

No. 34712 - **Leslie Equipment Company, a West Virginia Corporation, Plaintiff below,  
Appellee v. Wood Resources Company, L.L.C., et al.**

**FILED**

**October 30, 2009**

released at 10:00 a.m.  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Ketchum, Justice, concurring:

I concur completely with the majority opinion. I write to express my concern that Rule 60(b)(4) requires that a motion to set aside a void judgment must be filed within a reasonable period of time after entry of the void judgment.

What is a reasonable period of time? If a defendant learns 10 years later that a void judgment has been entered against him or her, is it too late to set aside the void judgment under Rule 60(b)(4)? What constitutes a “reasonable time” is not subject to precise definition. *Savas v. Savas*, 181 W.Va. 316, 319 n. 2, 382 S.E.2d 510, 513 n. 2 (1989) (The term “reasonable time” is not susceptible of a precise definition). Different circuit judges will apply different definitions to the term “reasonable time.”

There should be no time limit to set aside a void judgment. Once void, always void. Although Rule 60(b) indicates that relief from a judgment may also be sought through an independent action, Rule 60(b) should be amended to eliminate any time limit for setting aside a judgment that is void.

I, therefore, concur in the decision of this Court.

I am authorized to state that Justice Workman joins me in this concurrence.