

**Academic Health Professionals Ins. Assn.-A
Reciprocal Insurer v SB Clinical Practice Mgt. Plan,
Inc.**

2019 NY Slip Op 31266(U)

May 1, 2019

Supreme Court, New York County

Docket Number: 655580/2018

Judge: Marcy Friedman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

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ACADEMIC HEALTH PROFESSIONALS INSURANCE ASSOCIATION - A RECIPROCAL INSURER, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> SB CLINICAL PRACTICE MANAGEMENT PLAN, INC., et al., <p style="text-align: center;">Defendants.</p>	INDEX NO. <u>655580/2018</u> MOTION DATE _____ MOTION SEQ. NO. <u>010 011</u> DECISION AND ORDER
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HON. MARCY S. FRIEDMAN:

The following e-filed documents, listed by NYSCEF document number (Motion Seq No 010) 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 131, 140, 141, 142, 147, 156, 157, 164, 168

were read on this motion to/for EXTEND - TIME

The following e-filed documents, listed by NYSCEF document number (Motion Seq No 011) 158, 159, 160, 161, 162, 163, 165, 167, 169, 170, 199, 200, 201, 202, 203, 204, 205, 222

were read on this motion to/for EXTEND - TIME

Plaintiff Academic Health Professionals Insurance Association – A Reciprocal Insurer (Academic) brings two separate motions for an order, pursuant to CPLR 306-b, extending its time to serve the summons and complaint on individual defendant subscribers. Motion Sequence No. 010 involves 1200 physician defendants identified by Academic as “Stony Brook Subscribers.” Motion Sequence No. 011 involves 120 physician defendants identified by Academic as “NYMC Subscribers.” The branch of the motion in Sequence No. 010 for an order, pursuant to CPLR 308 (5), approving alternative service has been withdrawn, as the parties have reached an agreement as to service.

CPLR 306-b provides that if service of the summons and complaint is not made within the prescribed 120-day period after filing, “the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service.” It is well settled that “[a]n extension of time for service is a matter within the court’s discretion.” (Leader v Maroney, Ponzini & Spencer, 97 NY2d 95, 101 [2001].) A showing of “reasonable diligence” in effecting service is relevant to demonstrate good cause, but is not required to satisfy the interest of justice standard for an extension and is “simply one of many relevant factors to be considered by the court in applying the latter standard.” (Id., at 104; accord Nunez-Ariza v Nell, 161 AD3d 614, 614 [1st Dept 2018].) These factors include “expiration of the Statute of Limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff’s request for the extension of time, and prejudice to defendant.” (See Leader, 97 NY2d at 105-106.)

Applying this standard, the court holds that Academic meets both the good cause and the interest of justice standards. The court finds that Academic exercised due diligence in serving the Stony Brook Subscribers based on its ostensibly reasonable expectation that the practice group defendants would accept service for the individuals and based on the efforts of its process server to arrange for service through the Legal Department. (Academic Memo. In Supp., at 4 [NYSCEF Doc No 112]; Aff. of Larry Radler, ¶ 7.) The interest of justice will also be served by affording the 60-day extension requested by Academic. In so holding, the court finds that Academic makes a sufficient showing, at this juncture, of the potential merit of the action (see Leader, 97 NY2d at 105), and that the delay in service has not been lengthy and has not resulted in prejudice to defendants. (See id.)

The court further finds that the interest of justice will be served by affording Academic the requested 60-day extension to serve the NYMC Subscribers. As in the case of the Stony Brook Subscribers, Academic did not initially attempt service on the individuals based on its ostensibly reasonable expectation that the practice group defendants would accept service for them. Academic's process server subsequently made an error as to the place at which service should be made. This mistake is excusable as defendants have not made any showing of prejudice, the potential merit of the action has been sufficiently shown, and the delay in service has not been lengthy. (See Leader, 97 NY2d at 105.) Under these circumstances, the fact that the 120-day deadline for service has passed is not a bar to the granting of the extension. (See Matter of Baumann & Sons Buses, Inc. v Ossining Union Free Sch. Dist., 121 AD3d 1110, 1113 [2d Dept 2014]; Vincent C. Alexander Commentaries, McKinney's Cons Laws of NY, Book 7B CPLR 306-b:3; compare Johnson v Concourse Village, Inc., 49 AD3d 410 [1st Dept 2010], lv denied 15 NY3d 707; Umana v Sofola, 149 AD3d 1138 [2d Dept 2017].)

Finally, defendants make no showing that numerous individual subscriber defendants will assert claims in either action that the statute of limitations has passed during, or prior to, the 120-day period. Such passage does not preclude the granting of the extension. (See Leader, 97 NY2d at 105-106.) Nor will the extension prevent assertion by the individual defendants of any statute of limitations defenses based on the passage of the statute prior to the filing of the summons and complaint.

It is hereby ORDERED that the motion of plaintiff Academic Health Professionals Insurance Association – A Reciprocal Insurer (Academic) for an order, pursuant to CPLR 306-b, extending its time to serve the summons and complaint on individual defendant subscribers identified in Motion Sequence No. 010 and 011 is granted to the extent that plaintiff's time to

serve the summons and complaint is extended for 60 days from the date of entry of this order;
and it is further

ORDERED that nothing herein shall prevent assertion of any statute of limitations
defenses by any of the individual subscriber defendants.

5/1/2019
DATE


MARCY S. FRIEDMAN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: