



## I

American Chiropractic Association, Inc., Virginia Chiropractic Association, Inc., and individual doctors and patients of chiropractic medicine filed suit in this court against Trigon Healthcare, Inc., and affiliated companies based primarily on alleged anti-competitive activities of the defendants.

The defendants' motion to dismiss was granted in part and denied in part. *See Am. Chiropractic Ass'n, Inc. v. Trigon Healthcare, Inc.*, 151 F. Supp. 2d 723 (W.D. Va. 2001). The defendants thereafter filed an answer to the complaint listing fourteen affirmative defenses. In reply, the plaintiffs filed a motion to strike most of those affirmative defenses.

The parties have briefed the motion to strike and it is now ripe for decision.<sup>1</sup>

## II

The plaintiffs seek to strike the defendants' first, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth affirmative defenses pursuant to Fed. R. Civ. P. 12(f). The plaintiffs request the court to strike the

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<sup>1</sup> I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

listed affirmative defenses because they are “insufficiently pled, are immaterial, are insufficient, or a combination of those.” (Pls.’ Mot. to Strike at 4.)

The defendants in turn argue that their affirmative defenses are adequately pleaded according to the liberal pleading rules established by the Federal Rules of Civil Procedure.

The court may order sua sponte or upon motion “stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). However, the general rule is that Rule 12(f) motions are disfavored. “Both because striking a portion of a pleading is a drastic remedy and because it often is sought by the movant simply as a dilatory tactic, motions under Rule 12(f) are viewed with disfavor and infrequently granted.” 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1380 (2d ed. 1990). *See also Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 347 (4th Cir. 2001); *Clark v. Milam*, 152 F.R.D. 66, 70 (S.D. W.Va. 1993).

“Motions to strike a defense as insufficient . . . even when technically appropriate and well-founded . . . are often not granted in the absence of a showing of prejudice to the moving party.” Wright & Miller, *supra*, § 1381. Thus, the movant under Rule 12(f) faces a “sizeable burden.” *Clark*, 152 F.R.D. at 70.

The Federal Rules of Civil Procedure reflect a conscious decision to allow liberal pleading, sometimes referred to as “notice pleading.” *See* Fed. R. Civ. P. 8; *Conley v. Gibson*, 355 U.S. 41, 47-48 (1957). The rules apply this standard not only to allegations in the complaint, but also to defenses in the answer. *See* Fed. R. Civ. P. 7(a) (listing answer as a pleading).

According to the rules, “a party shall set forth affirmatively” certain defenses and “each averment of a pleading shall be simple, concise and direct.” Fed. R. Civ. P. 8(c) & (e). “The Federal Rules of Civil Procedure only require that an affirmative defense be definite enough to put the plaintiff on fair notice of its nature.” *Ferguson v. Guyan Mach. Co.*, No. 93-2593, 1995 WL 20793, at \*5 (4th Cir. Jan. 20, 1995) (unpublished). “An affirmative defense may be pleaded in general terms and will be held as sufficient, and therefore invulnerable to a motion to strike, as long as it gives plaintiff fair notice of the nature of the defenses.” Wright & Miller, *supra*, § 1274.

The appendix of forms to the rules contains examples of pleadings that conform to Rule 8. “The forms . . . are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.” Fed. R. Civ. P. 84. For example, form 20 lists a defense in its entirety: “The complaint fails to state a claim upon which relief can be granted.” Fed. R. Civ. P. app. at form 20.

Despite the leniency under the rules, courts do strike affirmative defenses in appropriate situations. A court may “strike defenses when they are clearly legally insufficient, such as when there is no *bona fide* issue of fact or law.” *Clark*, 152 F.R.D. at 70 (citation omitted). “[A] defense that might confuse the issues in the case and would not, under the facts alleged, constitute a valid defense to the action can and should be deleted.” *Id.*; *Gilmore*, 252 F.2d at 347 (citations omitted).

Given the allowances granted by the rules, the affirmative defenses challenged here are adequately pleaded. The defendants set forth their defenses in the answer in a “simple, concise and direct” manner. While the plaintiffs may have benefitted from a more explicit pleading, they have shown no prejudice caused by the defendants’ pleading. In addition, the defendants’ pleading has placed the plaintiffs on notice of the nature of the defenses that the defendants may assert in this case. The rules require nothing more.

However, the plaintiffs also challenge certain of the defendants’ affirmative defenses because they are not, in fact, defenses. The plaintiffs argue that the defendants’ fifth affirmative defense, claiming a violation of Rule 11, is not a defense. “A motion for sanctions . . . shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b).” Fed. R. Civ. P. 11(c)(1)(A). “The rule provides that requests for sanctions must be made as a

separate motion, *i.e.* not simply included as an additional prayer for relief contained in another motion.” *Id.*, advisory committee’s note. “Rule 11, as amended, requires presentation of a motion, and not the assertion of an affirmative defense.” *Krisa v. Equitable Life Assur. Soc.*, 113 F. Supp. 2d 694, 708 (M.D. Pa. 2000).

The movant may initiate proceedings under Rule 11 only by filing a separate motion with supporting evidence. Fed. R. Civ. P. 11(c)(1)(A). The twenty-one day “safe harbor” provision of Rule 11 ensures that the movant provide adequate notice of an alleged violation to the opposing party. *See* Fed. R. Civ. P. 11(c)(1)(A). Therefore, listing Rule 11 violations as an affirmative defense is both improper and unnecessary. This affirmative defense is improper because the answer is not a separate motion and the defense is unnecessary to provide notice to the opposing party because the safe harbor provision of the rule serves that purpose. Therefore, the plaintiffs’ motion to strike is granted as to the defendants’ fifth affirmative defense.

The plaintiffs also challenge the defendants’ fourteenth affirmative defense under the same theory. This defense states, “As a fourteenth separate, distinct and affirmative defense, Trigon intends to rely on all other properly provable defenses and reserves the right to amend its Answer to and through the time of trial.” (Defs.’ Answer at 26.)

Courts are reluctant to grant motions to strike merely to “prune” the pleadings, especially when no prejudice has been shown by the movant.

[B]ecause motions to strike . . . are not favored, often being considered “time wasters,” they usually will be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties. Thus, a motion to strike frequently has been denied when no prejudice could result from the challenged allegations, even though the matter literally is within the categories set forth in Rule 12(f).

Wright & Miller, *supra*, § 1382 (*quoting Pessin v. Keeneland Ass’n*, 45 F.R.D. 10, 13 (E.D. Ky.)). Here, the defendants’ affirmative defense adds little, if anything, to their pleading and therefore it is immaterial or redundant under Rule 12(f). However, it also does not harm the plaintiffs. In accordance with the general disfavor of motions to strike in the absence of prejudice to the movant, the plaintiffs’ motion to strike the defendants’ fourteenth affirmative defense is denied.

On the contrary, motions to strike are properly granted concerning withdrawn defenses. *See Am. Mach. & Metals, Inc. v. De Bothezat Impeller Co.*, 8 F.R.D. 306, 608 (S.D.N.Y. 1948). The defendants have indicated that they will not pursue the thirteenth affirmative defense alleging failure of service of process upon, and lack of personal jurisdiction over, Mid-South Insurance Company. (Defs’ Mem. in Opp. at 4 n.1.) Thus, the plaintiffs’ motion to strike is granted as to the defendants’ thirteenth affirmative defense.

### III

For the aforementioned reasons, it is **ORDERED** that the plaintiffs' motion to strike (Doc. No. 48) is granted in part and denied in part. The defendants' fifth and thirteenth affirmative defenses are stricken and the motion is otherwise denied.

ENTER: October 2, 2001

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United States District Judge