

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. JACK L. LIBERT,
Justice.

NATIONWIDE AFFINITY INSURANCE COMPANY OF AMERICA,

Plaintiff,

-against-

INDIVIDUAL CLAIMANT DEFENDANTS

**SHERRY ANN LAYNE,
EARL JASON BROOKS,
RON CALLISTE,
ARIEL HUGGINS**

HEALTHCARE PROVIDER DEFENDANTS

**WAHID MUHAMMAD, L.L.C.,
MEDISYS MANAGEMENT, L.L.C.,
THE JAMAICA HOSPITAL MEDICAL CENTER
DIAGNOSTIC AND TREATMENT CENTER
CORPORATION,
LIBERTY MEDICAL SERVICES, P.C.,
MEDICAL DIAGNOSTIC SERVICES, P.C.,
RADIOLOGY WORKS, P.C.,
TJH MEDICAL SERVICES, P.C.,
IVAN LAM, D.C.,
JHMC HOSPITAL CO. BETZ MITCHELL,
PHILLIP BALDERO, M.D.,
YOELI GIDEON, M.D.**

Defendants.

**TRIAL PART 29
NASSAU COUNTY**

**MOTION # 01
INDEX # 601765/17
MOTION SUBMITTED:
JUNE 21, 2017**

The following papers having been read on this motion:

- Notice of Motion/Order to Show Cause.....1**
- Cross Motion/Answering Affidavits.....2**
- Reply Affidavits.....3**

Plaintiff's motion for a default judgment against defendants Sherry Ann Layne, Earl Jason Brooks, Wahid Muhammad, L.L.C., Liberty Medical Services, P.C., Medical Diagnostic Services, P.C., Radiology

Works, P.C., Ivan Lam, D.C., and Philip Baldero, M.D. (Collectively “Defaulting Defendants”) for the relief demanded in the complaint, which is for a declaratory judgment is granted.

“To successfully oppose a motion for leave to enter a default judgment based on the failure to appear or timely serve an answer, a defendant must demonstrate a reasonable excuse for its delay and the existence of a potentially meritorious defense” (*Wassertheil v. Elburg, LLC*, 94 A.D.3d 753, 753, 941 N.Y.S.2d 679; see CPLR 5015[a][1]). Similarly, “[t]o extend the time to answer the complaint and to compel the plaintiff to accept an untimely answer as timely, a defendant must provide a reasonable excuse for the delay and demonstrate a potentially meritorious defense to the action” (*Mannino Dev., Inc. v. Linares*, 117 A.D.3d 995, 995, 986 N.Y.S.2d 578). “The determination of what constitutes a reasonable excuse lies within the trial court’s discretion” (*New York Hosp. Med. Ctr. of Queens v. Nationwide Mut. Ins. Co.*, 120 A.D.3d 1322, 1323, 992 N.Y.S.2d 361; *Jing Shan Chen v. R & K 51 Realty, Inc.*, 148 A.D.3d 689, 690–91, 48 N.Y.S.3d 474, 475 [N.Y. App. Div. 2017]). In determining whether to permit late service of an answer, courts should consider the extent of the delay, whether it was willful, presence or absence of prejudice, and the policy of resolving cases on their merits. (*Harczark v. Drive Variety, Inc.*, 21 AD3d 876 [2d Dept. 2005]). Furthermore, “it is within the sound discretion of the Court to determine whether the proffered excuse and the statement of the merits are sufficient.” (*Navarro v. A. Trenkman Estate, Inc.*, 279 A.D.2d 257, 719 N.Y.S.2d 34 [1st Dept. 2001] citing *Mediavilla v. Gurman*, 272 A.D.2d 146, 707 N.Y.S.2d 432 [1st Dept. 2001]).

As to the reasonable excuse offered, the Defaulting Defendants assert that the late service of answers was due to extensive delay in communication with medical providers. The Defaulting Defendants allege that the medical providers had to “review voluminous amounts of documents, including medical records, bills, and ledgers, and then provide them to counsel for purposes of elucidating the grounds of defendants’ defenses and counterclaims.” (see Aff. in Opp ¶4). Defaulting Defendants further allege that the nine-week delay in answering the complaint has not prejudiced the plaintiff, and is a *de minimis* delay in answering.

As to the meritorious defense, counsel for the individually named defendants, Sherry Ann Layne and Earl Jason Brooks assert as a meritorious defense only the unsupported statement that they “were present in the vehicle that was involved in the motor vehicle accident on October 26, 2015.” Defendant Wahid Muhammad, L.L.C., Liberty Medical Services, P.C., Medical Diagnostic Services, P.C., Radiology Works, P.C., Lam, and Baldero assert no meritorious defense. The proposed answer was verified by their attorney so it cannot be considered proof. While the nine week delay in answering is not prejudicial (see, *Williams v City of NY*, 85 AD2d 633, 445 NYS2d 18) the Defaulting Defendants did not prove a meritorious defense.

(see, *J.P. Equip. Rental & Materials, LLC v. Fid. & Guar. Ins. Co.*, 288 A.D.2d 187, 732 N.Y.S.2d 354, 355. [2001]).

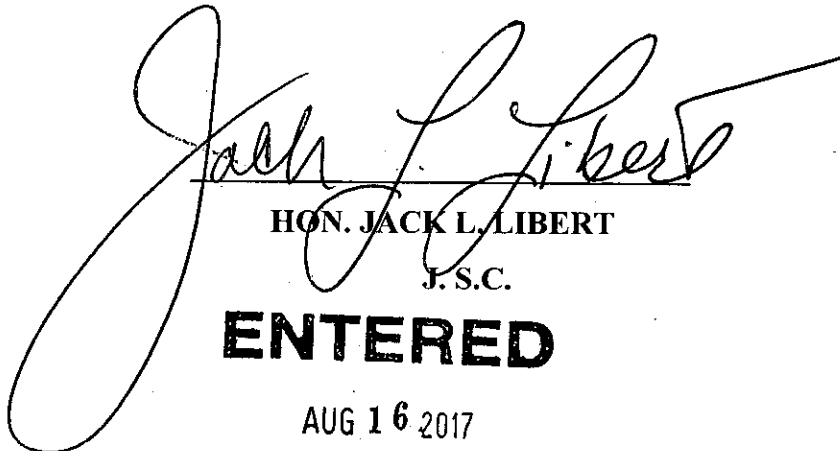
Accordingly, it is hereby

ORDERED, that a default judgment is granted against Sherry Ann Layne, Earl Jason Brooks, Wahid Muhammad, L.L.C., Liberty Medical Services, P.C., Medical Diagnostic Services, P.C., Radiology Works, P.C., Ivan Lam, D.C., and Philip Baldero, M.D.

ORDERED that the remaining parties appear for a Preliminary Conference on September 19, 2017 at 9:30 a.m. at the DCM Part at Nassau Supreme Court, 100 Supreme Court Drive, Mineola, New York.

ENTER

DATED: August 14, 2017

A large, stylized handwritten signature in black ink, reading "Jack L. Libert". The signature is written over a horizontal line.

HON. JACK L. LIBERT
J.S.C.

ENTERED

AUG 16 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE