massachusetts workers' compensation prescription drug pricing practices violated Massachusetts laws or regulations.

7. To the extent that Express Scripts is provided with funds by a pharmacy in the context of the pharmacy having performed a review and determined that it has previously overcharged Express Scripts for a prescription or set of prescriptions under the Massachusetts laws or regulations governing workers' compensation drug pricing or based on a protocol the pharmacy has agreed to with the AGO ("Pharmacy Funds"), Express Scripts shall, within thirty (30) days, provide notice to the AGO of such payment and shall, upon request, provide copies of all claims information and correspondence received by Express Scripts from such pharmacy relating to the payment.

8. It is Express Scripts' view that materials and information provided to the AGO as part of this investigation and during the implementation of this Assurance constitute confidential

commercial and trade secret information and have been or are provided pursuant to M.G.L. c. 93A, § 6, and thus are subject to the provision of M.G.L. c. 93A, § 6(6). By providing such information to the AGO (or its authorized auditor) in connection with the Investigation and/or with this Assurance and Protocol, Express Scripts has not and will not waive any rights that Express Scripts may have to protect against improper use or disclosure of its information.

9. This Assurance is not intended to impair any right of action that Express Scripts may have against any other person or entity, or any right of action that any person or entity other than the AGO might have against Express Scripts. Neither the terms of this Assurance nor the payment of any money hereunder is, nor shall either be construed to be, an admission of any wrongdoing, nor an admission to the allegations in this Assurance. Express Scripts expressly denies any liability or wrongdoing related to this matter.

10. Any funds or portion of funds paid under this Assurance may, at the discretion of the AGO, if not otherwise obligated, encumbered, or expended by February 6, 2023, be directed to the Treasurer for deposit in the General Fund.

11. This Assurance may be modified or supplemented only by a written document signed by both parties.

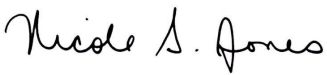
12. By signing below, Express Scripts agrees to comply with all of the terms of this Assurance. By signing below, the AGO agrees that this Assurance shall be in lieu of a civil action or proceeding against Express Scripts by the AGO for any acts or practices prior to the date of this Assurance related to the Investigation and the Investigation allegations.<sup>1</sup> The terms

---

<sup>1</sup> For purposes of clarity, this paragraph does not limit the right of the AGO to bring an action relating to a payment received by Express Scripts under paragraph 7 of this Assurance, if such payment is received after the date of this Assurance, even if the original pharmacy transactions related to that payment occurred prior to the date of this Assurance.

of this Assurance may be enforced by the AGO in a civil action or proceeding pursuant to G.L. c.  
93A, § 5.

**FOR:** Express Scripts Inc.

By: 

Nicole Jones  
Executive Vice President and  
General Counsel, Cigna Corp.

Dated: 11/04/2022

**FOR:** Attorney General, Maura Healey

By: 

Glenn Kaplan  
Assistant Attorney General  
Massachusetts Attorney General's Office  
Insurance and Financial Services Division  
Ashburton Place, 18th Floor  
Boston, Massachusetts 02108  
(617) 727-2200

Dated: 11/07/2022