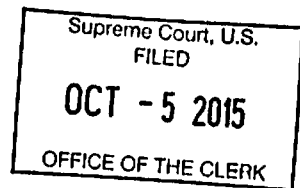


15-443

No.



IN THE

SUPREME COURT OF THE UNITED STATES

ANUJ GROVER, ET AL.,

Petitioners

v.

CHOICE HOTELS INTERNATIONAL, INC.

Respondent.

**On Petition For Writ Of Certiorari To The United
States Court Of Appeals, Seventh Circuit**

PETITION FOR WRIT OF CERTIORARI

MATTHEW J. ANDERSON

Counsel of Record

ANDERSON AGOSTINO & KELLER, P.C.

131 N. TAYLOR STREET

SOUTH BEND, INDIANA 46601

TELEPHONE: (574) 288-1510

FACSIMILE: (574) 288-1650

QUESTIONS PRESENTED

- 1) Whether abandonment by an attorney may provide a basis for relief in a monetary civil action under Fed. R. Civ. P. 60(b)(6); and
- 2) Whether a client is obligated to diligently follow his own case when he is unknowingly relying on the misrepresentation of his attorney.

PARTIES TO THE PROCEEDING

Petitioners, who were Defendants-Appellants below, are: Anuj Grover, Arjun Grover, and Dharam Punwani.

Respondent, who was Plaintiff-Appellee below is Choice Hotels International, Inc., a for profit corporation, incorporated in Delaware and based in Maryland.

The parties to the original proceeding, SBQI, Inc., Alok T. Gupta, Tarranpaul S. Chawla, Alok T. Gupta, Dharam Bahl, Jose Chettiah, and G.P. Srivastava, are defendants in the original proceeding but did not appeal the judgment against them and are not parties to this petition.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Anuj Grover, Arjun Grover, and Dharam Punwani, respectfully submit this petition for a writ of certiorari.

OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit (Pet.App. 1a) is reported as *Choice Hotels Int'l, Inc. v. Grover*, 792 F.3d 753 (7th Cir. 2015). The order and opinion denying Petitioner's Motion to Vacate pursuant to Fed. R. Civ. P. 60(b)(6) (Pet.App. 8a) is not yet reported.

JURISDICTION

The Seventh Circuit entered judgment on July 7, 2015. No petition for rehearing was filed. This Court has jurisdiction under 28 U.S.C. § 1254(1).

FEDERAL RULES INVOLVED

"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:

...
 (6) any other reason that justifies relief."
 Fed. R. Civ. P. 60(b)(6).

STATEMENT OF THE CASE

INTRODUCTION

This matter ultimately asks of the Court to resolve how to protect parties from attorneys who abandon clients without notice in civil cases involving monetary damages. Petitioners submit that they were

abandoned by their counsel, who failed to represent them in any meaningful way while misleading them of the status of their case. In the span of one year, said counsel appeared on behalf of Petitioners, participated in a preliminary pretrial conference under Fed. R. Civ. P. 16 before United States Magistrate Judge Andrew Rodovich and made no other filing of record nor any other action on behalf of Petitioners. During that same time, Petitioners' counsel contacted Petitioners either to mislead them about the status of the case or his actions or request more money to represent them. Ultimately, this abandonment led to a joint and several judgment against Petitioners, individually, as well as the other defendants, in the amount of \$430,286.75.

Petitioners then obtained new counsel, the undersigned, who filed a Motion to Vacate the Judgment pursuant to Fed. R. Civ. P. 60(b)(6). Relying principally on the cases of *Holland v. Florida*, 560 U.S. 631 (2010) and *Maples v. Thomas*, ___U.S.___, ___, 132 S.Ct. 912 (2012), Petitioners argued that abandonment by an attorney that occasions a default is an "extraordinary circumstance" so as to provide relief under Rule 60(b)(6). The District Court disagreed, relying on Seventh Circuit decisions that hold the client responsible for the attorney's malfeasance or nonfeasance.

On appeal, the Seventh Circuit allowed for abandonment to apply to provide relief in the context of litigation collateral to capital cases, i.e. prisoner-related litigation under 28 U.S.C. §2254 or §2255, but it stopped short of applying such relief in civil monetary cases stating, "the Supreme Court has not suggested that *Holland* or *Maples* has any bearing on suits about torts, contracts, and other economic

matters.” *Choice Hotels Int’l, Inc. v. Grover*, 792 F.3d 753, 756 (7th Cir. 2015).

While Petitioners maintain that the Supreme Court’s language in *Maples* alone makes clear that abandonment can provide relief in an economic civil case under Rule 60(b)(6), Petitioners believe that a writ of certiorari is necessary in order to modify the approach of the Seventh Circuit and resolve the splintered methodologies of the federal circuits on this issue.

COMPLAINT & BACKGROUND

Respondent, Choice Hotels International (“CHI”), a franchisor of motels and the holder of a number of trademarks related to the hospitality business, filed its Complaint on August 11, 2011 in the United States District Court in the Northern District of Indiana, which had jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question). (Pet.App. 10a.) The Court had original jurisdiction over the Lanham Act claims in the action pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331, 1338(a). Original jurisdiction pursuant to 28 U.S.C. §1338(b) also existed because the case was a civil action that asserted a claim of unfair competition joined with a substantial and related claim under the trademark laws. The District Court had supplemental jurisdiction over the state and common law claims pursuant to 28 U.S.C. §1367(a) because those claims were so related to the Lanham Act claims so as to form part of the same case or controversy under Article III of the United States Constitution.

CHI sought to make each of the defendants jointly and severally liable through its Complaint (Pet.App. 10a.) CHI alleged that all defendants entered into a franchising agreement with CHI under which

Defendants would operate a Quality Inn motel in South Bend, Indiana, using Plaintiff's trademarks. (*Id.*) CHI then claimed that Defendants failed to perform their end of the agreement and therefore elected to terminate the franchising agreement, consistent with its terms. (*Id.*)

CHI sent Defendants a notice of the termination at the end of 2010, and two subsequent letters directing Defendants to cease using CHI's proprietary marks but Defendants did not comply with any of the letters. (*Id.*)

The three individual Petitioners, however, denied ever signing the franchise agreement also affirmed by their affidavits that they believed "up until . . . [they] first received the complaint, that [their] involvement with [Plaintiff] was in [their] capacity as part owner of SBQI, Inc. and not individually." (Pet.App. 11a.)

Once the complaint was filed, Petitioners received effective service of process, but failed to answer timely the Complaint and the Clerk of Court entered their default on December 14, 2011. (*Id.*) Petitioners explained that they believed Tarranpaul Chawla, a co-defendant and Illinois attorney, was acting as their lawyer and was supposed to have been attempting to negotiate a settlement. (*Id.*) Seeing that no settlement could be reached, Petitioners and the other defendants requested that Chawla "retain local counsel."

In mid-February, 2012, Chawla reported that he had "located" Elton Johnson, an attorney, who would represent all defendants, including Petitioners.¹

¹ Elton Johnson was suspended from practicing law in Indiana on March 20, 2014, for noncooperation with the state's investigation of a grievance against him. On May 28, 2014, after

(Pet.App. 12a.) Johnson would also help sell the hotel property that was subject to the franchising agreement. (*Id.*) On or about February 20, 2012, Petitioners agreed to have Johnson represent their interests and Johnson entered his notice of appearance on behalf of all Defendants two days later. (*Id.*)

Johnson participated in a telephonic meeting with Plaintiff's counsel on May 10, 2012, where the attorneys reached agreement on some deadlines pertaining to the pleadings and discovery. (*Id.*) Eight days later, Johnson also appeared on Defendants' behalf at the magistrate judge's preliminary pretrial conference. (*Id.*)

Petitioners provided sworn testimony that Johnson never provided them with any documents, and that they were "never made aware of any deadlines in the case." (*Id.*)

One of the Petitioners, Anuj Grover, emailed Johnson on September 5, 2012, on Petitioners' behalf, asking for an update on the status of the litigation and sale of the hotel property. (*Id.* at 12a-13a.) (Arjun Grover and Dharam Punwani had asked Anuj Grover to communicate with Johnson to stay up-to-date on the case, and Anuj Grover kept Arjun Grover and Punwani informed of his interactions with Johnson.) (*Id.* at 13a.) Johnson responded that he was attempting to settle the case and that he was working on the prospective sale of the hotel property. (*Id.*)

Johnson failed to respond to an order to show cause why the imposition of reciprocal discipline by this district would be unwarranted, he was further suspended from practicing before the District Court. See the record for case number 2:14-MC-24-PPS. (Pet.App. 11a-12a.)

“Having heard no further status,” Anuj Grover emailed Johnson again on January 3, 2013, to find out what was going on. Johnson answered four days later that Plaintiff had sent him requests for admission in November, 2012, which he had “forwarded to Chawla. (*Id.*) The deadline to respond,” Johnson reported, had “expired and the Admissions were not sent in by the deadline.” (*Id.*) Johnson also said he was “trying to get the deadline extended.” (*Id.*) Johnson asked Anuj Grover to check in with him again in two weeks. (*Id.*)

In the interim, on January 11, 2013, Plaintiff filed its motion for summary judgment, relying, in part, on the Defendants’ failure to respond to requests for admissions. (*Id.*)

On January 21, 2013, Anuj Grover checked back in with Johnson, and did so again on January 30, 2013, with no response until February 11, 2013, the date of Defendants’ deadline for responding in opposition to the motion for summary judgment under N.D. Ind. L.R. 56-1(b)(1) and Fed. R. Civ. P. 6(d). (*Id.*) Johnson gave no update on the litigation but said he would be meeting with Chawla that week. (*Id.*) Two days later, the Court granted Plaintiff’s uncontested motion for summary judgment. (*Id.* and Pet.App. 25a.)

In late February 2013, Chawla contacted Anuj Grover to solicit payment for Johnson, which Anuj Grover tendered. Anuj Grover “was not provided any further status updates of the case until [he] received a copy of the Order and Judgment from Mr. Chawla.” (Pet.App. 13a-14a.) Anuj Grover also affirmed that he tried to get ahold of Johnson at least three other times but did not receive a call back. (*Id.* at 14a.) Petitioners learned of the judgment against them, and that discovery prompted them to secure legal

representation through their current attorneys, who then filed a Motion to Vacate all orders of default and judgment under Fed. R. Civ. P. 60(b)(6). (*Id.*)

Motion to Vacate and Ruling

In their motion and memorandum of law, Appellants argued that Johnson had abandoned his representation of Appellants in that he failed to take any further steps in representing Appellants but instead misled or ignored them in their inquiries into the case. (*Id.*)

As a result of this abandonment, Appellants argued that the while the 7th Circuit almost always refused to grant relief from judgments on the basis of attorney negligence, be it gross or nominal, such rulings were premised on the existence of an agency relationship, which was stricken by Johnson's abandonment. (*Id.* at 15a-18a.) In support of their motion, Appellants relied on two recent United States Supreme Court decisions: *Holland v. Florida*, 560 U.S. 631 (2010) and *Maples v. Thomas*, ___ U.S. ___, ___, 132 S.Ct. 912 (2012) which dealt with the distinction between attorney negligence and attorney abandonment, albeit in the context of criminal habeas petitions. (*Id.* at 21a.)

The District Court ruled against Appellants, citing three reasons for denying relief. (*Id.* at 19a-22a.)

The District Court first held that Appellants' affidavits did not enable the Court to find that they acted reasonably diligently in protecting their rights (*Id.* at 19a.) As a basis for this conclusion, the District Court reasoned that Johnson's informing Appellants that he has blown the deadline for responding to requests for admissions was distinguishable from *Maples* and *Holland* because Appellants "had notice of a potentially serious problem with their attorney, but

did not act accordingly.” (19a-20a.) The District Court also speculated that Mr. Chawla may have notified Appellants as to the status of the case. (*Id.*)

The District Court added to this first point by holding that Appellants’ failure to answer the complaint had nothing to do with Appellants’ failure to answer the Complaint. (*Id.* at 20a.)

The District Court’s second reason for denying relief was that Johnson was more responsive than the attorneys in the cases of *Holland* and *Maples*, where the attorneys were held to have abandoned their clients. (*Id.* at 21a.) The Court found that Johnson did not exhibit the “near-total failure to communicate” (*Id.*). Next the Court reiterated that Appellants had notice of a basis to protect themselves pro se unlike the petitioner in *Maples*. (*Id.*)

Finally, the District Court held, in essence, that the rationale of attorney abandonment could not apply in this case because Appellants ostensibly have a recourse (a malpractice claim), whereas the petitioner in *Maples* was looking at the death penalty. (*Id.* at 21a.)

SEVENTH CIRCUIT APPEAL

The Seventh Circuit then affirmed the District Court’s decision for various reasons cited *infra*. In so holding, the Seventh Circuit allowed for the proposition that abandonment severs the attorney-client relationship but ignored the mandate in *Maples* that a client could not be held responsible for failing to act on his own behalf when he lacks reason to believe his attorneys are representing him. *See id.* at 924 and Pet.App. 7a. Instead, the Seventh Circuit went in the opposite direction and charged clients with knowing the status of their case in spite of whether they know an attorney has failed to conduct

him/herself properly. *See Choice Hotels Int'l, Inc.*, 792 F.3d at 756 (“When they began to suspect that Johnson likewise was not protecting their interests, they did not replace him. Sending him emails, and making unreturned phone calls, is no substitute for action. They readily could have consulted the docket in the litigation and learned that Johnson was not filing essential documents, but they didn’t”); and Pet.App. 7a.

The Court also exempted the case from the Supreme Court’s rulings in *Holland* and *Maples*, holding that “the Supreme Court has not suggested that *Holland* or *Maples* has any bearing on suits about torts, contracts, and other economic matters.” *Choice Hotels Int'l, Inc.*, 792 F.3d at 756; Pet.App. 6a-7a.

REASONS FOR GRANTING THE PETITION

In *Maples*, the U.S. Supreme Court held that, “[a] markedly different situation is presented, however, when an attorney abandons his client without notice, and thereby occasions the default. Having severed the principal-agent relationship, an attorney no longer acts, or fails to act, as the client’s representative. *Id.* at 922-923 (citing 1 Restatement (Third) of Law Governing Lawyers §31, Comment 1(1998) (“Withdrawal, whether proper or improper, terminates the lawyer’s authority to act for the client”)).

The Court further stated:

under agency principles, a client cannot be charged with the acts or omissions of an attorney who has abandoned him. Nor can a client be faulted for failing to act on his own behalf when he lacks

reason to believe his attorneys of record, in fact, are not representing him.

Id. at 924.

Despite this holding, the Seventh Circuit has steadfastly refused to apply this language to civil cases relating to monetary relief. It has, by its ruling in the instant matter, maintained that clients are equally responsible for the legal malpractice of attorneys who abandon them and it has, at the very least, faulted clients who were misled by their attorneys into believing that they were still operating on that client's behalf.

Since the Seventh Circuit has qualified, and thus rejected in part, the pronounced rule of law in *Maples*, certiorari should be granted pursuant to USCS Supreme Ct R 10(c).

Furthermore, the Circuits themselves are divided on the issue of whether abandonment provides a basis for relief under Fed. R. Civ. P. 60(b)(6) and therefore certiorari should also be granted pursuant to USCS Supreme Ct R 10(a).

I. THE SEVENTH CIRCUIT'S DECISION CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT ON AN IMPORTANT FEDERAL QUESTION.

In evaluating the attorney-client relationship in *Holland* and *Maples*, the Supreme Court not only distinguished attorney neglect from attorney abandonment but also defined the onus placed back on a client once that abandonment has occurred. That burden is to hold a client without fault if the client lacked reason to know of his attorney's abandonment.

A. BACKGROUND OF HOLLAND AND MAPLES DECISIONS

In *Holland*, the defendant was a death row inmate whose one-year window to file a federal petition for post-conviction relief began running on October 1, 2001. 560 U.S. at 636. After Holland's attorney, Bradley Collins, was appointed, he waited 316 days to file a motion for post-conviction relief in the Florida trial court, thereby stopping the AEDPA clock with twelve days to spare. *Id.* The state trial court denied the petition, and Attorney Collins appealed the denial to the Florida Supreme Court. *Id.* Holland then became unhappy with what he perceived to be a lack of communication from Attorney Collins and twice made pro se motions the Florida Supreme Court asking that Attorney Collins be removed from his case. *Id.* at 636-637. The Florida Supreme Court held that Holland could not file any *pro se* papers with the court while he was represented by counsel, including papers requesting new counsel. *Id.* at 637.

Attorney Collins then argued the case before the Florida Supreme Court on February 10, 2005, and that court published its decision denying Holland relief on November 10, 2005. *Id.* Mandate issued on December 1, 2005, at which point the AEDPA federal habeas clock began to run again. *Id.* The one-year limit expired on December 13, 2005. *Id.* at 638. During the pendency of his post-conviction case and appeals, Holland frequently wrote to Attorney Collins requesting status updates on his case, but Collins never replied, and Holland did not learn that the Florida Supreme Court had issued its decision until January 18, 2006. *Id.* at 639.

In concurring with the decision that the holding that the AEDPA window was equitably tolled due to "extraordinary circumstances," Justice Alito differentiated gross attorney negligence and attorney

abandonment, reasoning that the latter constituted “extraordinary circumstances” to equitably toll the statute of limitations whereas the former did not. *Holland*, 560 U.S. at 658 (Alito, J. concurring). In so opining, Justice Alito found that Attorney Collins’s failure to respond to his client and his near-total failure to communicate with him exhibited abandonment. *Id.* He further stated, “[i]f true, petitioner’s allegations would suffice to establish extraordinary circumstances beyond his control. Common sense dictates that a litigant cannot be held constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word.” *Id.*

This concurrence became the standard when the Supreme Court revisited a similar issue in *Maples*, wherein the majority opinion adopted Justice Alito’s agency analysis in *Holland* and applied it to explain why Mr. Maples’s procedural default should have been excused after his attorneys abandoned his case. 132 S. Ct. 912

In that case, the attorneys in question were associates at a law firm and represented the defendant pro bono in his petition for post-conviction relief. *Id.* at 918. These associates then left their firm without notifying the trial court of their withdrawal. *Id.* The Alabama trial court denied the petition, and its clerk’s office mailed notice of the ruling to the law office where the associates had previously worked. *Id.* at 919-920. These notices were returned unopened, and, with no attorney acting on his behalf, Maples’s deadline to appeal the state trial court’s denial of his petition expired. *Id.* at 920.

The Supreme Court held that the petitioner in this case was abandoned by his attorneys and emphasized

that the abandonment coupled with the failure to withdraw only exacerbated the circumstances since all filings were sent to the counsel of record and not to the petitioner. *Id.* at 926-927.

In so holding, the Court stated that, “[a] markedly different situation is presented, however, when an attorney abandons his client without notice, and thereby occasions the default. Having severed the principal-agent relationship, an attorney no longer acts, or fails to act, as the client’s representative. *Id.* at 922-923 (citing 1 Restatement (Third) of Law Governing Lawyers §31, Comment 1(1998) (“Withdrawal, whether proper or improper, terminates the lawyer’s authority to act for the client”)).

The Court further made the bright-line rule that,

under agency principles, a client cannot be charged with the acts or omissions of an attorney who has abandoned him.

Nor can a client be faulted for failing to act on his own behalf when he lacks reason to believe his attorneys of record, in fact, are not representing him.

Id. at 924 (emphasis added).

Furthermore, the Supreme Court explicitly distinguished attorney abandonment from the imputed negligence position promulgated in *Link v. Wabash R. Co.*, 370 U.S. 626 (1962) and its vast progeny.² See *Maples*, 132 S.Ct. at 922.

B. BACKGROUND OF SEVENTH CIRCUIT DECISIONS

² For example, the genesis of the Seventh Circuit’s approach on this issue can be traced back to its reliance on *Link*, which was also reaffirmed in the instant matter. See *United States v. 7108 W. Grand Ave.*, 15 F.3d 632, 634 (7th Cir. 1994) and *Choice Hotels Int’l, Inc.*, 792 F.3d at 754.

In 1994, the Seventh Circuit took a bright-line position on who bore the consequences of attorney misconduct, post-judgment. Prior to the Seventh Circuit's decision in *United States v. 7108 West Grand Avenue, Chicago, Illinois*, 15 F.3d 632 (7th Cir. 1994), the Seventh Circuit had never made a such a rule with respect to whether an attorney's gross negligence was a basis for relief under Rule 60(b), although previous cases had trended towards denying such relief. *See id.* at 635 (citing *Nelson v. City Colleges of Chicago*, 962 F.2d 754, 756 (7th Cir. 1992) ('We continue to cast serious doubt on the theory that an attorney's gross negligence warrants relief under Rule 60(b)'); and *United States v. DiMucci*, 879 F.2d 1488, 1496 (7th Cir. 1989) ('It seems clear to us that the law in this circuit is that an attorney's conduct must be imputed to his client in any context')). The Court, reasoning that a client is responsible for both an attorney's negligent and intentional misconduct therefore held that, "[i]t is unnecessary to ask the district court to determine where on the line from 'mere' negligence to intentional misconduct attorney[s] [] handling of this litigation falls, because the answer does not make any difference." *7108 West Grand*, 15 F.3d at 635. Thus, in evaluating a 60(b) motion for relief, the Seventh Circuit all but removed the Court's discretion to evaluate attorney misconduct in the context of a Rule 60(b) analysis, thereby obviating any need to inquire into client diligence.

The Seventh Circuit then reaffirmed this position and even took it one step further in *Bakery Mach. & Fabrication, supra*. In that case, the petitioner for Rule 60(b)(6) relief cited the deception of his attorney as well as the diligence by the client as grounds for "extraordinary circumstances." *Id.* at 846-848. In

affirming the District Court's decision denying relief, the Seventh Circuit reaffirmed the bright-line rule promulgated in *7108 West Grand*, holding:

we drew a clear line in *7108 West Grand* when we said that '[t]he clients are principals, the attorney is an agent, and under the law of agency the principal is bound by his chosen agent's deeds.' The rule is that all of the attorney's misconduct (except in the cases where the act is outside the scope of employment or in cases of excusable neglect) becomes the problem of the client. *See id.* A lawyer who inexcusably neglects his client's obligations does not present exceptional circumstances. *See Williams v. Hatcher*, 890 F.2d 993 at 996 (7th Cir. 1989). [Attorney's] actions, even with [Client's] purported diligence, do not fall within the exceptions to the rule and do not rise to the level of 'exceptional' to warrant such 'extraordinary' relief.

[Client's] beef is against [Attorney], not the court's ruling on the case. Deception of a client becomes the liability of the client's attorney and not the client's opponent. *See Tolliver v. Northrop Corp.*, 786 F.2d 316 at 319 (7th Cir. 1986) ('Holding the client responsible for the lawyer's deeds ensures that both clients and lawyers take care to comply. If the lawyer's neglect protected the client from

ill consequences, neglect would become all too common.’).

Bakery Mach. & Fabrication, 570 F.3d at 848. Thus, the Court held that attorney misconduct, even when combined with attorney deception and client diligence was insufficient to create extraordinary circumstances justifying relief under Rule 60(b)(6). The Court also did not express any concern that the attorney whose misconduct had precipitated the judgment did not carry malpractice insurance. *Id.* at 849.

C. APPLICATION TO INSTANT MATTER

When the instant matter came before the Seventh Circuit, the Court responded by modifying its position but not entirely.

First, the Court accepted that abandonment severed the attorney client relationship an all types of cases. *See Choice Hotels International, Inc.* at 756. The Court however reasoned that Johnson did not abandon Petitioners but simply did not do what he was supposed to do. *Id.* at 755 (referring to his inaction as nonfeasance rather than abandonment).

Second, the Court stated that It did not believe the *Maples* and *Holland* decisions were directed toward civil monetary cases. *Id.* at 755-756.

Third, the Court maintained its rule that client diligence was required, though it did not address the *Maples* language refusing to hold abandoned and misled client’s responsible for their attorney’s action or inaction. *Id.* at 756.³

³ In an opinion issued the same day, the Seventh Circuit again recognized abandonment to sever an attorney client relationship and commented that in such cases a Rule 60(b)(1) motion would then suffice to obtain relief. *See Moje v. Fed. Hockey League, LLC*, 792 F.3d 756, 759 (7th Cir. 2015). The

It is the second and third point that the Supreme Court should address and for which it should grant certiorari.

D. THE *HOLLAND* AND *MAPLES* DECISION ALREADY APPLY TO ALL CASES.

In both *Holland* and *Maples* it is apparent that the rulings are intended to apply to attorney-client relationships and not only to habeas cases.

In each case, the Supreme Court is careful to use broad language relating to these scenarios, using terms such as “clients” and “litigants” and not “defendants” or criminals.⁴ See *Holland*, 560 U.S. at 654-60 (Alito, J. concurring) and *Maples*, 132 S. Ct. at 922-23. Such broad language, particularly when any specific or narrow term would have sufficed, signaled the Court’s intent to apply the reasoning broadly rather than narrowly.

Most importantly, the *Maples* decision, when distinguishing itself from *Link*, does not distinguish it on the basis that *Link* relates to a civil economic case and *Maples* is a habeas case. See *Maples*, 132 S. Ct. 922-923 (citing *Link*, 370 U.S. at 634 and *Coleman v. Thompson*, 501 U.S. 722, 753 (1991)). Rather, the Court distinguished the cases on the basis of negligence and abandonment. See *id.* Had the Court wanted to distinguish civil monetary and civil habeas cases, it would have had to do nothing more than to state that *Link* did not apply for that reason. Instead

decision, again, does not comment on whether attorneys who mislead clients would qualify for such relief. See *id.*

⁴ See also Stephen White, *The Universal Remedy for Attorney Abandonment: Why Holland v. Florida and Maples v. Thomas Give All Courts the Power to Vacate Civil Judgments Against Abandoned Clients by Way of Rule 60(b)(6)*, 42 Pepp. L. Rev. 155 (2014).

Link was distinguished solely on the bases above. *See id.*

E. THE MAPLES DECISION MANDATES THAT THE SEVENTH CIRCUIT HOLD CLIENTS HARMLESS FROM ATTORNEYS WHO MISLEAD AND ABANDON THEM.

The Seventh Circuit has taken the position that it will continue to hold client's responsible for the misdeeds of their attorneys in monetary civil cases, even when those attorneys abandon and mislead them. The Court held explicitly that it does not believe the *Maples* decision to extend that type of relief in such cases. *Choice Hotels International, Inc.*, 792 F.3d at 756.

The conflict lies in the *Maples* decision's language requiring that a client not be faulted "for failing to act on his own behalf when he lacks reason to believe his attorneys of record, in fact, are not representing him." *Maples*, 132 S. Ct. at 924.

Under the Seventh Circuit's most recent approach a client can be so faulted. The Seventh Circuit would obligate clients to "consult the docket" in lieu of relying on an attorney's duty of candor. *Compare Choice Hotels International, Inc.*, 792 F.3d 756 *with Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 469 (1978) (Marshall, J. concurring) (recognizing and restating an attorney's fiduciary obligation fairly and fully to disclose to clients his activities affecting their interests).

In other words, the Seventh Circuit would have clients with no legal training not only be unable to rely on conduct they have a legal right to rely on, but also to be sophisticated enough to monitor their own attorneys' conduct even when an attorney is

misleading them – i.e. clients should not be able to trust their own attorneys.

The Seventh Circuit's resulting duty imposed upon clients in order to vacate significant monetary judgments cannot be reconciled with the language of *Maples* exonerating clients under the very same circumstances. Therefore this Honorable Court should grant certiorari pursuant to USCS Supreme Ct R 10(c).

II. THE CIRCUIT SPLIT ON WHETHER ATTORNEY ABANDONMENT MAY PROVIDE RELIEF UNDER RULE 60(B)(6) NECESSITATES A GRANT OF CERTIORARI.

Aside from the reasons stated above, the Circuits are currently divided on how to address attorney abandonment and misconduct in the context of a petition for relief under Fed. R. Civ. P. 60(b)(6).

A. THE SEVENTH CIRCUIT APPROACH

As noted above, the Seventh Circuit has taken a modified approach wherein it recognizes abandonment as a basis for relief but shifts the burden to the misled client to know whether or not he has been so abandoned. Prior thereto, the Seventh Circuit has stated that attorney misconduct never provided a basis for relief under Fed. R. Civ. P. 60(b)(6).

B. THE GROSS NEGLIGENCE CIRCUITS

Other circuits have provided relief under Rule 60(b)(6), citing an attorney's gross negligence – which ordinarily has been tantamount to abandonment. *See, e.g., Cmty. Dental Servs. v. Tani*, 282 F.3d 1164, 1170 (9th Cir. 2002); (wherein gross negligence of attorney constituted “virtual abandonment”); *Boughner v. Sec'y of Health, Educ., & Welfare*, 572 F.2d 976, 978 (3rd Cir. 1978) (“We reverse, however, on the basis

that the motion to vacate should have been granted under Rule 60(b)(6). The conduct of [the lawyer] indicates neglect so gross that it is inexcusable.”); *Jackson v. Wash. Monthly Co.*, 569 F.2d 119, 122 (D.C. Cir. 1977) (holding that relief under Rule 60(b)(6) is appropriate when an attorney acts “grossly rather than just mildly negligent toward his client”).

It is also likely that the Sixth Circuit follows this standard even though it does not explicitly use the term “gross negligence.” *See Fuller v. Quire*, 916 F.2d 358, 359, 361 (6th Cir. 1990) (holding that the trial court did not abuse its discretion in granting relief for plaintiff under Rule 60(b)(6) for the “inexcusable misconduct of his attorney” when the lawyer did not appear on behalf of the client at hearings and would not respond to the client’s inquiries).

The Fourth Circuit, meanwhile, has never explicitly vacated a judgment under Rule 60(b)(6) based on alleged attorney misconduct, but it has suggested that it would likely follow the gross negligence standard if it did. *See Smith v. Bounds*, 813 F.2d 1299, 1304-05 (4th Cir. 1987) (holding that an attorney’s neglect was so deplorable that it would likely warrant relief under Rule 60(b)(6), but denying relief on different grounds).⁵

C. STRICT ABANDONMENT CIRCUITS

Other circuits have adopted an approach with a slightly stricter mandate than gross negligence. *See Heim v. Comm’r of Internal Revenue*, 872 F.2d 245, 248-49 (8th Cir. 1989) (holding that the gross negligence of an attorney does not satisfy Rule

⁵ *See also The Universal Remedy for Attorney Abandonment*, 42 Pepp. L. Rev. 155 for an in depth analysis of the split. The undersigned also thanks and acknowledges the author of that article for permission to replicate certain research herein.

60(b)(6) but "leaving his clients unrepresented" would); *Primbs v. United States*, 4 Cl. Ct. 366, 370 (1984) ("The usual understanding of the attorney-client agency relationship, however, should not bar relief under Rule 60(b) when the evidence is clear that the attorney and his client were not acting as one."); and *United States v. Cirami*, 563 F.2d 26, 34 (2d Cir. 1977) (wherein attorney had mental breakdown and was found to constructively disappeared, thereby justifying relief under Rule 60(b)(6)).

D. UNCLEAR CIRCUITS

The Fifth, Tenth, Eleventh, and Federal Circuits have not yet addressed this issue.

E. BECAUSE OF THIS SPLIT, CERTIORARI SHOULD ISSUE.

The Circuits differing approaches to attorney abandonment and misconduct as bases for relief under Rule 60(b)(6) offers an opportunity for the Supreme Court to intervene and declare with finality what circumstances may justify relief in this context and, perhaps most importantly, what are the obligations, if any, on a client to diligently follow his own case when he otherwise has no reason to believe his attorney is not.

This also represents an opportunity to establish who should bear the responsibility of a bad lawyer: the client who hired him or the adversarial party who may have obtained a windfall.⁶

Such issues lack clear resolution and the time has arrived in light of the recent Supreme Court decisions to create a path for all Courts to decide this important

⁶ Depending on whether any relief under Rule 60(b)(6) might likewise consider the existence of a meritorious defense or prejudice to the opposing party.

federal question. Therefore, certiorari should be granted under USCS Supreme Ct R 10(a).

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted,

S/MATTHEW J. ANDERSON

MATTHEW J. ANDERSON

Counsel of Record

ANDERSON, AGOSTINO & KELLER, P.C.

131 S. TAYLOR STREET

SOUTH BEND, INDIANA 46601

MJANDERSON@AAKLAW.COM

Counsel for Petitioners