

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

No. 24-449

HP, Inc.,  
Petitioner

v.)

Judith Thomas,  
Respondent

Appeal from Memorandum  
Opinion of Intermediate Court  
of Appeals of West Virginia  
in No. 23-ICA-203

---

**RESPONDENT'S BRIEF**

---

**Respondent, Pro Se**

**Judith P. Thomas, WVSb #3735**  
Post Office Box 6403  
Charleston, West Virginia 25362  
judithpthomas835@gmail.com  
Phone: 304.545.2637

## TABLE OF CONTENTS

|                                                                                                                                |    |
|--------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES .....                                                                                                     | ii |
| ASSIGNMENTS OF ERROR .....                                                                                                     | 1  |
| STATEMENT OF THE CASE .....                                                                                                    | 1  |
| Statement of Facts .....                                                                                                       | 2  |
| Procedural History .....                                                                                                       | 11 |
| STANDARD OF REVIEW .....                                                                                                       | 14 |
| SUMMARY OF ARGUMENT .....                                                                                                      | 15 |
| ARGUMENT .....                                                                                                                 | 16 |
| The ICA correctly found that HP failed to establish a<br>Rule 60(b) ground to vacate the <i>Amended Default Judgment</i> ..... | 16 |
| Subject Matter Jurisdiction .....                                                                                              | 16 |
| Excusable Neglect .....                                                                                                        | 18 |
| The ICA's remand to Circuit Court for consideration of<br>punitive damages was a proper exercise of its discretion .....       | 21 |
| CONCLUSION .....                                                                                                               | 24 |

## TABLE OF AUTHORITIES

### STATUTES

|                                             |            |
|---------------------------------------------|------------|
| W. VA. CODE §§ 46A-1-101 – 46A- 8-102 ..... | 17         |
| W. VA. CODE § 46A-1-107 .....               | 16, 17     |
| W. VA. CODE § 46A-6-107(a) .....            | 16, 17, 18 |

### RULES

|                               |               |
|-------------------------------|---------------|
| W. VA. R. APP. P. 38(a) ..... | 3             |
| W. VA. R. CIV. P. 15(b) ..... | 23            |
| W. VA. R. CIV. P. 54(c) ..... | 23            |
| W. VA. R. CIV. P. 60(b) ..... | <i>Passim</i> |

### CASES

|                                                                                                                                                                                 |        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| <i>Bell v. Preferred Life Assurance Soc’y</i> , 320 U.S. 238 (1943) .....                                                                                                       | 17     |
| <i>Cales v. Wills</i> , 212 W. Va. 232, 569 S.E.2d 479 (2002) .....                                                                                                             | 14     |
| <i>Elsey Ford Sales, Inc. v. Solomon</i> , 167 W. Va. 891, 280 S.E.2d 718 (1981) .....                                                                                          | 23     |
| <i>Garnes v. Fleming Landfill, Inc.</i> , 186 W. Va. 686, 413 S.E.2d 897 (1991) .....                                                                                           | 24     |
| <i>Hardwood Group v. LaRocca</i> , 219 W. Va. 56, 631 S.E.2d 614 (2006).....                                                                                                    | 14, 15 |
| HP, Inc. v. Thomas, No. 23-ICA-203 (June 13, 2024) (memorandum opinion) .....                                                                                                   | 19     |
| <i>Hicks v. Herbert</i> , 122 F. Supp.2d 699 (S.D. W.Va. 2000) .....                                                                                                            | 17     |
| <i>Hinerman v. Levin</i> , 172 W. Va. 777, 310 S.E.2d 843 (1983) .....                                                                                                          | 15     |
| <i>Intercity Realty Co. v. Gibson</i> , 154 W. Va. 369, 175 S.E.2d 452 (1970)<br>overruled on other grounds <i>Cales v. Wills</i> , 212 W. Va. 232, 569 S.E.2d 479 (2002) ..... | 14, 15 |

|                                                                                                                           |        |
|---------------------------------------------------------------------------------------------------------------------------|--------|
| <i>Law v. Monongahela Power Co.</i> , 210 W. Va. 549, 558 S.E.2d 349 (2001)<br>(per curiam) .....                         | 14     |
| <i>Pattison v. HP Inc.</i> , No. 3:24-cv-02752-MMC (U.S. N.Dist. Cal.,<br>San Francisco Div. May 8, 2024) .....           | 10, 11 |
| <i>Perdue v. Coiner</i> , 156 W. Va. 467, 194 S.E.2d 657 (1973) .....                                                     | 15     |
| Syl. pt. 2, <i>Rose v. Thomas Memorial Hosp. Found., Inc.</i> , 208 W. Va. 406,<br>541 S.E.2d 1 (2000) (per curiam) ..... | 14     |
| <i>Smith v. Beckley Water Co.</i> , No. 22-0044 (W. Va. Sup. Ct. Apr. 5, 2023) .....                                      | 14     |
| <i>State of West Virginia v. Berger</i> , 211 W. Va. 549, 567 S.E.2d 265 (2002) .....                                     | 15, 16 |
| Syl pt. 3, <i>Toler v. Shelton</i> , 157 W.Va. 778, 204 S.E.2d 85 (1974) .....                                            | 14     |
| <i>Wal-Mart Stores East, L.P. v. Ankrom</i> , 854 S.E.2d 257 n.24<br>(W. Va. Sup. Ct. Nov. 18, 2020) .....                | 23     |
| <i>White v. J.C. Penney Life Ins.</i> , 861 F. Supp. 25 (S.D. W.Va. 1994) .....                                           | 17     |
| <i>Widmyer v. Ames</i> , No. 22-0175 (W. Va. Sup. Ct. Mar. 7, 2023) .....                                                 | 14     |

## OTHER AUTHORITY

|                                                                                                                                         |    |
|-----------------------------------------------------------------------------------------------------------------------------------------|----|
| 14C Charles A. Wright, Arthur R. Miller & Edward H. Cooper,<br>Federal Practice and Procedure: Jurisdiction 3d § 3725 at 98 (1998)..... | 17 |
|-----------------------------------------------------------------------------------------------------------------------------------------|----|

## ASSIGNMENTS OF ERROR

Petitioner HP, Inc. ["HP"] appeals a *Memorandum Opinion* entered by the Intermediate Court of Appeals of West Virginia ["ICA"] on June 13, 2024 insofar as it affirms the Circuit Court of Putnam County's denial of HP's Rule 60(b) motion to vacate the *Order Denying HP, Inc.'s Rule 60(b) Motion to Set Aside Default Judgment* ["*Denial Order*"] and affirms the Circuit Court's award of compensatory damages, costs and post-judgment interest to Respondent Judith Thomas ["Ms. Thomas"]. HP also appeals the ICA's remand to the Circuit Court of Putnam County for consideration of punitive damages.

## STATEMENT OF THE CASE

It is necessary to provide a Statement of the Case in order to correct omissions and misstatements in HP's *Opening Brief* as they significantly change the complexion of this case.

### 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 her 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 unauthorized charges and overcharges in Ms. Thomas's Instant Ink subscription. [JA 26]

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 26]

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 41]

The Replacement Laptop failed in six months and lost all of Ms. Thomas’s stored data. Ms. Thomas contacted HP’s technical support, provided under HP’s subscription service called “SmartFriend.” The HP 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 and advised he would notate HP’s system with the results of his testing to facilitate handling of her claim. [JA 41]

---

<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 HP’s technician.













































