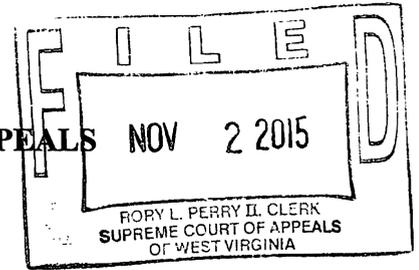


IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

No. 15-0821



**STACY STEVENS, PERSONAL
REPRESENTATIVE OF THE ESTATE
OF SCOTT STEVENS, DECEASED,**

**Petitioner,
v.**

**MTR GAMING GROUP, INC., d/b/a
MOUNTAINEER CASINO & RESORT;
and INTERNATIONAL GAME
TECHNOLOGY, INC.,**

Respondents.

Respondents.

**(ON ORDER CERTIFYING
QUESTIONS FROM THE
UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF WEST VIRGINIA,
CIVIL ACTION NO.
5:14-CV-104)**

PETITIONER'S BRIEF IN SUPPORT OF CERTIFIED QUESTIONS

Presented by:

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STACY STEVENS, as Personal Representative of the)	
Estate of Scott Stevens, Deceased.)	
Plaintiff Below, Petitioner,)	
vs.)	
)	No. 15-0821
)	
MTR GAMING GROUP, INC., d/b/a)	
MOUNTAINEER CASINO, RACETRACK &)	
RESORT, and INTERNATIONAL GAME)	
TECHNOLOGY, INC.,)	
)	
Defendants Below, Respondents.)	

PETITIONER STACY STEVENS’S BRIEF IN SUPPORT OF CERTIFIED QUESTIONS

This is a case before the Court upon certified questions presented by the United States District Court for the Northern District of West Virginia (Judge Stamp). Petitioner, Stacy Stevens, as Personal Representative of the Estate of Scott Stevens, deceased, by counsel, and pursuant to the provisions of Rule of Appellate Procedure 17(b)(1) and this Court’s Scheduling Order entered on August 28, 2015, hereby submits Petitioner’s Brief addressing the questions certified by the United States District Court for the Northern District of West Virginia.

CERTIFIED QUESTIONS PRESENTED

Pursuant to the Uniform Certification of Questions of Law Act, West Virginia Code § 51-1A-1, *et. seq.*, the United States District Court for the Northern District of West Virginia has requested that the following questions of law be answered by the Supreme Court of Appeals:

1. What duty of care exists as to each Defendant given the allegation that the slot machines or video lottery terminals are designed through the use of mathematical programs and algorithms to create the illusion of chance while instead fostering a disassociated mental state to

protect casino patrons from becoming addicted to gambling by using these machines or terminals?

2. Are the gambling machines or terminals and specifically the software in them a “product” under West Virginia products liability law?

3. What legal duties, if any, arise under *Moats v. Preston County Commission*, 206 W. Va. 8, 521 S.E.2d 180 (1990), given that the suicide of Scott Stevens was a possible intervening cause?

STATEMENT OF THE CASE

Petitioner, Stacy Stevens, is the widow of Scott Stevens. She brings this cause of action as the personal representative of Scott Stevens’s estate to recover damages from the Respondents, MTR Gaming Group, Inc. d/b/a Mountaineer Casino, Racetrack & Resort (“MTR”) and International Game Technology, Inc. (“IGT”). App. R. 1. Scott Stevens died on August 13, 2012, as the result of a self-inflicted gunshot wound. App. R. 9. Prior to his death, Scott Stevens had become addicted to gambling on slot machines. App. R. 9. A significant portion of his gambling took place at Mountaineer Casino and involved the use of a slot machine designed, manufactured, and distributed by Respondent IGT. App. R. 9-15.

MTR owns and operates Mountaineer Casino, Racetrack & Resort (“Mountaineer Casino”), a commercial gaming casino in Chester, West Virginia. App. R. 7-8. IGT is engaged in the distribution and sale of computerized gambling equipment, software, and network systems worldwide. App. R. 8. IGT manufactured and sold or leased gambling slot machines used by Scott Stevens when he visited Mountaineer Casino. App. R. 8.

Ms. Stevens's lawsuit seeks to recover damages from both Respondents for Scott Stevens's wrongful death. Petitioner alleges negligent and intentional breach of duty of care to Scott Stevens by MTR. App. R. 15-18. Petitioner's suit also asserts claims against both Respondents for premises liability, intentional infliction of emotional distress, defective product design and product use defectiveness, and failure to warn. App. R. 18-25. Petitioner's suit seeks both compensatory and punitive damages. App. R. 25-26.

As alleged in Ms. Stevens's Complaint, as a result of playing the above slot machines or video lottery terminals, Scott Stevens became addicted to playing those machines, lost money thereon, and in desperation, embezzled money from his employer. App. R. 9. After he was fired by his employer, Scott Stevens continued to gamble on these same slot machines and, to do so, took money from his family savings, 401(k) account, and his children's college fund. App. R. 9.

Petitioner's Complaint alleges that Scott Stevens did not voluntarily become addicted to gambling. App. R. 9-15, 21. The algorithms that govern slot machines' win/loss functions were intentionally concealed by IGT from patrons, and the patrons who use these machines or terminals do not know and are not warned that the machines are designed to cause and foster the loss of willpower and rational decision-making capacities. App. R. 9-15. The machines carry no warning at all. App. R. 9-15. A modern slot machine incorporates a sophisticated computer, designed and engineered to create, cause, and encourage fast, continuous, and repeat betting. App. R. 3, 9-10. As expressed in the Complaint, the "inability to stop losing time and money to these gambling machines is not a failure to exercise willpower but, rather, an effect of physiological changes that erode and weaken willpower." App. R. 14. Video lottery terminals

manufactured by IGT were sold and distributed to MTR and were at the Mountaineer Casino at all times involved in this action. App. R. 3.

Scott Stevens suffered from disordered gambling. According to the Diagnostic and Statistical Manual of Mental Disorders, (both and 4th and 5th Editions) published by the American Psychiatric Association, the condition of disordered gambling is associated with severe adverse health and other consequences for individuals. App. R. 11-13. About half the individuals in treatment for a gambling disorder have suicidal ideation, and about 17% have attempted suicide. App. R. 13. Petitioner alleges that Scott Stevens suffered from severe emotional distress because of the conduct of MTR and IGT, and furthermore, that his emotional distress was a substantial factor in bringing about his suicide on August 13, 2012. App. R. 3-4, 44. As the District Court observed, “[i]t is alleged that rather than cause the suicide, MTR and IGT had a duty to prevent the suicide from occurring.” App. R. 4.

The family of Scott Stevens was not aware of his addiction to slot machines or video lottery terminals, and they were not aware of his suicidal ideation. App. R. 9. The Complaint does not allege that MTR or IGT were in any position of special relationship with Scott Stevens, such as to be a caretaker of Scott Stevens. App. R. 4.

In response to the Complaint, both Respondents filed separate motions to dismiss. App. R. 27, 53. Following briefing and oral argument, both motions to dismiss were denied without prejudice, and the United States District Court for the Northern District of West Virginia (Judge Stamp) issued an order of certification to this Court noting a lack of controlling precedent on the issues presented. App. R. 1. The District Court relied upon the Uniform Certification of Questions of Law Act, West Virginia Code § 51-1A-1, *et seq.* App. R. 1. The action was stayed

pending an answer to the certified questions of law. App. R. 5. This Court's scheduling order followed.

SUMMARY OF THE ARGUMENT

Disordered, or compulsive gambling, is a form of addiction well-recognized in the medical field. Its symptoms are set forth in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, in both the 4th and 5th editions. Persons who exhibit the characteristics of compulsive or disordered gambling are at a notably higher risk of suicidal ideation and suicide attempts than those who do not exhibit the characteristics of a gambling disorder. MTR was aware that Scott Stevens was a patron afflicted with disordered gambling, yet despite (and *because* of) its knowledge of Scott Stevens's gambling disorder, MTR engaged in actions to induce, encourage, and facilitate Scott Stevens's continued gambling at its facility and on its slot machines. These actions of MTR were taken with the intention, and for the purpose, of profiting from Mr. Stevens and his addiction, and such profit was directly realized by MTR as a result.

IGT specializes in the design, development, manufacturing, distribution, and sale of computerized commercial gambling equipment, software, and network systems worldwide. As such, IGT was aware that disordered gambling is a condition affecting individuals who play its games and gaming devices, and that these individuals are at a markedly increased risk of suicide. IGT acted with knowledge and intent to take advantage of casino patrons, including Scott Stevens, to exploit them and to cause harm to them by engineering slot machines to promote behaviors associated with addiction. The slot machines engineered, manufactured, and sold or leased by IGT and MTR are intentionally designed to manipulate the human mind by creating a

dissociated mental state in slot machine players. It was known to both IGT and MTR that these machines affect the manner in which an individual's brain functions, causing physiological changes in brain activity which manifests as addiction and an inability to cease use of the slot machine. In addition to profiting from Mr. Stevens's addiction, MTR contributed to Scott Stevens becoming a compulsive or disordered gambler in the first place.

Under these circumstances, West Virginia law supports the conclusion that Respondents had a duty of care to prevent the threatened harm to Scott Stevens. Moreover, under West Virginia law, it is well-established that one who engages in affirmative conduct, and thereafter realizes or should realize that such conduct has created an unreasonable risk of harm to another, is under a duty to exercise reasonable care to prevent the threatened harm.

As Petitioner demonstrates below, gambling machines or slot machines, notwithstanding their computerized components, remain "products" subject to West Virginia products liability law. The mere fact that the machines operate electronically and contain software in no way diminishes their standing as a "product." As a product, Petitioner may raise the issue that IGT's slot machines are defectively designed, and that the defective design proximately caused Scott Stevens's injury.

Regarding the final certified question and the interpretation of *Moats v. Preston County Commission*, 206 W. Va. 8, 521 S.E.2d 180 (1990), the suicide of Scott Stevens is not an intervening act that precludes recovery. Respondents had a duty to prevent the suicide from occurring in that they were aware of the potential for suicide, yet they failed to take any action to prevent the suicide from occurring.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule of Appellate Procedure 18(a), Petitioner believes that oral argument is appropriate in this case under Rule of Appellate Procedure 20(a)(1) and (2).

ARGUMENT

This case arrives before the Supreme Court of Appeals of West Virginia following the submission of Fed. R. Civ. P. 12(b)(6) motions filed by both Defendants in the United States District Court for the Northern District of West Virginia. When ruling on such motions to dismiss for failure to state a claim upon which relief may be granted, the Court must accept all well pleaded facts as true and view them in the light most favorable to the non-moving party, in this instance, the Plaintiff. For purposes of this briefing, the operative facts are contained in the Complaint and are not subject to challenge.

Of course, in order to prevail in this lawsuit, Petitioner, as Plaintiff, must prove the allegations of the Complaint; however, the issue at this juncture is whether such allegations, if proved, will as a matter of law support a judgment for the Plaintiff. Petitioner respectfully provides the following responses to the certified questions.

QUESTIONS

1. **What duty of care exists as to each Defendant given the allegation that the slot machines or video lottery terminals are designed through the use of mathematical programs and algorithms to create the illusion of chance while instead fostering a disassociated mental state, to protect casino patrons from becoming addicted to gambling by using these machines or terminals?**

The duty of care owed by Respondents IGT and MTR is the same. As alleged in the complaint, both Respondents were aware of the slot machine design and its effects upon patrons including Scott Stevens; his injury was foreseeable and neither party can escape liability. Both parties were well aware of the potential for addiction to IGT's machines at Mountaineer Casino, as well as the potential consequences of that addiction. In the face of this knowledge, neither IGT nor MTR undertook any effort whatsoever to intervene to protect Scott Stevens or other patrons. App. R. 10-18, 23-25.

The West Virginia law regarding duty applies equally to both Defendants. "[N]egligence is the violation of the duty of taking care under the given circumstances," which is "always relative to some circumstances of time, place, manner, or person." *Dan Ryan Builders, Inc. v. Crystal Ridge Dev., Inc.*, 1:09CV161, WL 5352844 (N.D.W. Va., Sept. 24, 2013), citing *Marcus v. Stabs*, 230 W.Va. 127, 736 S.E.2d 360, 370 (W. Va. 2012) (quoting *Dicks v. Liverpool Salt & Coal Co.*, 41W.Va. 511, 23 S.E. 582 (W. Va. 1895)). The determination of whether a defendant owes a duty of care to the plaintiff will be rendered by the Court as a matter of law. Syl. Pt. 5, *Aiken v. Debow*, 208 W. Va. 486, 541 S.E.2d 576 (W. Va. 2000). West Virginia has recognized that "[d]uty is not, however, an inflexible principle." *Strahin v. Cleavenger*, 216 W. Va. 175, 184, 603 S.E.2d 197, 206 (2004). This Court has found that:

[t]he ultimate test of the existence of a duty to use care is found in the foreseeability that harm may result if it is not exercised. The test is, would the ordinary man in the defendant's position knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result?

Syl. Pt. 3, *Sewell v. Gregory*, 179 W.Va. 585, 371 S.E.2d 82 (1988). Moreover, West Virginia law has long provided that one who engages in affirmative conduct, and thereafter realizes or

should realize that such conduct has created an unreasonable risk of harm to another, is under a duty to exercise reasonable care to prevent the threatened harm. *Robertson v. LeMaster*, 171 W. Va. 607, 611, 301 S.E.2d 563, 567 (1983), citing *Restatement (Second) Torts* § 321 (1965). Thus, the duty owed in the instant case, as expressed in *Robertson v. LeMaster*, “is . . . to conform to the legal standard of reasonable conduct in light of the apparent risk.” *Id.*

Petitioner’s Complaint filed in the U.S. District Court sets forth the various injuries sustained by Scott Stevens as a result of the intentional, wrongful conduct of the Respondents. Indeed, the Complaint is replete with facts that demonstrate that IGT and MTR were on notice and that the risk of harm was foreseeable. In addition to allegations that MTR knowingly and willingly took advantage of patrons with gambling disorders, like Scott Stevens, the Complaint specifically states:

Scott Stevens did not voluntarily become addicted to gambling. The algorithms that govern slot machines’ win/loss functions have been intentionally concealed by IGT from patrons. Users do not know, and are not warned, that the machines are designed to cause and foster the loss of will power and rational decision-making capacities. There are no appropriate warnings on the slots; indeed, the obfuscation is intentional and strategic on the part of the manufacturer to maximize “time on device.”

App. R. 14. Further, Petitioner’s Complaint stated:

Unknown to gamblers when they begin to gamble is their markedly increased chance of attempting suicide, and succeeding in the attempts, as a result of becoming trapped in the psychological loss of control, caused, in whole or part, by use of the machines, including those provided to patrons by the defendants. However, the fact that use of slot machines can cause, or materially contribute, to social, mental, and physical harm to users and increase the chance of attempting and/or committing suicide is known to MTR and to Mountaineer Casino, and IGT. In light of this knowledge, along with Mountaineer employees’ direct witnessing of Scott Stevens’ problem gambling behavior and the data that management kept on

file on the time and money he spent at the casino, his suicide was a foreseeable event – and yet no attempts were made to intervene.

App. R. 15. Although Respondents' duty is defined by case precedent, it is important to consider the particular roles of each Respondent and the duty that arises from those facts.

Duty of IGT

IGT is the manufacturer and distributor of the slot machines at issue; Mountaineer Casino purchases, uses, and promotes IGT's slot machines in its casino. App. R. 11. IGT is responsible for the design of the slot machine, including the algorithms that determine the win/loss functions that it intentionally conceals from patrons. App. R. 14. IGT's slot machines "cause and foster physical changes in brain functioning and behavior of patrons, such as Scott Stevens, and cause and contribute to their lost of willpower to the extent that patrons desire to continue in this dissociated state even when doing so is irrational or unhealthy." App. R. 14. These effects are intended and known by IGT as they are part of the very design of its machines.

Not only does IGT create an "illusion of chance" in its machines but it also leads participants to "play;" *i.e.*, they are convinced that they will also have fun. Instead, insidious harm can befall them. The harm is designed, in that the machine manufacturer plans and effectuates mathematical programs and algorithms so that the slots do not use "chance." Instead, the "outcomes of each spin are based on mathematical algorithms programmed into the machine's microprocessor and are shown to players via symbols displayed on its reels. A modern slot machine incorporates a sophisticated computer, designed and engineered to create, cause, and encourage fast, continuous, and repeat betting." App. R. 9. Restated, players have no input into the results of the slot machines—it is the computer that determines the outcomes. "Machine gambling is a potentially inexhaustible activity; the activity ends only when a person self-stops,

or when his financial resources are depleted. The operational logic of slot machine design and mathematical programming is to erode gamblers' capacity to "self-stop" and in this way to keep them seated and playing until their funds are depleted, and in this sense they approach every gambler as a potential addict—that is, as someone who cannot stop until his funds are gone." App. R. 14-15.

As a result, West Virginia law establishes that IGT "is under a duty to exercise reasonable care to prevent the threatened harm to another," of which IGT is well aware. *Robertson v. LeMaster*, 171 W. Va. 607, 611, 301 S.E.2d 563, 567 (1983).

Duty of MTR

Petitioner's Complaint alleged with particularity that MTR engaged in affirmative conduct, including enticing Scott Stevens to gamble, and that MTR knew or should have known that such conduct created an unreasonable risk of harm to Scott Stevens, thereby imposing upon MTR a duty to exercise reasonable care to prevent the threatened harm. *Robertson*, 171 W. Va. at 611, 301 S.E.2d at 567. Instead, MTR took affirmative actions to cultivate Scott Stevens's addiction to slot machines by purchasing or leasing machines specifically engineered to foster addictive, compulsive, or disordered gambling by altering the physiology of the brain. App. R. 14. MTR, like IGT, had a duty to exercise reasonable care to prevent the threatened harm to Scott Stevens.

2. Are the gambling machines or terminals and specifically the software in them a "product" under West Virginia products liability law?

This certified question invites an analysis of whether a component part is a "product," for product liability purposes, in that software is certainly an important component part of the

slot machines at issue in this case. To be clear, Petitioner’s Complaint does not allege that the gambling machines’ software, standing alone, is a defective product, rather, Petitioner contends that the gambling machines or terminals, which operate using software, are defective. *Morningstar v. Black & Decker Mfg. Co.*, 162 W. Va. 857, 253 S.E.2d 666 (1979). Moreover, it is important to consider that there is no West Virginia authority to support a position that either gambling machines or specifically the software they contain are *not* “products” within the meaning of West Virginia products liability. With those facts in view, Petitioner further responds to the certified question presented.

The answer to the question is “yes.” Gambling machines and terminals, along with their software, are products within the meaning of West Virginia products liability law. The Restatement of Torts provides some insight and support:

- (a) A product is tangible personal property distributed commercially for use or consumption. Other items, such as real property and electricity, are products when the content of their distribution and use is sufficiently analogous to the distribution and use of tangible personal property that it is appropriate to apply the rules stated in this Restatement.

Restatement (Third) of Torts: Prod. Liab. § 19 (1998). Without question, the gambling machines were manufactured and distributed by IGT “commercially for use” to the Mountaineer Casino. To be sure, the Restatement definition of “product” encompasses the gambling machines as well as their software. Indeed, if software is to be considered a separate “component part” of a product, the same is true. In particular, whether an item is a component part or fully assembled, the Restatement indicates that component parts are to be considered products as well:

- b. Tangible personal property: in general.* For purposes of this Restatement, most but not necessarily all products are tangible personal property. In certain situations, however, intangible

personal property (see Comment *d*) and real property (see Comment *e*) may be products. **Component parts are products, whether sold or distributed separately or assembled with other component parts.** An assemblage of component parts is also, itself, a product. Raw materials are products, whether manufactured, such as sheet metal; processed, such as lumber; or gathered and sold or distributed in raw condition, such as unwashed gravel and farm produce. For treatment of the special problems presented when plaintiffs join sellers of component parts and raw materials in actions against those who subsequently combined those materials to create defective products, see § 10.

Comment b, Restatement (Third) of Torts: Prod. Liab. § 19 (1998) (emphasis supplied).

The gambling machines at issue here all contain software. As the Restatement makes clear, whether or not the hardware (the machines) and the software are distributed as one component or separately, they constitute products. In that there is no West Virginia statutory or common law suggesting otherwise, the Court may reasonably rely upon the Restatement as persuasive guidance on this issue. In so doing, the Court should answer this certified question affirmatively and conclude that the gambling machines, terminals, and the software used with those machines or terminals, are all products under West Virginia law.

3. What legal duties, if any, arise under *Moats v. Preston County Commission*, 206 W. Va. 8, 521 S.E.2d 180 (1990), given that the suicide of Scott Stevens was a possible intervening cause?

Under West Virginia law, “recovery for wrongful death by suicide may be possible where the defendant had a duty to prevent the suicide from occurring.” *Moats v. Preston Cnty. Comm’n*, 206 W. Va. 8, 17, 521 S.E.2d 180, 189 (1999). In *Moats*, this Court responded in the negative to a certified question asking whether the plaintiff’s claims were barred due to the fact that the decedent had committed suicide. *Id.* at 521. The Court went on to provide some general

framework applicable to cases involving death by suicide, stating that for a plaintiff to proceed with such a claim, the plaintiff must show “the existence of some relationship between the defendant(s) and the decedent giving rise to a duty to prevent the decedent from committing suicide.” *Id.* Under existing West Virginia jurisprudence, this duty has been generally found in situations where “one of the parties knowing the other is suicidal, is placed in the superior position of caretaker of the other who depends upon that caretaker either entirely *or with respect to a particular matter.*” *Moats* at 17 (citing *Comment, Civil Liability for Causing or Failing to Prevent Suicide*, 12 Loy. L.A.L. Rev. 967, 990 (1979)) (emphasis added).

Significantly, the Court in *Moats* did not foreclose the possibility that such a duty might arise in other circumstances, or that a claim could proceed under other factual scenarios. The Court concluded that “. . .we find that a wrongful death action may be maintained where the decedent committed suicide,” it just did not reach such a conclusion in that particular case. *Moats* at 72.

The facts pled in the Complaint in the instant case shed some light on the issue of Respondents’ duty. First, because of the note that he left, it is known that Scott Stevens’s gambling addiction was the reason for his death. App. R. 15. Second, it is known that the algorithms that govern the slot machines were intentionally concealed by Respondents to the patrons in order to maximize Respondents’ profits. App. R. 9, 13-14. Third, his death by suicide was reasonably foreseeable, and as the Complaint alleges, Mountaineer Casino had a duty to exercise reasonable care and to avoid affirmative actions to take advantage of such a patron. App. R. 13-14. Respondents took no actions consistent with these duties or its duty to prevent the suicide from occurring, as recognized in *Moats*.

Harbaugh v. Coffinbarger, 209 W.Va. 57, 64-65, 543 S.E.2d 338, 345-46 (2000), also addressed the issue of whether suicide can be an intervening cause. In that case, the Court looked to a Tennessee case, *White v. Lawrence*, 975 S.W.2d 525 (Tenn. 1998), which noted that the “crucial inquiry is whether the defendant’s negligent conduct led to or made it reasonably foreseeable that the deceased would commit suicide. If so, the suicide is not an independent intervening cause breaking the chain of legal causation.” *Id.* at 530. As noted, Respondents’ negligent conduct in failing to warn about the dangers of addictive gambling, as well as its failure to discourage Scott Stevens’s gambling in any way, despite knowledge of the substantial risk of suicidal ideation, not only establish a duty, but these factors also lend support to the fact that his suicide was reasonably foreseeable under these circumstances. Indeed, Respondents actually encouraged the acts which led to Scott Stevens’s suicide.

Moats did find that a wrongful death action may be maintained where the decedent committed suicide. Based upon that case and the facts alleged in the complaint, Petitioner, Stacy Stevens, has crossed the threshold to enter the courtroom where she can present such evidence.

CONCLUSION

Petitioner, Stacy Stevens, respectfully asks this Court to answer the first certified question in accordance with already existing, and well-established, West Virginia law which imposes a duty upon one who engages in affirmative conduct, and thereafter realizes or should realize that such conduct has created an unreasonable risk of harm to another, to exercise reasonable care to prevent the threatened harm. The Respondents have engaged in affirmative conduct, which led to the foreseeable risk of harm to Scott Stevens, yet not only did Respondents fail to exercise any degree of reasonable care to prevent such harm, they actively enticed Scott

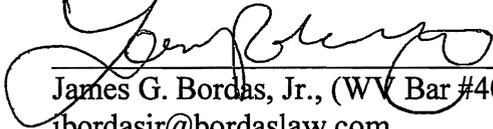
Stevens further into the harm for their own profit. Simply because the facts of this case involve a context not yet specifically examined by this Court does not absolve the Respondents of their duty or liability under long-standing principles of West Virginia law.

With respect to the second question certified to this Court, Petitioner asks that this Court consider and adopt the principles set forth in the Restatement, which lends support to the conclusion that conclude that the gambling machines, terminals, and the software used with those machines or terminals, and should be recognized as such under West Virginia law, particularly in the absence of case law or statute that would indicate otherwise.

Regarding the final certified question, and the interpretation of this Court's decision in *Moats v. Preston County Commission*, 206 W. Va. 8, 521 S.E.2d 180 (1990), the Petitioner seeks for this Court to determine that the suicide of Scott Stevens did not constitute an intervening act that would preclude recovery because Scott Stevens's death by suicide was the result of his addiction to gambling, which such addiction was the result of intentional, affirmative conduct by the Respondents. In addition to being the direct result of the Respondents affirmative conduct, Scott Stevens's suicide was a foreseeable consequence of the Respondents' affirmative conduct, and the Respondents took no action to prevent harm to Scott Stevens, and in fact, sought to continue to profit therefrom. Accordingly, Petitioner respectfully asks that this honorable Court answer the certified questions in the manner set forth above, and have this matter resent to the United States District Court for the Northern District of West Virginia, with instructions to rule on the Respondents' Motions to Dismiss in accordance with this Court's answers to the certified questions.

Very respectfully submitted,

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of Scott Stevens, deceased, Petitioner,



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CERTIFICATE OF SERVICE

Service of the foregoing *Petitioner's Brief in Support of Certified Questions* was had upon counsel of record herein by mailing a true and exact copy thereof, by regular United States Mail, postage prepaid, this 30th day of October, 2015 as follows:

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