No._____

In the

SUPREME COURT OF THE UNITED STATES

WHITNEY N. BROACH, *Petitioner*

v.

DAVID G. PEAK, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

WHITNEY N. BROACH
Pro-Se Petitioner
P.O. Box 56143
Houston, Texas 77256
Tel. No. 281-435-1710

QUESTIONS PRESENTED FOR REVIEW

Whitney N. Broach, a citizen, has been barred from The United States Bankruptcy Court anywhere in the United States through no personal fault. The plaintiff's husband had medical problems, and the plaintiff wished to pay off debts in a Chapter 13.This case presents a clear and intractable conflict regarding important Questions of Federal Bankruptcy Laws, and the Fifth and Fourteenth Constitutional Amendments. These questions affect the 94 Federal Judicial Districts that handle the 12,775,578 bankruptcies that are in the Federal Courts at any one time. In 2015, The Kaiser Foundation found that medical bills made 1 million adults declare bankruptcy (reported May 6, 2018). Fifty two million U.S. adults struggle to pay medical bills, and represent 26% of Americans aged 18-64. Bankruptcy Filings nationwide are on the rise. When debtors do not pay their creditors, the financial hardship causes bankruptcies to increase and affects millions of people. The way these questions are answered will affect the quality of life of millions of people.

1) Does a Federal Bankruptcy Judge (who has required the debtor to employ a Board Certified in Consumer Bankruptcy Attorney) deny the debtor's procedural due process of law and substantive due process by holding the debtor responsible for the Bankruptcy Attorney's self-admitted mistakes, thereby dismissing a correct in form, and in content bankruptcy petition?
2) Does a Bankruptcy Court Judge deny the debtor's substantive and procedural due process, by treating the Debtor's Fed.R. Civ.P. 60(b)(1) "Excusable Neglect" Argument in a Motion for Rehearing by unilaterally and improperly converting Debtor's 60(b)(1) motion to a Fed.R.Civ.P. 59 motion, and thereby depriving the debtor of a rehearing?

List of Parties

1) WHITNEY N. BROACH, Plaintiff, Debtor, and Petitioner
2) J. PATRICK BRADY, Attorney, Board Certified in Consumer Bankruptcy, served as attorney for Whitney N. Broach before the United States Bankruptcy Court for the Southern District of Texas, Houston Division.
3) HONORABLE JEFF BOHM, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of Texas, Houston Division.
4) DAVID G. PEAKE, Respondent, U.S. Bankruptcy Trustee
5) RICHARD W. AURICH, JR., Attorney to Respondent, David G. Peake, U.S. Bankruptcy Trustee
6) U.S. TRUSTEE, Office of the U.S. Trustee, and U.S. Trustee served before the United States Bankruptcy Court for the Southern District of Texas, Houston Division.
7) HONORABLE NANCY ATLAS, Judge of the United States District Court for the Southern District of Texas, Houston Division.
8) HONORABLE MARVIN ISGUR, Judge of the United States Bankruptcy Court for the Southern District of Texas, Houston Division.
9) LASER TATTOO REMOVAL, INC., and AESTHETIC PERMANENT COSMETICS, INC. Texas corporations previously operated as Texas Corporations by Petitioner.

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the debtor was ordered to hire a board certified in consumer bankruptcy attorney who subsequently made mistakes. Review is warranted as to violations of procedural due process, and violations of substantive due process.

II.

Review is warranted to answer the question: Does a Bankruptcy Court Judge deny the debtor's substantive and procedural due process by treating Debtor's Fed. R. Civ. P. 60(b)(1) " Excusable Neglect" Argument in a Motion for Rehearing by unilaterally and improperly converting Debtor's 60(b)(1) Motion to a Fed. R. Civ. P. 59 Motion, and thereby depriving the debtor of a rehearing? Review is warranted because the bankruptcy court abused its discretion in failing to make a substantive analysis by applying the applicable law to the facts in evaluating Debtor's Fed. R. Civ. P. 60 (b)(1) Motion For Rehearing and her claim of "Excusable Neglect" relative to her mandated by court order board certified attorney. Review is warranted to determine if the Bankruptcy Court analyzed the factors constituting "Excusable Neglect". Review is warranted because the Bankruptcy Court did not hold a hearing on Debtor's Fed.R.Bkpt. P. 9024/Fed. R. Civ.P.60 (b)(1) Motion For Rehearing. Review is warranted because the Bankruptcy Court failed to provide a detailed factual and legal analysis of the "Excusable Neglect" claim. Review is warranted because the Bankruptcy Court failed to give the debtor an adequate opportunity to present her case which justifies setting aside the Bankruptcy Courts Order denying the Debtor a Rehearing, and constitutes a violation of the Debtor's procedural and substantive due process.

TABLE OF AUTHORITIES

Statutes

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Whitney N. Broach respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals Fifth Circuit appears at Appendix Sec.No.18 to the petition. The court's opinion is noted as affirmed

JURISDICTION

The judgment of the Court of Appeals Fifth Circuit was entered on June 6, 2018. A petition for rehearing en banc was denied on September 5, 2018. The jurisdiction of this court is invoked under 28 U.S.C. 1254 (1). The United States Court of appeals for the Fifth Circuit has entered a decision in conflict with the decision of another United States Court of Appeals on the same matter, and has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this court's supervisory power. The United States Court of Appeals, Fifth Circuit, has decided an important question of federal law that has not been, but should be settled by this court. The United States Court of Appeals Fifth

circuit has decided an important question in a way that conflicts with relevant decisions of this court.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS AT ISSUE

U.S. Const. Amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. XIV. Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state where they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

Fed.R.Civ.P.60 (b) (1)

Grounds for relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect;

Federal Rule of Bankruptcy Procedure Rule 9024

Relief from judgment or Order. Rule 60 F.R.Civ.P. Rule 9024 incorporates the provisions of Fed. R. Civ. P. 60 with several important exceptions relating to the time for obtaining relief.

STATEMENT OF THE CASE

A. Facts Giving Rise To This Case

Whitney N. Broach, Petitioner, is disabled with a neurodegenerative disease that is clearly discernable. (One aspect of the disease is that the facial muscles do not move, and people with this disease are evaluated by others incorrectly as not being credible. The person may have tremors, and speech impediments, and pause before responding which bears the medical term poverty of movement.) See Appendix Sec. No.16, letter dated December 8, 2016, from Jamshid Lofti, M.D. Ms. Broach was married to Mr. Broach (who died in 2010) for twenty years, and Mr. Broach was hospitalized at least 1,855 days during their marriage. Ms. Broach was both a care-giver, and primary breadwinner when Mr. Broach was ill. During this time Mr. Broach had 6 major surgeries including 3 heart by-pass surgeries, and an Aortic valve replacement. In addition, Ms. Broach experienced many calamities, none of which were caused by her or Mr.

Broach (see App. Sec. No. 13). Mr. Broach and Ms. Broach had a pre-nuptial agreement, and maintained separate property. Mr. Broach practiced law in the Federal Courts. He graduated from the University of Texas with Honors, and was the case note editor of the Law Review. Ms. Broach called Mr. Broach the perfect husband. Mr. Broach filed bankruptcy for himself, and received a discharge in a Chapter 7. Mr. Broach filed several Ch. 13 bankruptcy cases during the Broaches' marriage. Mr. Broach's bankruptcy cases did not benefit Ms. Broach, and she was not ever listed as a co-debtor. Ms. Broach was motivated to pay all her debts through a Chapter 13. Ms. Broach filed a Chapter 13 in 2009. She listed several former legal names, and an active social security number and two retired social security numbers because she had been a participant previously in a federal change of identity program (see App. Sec. No. 23). In the 2009 bankruptcy case(0930073-H4-13), Judge Bohm demanded for Ms. Broach to produce documentation of the federal change of identity in a few days. Ms. Broach could not comply with the Judge's demand given the short deadline. The 2009 Chapter 13 was dismissed by Judge Bohm, and two days after it was dismissed, Ms. Broach received the documentation on the federal change of identity and gave it to the U.S. Trustee. Although the bankruptcy case 0930073-H4-13 was dismissed, the Court and Ms. Broach continued to make Motions and Court Orders under this case number.

B. The Bankruptcy Court Proceedings

On April 9, 2009, Judge Bohm wrote an order, without giving Ms. Broach a pre-filing hearing, in the 2009 bankruptcy case (0930073-H4-13). "Ordered that Debtor Whitney N. Broach is permanently barred from refiling bankruptcy under any chapter of the Bankruptcy Code, anywhere in the United States unless Debtor Whitney N. Broach requests and receives prior permission from this Court" (see App. Sec. 26).

In Nov. 2012, Ms. Broach, representing herself pro-se, filed a motion under the 2009 case number, (0930073-H4-13) asking for permission to file bankruptcy. Ms. Broach presented to the court a completed bankruptcy petition, and an exhibit book of fifty exhibits. The completed bankruptcy schedules were given to Judge Bohm, only to disappear into his chambers. Neither the exhibit book, nor the petition, was placed into the court's record.

Judge Bohm of The Bankruptcy Court, was on leave, so Judge Isgur ordered on Dec. 21,2012 under the 2009 case no. 09-30073-H4-13 that Ms. Broach hire an Attorney Board Certified in Consumer Bankruptcy Law, and that she ask for permission to file bankruptcy before filing for bankruptcy. Judge Isgur did not enumerate how that permission was to be obtained, nor did he allow the debtor to appear at a hearing before the pre-filing order was signed. The permission to file bankruptcy was to be filed with a set of completed bankruptcy schedules. The Dec.21, 2012, order states that (*See* App. Sec. No. 25,page 1, 3B.) "A proposed form of electronic payment or a proposed wage order, each filed in accordance with the local rules"... The elusive question/answer was what case number was the request to file bankruptcy filed under? Was it to be filed under a new case number? Or an old case number? Or was it to be ex parte? Judge Isgur's

order further stated (see App. Sec. No. 25, page 2,No. 4) "If a motion is filed that conforms with this order, new counsel should contact the Court's Case Manager." " The Motion will promptly be presented to the court for review." Judge Isgur's order at best contained a conflict on how to obtain permission, and at the worst was meant to close the door on Ms. Broach's filing bankruptcy. Once a motion is filed pertaining to bankruptcy with a wage order, and petition with schedules, and a plan, it receives a bankruptcy number, and asking for permission is moot.

There are over 40,000 attorneys in Houston, Texas. There are less than fifty attorneys in Houston that are board certified in consumer bankruptcy. Half of the board certified in consumer bankruptcy attorneys worked for creditors, so Ms. Broach was severely limited to a pool of less than thirty attorneys by Judge Isgur's order of Dec. 21, 2012. Some of the board certified attorneys initially agreed to represent Ms. Broach, and received payment, but after the attorney for the Chapter 13 trustee bad mouthed Ms. Broach to the attorneys, the board certified attorneys rescinded their representation of Ms. Broach.

Ms. Broach hired a Board Certified in Consumer Bankruptcy Attorney in 2015 , Mr. Brady, pursuant to the court order from Dec. 21, 2012 in the bankruptcy case 0930073-H4-13. Ms. Broach conferred with Mr. Brady for 15 hours to review her financial records, banking documents and Judge Isgur's order (see App. Sec. No. 14, page 8, lines 9-14;and page 10, lines 6-10,).Ms. Broach paid Mr. Brady over $4,000 for the bankruptcy pre-counseling hours. The Board Certified Attorney in Consumer Bankruptcy, Mr. Brady, filed two cases in succession for Ms. Broach starting in 2015 without asking the court for permission to file bankruptcy, and without filing all the required documents, thereby permitting the

bankruptcy cases to be dismissed (see App. Sec.No.14, page6, lines1-15). Mr. Brady took full responsibility for the mistakes and errors that resulted in the two cases being dismissed.

On or about February 19, 2016, a Board Certified Attorney specializing in Consumer Bankruptcy Law, Mr. Brady, filed on behalf of his client, Debtor Whitney N. Broach, a Voluntary Petition and Plan for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code(Bankruptcy Case No. 16-30848). The bankruptcy judge was Judge Jeff Bohm.

On April 7, 2016, Bankruptcy Judge Bohm conducted a show cause hearing inquiring why, by filing the above referenced voluntary Chapter 13 bankruptcy petition, Ms. Broach should not be sanctioned for violating a prior bankruptcy order from Dec. 21, 2012, in Bankruptcy Case No. 09-30073-H4-13, mandating that before filing for bankruptcy again, she was required to obtain permission from the bankruptcy court, and Ms. Broach was required to hire a Board Certified in Consumer Bankruptcy Attorney. Mr. Brady, the Board Certified Attorney accepted responsibility for the errors he made in the three bankruptcy cases (see transcript from show cause hearing at App. Sec. No. 14 , page 4, lines 20-25; page 5, lines1-16, page 6, lines1-3, lines 24-25;page7, lines1-2; page 8, lines 7-8).Mr. Brady accepted full responsibility for all the mistakes in the filing of three cases in Chapter 13 for Ms. Broach. In the transcript from the show cause hearing (see App. Sec. No. 14, page 8, lines15-18, Attorney Brady stated that " I don't think penalizing Whitney (Ms. Broach) certainly benefits the creditors." " As it stands now, because this was the third case, there is no stay." " No creditors have objected." " No creditors have showed at this hearing." On April 7, 2016

The Bankruptcy Court heard the testimony of Ms. Broach's Board Certified in Consumer Bankruptcy Attorney, who took personal responsibility for failing to ask for permission before filing the subject Ch. 13 bankruptcy petition due to personal issues (the attorney had been taking prescription pain pills for several years, and he was grieving the death of his wife who died three years earlier). Ms. Broach's board certified attorney took responsibility for filing three separate bankruptcy cases for Ms. Broach during this "very bad period"and "that was my fault." " My client cooperated." " The fact that I did not file a motion, that's my fault too." " That's on me" (see Sec. App. No. 14, page6, lines 1-3).Ms. Broach's attorney added, "I did not realize or read the rest of the Order that required us to get permission from the Court to file" (App.Sec.No.14,page 6, lines1-3). Mr. Brady stated in an affidavit that Ms. Broach had given him the Judge's order requiring permission be obtained before filing bankruptcy (see App. Sec. 24). Commenting on all three bankruptcy cases which Ms. Broach's attorney filed, her attorney testified: " I mean, granted, I should have read that Order three times and made notes because in addition, after looking at your order, there are things that go along with filing for permission, attaching some of the schedules." " And that we didn't do either." " I didn't do either" (see App. Sec. No. 14, page10, lines5-10). However, the Judge conceded that on the third bankruptcy case filed by Ms. Broach's board certified attorney " Now you did on this third case before the Court: " "Now you did on this third case file all of her Schedules and Statements. On the first two, that was not done at all" (see App. Sec. No. 14, page 10, lines 9-21). Ms. Broach's attorney conceded that because of his "bad period" "there's probably four" other bankruptcy cases of

clients other than Ms. Broach's case which also were dismissed (see App. Sec. No. 14, page 12, lines23-25; page 13, lines1-6).

By order dated April 8, 2016, the Bankruptcy Court decided not to sanction Ms. Broach, but dismissed the bankruptcy petition (Case No.16-30848) that complied with the bankruptcy code requirements as to correct form, plan, and schedules. The bankruptcy trustee had been paid by Ms. Broach, and lack of payment to the trustee was not at issue (see App. Sec. No. 14, page 10, lines 19-20). This dismissal of a correct in form and content bankruptcy petition shocked the conscience and was an example of the court taking away life, liberty, and property, through denial of substantive due process to Ms. Broach (see the Fifth and Fourteenth Amendments of the U.S. Constitution). The government's deprivation of Ms. Broach's property by not allowing her to file a bankruptcy, or keep her correct in form bankruptcy petition was not justified by a sufficient purpose, and constituted a breach of Ms. Broach's substantive due process. The Bankruptcy Court denied Ms. Broach procedural due process of law when it had taken away life, liberty, and property, due to an absence of the automatic stay of the bankruptcy code when the case was dismissed by Judge Bohm, even though it was a perfectly correct bankruptcy petition. Ms. Broach, as a consequence lost tools of trade, 6,000 cubic feet of medical files, and Mr. Broach's legal files, and many items that were irreplaceable, which were a substantial loss.

At the show cause hearing held on April 7, 2016, Judge Bohm asked Mr. Brady "are you aware of any other cases that got dismissed because of the medical condition you are suffering from?" Mr. Brady responded "Like I say, There's probably four" (see App.Sec.No.14, page 13, lines

7-10). Mr. Brady admitted to four cases of other clients besides Ms. Broach's cases where he had been negligent, and had caused them to be dismissed.

Subsequently, on May 2, 2016, Ms. Broach's legal counsel, Board Certified in Consumer Bankruptcy Attorney, Mr. Brady, filed in the Bankruptcy Court a Motion for permission to file a Bankruptcy Case, with attached exhibits such as a copy of the voluntary bankruptcy petition with all required Schedules and Plan. Bankruptcy Judge Bohm conducted a hearing on May 12, 2016, and the next day entered an Order Denying Ms. Broach's Motion for Permission to file bankruptcy. None of Ms. Broach's creditors opposed her filing bankruptcy. Substantive due process looks to whether there is a sufficient substantive justification, a good enough reason for such a deprivation, and there was none.

Judge Bohm prevented Ms. Broach from conferring with her court mandated Board Certified Attorney, Mr. Brady, (see App. Sec. No.15, page11,lines 6-7) at the May 12, 2016, hearing. Ms. Broach's Board Certified Attorney had proffered her testimony. Counsel for the U.S. Trustee then cross examined Ms. Broach. She had difficulties answering complicated questions regarding a disputed and/or a transferred mortgage and the specific amounts which she owed, which included a mortgage on her house which had been sold four times to different entities. Two of the banks had engaged in illegal foreclosure activity (the banks later paid Ms. Broach $12,000.00 for violating banking laws), and she had a stair-step mortgage note from 2013, but the mortgage company was charging her according to an old note from 2005, so Ms. Broach asked the judge, " Can I have- discuss with my attorney?" Judge Bohm responded "you may not"(see App.Sec.No.15, page 11, lines6-7). Ms. Broach's board certified attorney later

attested that " I did not have the opportunity to fully and thoroughly question Ms. Broach after questioning by the representative of the Chapter 13 Trustee" (see App.Sec.No. 24). The attorney further attested that "Ms. Broach had obviously been confused by the questioning and I believe her answers could have been clarified through more extensive questioning"(see App.Sec.24).During the middle of cross-examination by the Bankruptcy Trustee's Attorney, Judge Bohm concluded: " We're going to stop this hearing" (see App. Sec. No. 15, page 15, line 16). The Judge stated that Ms. Broach was not credible (see App. Sec. No. 16). The Judge would say "not credible" before Ms. Broach could answer a question.

It is apparent to all that see her that the elderly Ms. Broach had suffered from a serious neurodegenerative disease, which appeared to give Judge Bohm the mistaken impression that she was not credible (see letter from Jamshid Lofti, M.D., App. Sec. No. 16). In spite of Ms. Broach's obvious tremors and difficulties in communicating, which her doctor opined "can affect another person's judgment of her credibility," the Judge did not acknowledge her disability. After appearing before Judge Bohm at four different hearings, the record does not show that the judge showed concern for Ms. Broach's obvious disability. Judge Bohm ignored the fact that she qualified as disabled under the Americans With Disabilities Act.

On May 21, 2016 (Case No. 16-30848), Ms. Broach's attorney filed a Fed.R.Civ.P. 60(b)(1) Motion for Expedited Rehearing on Request for Permission to file Bankruptcy Case (see App.Sec. No.13). The matter was never scheduled for a hearing and on August 8, 2016, Judge Bohm denied the rehearing by treating it as if it had been submitted as a Fed.R.Civ.P. 59 Motion. Judge

Bohm filed of record his Findings of Fact and Conclusions of Law (see App.Sec.No.10).Federal R.Civ. P. 61 mandates the court at every stage of the proceeding to disregard all errors and defects that do not affect any party's substantive due process rights. Ms. Broach filed all pleadings on a pro-se basis from this point on, because Judge Bohm stated that Ms. Broach could not be represented by her Board Certified in Consumer Bankruptcy Attorney (see App. Sec. No. 15, page 16, lines 3-6). On May 12, 2016, Judge Bohm told Ms. Broach's attorney "You are not to assist her" (see App. Sec. No. 15, page 16, lines 5-6). Judge Bohm failed to give Ms. Broach her procedural due process because he did not give notice, and grant a hearing before permanently barring Ms. Broach from filing in the bankruptcy court (see App. Sec. No. 15, page 16, lines 3-5). By the Bankruptcy Court's failure to show a compelling reason that would demonstrate an adequate justification for terminating a correct in form, and content bankruptcy petition, the court deprived Ms. Broach of her substantive due process, by barring her from filing bankruptcy. Judge Bohm deprived Ms. Broach of her procedural due process by not granting a hearing on the Fed. R. Civ. P. 60(b)(1) motion.

Debtor Ms. Broach sought bankruptcy protection before U.S. Bankruptcy Judge Bohm, yet instead encountered his pervasive bias and prejudice by his refusal to allow her to file for Chapter 13 Bankruptcy. The undisputed errors made in Judge Bohm's Court were attributed to her Board Certified Attorney in Consumer Bankruptcy. Judge Bohm denied Debtor's request to file for bankruptcy, claiming that Ms. Broach was not credible. The Judge took every measure available to bar Ms. Broach from seeking bankruptcy protection. The Judge treated Ms. Broach's Fed. R. Civ. P. 60(b)(1) motion

as a Fed. R. Civ. P. 59 Motion (see App. Sec. No. 10, page19, letter C. "Applying the Standards for a Rule 59 Motion to the Case at Bar") to avoid dealing with the Judge's mandated Board Certified Attorney's commission of excusable neglect. The Judge ignored the fact that the Fed. R. Civ. P. 60(b)(1) Motion was submitted to the Court pursuant to the provisions of Federal Rules of Bankruptcy Procedure, Rule 9024, and he denied Ms. Broach's claim of excusable neglect by her attorney.

The Judge's pervasive bias and prejudice that he has always exhibited for Ms. Broach resulted in a violation of her due process, and a violation of her substantive due process.

C. The U.S. District Court Proceedings:

On August 19, 2016, Ms. Broach appealed Judge Bohm's denial of her Motion for Rehearing(Fed. R. Civ. P. 60) to the U.S. District Court for the Southern District of Texas, Houston Division (App. Sec. No. 3), Case No.4:16-cv-02561. Ms. Broach filed her brief on appeal with the District Court on December 20, 2016. On January 11, 2017, Ms. Broach filed with the court her amended brief.

On or about February 24, 2017, Ms. Broach filed with the U.S. District Court for the Southern District of Texas, Houston Division, her Motion, and brief for Disqualification and or Recusal of Bankruptcy Judge Jeff Bohm. Over 17 adult disinterested people signed affidavits that Judge Bohm's impartiality was reasonably questioned under 28 §455, and that Judge Bohm should be recused.

On March 6, 2016, The U.S. District Judge, Nancy Atlas, issued her order. The Judge stated in her order that a recusal of Judge Bohm was moot because the

bankruptcy case had been dismissed. The recusal of Judge Bohm was not moot because an Adversary suit or proceeding can be filed in a bankruptcy case even after the bankruptcy has been dismissed. It was not moot because Judge Bohm, and Judge Isgur had issued orders in Case No. 0930073-H4-13 for three years after the bankruptcy case was dismissed.

D. The Appellate Court proceedings

Ms. Broach appealed the above referenced adverse rulings to the United States Court of Appeals for the Fifth Circuit (see App. Sec. No.4). On June 25, 2018, Judgment was entered and filed (Case No. 17-20229) and an unpublished opinion filed. A court order denying petition for rehearing en banc was filed on Sept. 5, 2018.

The Honorable Alito of The U.S. Supreme Court granted an extension (on November 26, 2018) for a writ of certiorari until Feb. 2, 2019.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I.

Review Is Warranted Because The Opinion By The Fifth Circuit Conflicts With Opinions of The Other Circuits As Well As Affirmations Contained in Opinions Of This Court. Review is warranted because the Court mandated that the Debtor hire a Board Certified in Consumer Bankruptcy Attorney, and the Court failed to protect the debtor and creditors when the attorney made self-admitted mistakes. Review is warranted because the Court has not decided an opinion on a similar case where the debtor was ordered to hire a board certified in consumer bankruptcy attorney who subsequently made mistakes. Review is warranted as to violations of

procedural due process, and violations of substantive due process.

A. The Bankruptcy Court violated the procedural due process, and substantive due process of the Debtor, Whitney N. Broach by blocking her from filing bankruptcy. When the following events are considered as a whole, they constitute a violation of procedural due process, and thus substantive due process.

The question of whether the petitioner, Ms. Broach, should be responsible for the mistakes of her Court mandated Board Certified in Consumer Bankruptcy Attorney is no because this case meets all the elements of a substantive due process claim. The Bankruptcy Court violated the substantive due process clauses of the Fifth and Fourteenth Amendments of the Constitution. The Bankruptcy Court deprived Ms. Broach of "life, liberty, and property without due process of law".

The Bankruptcy Court violated Ms. Broach's procedural due process when it deprived her of her "life, liberty, and property."

Substantive due process asks the question of whether the government's (Bankruptcy Court's) deprivation of a person's (Ms. Broach's) life, liberty or property is justified by a sufficient purpose? In the case at hand the answer is no. The role of the bankruptcy court is to administer the debts and property of the debtor, and to oversee the payment of creditors. A fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial "fresh start" from burdensome debts. The Supreme Court made this point about the purpose of the bankruptcy law in a 1934 decision " ...It gives to the unfortunate debtor ....a new opportunity in

life and a clear field for future effort unhampered by the pressure and discouragement of preexisting debt" (***Local Loan Co. v. Hunt,*** 292 U.S. 234,244(1934)). In the case at hand, none of the creditors were paid, and the court turned away a debtor willing to pay her debts. The Court deprived Ms. Broach of her life, her property (the loss of 6,000 cubic feet of files),and her liberty of a fresh start. The creditors were deprived of payment. The actions of the bankruptcy court were not justified by sufficient purpose. Judge Bohm dismissed a completed, and proper in form bankruptcy petition in 2016 (Case No. 1630848). Substantive due process looks to whether there is a sufficient substantive justification, a good enough reason for such a deprivation, and there was none. Neither the creditors, nor the debtor benefitted when this complete bankruptcy petition, plan and schedules was dismissed by Judge Bohm(see App. Sec. 14, page 10, lines 9-21). Instead the Court focused on putting obstacles in front of the debtor to prevent her from filing bankruptcy, and therefore none of the creditors were paid.

Any time the government deprives a person of life, liberty or property, the government must provide a sufficient justification (*See* ***Sacramento v. Lewis*** ,118 S.C. 1708, 1716 (1996) (quoting ***Wolff v. McDonnell,*** 418 U.S. 539, 558 (1974) (noting " the touchstone of due process is protection of the individual against the arbitrary action of government"). Judge Bohm acted in an arbitrary way by dismissing a correct in form, and content bankruptcy schedule. Judge Bohm did not offer a sufficient justification for dismissing a correct in form, and content bankruptcy schedule. In 1926, in ***Village of Euclid v. Ambler Realty Co.,*** 272 U.S.365 (1926) the court held that government action affecting real property violates substantive due process if such action is "clearly arbitrary

and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." Judge Bohm's dismissal of a bankruptcy petition that complied with the bankruptcy rules did not benefit the creditors, the debtor, or the general public. Therefore, the dismissal was an arbitrary and unreasonable act. The Supreme Court recognized that substantive due process serves as a check on government power. In Ms. Broach's case, the court (judicial) is the power. Because Judge Bohm significantly limited Ms. Broach's ability to pay her creditors by dismissing the correct in form bankruptcy petition, there is a constitutional requirement to care for and protect the Debtor and creditors. The Judge was arbitrary and capricious because the Judge rendered Ms. Broach unable to defend herself.

The Bankruptcy Court ordered Ms. Broach to hire a Board Certified Attorney in Consumer Bankruptcy. A Board Certified in Consumer Bankruptcy Attorney is held at a higher standard by Judge Bohm in the United States Bankruptcy Court in the Southern District of Texas, Houston Division. *See* ***In Re Ritchey,*** 512 B.R.847, 868, 869 (2014). When the Court required that Ms. Broach hire a Board Certified Attorney in Consumer Bankruptcy, the Court placed a substantial financial burden on Ms. Broach. The attorney, Mr. Brady admitted in open court, (see App. Sec. 14, and 24),that he was responsible for the mistakes in Ms. Broach's cases. Ms. Broach argues that substantive due process safeguards Ms. Broach and her rights in this case that are not otherwise enumerated in the constitution. Ms. Broach argues that when she complied with the court order to hire a Board Certified in Consumer Bankruptcy Attorney, and the attorney made self-admitted mistakes, that she cannot be held accountable for his mistakes, and that the burden of

protecting the debtor, and the creditors shifts to the court. In Ms. Broach's case, a government official, in this case the Bankruptcy Judge, through his affirmative action conduct of mandating through court order that the Debtor, Ms. Broach, hire a board certified attorney, shows that the government (court) contributed to or created the danger (attorney's mistakes). When the Bankruptcy Judge realized the "danger", the attorney's self-admitted mistakes, the Judge acted recklessly in conscious disregard to that risk, and therefore his conduct was conscience-shocking. Under the Danger Creation theory a constitutional duty to protect is triggered. The court cannot show an adequate justification in holding the Debtor Ms. Broach, responsible for the Board Certified Attorney's mistakes because the court must meet strict scrutiny, and the court has failed to meet strict scrutiny. The Debtor has an unenumerated right to rely on the court to protect her and keep her bankruptcy case from being dismissed in the case at hand. It is unconstitutional for the Bankruptcy Court to blame the Debtor, Ms. Broach, for the mistakes of her board certified attorney. Ms. Broach has a liberty interest in not being held accountable for her attorney's mistakes. Holding Ms. Broach accountable for her board certified attorney's mistakes constitutes discrimination and a violation of her civil rights. Ms. Broach is one person of many people that seek bankruptcy protection, and are kicked out of the bankruptcy court by the Court's unrealistic expectations of debtors and Court created debtor obstacles relied on by the court to reduce the caseload of bankruptcies.

The debtor should have access to an attorney. In ***Washington v. Glucksberg,*** Chief Justice Rehnquist said courts should protect rights under the liberty of the due process clause only if they are enumerated in the text,

intended by the framers, or there is a clear tradition of safeguarding such a right (*See* ***Washington. v Glucksberg,*** 521 U.S. 702, 117 S. Ct. 2258, 2275 (1997). The court in Ms. Broach's case ordered her to hire a board certified attorney, then told the attorney not to represent or assist her. Judge Bohm told attorney Brady " You are not to assist her" (see App. Sec. 15, page 16, lines 5-6).The court refused to let Ms. Broach confer with her attorney, or be proffered by her attorney. The Bill of Rights, and the Constitution support the right to consult with an attorney. In ***Rochin v. California,*** the government officials were limited by substantive due process (*See_**Rochin v. California,*** 342 U.S. 165 (1952)). In this case the police officers forcibly pumped a person's stomach to recover drugs. The United States Supreme Court held that the police's action shocked the conscious and therefore it violated substantive due process. In Ms. Broach's case the government official was the Bankruptcy Judge who dismissed a correct in form, and proper bankruptcy petition. This egregious action shocked the conscious, and violated Ms. Broach's substantive due process. The court, by taking away Ms. Broach's liberty in such an arbitrary or capricious manner violated the substantive due process of Ms. Broach. In ***Sacramento v. Lewis*** where there is the opportunity for deliberation and reflection, deliberate indifference is enough for a substantive due process violation (*See **Sacramento v. Lewis,*** 118 S. Ct. at 1720). In the case at hand, the Judge had the opportunity for deliberation, and reflection, but he dismissed the proper in form bankruptcy petition (Case No. 16-30848). ***Sacramento v. Lewis*** supports a violation of substantive due process in Ms. Broach's case.

Ms. Broach's Case has met all the requirements for a violation of substantive due process for Question One:

(1) Through the actions of the court there was a deprivation. (2) There was a deprivation of life (Ms. Broach was denied a new opportunity at life as defined by the Bankruptcy Title 11, and *Local Loan Co. v Hunt,* 292 U.S. 234 (1934), liberty (of a fresh start)(the right to confer with an attorney), or property,(6,000 cubic feet of files, tools of trade) and (3) The Court (Government) did not have an adequate justification for its action. In order to show an adequate justification, the court (government) must meet strict scrutiny, and it cannot.

When the court dismissed a completed bankruptcy petition that complied with the bankruptcy requirements, the court violated the procedural due process of Ms. Broach...and therefore her substantive due process was violated.

II.

Review is warranted to answer the question: Does a Bankruptcy Court Judge deny the debtor's substantive and procedural due process by treating Debtor's Fed. R. Civ. P. 60(b)(1) " Excusable Neglect" Argument in a Motion for Rehearing by unilaterally and improperly converting Debtor's 60(b)(1) Motion to a Fed. R. Civ. P. 59 Motion, and thereby depriving the debtor of a rehearing? Review is warranted because the bankruptcy court abused its discretion in failing to make a substantive analysis by applying the applicable law to the facts in evaluating Debtor's Fed. R. Civ. P. 60 (b)(1) Motion For Rehearing and her claim of "Excusable Neglect" relative to her mandated by court order board certified attorney. Review is warranted to determine if the Bankruptcy Court analyzed the factors constituting "Excusable Neglect". Review is warranted because the Bankruptcy Court did not hold a hearing on Debtor's Fed.R.Bkpt. P.

9024/Fed. R. Civ.P.60 (b)(1) Motion For Rehearing. Review is warranted because the Bankruptcy Court failed to provide a detailed factual and legal analysis of the "Excusable Neglect" claim. Review is warranted because the Bankruptcy Court failed to give the debtor an adequate opportunity to present her case which justifies setting aside the Bankruptcy Courts Order denying the Debtor a Rehearing, and constitutes a violation of the Debtor's procedural and substantive due process.

On May 21, 2016, Mrs. Broach filed her Motion for Expedited Rehearing (see App. Sec. 13). The Bankruptcy Court denied the motion, yet failed to recognize that at ¶8 of the subject motion, Mrs. Broach essentially alleged a claim of "excusable neglect" under Fed.R.Civ.P. 60(b)(1) against her board certified attorney for not following the Bankruptcy Court's 2009 Order requiring that permission be requested from the Court before filing for bankruptcy. The attorney took responsibility for filing three separate bankruptcy cases for Mrs. Broach during this "very bad period" and "that was my fault. My client cooperated. The fact that I did not file a motion, that's my fault too. That's on me" (see App. Sec. 14). He added, "I did not realize or read the rest of the Order that required us to get permission from the Court to file" (*Id.*).

Commenting on all three bankruptcy petitions which he filed, attorney Brady testified: "I mean, granted, I should have read that Order three times and made notes because in addition, after looking at your Order, there are things that go along with filing for permission, attaching some of the Schedules. And that we didn't do either. I didn't do, either" (*Id.*). The Judge conceded that on the third bankruptcy case before, the Court: "Now you did on this third case file all of her Schedules and Statements.

On the first two, that wasn't done at all." Attorney Brady conceded that because of his "bad period," "there's probably four" other bankruptcy cases which also got dismissed (*Id.*).

The undisputed errors made in Judge Bohm's Court were attributed to her board certified attorney in Consumer Bankruptcy. The judge's continued bias and prejudice continued, as he took every measure available to purge Mrs. Broach from seeking bankruptcy protection. One measure taken was the judge's unilateral transformation of Mrs. Broach's Fed.R.Civ.P. 60(b)(1) motion into a Fed.R.Civ.P. 59 motion, assuring that the Court would not have to deal with the issue of her board certified attorney's excusable neglect. Such a measure was an abuse of discretion by intentionally avoiding to have to apply settled legal factors which must be applied in evaluating whether the negligence of an attorney is excusable under Rule 60(b)(1). Finally, Judge Bohm wrote Findings of Fact and Conclusions of Law which were rife with factual and legal error, but most importantly exhibit the judge's pervasive bias and prejudice he has always had for the Debtor. The District Court erred in affirming Judge Bohm's rulings. Mrs. Broach appeals the denials of the courts below, seeking the appointment of a fair bankruptcy judge, overall fairness, and a compassionate, patient and understanding judge who will not treat her adversely because she is handicapped and disabled. Like any other citizen, she seeks as a Debtor protection under the bankruptcy laws.

A. The U.S. Bankruptcy Court Abused its Discretion By Ignoring Debtor-Appellant's Claim of "Excusable Neglect."

The Bankruptcy Court entered its Order denying

Debtor permission to file her Chapter 13 bankruptcy case on May 13, 2016 (see App. Sec. 8). Eight days later, on May 21, 2016, Debtor filed in the Bankruptcy Court her Motion for Expedited Rehearing of Request for Permission to File Bankruptcy Case ("Motion for Rehearing") pursuant to Federal Rule of Bankruptcy Procedure 9024 (see App. Sec.13). The "Notes of Advisory Committee on Rules– 1983" related to Rule 9024 clearly state: "For the purpose of this rule all orders of the bankruptcy court are subject to Rule 60 F.R.Civ.P." Federal Rule of Civil Procedure 60(b)(1) provides in relevant part:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or ***excusable neglect;*** ...

Fed.R.Civ.P. 60(b)(1) (***emphasis added***). Rule 60(b), Fed.R.Civ.P., provides in relevant part that a Rule 60(b)(1) motion must be filed within one year after entry of judgment. Debtor complied with this time limitation. The Bankruptcy Court, in denying Debtor's Motion for Rehearing, wholly failed to recognize that at ¶8 of the subject motion, Mrs. Broach essentially alleged a claim of "excusable neglect" under Rule 60(b)(1) against her board certified attorney, James Brady, for not following the Bankruptcy Court's 2009 Order requiring that permission be requested from the Court before filing for bankruptcy (See specific allegations set out at ¶8 to Appellant's Motion for Expedited Rehearing, setting out the basis for her "excusable neglect" claim (see App. sec. 13)).

Judge Bohm agreed that attorney Brady was negligent in his handling of Mrs. Broach's bankruptcy

cases (see App. sec. 15). However, absent from the record is any indication that the judge even considered whether the attorney's negligence was "excusable" under Fed.R.Civ.P. 60(b)(1). No form of a ruling on this issue exists in the record. Instead the judge bypassed the "excusable neglect" claim against attorney Brady and places the blame on Mrs. Broach: "The Court reiterates that it was the Debtor's non-credible testimony at the May 12, 2016 hearing– not Mr. Brady's conduct ... that resulted in this Court's denying the Motion for Permission" (see App. sec. 10 Fact Nos. 57 and 58).

The Bankruptcy Court cites in its Conclusions of Law ***In re Aguilar,*** 861 F.2d 873 (5th Cir. 1988) and ***Stangel v. United States,*** 68 F.3d 857, 859 (5th Cir. 1995) in support of its decision to treat Debtor's Fed.R.Bkpt.P. 9024/Fed.R.Civ.P. 60(b) motion as a Fed.R.Bkpt.P. 9023/Fed.R.Civ.P. 59 motion (*Id.*). However, these cases do not warrant such a unilateral conversion of a Rule 60(b) motion to a Rule 59 motion, particularly when the movant alleges "excusable neglect" under Rule 60(b)(1), specifically blaming the failure to comply with the April 7, 2009 Order on the negligence (ROA.116, lines 5-8, ROA.116, lines 24-25; and ROA.119, line 25 through ROA.120, line 1– see App. Sec. 14).

The case of ***In re Aguilar*** makes it clear that "motions for reconsideration or rehearing served more than 10 days after the judgment are generally decided under Fed.R.Civ.P. 60(b)," not Fed.R.Civ.P. 59(e). ***In re Aguilar,*** 861 F.2d 873 (*citing* ***Harcon Barge Co. v. D G Boat Rentals, Inc.,*** 784 F.2d 665, 669 (5th Cir. 1986)). The failure of Bankruptcy Judge Bohm to recognize and rule on Debtor's Rule 60(b)(1) "excusable neglect" claim constituted an abuse of his discretion, a violation of procedural due process, and therefore a violation of

substantive due process.

B. Bankruptcy Judge Bohm abused his discretion by failing to make substantive rulings by applying law to the facts with respect to Appellant's Fed.R.Civ.P. 60(b)(1) motion.

In *Pioneer Investments Services Co. v. Brunswick Associates Ltd., Partnership,* 507 U.S. 380, 396, 113 S.Ct. 1489 (1993), the U.S. Supreme Court set out the analysis required for a finding of "excusable neglect" and held that where appropriate, the courts are allowed to accept late filings even where caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond a party's control. *See Id.; In re Cendant Corp. Prides Litigation,* 235 F.3d 176, 181-182 (3d Cir. 2000). The Supreme Court pronounced that the inquiry is equitable, and necessitates considering "all relevant circumstances surrounding a party's omission." *Pioneer,* 507 U.S. at 395, 113 S.Ct. 1489.

The Supreme Court articulated the following "relevant circumstances" or factors that should be considered in determining whether there is excusable neglect: (1) "whether the movant acted in good faith"; (2) "the danger of prejudice" to the nonmovant; (3) "the length of the delay and its potential impact on judicial proceedings"; and (4) "the reason for the delay, including whether it was within the reasonable control of the movant." *Pioneer,* 507 U.S. at 395, 113 S.Ct. 1489; *United States v. Clark,* 51 F.3d 42, 43 (5th Cir. 1995) (*citing Pioneer*).

In light of *Pioneer,* the Third Circuit Court of Appeals in *In re Cendant Corp. PRIDES Litigation,* 235 F.3d 176, *supra,* recognized a duty of explanation on the District Courts when they conduct an "excusable neglect"

analysis under Fed.R.Civ.P. 60(b)(1). The appeals court cited its earlier case of ***Chemerton Corp. v. Jones,*** 72 F.3d 341 (3d Cir. 1995), where the court held that the bankruptcy court's "analysis failed to adequately consider the totality of the circumstances presented." *Id.* at 349. The ***Chemerton*** court faulted the bankruptcy court for failing to make additional relevant factual findings with regard to the ***Pioneer*** factors listed above. *Id.* at 350. The court "remand[ed] the issue to the bankruptcy court, with directions [to] undertake a more comprehensive and thorough determination of whether the totality of the circumstances support claimants' defense of 'excusable neglect.'" *Id.; See also* ***In re O'Brien Envntl. Energy,*** 188 F.3d 116 (3d Cir. 1999) (faulting a district court for not making specific findings as to prejudice).

The ***In re Cendant*** court held that the district court decision suffered from the same defects presented in ***Chemerton*** and ***O'Brien*** in that the ruling on the Rule 60(b)(1) motion lacked substantive analysis and application of the ***Pioneer*** factors, warranting reversal based on abuse of discretion. *Id.* at 182. Finally, the appeals court in ***In re Cendant*** applied the facts to the ***Pioneer*** factors in concluding that any neglect by the movant in submitting a proof of claim form late was "excusable neglect." *Id.* at 184.

The Bankruptcy Court and the District Court abused their discretion in never even making a ***Pioneer*** based evaluation of relevant factors to the facts of the case as they relate to Mrs. Broach's "excusable neglect" claim. In this regard, see App. Sec. 10 and 12. The courts below were able to avoid the merits of Appellant's "excusable neglect" claim by erroneously transforming Appellant' Rule 60(b) motion into a Rule 59 motion, with the courts further abusing their discretion in applying the

wrong standard of review, that is, evaluating the case for manifest errors of law or fact to present newly discovered evidence (see cites at *Id.*). For this reason, a reversal is warranted. Appellant should be granted a reversal and her day in court so that her complete Rule 60(b) motion for rehearing can be considered in context of the ***Pioneer*** factors. In the instant case, the undisputed evidence shows that Mrs. Broach acted in good faith in retaining, cooperating and working with her board certified attorney, Mr. Brady. Unfortunately, the attorney was overcome with sadness and great depression with the loss of his wife in October of 2012, so on each of the three bankruptcy cases which the attorney filed for Mrs. Broach, he overlooked the April 7, 2009 Order , requiring that his client, Mrs. Broach, ask the court for permission to file bankruptcy.

Additionally, absent from the record is evidence of any danger of prejudice to the creditors. Mrs. Broach's attorney was obviously concerned for the protection of the creditors, yet he pointed out to Judge Bohm that no creditors were present at the show cause hearing and, therefore, dismissing the Chapter 13 case would not benefit the creditors (see App. sec 14). Nor were creditors prejudiced eight (8) days later, when attorney Brady filed with the Bankruptcy Court Mrs. Broach's Motion for Permission to File Chapter 13 bankruptcy petition.

By its very nature, Rule 60(b) seeks to "strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and the 'incessant command of the court's conscience that justice be done in light of all the facts.'" ***Seven Elves, Inc. v. Eskenazi,*** 635 F.2d 396, 401 (5th Cir. Unit A 1981) (*citing* ***Bankers Mortgage Co. v. United States,*** 423 F.2d 73, 77 (5th Cir.), cert. denied, 399 U.S. 927, 90 S.Ct. 2242 (1970)).

For this reason, the rule should be liberally construed in order to do substantial justice. ***Seven Elves,*** 635 F.2d at 401.

While the "desideratum of finality is an important goal, the justice-function of the courts demands that it must yield, in appropriate circumstances, to the equities of the particular case in order that the judgment might reflect the true merits of the cause." *Id.* However, Rule 60(b) "vests in the district courts power 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'" *Id.* at 401-402. The "discretion of the district court is not unbounded, and must be exercised in light of the balance that is struck by Rule 60(b) between the desideratum of finality and the demands of justice." *Id.* at 402. "That same consideration must inform appellate review of a district court's exercise of discretion under Rule 60(b); and ***where denial of relief precludes examination of the full merits of the cause, even a slight abuse may justify reversal."*** *Id.* (***emphasis added***).

In ***United States v. Gould,*** 301 F.2d 353, 355-56 (5th Cir. 1962), quoting 7 Moore's Federal Practice P 60.19, at 237-39, the Fifth Circuit delineated factors that should inform the district court's consideration of a motion under Rule 60(b): (1) that final judgments should not lightly be disturbed; (2) that the Rule 60(b) motion is not to be used as a substitute for appeal; (3) that the rule should be liberally construed in order to achieve substantial justice; (4) whether the motion was made within a reasonable time; (5) whether if the judgment was a default or a dismissal in which there was no consideration of the merits, the interest in deciding cases on the merits outweighs, in the particular case, the interest in the finality of judgments, and there is merit in the movant's claim or defense; (6) whether if the judgment was

rendered after the trial on the merits the movant had a fair opportunity to present his claim or defense; (7) whether there are intervening equities that would make it inequitable to grant relief; and (8) any other factors relevant to the justice of the judgment under attack.

Liberally construing Rule 60(b), it is undisputed that Bankruptcy Judge Bohm never considered the substantive merits and evaluated Debtor's "excusable neglect" argument under Rule 60(b)(1) (see App. sec. 10).

The Fifth Circuit in ***Seven Elves***, 635 F.2d 396, *supra*, held that a pleading with characteristics of a default judgment rendered prior to a hearing taking place had equities which would militate in favor of Rule 60(b) relief:

> ...appellants did not in fact have an opportunity to present their side of the controversy. Thus, regardless of the characterization of the judgment below, it seems clear that the full merits of the cause were not examined. Truncated proceedings of this sort are not favored, and Rule 60(b) will be liberally construed in favor of trial on the full merits of the case. ... We believe the appellants in this case have shown both the existence of a sufficiently meritorious defense and the absence of a fair opportunity to present that defense below.

Seven Elves, 635 F.2d at 403. Another militating factor the Fifth Circuit considered was that "***any possible malpractice remedy against their attorney would be inadequate to restore the appellants to their prejudgment position.***" *Id.*(***emhpasis added***). Therefore, the Court concluded that the challenged judgment "must yield to

equities of the case in order that the appellants may be afforded their day in court."

In the case at bar, Debtor never had her day in Bankruptcy Court regarding her Rule 60(b)(1) "excusable neglect" claim. The neglect by attorney Brady has never been disputed. Judge Bohm never determined under the law whether the undisputed neglect was "excusable" (see App. sec. 10 and 12).

Moreover, any possible claim asserted against attorney Brady for legal malpractice would be wholly inadequate to restore Mrs. Broach to her pre-order position of bankruptcy protection under Chapter 13. The Order denying Debtor's motion for rehearing, particularly with a claim of her former attorney's "excusable neglect" never being considered by both courts below, should yield to equities of the case so that Debtor's "excusable neglect" claim may finally be considered based on a totality of the circumstances in a fair and unbiased forum willing to consider the legal issues expressly presented in Debtor's motion. The equities presented above militate in favor of reversal and a complete rehearing. Since no party in the underlying case will be prejudiced by the delay presented, equity should tolerate negligence, warranting a reversal.

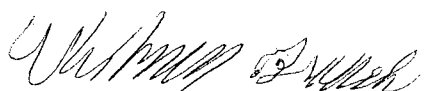
For these reasons, and based on the totality of the circumstances, Debtor-Appellant should be granted a reversal of the denial of her Rule 60(b) motion for rehearing. Upon reversal, fairness and equity also warrant providing the *pro se* Debtor a hearing where she will be afforded a reasonable opportunity to present additional supporting evidence so that the court can finally make an informed and complete analysis by applying the ***Pioneer*** factors in spite of the presence of "inadvertence, mistake, or carelessness, as well as intervening circumstances" beyond Debtor's control. The

legal error and abuse of discretion by the courts below warrant a reversal and remand for further proceedings.

CONCLUSION

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted. The court may wish to consider a reversal of the denial for a rule 60(b) Motion for Rehearing.

Respectfully submitted,



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