

**IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA**

Docket No. 23-ICA-203

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HP, Inc., Petitioner

Appeal from a final order  
Dated April 26, 2023  
Circuit Court of Putnam Co., WV  
Case No. 21-C-142

v.

Judith Thomas, Respondent

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**RESPONDENT'S BRIEF**

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Respondent, Pro Se

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## ASSIGNMENTS OF ERROR

HP, Inc. ["HP"] appeals an *Order Denying HP, Inc. 's Rule 60(b) Motion to Set Aside Default Judgment* ["*Denial Order*"] entered by the Circuit Court of Putnam County, West Virginia ["Circuit Court"] and asserts Assignments of Error unrelated to the order appealed.

HP's Assignment of Error #2 states the Circuit Court abused its discretion in awarding Respondent, a *pro se* litigant, attorney's fees in the underlying *Amended Final Order for Default Judgment* ["*Default Judgment*"] and Assignment of Error #3 states the Circuit Court erroneously awarded Ms. Thomas \$20,000.00 in punitive damages in the *Default Judgment*.

Only assignments of error relating to the Circuit Court's *Rule 60(b) Denial Order* can be considered by this Court as appellate review of a Rule 60(b) denial is limited to considering the denial itself and not the substance of the underlying judgment nor the final judgment order. HP's assignments of error regarding punitive damages, attorney fees, and costs concern the substance of the Circuit Court's *Default Judgment* in the underlying action and are outside the limited appellate review permissible in HP's appeal of the *Denial Order*.

HP's Assignment of Error #1 states the Circuit Court abused its discretion in denying HP's request to vacate the *Default Judgment* for lack of subject matter jurisdiction. If this alleged error is considered, it should be as a subpart of HP's Assignment of Error #4 claiming the Circuit Court erred in failing to find HP showed good cause to vacate the *Default Judgment*. Good cause requires proof of a Rule 60(b) ground for vacating the judgment and HP claims the *Default Judgment* is void for lack of subject matter jurisdiction.

HP's Assignment of Error #4 states the Circuit Court erred in denying its' Rule 60(b) motion to vacate the *Default Judgment* for failure to show good cause. Ms. Thomas agrees that HP's Assignment of Error #4 is a proper matter for consideration in this Rule 60(b) appeal. When restated using the applicable standard of review, the issue in this appeal is whether the Circuit Court abused its discretion in denying HP's Rule 60(b) motion to vacate the *Default Judgment* for failure to show good cause.

## **STATEMENT OF THE CASE**

It is necessary to provide a Statement of the Case in order to include and correct omissions and misrepresentations in *Petitioner's Brief* as they significantly change the complexion of this case. The facts and procedural history are arguably more important than a discussion of the law in this appeal because West Virginia law regarding appellate review of a Rule 60(b) denial is clear and well-settled.

### **I. Statement of Facts**

Ms. Thomas filed suit against HP in the Circuit Court of Putnam County alleging HP's breach of warranty, bad faith, and tortious misrepresentations in connection with Ms. Thomas's purchase of a HP laptop and related products and services. Suit was filed after HP denied Ms. Thomas's warranty claim requesting a purchase price refund for a defective laptop and refused to refund overcharges in Ms. Thomas's subscriptions for technical support and printer ink.

The laptop at issue in Ms. Thomas's warranty claim was the second of two HP laptops that failed within months of her use. Ms. Thomas purchased the original laptop for her personal and business needs in July 2019, together with all products and services HP recommended, including



a HP printer, software, ink subscription service [“Instant Ink”], technical support service [“SmartFriend”] and HP’s three-year extended factory warranty for coverage through July 2023 [“Extended Warranty”] [JA 75]

The original laptop began malfunctioning in the first year of use with HP technicians unable to resolve the problems remotely. Without requiring the laptop to be sent to a HP service center for diagnosis and repair, HP’s Case Manager replaced the laptop under the Extended Warranty. The Case Manager chose the same model HP laptop as the original for the replacement [“Replacement Laptop”], custom ordered it from HP’s manufacturer in China,<sup>1</sup> and transferred Ms. Thomas’s Extended Warranty to the Replacement Laptop. Ms. Thomas agreed to the resolution, received the Replacement Laptop six weeks later and the warranty claim was satisfactorily closed. [JA 76]

The Replacement Laptop failed in six months. Ms. Thomas contacted HP’s technical support, provided under HP’s subscription service called “SmartFriend.” The SmartFriend technician conducted remote testing, determined the Replacement Laptop was not repairable and advised Ms. Thomas that her lost data could not be recovered.<sup>2</sup> The technician recommended Ms. Thomas file a claim under the Extended Warranty coverage in effect and advised he would notate HP’s system with the results of his testing to facilitate handling of her claim. [JA 77]

The only written HP warranty Ms. Thomas received when purchasing HP products and services was that included with the Replacement Laptop. Inside the laptop box was a 4” x 5.5”

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<sup>1</sup> The Case Manager stated custom ordering was necessary because HP no longer had that model laptop available.

<sup>2</sup> The failure of the Replacement Laptop caused the loss of ten years’ worth of Ms. Thomas’s data due to it being transferred from other sources to the Replacement Laptop by SmartFriend

pamphlet titled HP Worldwide Limited Warranty<sup>3</sup> in four-point typeface,<sup>4</sup> that is too small for to read. Ms. Thomas accessed a readable copy of the warranty on HP.com and submitted a claim requesting a purchase price refund, one of the remedies provided by the warranty, and stated that , with the disastrous failure of two HP laptops, she could no longer afford to rely upon a HP product.

[JA 77]

HP's Factory Warranty and Extended Warranty provide that, if an HP product manifests a defect in materials or workmanship during the warranty period, HP guarantees it will either (1) repair the product, (2) provide a replacement product with equal features and functionality that is new or equivalent to new in performance and reliability, or (3) provide a purchase price refund.

[JA 35, 76] The warranties limit coverage with disclaimers, exclusions and limitations of express and implied warranties and consumer remedies ["Warranty Limitations"]. Neither the boilerplate warranties nor the "agreements" in which they are contained can be modified by purchasers of HP products. If warranty terms are provided to consumers, the warranty is included in product boxes, not seen by the customer prior to purchase and written in text too small to read.

HP's Factory Warranty states that the law of the state in which the purchaser resides governs warranty disputes and that its Warranty Limitations may not apply if prohibited by the laws of that state.

**SOME STATES OR COUNTRIES DO NOT ALLOW A  
LIMITATION ON HOW LONG AN IMPLIED WARRANTY  
OR CONDITION LASTS OR THE EXCLUSION OR  
LIMITATION OF PARTICULAR TYPES OF DAMAGE.**

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<sup>3</sup> The name given HP's factory warranty in the pamphlet. The warranty is also referred to as the HP Hardware Limited Warranty ["Factory Warranty"].

<sup>4</sup> As a point of reference, W. Va. App. R. 38(a) requires the text of appellate filings to be no smaller than twelve-point proportionately spaced or eleven-point non-proportionately spaced. The text used in the body of this brief is twelve-point proportionately spaced and footnote text is eleven-point proportionately spaced. The following is an example of the text size in HP's warranty pamphlet, when using a Times New Roman four-point font in Microsoft Word: The rain in Spain falls mainly on the plain.



**INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR CONSUMER PRODUCTS. IN SUCH STATES OR COUNTRIES, SOME EXCLUSIONS, DISCLAIMERS OR LIMITATIONS OF THIS HP LIMITED WARRANTY MAY NOT APPLY TO YOU. TO THE EXTENT THAT THIS HP LIMITED WARRANTY OR ANY PART OF IT IS INCONSISTENT WITH LOCAL LAW, THIS HP LIMITED WARRANTY OR THE CORRESPONDING PART SHALL BE DEEMED MODIFIED TO BE CONSISTENT WITH SUCH LOCAL LAW.** (emphasis added) [JA 35, 36, 39]

\* \* \*

**Disputes arising out of this HP Limited Warranty or relating to your purchase of the HP Hardware Products subject to this Limited Warranty . . . are governed by the law of the . . . state . . . in which you currently reside.** (emphasis added) [JA 36]

\* \* \*

**In the unlikely event that your HP Hardware Product has recurring failures or HP determines it is unable to repair or replace the HP Hardware Product, HP, at its option, may elect to provide you with (a) a replacement unit selected by HP . . . or (b) to give you a refund or credit of your purchase price. To the extent permitted by local law, this is your exclusive remedy for defective products.** (emphasis added) [JA 36]

HP's Extended Warranty provides service and coverage in addition to the Factory Warranty, including "remote problem diagnosis," the same three remedy options as those contained in the Factory Warranty, and qualifies application of the Warranty Limitations by stating they are applicable "to the extent permitted by law," and inapplicable if contrary to consumer statutory rights under state law. [JA 49]

**TO THE EXTENT PERMITTED BY LAW, WE SPECIFICALLY DISCLAIM . . . IMPLIED WARRANTIES. SOME STATES DO NOT ALLOW A LIMITATION OF IMPLIED WARRANTIES FOR CONSUMER PRODUCTS OR OF A CONSUMER'S STATUTORY RIGHTS. IN SUCH**



**STATES SOME EXCLUSIONS OR LIMITATIONS OF THIS LIMITED WARRANTY MAY NOT APPLY. . .** (emphasis added) [JA 53]

The Extended Warranty also provides that HP may use an authorized third party to provide services on its' behalf. [JA 49]

HP represents the Extended Warranty is risk free and comes with a money back guarantee. If the warranty is not used, HP will refund the purchase price and, if cancelled before expiration of the coverage period, HP will issue a pro rata refund of the Extended Warranty cost for the period following cancellation.

Unbeknownst to consumers, but well known by HP employees, is HP's strictly-enforced, corporate "business compensation and refund policy" prohibiting refunds – those represented to be a warranty remedy, those guaranteed for unused Extended Warranty coverage, and even those due customers for unauthorized charges and overcharges. Ms. Thomas was denied a refund in all three circumstances. [JA 3]

A new HP Case Manager was assigned to Ms. Thomas's warranty claim for the failed Replacement Laptop. Without inquiry regarding the circumstances of her claim, the manager advised that HP would not issue a purchase price refund and Ms. Thomas's only option was to deliver the Replacement Laptop to HP's service center for diagnosis. If HP determined the problem was caused by a warranted event, the laptop would be repaired. [JA 2]

In speaking with another HP Case Manager about her request for a purchase price refund, Ms. Thomas was told that HP's "corporate refund policy" was strictly enforced. Mistakenly believing this meant she must provide proof of purchase and receipts for all items claimed, Ms.

Thomas submitted receipts and other evidence of purchase for all items claimed which HP accepted without dispute or inquiry. [JA 3]

When Ms. Thomas sought the involvement of a HP Case Manager Supervisor, claim handling deteriorated further. Not having familiarized herself with the circumstances of Ms. Thomas's claim, HP's Case Manager Supervisor advised Ms. Thomas (1) she had not purchased an extended warranty, (2) her original laptop was not under warranty when it failed but was replaced by HP as an exception for customer relations purposes, (3) Ms. Thomas could not receive more than one customer relations exception, (4) although an HP service center had not diagnosed the cause of the Replacement Laptop failure, it was due to a software defect not covered by HP warranties, (5) the findings and recommendations of SmartFriend were irrelevant as the technical support service is provided by a third party (6) SmartFriend technicians had not determined the Replacement Laptop was unrepairable, advised her to make a warranty claim or notated HP's system, (7) warranty claimants must ship a product to HP's service center for diagnosis before warranty coverage is determined, and (8) HP does not need to identify the warranty basis for its decisions as the warranty affords HP the discretion to handle claims as it wishes. [JA 61] There was no factual basis for any of the Supervisor's representations. The only concession subsequently made was to acknowledge that the Replacement Laptop was covered by the Extended Warranty when it failed. [JA 62]

Ms. Thomas was given two options – she could ship the Replacement Laptop to HP for diagnosis and repair or accept a HP gift card with a pro-rata value reduction for Ms. Thomas's use

of the Replacement Laptop prior to its failure. [JA 61] A reduced value HP gift card is not a remedy under any HP warranty known to Ms. Thomas or even factually possible.<sup>5</sup>

Ms. Thomas spent over three months unsuccessfully seeking a purchase price refund by communicating with 16 different HP representatives in more than 50 documented email and telephone contacts that consumed over 30 hours of her time. [JA 61] HP representatives refused to consider the futility of shipping an unrepairable laptop for repair or that Ms. Thomas previously agreed to accept a HP replacement laptop when her original laptop malfunctioned and waited six weeks for it to be delivered, only to have the Replacement Laptop fail in six months with disastrous results. [JA 62]

When Ms. Thomas sought the assistance of HP's "executive response team," she received an email from the HP Case Manager originally assigned to her claim that stated:

**I am willing to use all resources available under my scope to resolve your issue, per your request I will not involve my upper management and I will work hard and closely with you to find a win-win scenario that satisfies your needs. [JA 62]**

He asked Ms. Thomas to prepare an argument he could make to obtain the purchase price refund she sought. Ms. Thomas obliged and spent hours preparing a position statement annotated with provisions of HP warranties for his use. The Case Manager acknowledged receipt of Ms. Thomas's statement and made plans to discuss the same during a telephone call the following day. Rather than call to discuss the statement, the Case Manager left Ms. Thomas a voicemail that

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<sup>5</sup> To arrive at a pro-rata reduction for the time the Replacement Laptop was operable, it is necessary to know the length of time Ms. Thomas would have used the laptop if there were no defect, a determination that is speculative.



reiterated the position of the HP Case Manager Supervisor without mention of the position statement Ms. Thomas prepared at his request. [JA 62]

At claim inception through their final communication, HP's Case Manager was more focused on securing Ms. Thomas's agreement to claim closure than addressing her repeated requests to be advised of the basis for HP's refusal to issue a purchase price refund. That explanation was never provided. Their final telephone communication occurred when the HP Case Manager once again called to request Ms. Thomas's consent to closure. Ms. Thomas advised claim closure was an administrative matter for HP and would not affect HP's liability or Ms. Thomas's intention to file suit against HP. The Case Manager stated Ms. Thomas could do as she pleased and refused her request to be connected with HP's legal department.<sup>6</sup> [JA 104]

Following failure of the Replacement Laptop, Ms. Thomas cancelled her Instant Ink and SmartFriend subscriptions. HP nonetheless continued to charge Ms. Thomas's credit card for three additional months and maintained Ms. Thomas's cancellations were not received or immediately effective under the HP Instant Ink subscription plan. Ms. Thomas had to dispute the charges with her credit card issuer to have them reversed. [JA 103]

In protesting HP's unauthorized charges for Instant Ink, Ms. Thomas discovered she had also been overcharged for many months due to HP's misrepresentation about the Instant Ink program. With this HP subscription service, the customer selects a pages-per-month plan and is billed for monthly usage. If the subscriber does not use their monthly page allotment, the unused pages are rolled over for future use. Ms. Thomas chose a plan that allowed her to print 700 pages

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<sup>6</sup> Ms. Thomas wished to speak with a HP lawyer who might have a better appreciation for the need to administer warranty claims using warranty provisions as well as the value of voluntarily resolving the claim on a reasonable basis but was unable to find contact information for HP Legal or be connected with the department by calling HP's main line.

for a monthly charge of \$19.99 to \$24.99.<sup>7</sup> When Ms. Thomas accumulated 2800 rollover pages, she chose to downgrade to a plan that cost \$2.99/month until she used her accumulated rollover pages. Immediately upon downgrading, HP took Ms. Thomas's accumulated rollover pages on the basis that plan downgrades result in the loss. The taking forced Ms. Thomas to reinstate her original plan the same day she downgraded and pay the \$22.99/month difference in plan cost. [JA 113]

When protesting the unfairness of using an undisclosed policy to take rollover pages for which a customer has paid, an Instant Ink supervisor admitted the taking was not authorized by plan terms and resulted in HP overcharging her \$22.99 each month. Ms. Thomas's request for a refund was refused because "our [HP's] refund and business compensation rules are very strict." The supervisor stated the best she could do was to compensate Ms. Thomas for less than half of the overcharges by giving her two "free" ink cartridges. Ms. Thomas never received the ink cartridges and HP representatives refused further communication. [JA 113]

It was after two HP representatives referred to the company's "strict" refund policy that Ms. Thomas finally understood it was HP's concealed corporate refund policy, not circumstances or warranty provisions, that precluded her from receiving the purchase price refund remedy afforded by the Factory Warranty and Extended Warranty. [JA 3]

## **II. Procedural History**

Ms. Thomas filed suit against HP on September 2, 2021, in the Circuit Court of Putnam County, West Virginia, for breach of warranty, bad faith, and tortious misrepresentation. HP was successfully served with Ms. Thomas's *Complaint* on September 13, 2021.

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<sup>7</sup> HP increased the monthly charge by 25% during the term of Ms. Thomas's subscription.

Ms. Thomas waited five months for HP's appearance in the underlying action before seeking default judgment. At a March 24, 2021, hearing on *Plaintiff's Motion for Default Judgment*, the Circuit Court found HP in default but withheld judgment pending proof of Ms. Thomas's damages. The Circuit Court directed Ms. Thomas to submit evidence and legal authority for the relief she sought and scheduled an evidentiary hearing to consider the same. On April 28, 2022, Ms. Thomas submitted attested evidence and supporting legal authority for an award of compensatory, incidental, consequential and punitive damages together with her fees and costs. An evidentiary hearing was held July 29, 2022, during which Ms. Thomas reaffirmed the truth and accuracy of her submissions. Ms. Thomas supplemented her submissions to the Circuit Court on September 13, 27 and 29, 2022, following the evidentiary hearing. It was not until November 28, 2022, when HP had not appeared for over a year, that the Circuit Court entered the *Default Judgment*.

Ms. Thomas served HP with a courtesy copy of the *Default Judgment* through its designated agent with a cover letter asking HP's legal department to contact her to discuss.

HP chose not to contact Ms. Thomas and instead hired legal counsel to appear in the underlying action 1½ years after being served with the *Complaint* and move to have the *Default Judgment* vacated under West Virginia Rule of Civil Procedure 60(b). HP did not claim or show faulty service of process, excusable neglect, or unavoidable cause for its failure to respond to the *Complaint* in the preceding 1½ years. HP attributed the failure to HP's erroneous internal routing of the *Complaint*, and the temporary absence of a single employee who might have discovered the erroneous routing and redirected it to the legal department.



The parties briefed HP's Rule 60(b) Motion and a hearing was held on March 17, 2023. The Court demonstrated a thorough review of the parties' briefs and welcomed their legal argument. Rejecting HP's argument that the Court lacked subject matter jurisdiction, the Circuit Court recited measures that had been taken to ensure the necessary record and opportunity for HP to appear and defend before entering the *Default Judgment*. The Circuit Court declined to vacate the *Default Judgment* for HP's failure to show good cause. Pending entry of the *Denial Order*, the Circuit Court encouraged the parties to consider a voluntary resolution of their dispute.

Ms. Thomas prepared and submitted a proposed order for the Circuit Court's entry on April 11, 2023, and provided HP's counsel with notice of the five-day period for objections and exceptions. HP did not object to entry of the proposed order and the *Denial Order* was entered April 26, 2023.

Ms. Thomas sought a voluntary resolution of her dispute with HP before filing suit, following entry of the *Default Judgment*, and again following entry of the *Denial Order*. HP repeatedly rebuffed Ms. Thomas's efforts to settle with its final response being delivered through its legal counsel -- "we spoke with our client concerning your demand and reject it."<sup>8</sup>

## **STANDARD OF REVIEW**

### **Rule 60(b) Motion**

The parties agree that "[a] motion to vacate a default judgment is addressed to the sound discretion of the court and the court's ruling on such motion will not be disturbed on appeal unless there is a showing of abuse of discretion." Hardwood Group v. LaRocco, 219 W. Va. 56, 631

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<sup>8</sup> Email from Patrick C. Timony, Esq., Counsel for HP, to Ms. Thomas dated July 18, 2023.



S.E.2d 614, 618 (2006), quoting Syl. Pt. 3, Intercity Realty Co. v. Gibson, 154 W. Va. 369, 175 S.E.2d 452 (1970), overruled on other grounds by Cales v. Wills, 212 W. Va. 232, 569 S.E.2d 479 (2002).

The parties disagree about the scope of review and function of the appellate court in this appeal of the *Denial Order*. HP seeks this Court's consideration of the underlying *Default Judgment* and the substance of Circuit Court proceedings leading to the *Default Judgment*.

Ms. Thomas disagrees with the expansive scope of review urged by HP, as well-established law provides that appellate review is limited to the lower court's denial of a Rule 60(b) motion to vacate, and consideration of the underlying default judgment is prohibited. Syl. Pt. 3, Toler v. Shelton, 157 W.Va. 778, 204 S.E.2d 85, 89 (1974); Smith v. Beckley Water Co., No. 22-0044 at \*5 (W. Va. Apr. 5, 2023) (Memorandum decision); Widmyer v. Ames, No. 22-0175 (W. Va. Mar. 7, 2023) (Memorandum decision); Law v. Monongahela Power Co., 210 W. Va. 549, 558 S.E.2d 349, 355 (2001) (Per curiam); Syl. Pt. 2, Rose v. Thomas Memorial Hosp. Found., Inc., 208 W. Va. 406, 541 S.E.2d 1 (2000) (Per curiam); State of West Virginia ex rel Bess v. Berger, 203 W. Va. 662, 510 S.E.2d 496 (1998) citing Hinerman v. Levin, 172 W. Va. 777, 783, 310 S.E.2d 843, 849 (1983).

The presumption relevant to appellate review of a Rule 60(b) denial is in favor of the correctness of the proceedings and judgment of the trial court. Hardwood, 631 S.E.2d at 618, citing v. Coiner, 156 W. Va. 467, 194 S.E.2d 657 (1973).

**Where the law commits a determination to a trial judge and his discretion is exercised with judicial balance, the decision should not be overruled unless the reviewing court is actuated, not by a desire to reach a different result, but by a firm conviction that an abuse of discretion has been committed.**

Intercity Realty, 175 S.E.2d at 457.

As applied in this appeal, only the Circuit Court's *Denial Order* may be considered and not the underlying *Default Judgment*, or the substance of the Circuit Court's proceedings before entry of the *Default Judgment*, and a presumption of correctness is given the Circuit Court's proceedings and *Denial Order*.

### **Punitive Damages, Attorney Fees and Costs**

The standard for appellate review of a trial court's award of punitive damages, attorney fees and costs is irrelevant in an appeal of a Rule 60(b) denial where only the trial court's order of denial may be considered and not the substance supporting the underlying judgment nor the final judgment order.

Only the Circuit Court's *Denial Order* may be considered in this appeal, not the *Default Judgment* or the award granted in that judgment.

### **SUMMARY OF ARGUMENT**

HP is improperly using this appeal of a Rule 60(b) denial as an indirect means of defeating the *Default Judgment* granted in the underlying action, having lost the legitimate opportunities afforded. HP's *Notice of Appeal* states the Outcome Below is entry of *Default Judgment* and the Relief Sought is reversal of the *Default Judgment*. There is no reference to the Circuit Court's Rule 60(b) *Denial Order*.

HP treats this appeal as a third opportunity to defeat the *Default Judgment* because its failure to appear and defend the underlying case precludes its direct appeal of the *Default Judgment* and an inability to show good cause precluded vacation of the *Default Judgment*.

The Circuit Court's denial of HP's Rule 60(b) Motion to vacate was a proper exercise of its discretion when HP did not show a Rule 60(b) ground for vacating the *Default Judgment* or excusable neglect for its protracted failure to appear and defend against Ms. Thomas's lawsuit. Other necessary considerations when determining good cause, established by *Hardwood Group v. LaRocco*, 219 W. Va. 56, 631 S.E.2d 614, weigh against a finding of good cause.

## **ARGUMENT**

### **I. HP's Warranty Limitations are void and do not determine Circuit Court jurisdiction.**

HP unabashedly contends that its Warranty Limitations control the viability of Ms. Thomas's claims and the amount of her recovery and thereby determine the amount in controversy in the underlying lawsuit, deprive the Circuit Court of subject matter jurisdiction, and render the *Default Judgment* void. HP maintains that West Virginia law prohibiting and voiding its Warranty Limitations does not change this result. Provisions of the West Virginia Consumer Credit and Protection Act ["WVCCPA"], codified at 46A-1-101 to 46A-8-102, as well as the language of the Warranty Limitations, say otherwise.

W. Va. Code § 46A-6-107(a) provides that, with respect to consumer goods sold in West Virginia, no merchant may:

- (1) [e]xclude, modify or attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose; or
- (2) [e]xclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied.

Any such exclusion, modification or attempted limitation is void.



§ 46A-6-107(a) (2018). Nor can a merchant cause a consumer to waive the protection afforded by this statute. W. Va. Code § 46A-1-107 (2018).

The statutes are applicable to all merchants who sell consumer goods in West Virginia without regard to the context in which they apply. They apply every day the merchant sells its consumer products in West Virginia.

The West Virginia legislature enacted these statutes in the WVCCPA to eliminate the unfairness created by merchants including unconscionable, non-negotiable terms in consumer agreements. It was the legislature's intention that the Act be liberally construed for the benefit and protection of the public. W. Va. Code § 46A-6-101(1); Vanderbilt Mortgage & Finance, Inc. v. Cole, 230 W. Va. 505, 740 S.E.2d 562, 568 (2013); Barr v. NCB Management Services, Inc., 227 W. Va. 507, 711 S.E.2d 577, 583 (2011); Arnold v. United Companies Lending Corp., 204 W. Va. 229, 511 S.E.2d 854, 860 (1998); U.S. Life Credit Corp. v. Wilson, 171 W. Va. 538, 301 S.E.2d 169, 172-73 (1983 ).

HP's Warranty Limitations are void and prohibited under West Virginia statutory law and cannot be applied in any manner to the HP products Ms. Thomas purchased. This being the case, the Warranty Limitations are inapplicable by their own terms as the language of HP Warranty Limitations states they are only applicable to the extent permitted by law and, if they conflict with any state law, the Warranty Limitations are to be modified to make them consistent.

To be consistent with West Virginia law, the Warranty Limitations are inapplicable, prohibited and void.

HP's contention that HP Warranty limitations determine the amount in controversy and Circuit Court subject matter jurisdiction evidences an arrogant and misplaced belief that HP's Warranty Limitations override W. Va. Code §§ 46A-6-107(a) and 46A-1-107. The amount in controversy in a lawsuit is not determined by a defendant but by the amount sought by the plaintiff, both in its complaint and as augmented by a plaintiff's good faith claim for punitive damages. Hicks v. Herbert, 122 F.Supp.2d 699, 701 (S.D. W.Va. 2000), quoting 14C Charles A. Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure: Jurisdiction 3d § 3725 at 98 (1998). In West Virginia, therefore, a plaintiff's recovery is theoretically unlimited. Hicks, 122 F. Supp.2d 699, 701 (S.D. W.Va. 1994) citing White v. J.C. Penney Life Ins. Co., 861 F. Supp. 25, 27 (S.D. W.Va. 1994) (citing Bell v. Preferred Life Assurance Soc'y, 320 U.S. 238 (1943)).

If HP's Warranty Limitations were to determine the amount in controversy and court jurisdiction, HP would (1) establish whatever Warranty Limitations it wishes and bind West Virginia purchasers by contracts of adhesion, (2) establish the limit of a purchaser's recovery when they are sued, (3) deprive West Virginia consumers of their constitutional right of access to the courts, (4) exempt HP from West Virginia's consumer protection laws, including W. Va. Code § 46A-6-106(a) that grants consumers the right to file suit against offending merchants in Circuit Court, and (5) determine when and to what extent it is liable regardless of the facts and governing law.

Lest one believe these results are too unrealistic to be HP's intention, they are exactly what HP maintains should have occurred in this case. HP states the Circuit Court should have *sua sponte* considered its Warranty Limitations without regard to § 46A-6-107(a) that renders them void or HP's own language that limits their application to the extent permitted by law, determined Ms. Thomas could not recover more than \$2,000, an amount insufficient to meet the Circuit Court's

\$7,500 jurisdictional threshold, and dismissed the lawsuit for lack of subject matter jurisdiction. What's more, HP contends this should have occurred despite its failure to appear and defend the case. Stated another way, the Circuit Court should have assumed HP's defense when it failed to appear and defend the case for 15 months and ruled in a way most favorable to HP. Since this is not what occurred, HP argues the Circuit Court should have determined the *Default Judgment* was void for lack of subject matter jurisdiction and vacated it under West Virginia Rule of Civil Procedure 60(b).

HP even touts this appeal as an opportunity for this appellate court to require lower courts to consider and apply HP's Warranty Limitations in this fashion when HP fails to appear and defend the action. HP claims the issue is one of first impression in West Virginia and allows "this Court to determine whether a limitation of remedies and/or damages provision in a contract applies in the event of a default or default judgment." [*Petitioner's Brief* at 11]

HP is urging this Court to require West Virginia trial courts to anticipate, determine and selectively apply HP Warranty Limitations when HP fails to appear and defend a lawsuit to ensure HP's financial gain at the expense of West Virginia residents. That is an invitation to violate West Virginia law.

HP contends Ms. Thomas's use of her laptop for business needs rendered her purchase a commercial rather than consumer transaction and its Warranty Limitations are not unconscionable in commercial transactions. Again, West Virginia Code §§ 46A-6-107(a) and 46A-1-107 apply to a merchant who sells consumer goods in West Virginia. HP is undisputedly a merchant that sells consumer goods in West Virginia and the HP products Ms. Thomas purchased are consumer goods. It is irrelevant whether Ms. Thomas used her laptop for personal or business purposes, or both, as



is the case. Being a merchant that sells consumer goods in West Virginia, HP is governed by the provisions of these statutes.

HP Warranty Limitations are prohibited and void in West Virginia, and Ms. Thomas is entitled to recover all damages available to her by law, including compensatory, incidental, consequential, and punitive damages. She provided evidentiary support for a compensatory award of \$25,156.95, an amount clearly within the Circuit Court's subject matter jurisdiction, and was permissibly granted the award.

The Circuit Court did not act "in clear defiance" of HP's Warranty Limitations in assuming jurisdiction over Ms. Thomas's claims, as HP states. On the contrary, it is HP that is acting in clear defiance of West Virginia law by insisting this Court enforce the Warranty Limitations.

## **II. HP cannot obtain review and reversal of the *Default Judgment* in this Rule 60(b) appeal.**

HP seeks this Court's review of the *Default Judgment* because the Circuit Court abused in discretion in awarding Ms. Thomas attorney fees, costs and punitive damages. HP seeks relief that is beyond that permissible in this appeal of the Rule 60(b) *Denial Order*. Moreover, it is the Circuit Court's actions in rendering the *Denial Order*, not those in granting the *Default Judgment*, that are considered by an abuse of discretion standard.

### **A. Appellate review of a Rule 60(b) denial is limited.**

HP is improperly using this appeal of the Rule 60(b) *Denial Order* as an indirect means of defeating the *Default Judgment*. This fact is evidenced by HP's *Notice of Appeal* and *Opening Brief*. In describing the "Outcome Below" in the *Notice of Appeal*, HP recites only the Circuit Court's determinations in the *Default Judgment*. There is no reference to the Circuit Court's Rule



60(b) *Denial Order*. Additionally, the “Relief Sought” is reversal of the *Default Judgment*, not a reversal of the *Denial Order*. In HP’s *Opening Brief*, two of the four Assignments of Error complain of the Circuit Court’s award in the *Default Judgment* and present supporting argument. HP’s Assignment of Error #2 states the Circuit Court “[a]bused its discretion in awarding Respondent, a *pro se* litigant, attorney fees” and Assignment of Error #3 states the Circuit Court “[e]rroneously awarded Respondent \$20,000.00 in punitive damages without making detailed findings that adhere to the factors set forth in Garnes v. Fleming Landfill, Inc.”.

This is not an appeal of the *Default Judgment* or a third opportunity for HP to challenge its determinations after losing the legitimate opportunities afforded it by failing to appear and defend the underlying action for over a year without excusable neglect and failing to show good cause for vacating the *Default Judgment* under W. V. R. Civ. P. 60(b).

Well-established law provides that appellate review of a Rule 60(b) denial is limited to the lower court’s denial order and consideration of the underlying judgment is prohibited. Syl. Pt. 3, Toler v. Shelton, 157 W.Va. 778, 204 S.E.2d 85, 89 (1974); Smith v. Beckley Water Co., No. 22-0044 at \*5 (W. Va. Apr. 5, 2023) (Memorandum decision); Widmyer v. Ames, No. 22-0175 (W. Va. Mar. 7, 2023) (Memorandum decision); Law v. Monongahela Power Co., 210 W. Va. 549, 558 S.E.2d 349, 355 (2001) (Per curiam); Syl. Pt. 2, Rose v. Thomas Memorial Hosp. Found., Inc., 208 W. Va. 406, 541 S.E.2d 1 (2000) (Per curiam); State of West Virginia ex rel Bess v. Berger, 203 W. Va. 662, 510 S.E.2d 496 (1998) citing Hinerman v. Levin, 172 W. Va. 777, 783, 310 S.E.2d 843, 849 (1983).

This appeal is limited to considering whether the Circuit Court abused its discretion in denying HP’s Rule 60(b) request to vacate the *Default Judgment* and the presumption is in favor

of the correctness of the Circuit Court's proceedings and the *Denial Order*. Hardwood Group, 631 S.E.2d at 618, citing Perdue v. Coiner, 156 W. Va. 467, 194 S.E.2d 657 (1973).

**Where the law commits a determination to a trial judge and his discretion is exercised with judicial balance, the decision should not be overruled unless the reviewing court is actuated, not by a desire to reach a different result, but by a firm conviction that an abuse of discretion has been committed.**

Intercity Realty, 175 S.E.2d at 457 (emphasis added).

Without waiving her position that the award granted in the Default Judgment is not reviewable in this appeal, Ms. Thomas addresses HP's arguments regarding the award.

**B. The Circuit Court's award of attorney fees as costs was correct and is not reviewable in this appeal.**

HP is mistaken in claiming "[a]bsolutely no authority existed to permit the Circuit Court to award [Ms. Thomas] any attorneys' fees. . . ." Two entire pages of the *Denial Order* are devoted to the legal authority, factual findings, and conclusions of law supporting the award of attorney fees as costs. First was our Supreme Court's recognition in City Nat'l Bank v. Wells, 181 W. Va. 763, 384 S.E.2d 374 (1989) that consequential damages include attorney fees as they are a foreseeable expense resulting from a breach of warranty that the buyer cannot prevent by cover or otherwise. The second basis was our Supreme Court's ruling that an equitable exception to the general prohibition on recovering attorney fees exists "when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons" in conduct leading to the litigation or in connection with the litigation." Tri-State Petroleum Corp. v. Coyne, 814 S.E.2d 205, 227 (W. Va. 2018) quoting Syl. pt. 1, in part, Sally-Mike Properties v. Yokum, 179 W. Va. 48, 365 S.E.2d 246 (1986)). The fees are awarded as "costs" without express statutory authorization. Muzelak v. King Chevrolet, Inc., 179 W. Va. 340, 368 S.E.2d 710, 716 (1988).

The Circuit Court made a multitude of factual findings regarding HP's bad faith in the *Default Judgment*. The court cited HP's denial of Ms. Thomas's warranty claim requesting a purchase price refund without a basis in fact or warranty and found

**[o]ne baseless reason after another was given and relied upon by 16 different HP representatives without disclosing HP's 'refund and business compensation policy' precluded cash refunds. It was not until Plaintiff spent over 30 hours fruitlessly pursuing the refund that she learned of HP's strictly enforced policy to deny buyers the remedy expressly provided by its warranty. The policy was so strictly enforced that HP representatives could not refund admitted overcharges. HP's bad faith continued despite Plaintiff advising of her intention to file suit and to the present day.**

[JA 116]

The Circuit Court's extensive consideration of the factual basis for Ms. Thomas's claim of bad faith and the legal authority for an equitable grant of fees as costs, together with its numerous findings of fact and conclusions of law, evidence the Circuit Court acted within the discretion afforded it and its proceedings and resulting judgment are correct.

**C. Even if permissible, HP waived appellate review of the punitive damage award by failing to meet the requirements for review established in Garnes.**

There are two determinative reasons why the Circuit Court's award of punitive damages is not reviewable in this appeal.

As with attorney fees, the Circuit Court's award of punitive damages in the *Default Judgment* is beyond the scope of this Rule 60(b) appeal and not reviewable.



Even if appellate consideration were permissible, HP waived its Assignment of Error #3 claiming error in the award of punitive damages by failing, in its *Notice of Appeal* and *Opening Brief* to address with particularity the requirements for seeking the review established in Garnes v. Fleming Landfill, Inc., 186 W. Va. 656, 413 S.E.2d 897 (1991).

The court in Garnes v. Fleming Landfill, Inc., 186 W. Va. 656, 413 S.E.2d 897 (1991) established a new system for the review of punitive damage awards in West Virginia and the system includes a mandatory process for seeking appellate review of a punitive damage award.

**All petitions [for appeal] must address each and every factor set forth in Syllabus Points 3 and 4 of this case with particularity, summarizing the evidence presented to the jury on the subject or to the trial court at the post-judgment review stage. Assignments of error related to a factor not specifically addressed in the petition will be deemed waived as a matter of state law.**

Syl. pt. 5, Garnes, 186 W. Va. 656, 413 S.E.2d 897 (1991) (emphasis added).

HP's request for this court's review did not meet these requirements. Neither HP's *Notice of Appeal* or *Opening Brief* addressed each and every factor in syllabus points 3 and 4 of the Garnes decision and did not summarize the evidence before the Circuit Court relating to each of those factors. HP's Assignment of Error #3 in its *Notice of Appeal* states only that the Circuit Court "erroneously awarded Ms. Thomas \$20,000.00 in punitive damages without making detailed findings that adhere to the factors set forth in Garnes v. Fleming Landfill, Inc., 413 S.E.2d 897 (W. Va. 1991)" The supporting argument in HP's *Opening Brief* is limited to two paragraphs that make the general allegation the Circuit Court failed to properly consider its award of punitive damages. As a result, HP waived its Assignment of Error #3 as a matter of law.

Unlike HP's failure to meet the Garnes requirements for seeking appellate review, the Circuit Court complied with its obligations under Garnes in considering its award of punitive

damages. Without stating the Garnes factors, the Circuit Court's award was rendered in accordance with the factors. Evidence of its consideration is shown in its findings of fact and conclusions of law.

- In granting *Default Judgment*, the Circuit Court deemed as true Ms. Thomas's allegations and claims in the *Complaint* as well as those in her sworn testimony and written attestations [JA 111]
- Ms. Thomas's asserted claims for HP's tortious misrepresentations concerning the warranty remedies available for defective products and the terms of its Instant Ink subscription service [JA 57]
- Ms. Thomas's *Complaint* ad damnum sought compensatory, incidental, and consequential damages together with "such other relief as the Court or jury deems proper" [JA 20]
- Ms. Thomas's *Motion for Default Judgment* requested punitive damages [JA 27, 106]
- Ms. Thomas requested punitive damages for HP's "fraudulent, willful, wanton, and reckless misrepresentations" [JA 111] and "bad faith" actions in denying her requests for refunds [JA 70]
- Ms. Thomas provided evidentiary proof of HP's fraudulent, willful, wanton, and reckless misrepresentations and other bad faith actions [JA 111]
- HP's handled Ms. Thomas's warranty claim in an arbitrary and capricious manner that was contrary to terms of its agreements and warranties [JA 112-113]
- HP established, concealed, and strictly enforced a corporate policy that prohibited the purchase price refund represented to be a warranty remedy, the guaranteed money-back refund for unused Extended Warranty coverage, and the refund of intentional overcharges to HP customers [JA 82-83]

- HP denied Ms. Thomas's warranty claim for a purchase price refund for meritless reasons that were a pretext for complying with a concealed business policy prohibiting refunds [JA 65]
- HP intentionally misrepresented the terms of Instant Ink for its financial gain at Ms. Thomas's expense [JA 64]
- HP refused to refund admitted overcharges [JA 63, 66]
- HP failed and refused to honor its promise to provide Ms. Thomas with ink cartridges as partial compensation for intentional overcharges [JA 65]
- HP refused to honor Ms. Thomas's requests to cancel subscription plans [JA 63]
- HP's wrongful actions caused Ms. Thomas an extraordinary and unnecessary expenditure of effort and time, annoyance, and inconvenience [JA 66]
- HP made no effort to make amends for its wrongful conduct and refused Ms. Thomas's repeated requests to voluntarily resolve existing disputes in a prompt and reasonable manner [JA 116]
- HP prevented Ms. Thomas from communicating with its legal department regarding a voluntary resolution of disputes without filing suit [JA 104]
- HP advised Ms. Thomas she could do as she pleased in filing suit against HP and improperly closed her warranty claim [JA 113]
- HP's fraudulent, willful, wanton, and reckless misrepresentations and bad faith actions adversely affected Ms. Thomas from the date of her purchase of HP products in July 2019 through the Circuit Court's grant of *Default Judgment* [JA 111, 116]
- Ms. Thomas provided evidentiary proof of compensatory damages totaling \$25,156.95 [JA 96]



- Ms. Thomas provided proof of her litigation costs [JA 99]
- A punitive damage award of \$20,000 is less than 1x the compensatory damage award
- HP's net earnings in 2021 were \$65 billion; [JA 107]

While the Circuit Court properly considered the factors for an award of punitive damages established in Garnes, HP failed to meet the Garnes mandatory requirements for seeking appellate review of the award. As a result, HP waived appellate review of punitive damages awarded in the *Default Judgment*

**III. It was not an abuse of discretion for the Circuit Court to deny HP's Rule 60(b) request to vacate the *Default Judgment* for failure to show the requisite good cause.**

The only permissible consideration for this Court in reviewing the *Denial Order* is the last addressed in HP's *Opening Brief*, whether the Circuit Court abused its discretion in finding that HP failed to show good cause for vacating the *Default Judgment*.

To vacate the *Default Judgment* under West Virginia Rules of Civil Procedure Rule 55(c), HP was required to show the "good cause" required by that Rule. West Virginia Rule of Civil Procedure 55(c) states "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." In analyzing "good cause" for this purpose, the Court considers (1) the degree of prejudice suffered by the plaintiff from the delay in answering; (2) the presence of material issues of fact and meritorious defenses; (3) the significance of the issues at stake; (4) the degree of intransigence on the part of the defaulting party; and (5) the reason for the defaulting party's failure to timely file an answer. *Hardwood Group v. LaRocco*, 219 W. Va. 56, 631 S.E.2d 614, 620 (citing *Parsons v. Consolidated Gas Supply Corp.*, 163 W. Va. 464, 256 S.E.2d 758, 761-62 (1979)). Additionally,



“under . . . the West Virginia . . . Rules of Civil Procedure, there is the necessity to show some excusable or unavoidable cause to explain the delay in answering”. *Parsons*, 256 S.E.2d at 621. Good cause for setting aside a default judgment requires not only a consideration of these factors but also a showing that a ground set out under West Virginia Rule of Civil Procedure 60(b) has been satisfied. *Hardwood Group v. LaRocco*, 631 S.E.2d 614, 618. ( W. Va. 2006).

HP failed to show a Rule 60(b) ground to vacate the *Default Judgment*, lacked excusable error for its failure to appear and defend the underlying case, and failed to show that consideration of the Parsons factors favors a finding of good cause.

HP did not claim or show excusable neglect or unavoidable cause for its failure to appear and defend the underlying action for the 15 months before the *Default Judgment* was granted. HP attributed the failure to erroneous routing of the Complaint by HP employees and the temporary absence of a single employee who might have caught the error and routed the Complaint to the legal department.

The reasons HP offered for its failure to defend the underlying case evidence were caused by avoidable inadequacies in company procedures to ensure the delivery of legal process to the legal department. HP is a multinational company with 54,000 employees, over 200 of which are attorneys, and the temporary absence of a single employee who might have caught and corrected the erroneous routing of the Complaint evidences an inadequate procedure, not excusable error. Nor does it justify transferring the cost of the failure to Ms. Thomas and the Circuit Court who spent considerable resources over 10 months to ensure the *Default Judgment* was granted in a fair and legally supportable manner.

HP's failure to show excusable error for its 15-month failure also evidences significant intransigence, as does its baseless insistence that its Warranty Limitations are a meritorious defense to Ms. Thomas's claims and even determine Circuit Court jurisdiction. It is clear West Virginia Code §§ 46A-6-107(a) and 46A-1-107 prohibit and render void HP's Warranty Limitations and, the Warranty Limitations by their own terms, are inapplicable and void.

The year and a half that passed without HP's appearance exacerbated the prejudice HP caused Ms. Thomas during the preceding two years. It resulted in additional financial loss and compounded the unnecessary and excessive loss of time, resources, and delay she suffered in attempting to resolve her claims before filing suit. Not to be overlooked is the prejudice to the Circuit Court by causing it a considerable expenditure of judicial resources and a delay in attending to other pending matters.

The combination of a great degree of intransigence and the lack of excusable neglect is a sufficient basis for a court's refusal to vacate a default judgment. Arbuckle v. Smith, No. 17-0239 (W. Va. Mar. 23, 2018)(petitioner's dilatory conduct and failure to demonstrate excusable neglect establish a failure to show good cause); see also Groves v. Roy G. Hildreth and Son, Inc., 222 W. Va. 309, 664 S.E.2d 531 (2008)(significant intransigence found when adjudication of the case was delayed 14 months before defendant appeared); Cook v. Channel One, Inc., 209 W. Va. 432, 549 S.E.2d 306, 310 (2001)(substantial intransigence when nearly 11 months passed before the defendant appeared and defended). HP's intransigence is even greater than that in the cases cited as it never appeared and defended in the 15 months before the *Default Judgment* was entered.

"Any degree of intransigence" should "weigh heavily against" the defaulting party. Arbuckle, No. 17-0239 \*6 citing Parsons, 256 S.E.2d at 763. "The stronger the excusable neglect

or good cause shown, the more appropriate it is to give relief against the default judgment.”

Hardwood Group, 631 S.E.2d at 623.

Consideration of the competing interests at stake also weighs against HP. The passage of the West Virginia Consumer Credit and Protection Act and the remedial measures included in the Act (e.g., creation of private causes of action, civil and criminal penalties) evidence the significance of West Virginia’s interest in protecting its residents against unfair, deceptive, and fraudulent acts or practices of merchants. See also W. Va. Code § 46A-6-101 (2018). A merchant’s use of boilerplate warranties to deprive consumers of rights and remedies afforded the public by law is deemed an unfair practice prohibited by W. Va. Code § 46A-6-107(a). The interest of HP, a corporation with annual earnings exceeding \$63 billion, in vacating a \$43,307.92 judgment caused by its intentional and prohibited practices, is not even comparable.

There are no facts upon which it can reasonably be argued that HP made a showing of good cause to vacate the *Default Judgment*. HP has not claimed or shown excusable neglect for its failure to answer Ms. Thomas’s *Complaint* for 1½ years, and relies upon prohibited Warranty Limitations to show a defense that is not meritorious but actionable for violating W. Va. Code § 46A-6-107(a). HP’s Limited Warranties do not determine a Circuit Court’s jurisdiction or render the *Default Judgment* void under Rule 60(b), HP is significantly intransigent and has prejudiced Ms. Thomas and the Circuit Court by causing a two-year delay in the prosecution of claims, has wasted judicial resources and promises to continue wasting the resources of West Virginia courts and intentionally violating the statutory rights of West Virginia consumers, and been foolish enough to reject the possibility of settlement.



“[The Supreme Court of Appeals of West Virginia] fully recognizes the validity of and supports the enforceability of a default judgment that is properly obtained.” Cales v. Wills, 212 W. Va. 232, 569 S.E.2d 479, 490 (2002) (Albright, J., concurring). The Circuit Court ensured that the *Default Judgment* was properly granted and confirmed that to be the case in rendering its *Order Denying HP, Inc.’s Rule 60(b) Motion to Set Aside Default Judgment*.

## CONCLUSION

West Virginia consumer protection laws are a primary reason HP is unable satisfy its burden of proof in having the *Default Judgment* vacated. HP cannot use the Warranty Limitations against Ms. Thomas for any purpose – not to limit Ms. Thomas’s recovery of damages, control Circuit Court subject matter jurisdiction, render the *Default Judgment* void, vacate the *Default Judgment* under Rule 60(b), or establish a meritorious defense to Ms. Thomas’s claims, all of which are necessary for a finding of HP’s good cause.

The Circuit Court’s *Denial Order* was not an abuse of discretion but a well-supported, judicially balanced exercise of discretion and should be affirmed. This Court’s reversal of the *Denial Order* will reward HP for dilatory and negligent conduct at the expense of Ms. Thomas and the trial court and will encourage HP’s continued use of its Warranty Limitations to violate West Virginia consumer protection law and public policy.

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For the reasons stated herein, and for those this Court may deem appropriate, Ms. Thomas respectfully requests that the Circuit Court's *Order Denying HP Motion to Set Aside Default Judgment* be affirmed.

Respectfully submitted by,

/s/ Judith P. Thomas  
Respondent Pro Se

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