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Civil Procedure: Restriction on the Trial Court's Discretion in Ruling on Rule 55(c) and 60(b) Motions to Vacate Default Entries and Judgments

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CASENOTES

CIVIL PROCEDURE: RESTRICTION ON THE TRIAL COURT'S DISCRETION IN RULING ON RULE 55(c) AND 60(b) MOTIONS TO VACATE DEFAULT ENTRIES AND JUDGMENTS—*United Coin Meter Co. v. Seaboard Coastline R.R.*, 705 F.2d 839 (6th Cir. 1983).

I. INTRODUCTION

It is a settled principle of Anglo-American jurisprudence that judgments should be final. It is equally settled that judgments need be rendered without sacrifice of an individual's paramount right to defend on the merits. A federal district court judge confronted with a rule 55(c)[1] or 60(b)[2] motion to set aside a default or default judgment balances the competing values of judicial efficiency and individual justice.[3] In theory, this "disposition of motions made under rules 55(c) and 60(b) is a matter which lies largely within the discretion of the trial judge"[4] and the trial judge's determination should not be reversed on appeal absent an abuse of discretion.[5] In reality, however, the courts of

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1. FED. R. CIV. P. 55(c) provides that "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)."

2. The relevant portion of FED. R. CIV. P. 60(b) provides that

> [o]n 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; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. . . .

This note will only deal with FED. R. CIV. P. 60(b)(1). Although the defaulter in this case argued rule 60(b)(2) grounds for relief in addition to rule 60(b)(1) grounds, neither the district court nor the court of appeals dealt with this argument. United Coin Meter Co. v. Seaboard Coastline R.R., 705 F.2d 839, 843 (6th Cir. 1983).

3. 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2851, at 140 (1973).

4. Consolidated Masonry & Fireproofing, Inc. v. Wagman Constr. Corp., 383 F.2d 249, 251 (4th Cir. 1967).

5. 10 C. WRIGHT, A. MILLER & M. KANE, FEDERAL PRACTICE AND PROCEDURE § 2693, at 472–74 (2d ed. 1983).

appeals have not been reluctant to find abuses of discretion.[6]

This note will focus upon the recent Sixth Circuit Court of Appeals decision in *United Coin Meter Co. v. Seaboard Coastline R.R.*[7] In *Coin Meter,* the court of appeals held that the district court had abused its discretion in denying Seaboard's motions to set aside the default entry and judgment entered against it.[8] The court enunciated three criteria for the district courts to consider in the exercise of their discretion on rule 60(b) motions: "1. Whether the plaintiff will be prejudiced; 2. Whether the defendant has a meritorious defense; and 3. Whether culpable conduct of the defendant led to the default."[9] The court found an abuse of discretion because the district court had not considered these three factors.[10] Strongly emphasizing the need for a liberal, equitable construction of rules 55(c) and 60(b), the *Coin Meter* court left no doubt of the Sixth Circuit's disfavor of default judgments.[11]

This note will also examine the procedure contemplated by rules 55 and 60 in juxtaposition with the procedures followed by the *Coin Meter* court.[12] A review of some previous Sixth Circuit cases dealing with rules 55(c) and 60(b)[13] and a survey of the treatment of these rules in the other federal circuits[14] will also be provided by way of background. The analysis of the rationale behind the *Coin Meter* decision will focus upon the three factors considered by the court as dispositive of rule 55(c) and 60(b) motions to vacate,[15] and will include a brief discussion of the opposing policies involved in these cases[16] and the informal practices followed by both parties in the lower court in this case.[17]

II. FACTS AND HOLDING

On December 12, 1980, Coin Meter filed a complaint against Seaboard Coastline Railroad alleging that Seaboard had damaged its property in the process of transporting it from New York to Florida. On February 17, 1981, Seaboard moved to dismiss Coin Meter's com-

6. *Id.* at 475–76.
7. 705 F.2d 839 (6th Cir. 1983).
8. 705 F.2d at 839.
9. *Id.* at 845 (quoting Feliciano v. Reliant Tooling Co., 691 F.2d 653, 656 (3d Cir. 1982)).
10. *Id.* at 846.
11. *Id.* at 844–45.
12. *See infra* section III(A).
13. *See infra* section III(B).
14. *See infra* section III(C).
15. *See infra* section IV(A).
16. *See infra* section IV(B).
17. *See infra* section IV(C).

plaint, contending that the plaintiff's property was damaged by a third party employed by the plaintiff to move the property from the defendant's train. Coin Meter thereupon denied having employed any third party to move its property.[18]

The hearing on the motion for dismissal was postponed several times and the defendant subsequently withdrew the motion. A docket entry on May 5, 1981, noted the withdrawal of the motion to dismiss; the defendant Seaboard had not, however, filed any written motion to withdraw the motion to dismiss nor had the court entered an order permitting the withdrawal.[19]

On May 19, 1981, the plaintiff Coin Meter Company filed a request for entry of default, claiming that "[d]efendant had failed and neglected to file an [a]nswer or take any other affirmative action as prescribed by law."[20] The clerk entered default on that day and on May 26, 1981, the plaintiff filed a motion for entry of a default judgment. The court set the hearing for June 30, 1981.[21] Seaboard then filed its opposition to the default entry, contending that the plaintiff's attorney had granted the defendant "a period of 20 days from the hearing date on the motion to dismiss within which to file a response to the complaint."[22]

At the hearing on the motion for default judgment, the plaintiff's attorney claimed that the judge's law clerk had informed him that the twenty days were to run from April 28, 1981.[23] After both sides argued the merits of the case, the district court denied the defendant's motion to set aside the default entry, finding neither excusable neglect nor a meritorious defense.[24] Also at the hearing, Coin Meter presented evidence establishing damages and a witness who testified that the plaintiff had not employed any third party to move its property from Seaboard's train. Seaboard "requested a continuance to obtain testimony" but the court granted Coin Meter's motion for entry of default judgment.[25] Subsequently, Seaboard filed a motion for reconsideration and

18. 705 F.2d at 840.

19. *Id.* at 841. As the court of appeals noted, "[t]he oral withdrawal of a written motion to dismiss is a procedure unknown to this court. Rule 7(b), F.R. Civ. P., requires motions to be made in writing unless made during a hearing or a trial." 705 F.2d at 843. The parties agreed that the motion was withdrawn but they disagreed as to the date of withdrawal. The court of appeals concluded that "the official record of the case should control" and the record supported Seaboard's contention that the motion was withdrawn on May 5, 1981. *Id.*

20. *Id.* at 841.

21. *Id.*

22. *Id.* The defaulter did not file a formal motion to set aside the default entry. *Id.* at 844.

23. *Id.* at 841.

24. *Id.* at 841–42.

25. *Id.* at 842. The district court's ruling was oral. *Id.*

answered the plaintiff's complaint. At the hearing on this motion, Seaboard filed a motion to set aside the default judgment. The district court ruled in the plaintiff's favor on both motions.[26]

On appeal, the circuit court reversed the judgment of the district court, holding that the district court had abused its discretion in denying the defendant's motion to set aside the entry of default and default judgment.[27] The court of appeals found an abuse of discretion because "the district court did not discuss prejudice or willfulness and applied an erroneous standard in concluding that no meritorious defense had been presented."[28]

III. BACKGROUND

A. Procedural Steps Entailed in Rules 55 and 60

Default entries and judgments were designed to promote the expeditious conduct of litigation:[29] the default judgment is in fact the ultimate weapon for the promotion of compliance with the Federal Rules of Civil Procedure.[30] However, the effect of default is not always ultimate. Rules 55(c) and 60(b) furnish the means whereby a defaulter may obtain relief from a default entry or judgment. Rules 55 and 60 were meant solely to define the *procedures* a party should follow in entering and setting aside defaults and default judgments,[31] procedures the court of appeals set out as follows:

> The procedural steps contemplated by the Federal Rules of Civil Procedure following a defendant's failure to plead or defend as required by the Rules begin with the entry of a default by the clerk upon a plaintiff's request. Rule 55(a). Then, pursuant to Rule 55(c), the defendant has an opportunity to seek to have the default set aside. If that motion is not made or is unsuccessful, and if no hearing is needed to ascertain damages, judgment by default may be entered by the court or, if the defendant has not appeared, by the clerk. Rule 55(b). Finally, Rule 55(c) authorizes a motion to set aside a default judgment pursuant to Rule 60(b).[32]

After this exposition of procedure, the *Coin Meter* court proceeded to condone Seaboard's failure to follow this procedure. Specifically,

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26. *Id.*
27. *Id.* at 843, 846.
28. *Id.* at 846.
29. 10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2693, at 477–80.
30. *Id.* § 2693, at 477–78.
31. FED. R. CIV. P. 60(b) advisory committee note. The committee stated that the rule was not meant to define the substantive grounds for relief. *Id.*
32. 705 F.2d at 844 (quoting Meehan v. Snow, 652 F.2d 274, 276 (2d Cir. 1981)).

Seaboard had never made a motion to set aside the default entry.[33] Although most courts require a party to file a formal motion to set aside the default,[34] the *Coin Meter* court took the position that "an answer or other opposition to a motion for default may be treated as a motion to set aside entry of default."[35] Although this proposition is directly supported by a prominent commentator,[36] the expedience of this proposition is questionable.

B. Previous Sixth Circuit Cases

In *Golden v. National Finance Adjusters*,[37] a trial court in the same district as the *Coin Meter* court considered the same three factors for setting aside a default entry as did the court of appeals in *Coin Meter*.[38] The trial judge in *Golden* held these factors appropriate for the disposition of a rule 55(c) motion,[39] while the trial judge in *Coin Meter* held that the default in that case should not be set aside because there was no proof of excusable neglect and no facts establishing a meritorious defense.[40] The court of appeals in *Coin Meter* made no mention of *Golden* in its opinion.

A very early Sixth Circuit Court of Appeals decision, *Rooks v. American Brass Co.*, exhibited a preference for trial on the merits similar to that of the court in *Coin Meter*.[41] The *Coin Meter* court quoted some language from *Rooks* in support of its liberal approach to rule 60(b) motions.[42] Although the *Rooks* court explicitly considered only

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33. 705 F.2d at 841, 844. On June 30, 1981, Seaboard merely filed its opposition to the default. *Id.* at 841.

34. 11 C. WRIGHT & A. MILLER, *supra* note 3, § 2865, at 226. *See, e.g.*, Gray v. John Jovino Co., 84 F.R.D. 46, 47 (E.D. Tenn. 1979).

35. 705 F.2d at 844. The court in *Coin Meter* cited two recent decisions as authority for this proposition. The first decision generously construed a motion for a directed verdict as the equivalent of a rule 60(b) motion. Breuer Elec. Mfg. Co. v. Toronado Sys. of Am., 687 F.2d 182, 186 (7th Cir. 1982). The other court stated that since a default had not been formally entered by the court, there was no basis for criticizing the defendant for failing to file a motion to set aside the default. *Meehan*, 652 F.2d at 276. The court in *Meehan* did state, in dicta, that even if the court had formally entered the default, it still would have allowed the appeal. *Id.*

36. Although Rule 55(c) envisions a formal motion for relief, the courts have shown considerable leniency in treating other procedural steps as equivalent to a motion, particularly when the conduct evidences a desire to correct the default. Illustratively, the federal courts quite naturally often view opposition to a motion for the entry of a default judgment as a motion for setting aside the default, whether or not a formal motion under Rule 55(c) has been made . . . .

10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2692, at 466–67 (footnote omitted).

37. 555 F. Supp. 42 (E.D. Mich. 1982).

38. *Compare* 705 F.2d at 844 *with* 555 F. Supp. at 44.

39. 555 F. Supp. at 42.

40. 705 F.2d at 842.

41. 263 F.2d 166, 169 (6th Cir. 1959).

42. 705 F.2d at 846.

two factors in its decision to set aside the default judgment,[43] the court also considered it relevant that "no intervening rights [had] attached."[44] This is analogous to the *Coin Meter* court's analysis of the possibility of prejudice to the nondefaulting party.[45] In addition, the *Coin Meter* court applied the *Rooks* court's meritorious defense standard virtually intact.[46] For all practical purposes, the *Coin Meter* court's articulation of the three factors required to be considered in the disposition of rule 55(c) or 60(b) motions is not fundamentally different from the *Rooks* articulation.[47]

C. *Comparison with the Other Federal Circuits*

Every federal circuit court of appeals except the Eleventh Circuit has recognized that abuse of discretion is the proper standard of review for district court decisions on rule 55(c) and 60(b) motions.[48] Disposition of these motions rests within the sound discretion of the trial court judge because he or she is "in the best position to evaluate the good faith and credibility of the parties."[49] Nevertheless, there are many cases where, as in *Coin Meter,* the courts of appeals have found abuses of discretion.

Those courts which have found an abuse of discretion are usually predisposed toward a trial on the merits as was the *Coin Meter* court. In these circuits, the courts have required a liberal construction of rules 55(c) and 60(b) when dealing with default entries and judgments.[50]

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43. The court in *Rooks* considered whether the defaulter had demonstrated the existence of rule 60(b)(1) grounds for relief and whether the defaulter had shown a meritorious defense. 263 F.2d at 168–69.

44. *Id.* at 168.

45. 705 F.2d at 845.

46. "[I]f any defense relied upon states a defense good at law, then a meritorious defense has been advanced." *Id.*

47. However, the *Coin Meter* court underscored its preference for trial upon the merits much more emphatically than did the *Rooks* court.

48. 705 F.2d at 843; Kansas City Bricklayers Employees Pension Fund v. Kelly Waterproofing, Inc., 646 F.2d 338, 339 (8th Cir. 1981); Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981); Keegel v. Key West & Caribbean Trading Co., 627 F.2d 372, 373–75 (D.C. Cir. 1980); *In re* Stone, 588 F.2d 1316, 1321 (10th Cir. 1978); Ben Sager Chems. Int'l v. E. Targosz & Co., 560 F.2d 805, 809 (7th Cir. 1977); Medunic v. Lederer, 533 F.2d 891, 892–93 (3d Cir. 1976); Greenspun v. Bogan, 492 F.2d 375, 377 (1st Cir. 1974); United States v. Erdoss, 440 F.2d 1221, 1223 (2d Cir.), *cert. denied,* 404 U.S. 849 (1971); Madsen v. Bumb, 419 F.2d 4, 6 (9th Cir. 1969); Tolson v. Hodge, 411 F.2d 123, 130 (4th Cir. 1969). Although the Eleventh Circuit has not explicitly stated that abuse of discretion is the standard of review, the court in Hall v. Alabama, 700 F.2d 1333 (11th Cir. 1983), recognized that it is within a district court's discretion whether or not to vacate a judgment. *Id.* at 1338.

49. 10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2693, at 475.

50. 705 F.2d at 845; SEC v. Seaboard Corp., 666 F.2d 414, 417 (9th Cir. 1982); Ellingsworth v. Chrysler, 665 F.2d 180, 185 (7th Cir. 1981); 652 F.2d at 277; 635 F.2d at 403; *In re* Stone, 588 F.2d at 1322; 533 F.2d at 893–94; 492 F.2d at 382; Pulliam v. Pulliam, 478 F.2d 935,

Although the Eighth and Eleventh Circuits have not adopted liberal constructions of these rules, a district court in the Eleventh Circuit stated that the benefit of the doubt on a rule 55(c) motion should be given to the movant in order to secure a trial on the merits.[51] In *Assmann v. Fleming*, the Eighth Circuit recognized that these rules "must be administered upon equitable principles."[52] More recently, however, in *Kansas City Bricklayers Employees Pension Fund v. Kelly Waterproofing, Inc.*,[53] the Eighth Circuit stated that rule 60(b) relief may be granted "only upon an adequate showing of exceptional circumstances."[54] According to one court, an equitable and liberal construction of these rules is mandated by the language of rule 1 of the Federal Rules of Civil Procedure,[55] which states that the Rules "shall be construed to secure the just, speedy and inexpensive determination of every action."[56]

Although most of the federal circuits liberally construe the motions to set aside default entries or judgments, there has been a divergence in the factors which the circuits consider dispositive in ruling on these motions. As the court in *Rasmussen* stated, "[b]ecause discretion is involved in determining whether good cause exists, the Court cannot rely upon a mechanical rule of general application."[57] Nonetheless, several circuits' courts of appeals do rely upon the same three-factor mechanical test that *Coin Meter* utilized.[58] The other circuits have utilized a variety of approaches to rule 55(c) and 60(b) motions to set

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936 (D.C. Cir. 1973); 411 F.2d at 130. *See* 10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2694, at 494; 11 C. WRIGHT & A. MILLER, *supra* note 3, § 2852, at 143.

51. Rasmussen v. W.E. Hutton & Co., 68 F.R.D. 231, 233 (N.D. Ga. 1975).

52. 159 F.2d 332, 336 (8th Cir. 1947).

53. 646 F.2d 338 (8th Cir. 1981).

54. *Id.* at 339. One commentator has noted that courts which have required "a showing of exceptional circumstances" for motions under clauses one through five of rule 60(b) have misinterpreted the Supreme Court's decision in Klapprott v. United States, 335 U.S. 601 (1949). Wham, *Federal District Court Rule 60(b): A Humane Rule Gone Wrong*, 49 A.B.A. J. 566, 567 (1963). As Wham points out, the Court in *Klapprott* merely held that a defaulter must make "a showing of exceptional circumstances" in a motion under the sixth clause of rule 60(b) for "any other reason justifying relief from the operation of the judgment." *Id.* at 567.

55. Davis v. Parkhill-Goodloe Co., 302 F.2d 489, 495 (5th Cir. 1962).

56. FED. R. CIV. P. 1.

57. 68 F.R.D. at 233.

58. Farnese v. Bagnasco, 687 F.2d 761, 764 (3d Cir. 1982); 652 F.2d at 277; 627 F.2d at 373. In *Madsen*, 419 F.2d at 6–7, the court considered "the additional cost and delay resulting from a reopening of the action" in addition to considerations of the willfulness of the default and whether the defaulter had shown a meritorious defense. The cost and delay considerations are merely measures of prejudice to the nondefaulter. In *Tolson*, 411 F.2d at 130, the court considered the "shortness of delay" and the "absence of gross neglect" instead of the willfulness of the default and prejudice to the nondefaulter. A district court in the Eleventh Circuit also considered the three *Coin Meter* criteria immediately after stating that a mechanical rule cannot be relied upon. 68 F.R.D. at 233.

aside default entries and judgments. The Fifth Circuit considered a long list of factors in setting aside a default judgment in *Seven Elves, Inc. v. Eskenazi,* including the meritorious defense requirement and prejudice to the nondefaulting party.[59] In the Seventh and Tenth Circuits, the courts of appeals will set aside default entries or judgments if the defaulter can show a good reason or excuse for the default and a meritorious defense.[60] In the Eighth Circuit, the court of appeals has no consistent manner of dealing with rule 55(c) or 60(b) motions and often requires a "showing of exceptional circumstances."[61] Although in theory the disposition of a rule 55(c) or 60(b) motion is within the discretion of the trial judge, this discretion is severely limited in those circuits which have determined that certain criteria must be considered by the trial court.[62]

IV. ANALYSIS

A. *The Three Criteria Adopted by the* Coin Meter *Court*

The *Coin Meter* court stated that there are three criteria which a district court should apply in considering a rule 60(b) motion for relief: "1. Whether the plaintiff will be prejudiced; 2. Whether the defendant has a meritorious defense; and 3. Whether culpable conduct of the defendant led to the default."[63]

The Coin Meter Company did not claim that it would be prejudiced by reopening the judgment and the court therefore concluded that there was not sufficient prejudice.[64] The justification for consideration of the prejudice factor was provided by the early case of *Tozer v. Charles A. Krause Milling Co.,*[65] wherein it was stated that a court should consider prejudice in ruling on these motions because relief from a default judgment is "essentially equitable in nature."[66] It should be emphasized that it is extremely rare for a court to deny a

59. 635 F.2d at 402–03.

60. 687 F.2d at 185; Barta v. Long, 670 F.2d 907, 909 (10th Cir. 1982). A district court in the First Circuit also used these criteria in setting aside a default. Vega Matta v. Alvarez de Choudens, 440 F. Supp. 246, 248 (D.P.R. 1977), *aff'd mem.*, 577 F.2d 722 (1st Cir. 1978).

61. 646 F.2d at 339.

62. For example, the court in *Coin Meter* found an abuse of discretion because the district court did not consider all of the three criteria that the court of appeals decided were controlling. 705 F.2d at 846.

63. *Id.* at 845 (quoting Feliciano v. Reliant Tooling Co., 691 F.2d 653, 656 (3d Cir. 1982)).

64. "Mere delay in satisfying a plaintiff's claim, if it should succeed at trial, is not sufficient prejudice to require denial of a motion to set aside a default judgment." 705 F.2d at 845. The court in Gill v. Stolow, 240 F.2d 669, 672 (2d Cir. 1957), stated that in our court system delay is inevitable in these situations and that delay alone would not establish prejudice.

65. 189 F.2d 242 (3d Cir. 1951).

66. *Id.* at 246. *See also* 10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2699, at 534.

motion for relief on this basis alone because courts have the power to impose conditions upon the vacation of a judgment to prevent any significant prejudice to the nondefaulting party.[67]

It is much more common for a court to deny a motion for relief from a default entry or default judgment when the defaulter fails to make an adequate showing of a meritorious defense.[68] Although the Federal Rules clearly do not mandate the showing of a meritorious defense, the courts have imposed this requirement in the interests of judicial economy.[69] Since the rules do not expressly require a meritorious defense, "the nature and extent of the showing that will be necessary is a matter that lies within the court's discretion."[70]

In this exercise of discretion, the courts have taken three different approaches to the meritorious defense requirement.[71] Some courts have required the defaulter to provide the facts supporting the defense.[72] Other courts have merely required that the defaulter allege a meritorious defense,[73] and, under the most liberal approach, courts have actually searched the pleadings for any indication of a meritorious defense.[74]

A majority of courts have required a defaulter to show a factual basis for the defense.[75] The district court in *Coin Meter* followed this approach.[76] By requiring a factual basis for a meritorious defense, a balance is struck between the competing values of individual justice—achieved through a trial on the merits—and judicial economy.[77] The court of appeals in *Coin Meter,* however, required that the defaulter need merely allege a meritorious defense. The *Coin Meter* court found that Seaboard's contention that the damage occurred to the

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67. 10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2699, at 534, 536. Rule 60(b) provides that a court should grant these motions "upon such terms as are just." FED. R. CIV. P. 60(b). For example, in Barber v. Turberville, 218 F.2d 34 (D.C. Cir. 1954), the defaulter had to pay the costs that the other party incurred upon appeal. *Id.* at 36.

68. *See, e.g.,* Wokan v. Alladin Int'l, Inc., 485 F.2d 1232, 1234 (3d Cir. 1973) (default judgment); Tri-Continental Leasing Corp. v. Zimmerman, 485 F. Supp. 495, 501 (N.D. Cal. 1980) (default entry).

69. 10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2697, at 531. There would be no need to reopen a case unless the defaulter could show that the outcome would be different in a trial on the merits. *Id.* at 525.

70. *Id.* at 531.

71. Trueblood v. Grayson Shops, 32 F.R.D. 190, 196 (E.D. Va. 1963); *see* 10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2697, at 528–31.

72. *See, e.g.,* Gomes v. Williams, 420 F.2d 1364, 1366 (10th Cir. 1970).

73. *See, e.g.,* 705 F.2d at 844, 845.

74. *See, e.g.,* 411 F.2d at 130.

75. 10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2697, at 529.

76. 705 F.2d at 842.

77. *See* 420 F.2d at 1366; 485 F. Supp. at 497; Project, *Relief from Default Judgments under Rule 60(b)—A Study of Federal Case Law,* 49 FORDHAM L. REV. 956, 997–1005 (1981).

plaintiff's property after Seaboard had completed delivery represented a meritorious defense to the action.[78] The *Coin Meter* court concluded that the district court "applied an erroneous standard in concluding that no meritorious defense had been presented."[79] By requiring little more than an allegation of a defense, *Coin Meter* has clearly tipped the balance in favor of individual justice, limiting the district court's discretion as to the "nature and extent" of the required showing.[80]

The third criterion applied in *Coin Meter* was the measure of the willfulness of Seaboard's default.[81] This factor was not judicially created. A defaulter who can show that default was not willful has usually shown the existence of rule 60(b)(1) grounds for relief.[82]

The *Coin Meter* court decided that the default was not the result of willful (culpable) conduct on the part of Seaboard. The trial court record supported Seaboard counsel's belief that she had twenty days from May 5, 1981 in which to answer the plaintiff's complaint. There was nothing in the official record to support Coin Meter's contention that April 28 was the date from which the twenty days to answer should run. The court of appeals accepted Seaboard counsel's explanation that she *misunderstood* the agreement with Coin Meter and as a result she *inadvertently* failed to answer before Coin Meter filed for default.[83]

B. Policy Considerations.

During the *Coin Meter* court's consideration of these three factors, the court should have been concerned with the competing goals of the federal courts: expediting litigation and achieving substantial justice through a trial upon the merits.[84] As one court has articulated this proposition, "[t]he preferred disposition of any case is upon its merits and not by default judgment. However, this judicial preference is counterbalanced by considerations of social goals, justice and expediency, a weighing process which lies largely within the domain of the trial

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78. 705 F.2d at 845.

79. *Id.* at 846.

80. According to one commentator, "[b]y its very nature, the question whether to require a showing of a meritorious defense, as well as the type of demonstration required, must be determined on a case by case basis and with an awareness of the policies behind default judgments and the circumstances under which they should be set aside." 10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2697, at 531–32. Assuming that this commentator is correct, the *Coin Meter* approach to the meritorious defense requirement may be ill-advised in that it promotes judicial inefficiency and removes a major component of the trial court's discretion.

81. 705 F.2d at 845.

82. Rule 60(b)(1) grounds are "mistake, inadvertence, surprise or excusable neglect." FED. R. CIV. P. 60(b)(1).

83. 705 F.2d at 845.

84. *See* 10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2693, at 477–80.

judge's discretion."[85] The *Coin Meter* court, however, does not expressly consider any of these countervailing policies in its opinion, effectively removing this balancing process from the trial judge's domain. As the court in *Coin Meter* states, "Trials on the merits are favored in federal courts and a 'glaring abuse' of discretion is not required for reversal of a court's refusal to relieve a party of the harsh sanction of default."[86] The implication of this decision for the district courts in the Sixth Circuit is that trial judges will be found to have abused what little discretion the court of appeals has left them unless the benefit of any doubt is given to the defaulting party.[87]

As previously mentioned, some courts have interpreted rule 1 of the Federal Rules of Civil Procedure as mandating this extremely liberal and equitable approach to rule 55(c) and 60(b) motions to vacate default entries and judgments.[88] Although this approach may be justified for default entries, it seems too lenient when there is a final judgment at stake—even if only a default judgment. Defaults and default judgments clearly "play an important role in the maintenance of an orderly, efficient judicial system."[89] The *Coin Meter* court's evident antagonism toward default entries and judgments could signal a reduction in importance of both in the future in the Sixth Circuit.[90]

C. Informal Procedures in the Lower Court.

The court of appeals in *Coin Meter* devoted a substantial portion of its opinion to a discussion of the "sloppy practice" of the attorneys for both parties and their failure to keep the court informed of their actions.[91] In fact, the amount of attention devoted to these informalities may serve to neutralize some of the decision's precedential effect. The excessive informality present in the lower court could provide a means for courts to distinguish the facts of *Coin Meter* and avoid this liberal approach to setting aside default judgments.

To a large degree, the *Coin Meter* court's decision to set aside the default judgment hinged on the fact that the record supported Seaboard's version of the facts; as an appellate court, the justices were

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85. 420 F.2d at 1366 (citation and footnotes omitted).

86. 705 F.2d at 846.

87. "Any doubt should be resolved in favor of the petition to set aside the judgment so that cases may be decided on their merits." *Id.* (quoting 189 F.2d at 245).

88. *See supra* text accompanying notes 55–56.

89. 10 C. WRIGHT, A MILLER & M. KANE, *supra* note 5, § 2693, at 477–78. Mainly, they serve to enforce compliance with the rules and secure speedy decisions. *Id.* at 478.

90. However, many other courts have shown a similar dislike for default judgments. *Id.* at 480. *See, e.g.*, 627 F.2d at 373–74.

91. 705 F.2d at 843, 846.

forced to review the case on that basis alone.[92] This decision should serve as an adequate warning to attorneys practicing in the Sixth Circuit that they should file formal written motions with the trial court in order to prevent the type of confusion present in *Coin Meter*.[93] The court of appeals had no sympathy for the plight of the nondefaulting party in *Coin Meter* as evidenced by the fact that both parties were required to pay their own costs on appeal.[94]

V. CONCLUSION

Although the court of appeals' holding in this case is sound and its criticism of the informal conduct of both parties' attorneys was appropriate, the *Coin Meter* court may have adopted an overly generous approach to vacating default judgments. The language of the opinion indicates that the court will rarely allow a default judgment to stand.[95] In many cases, the court's unequivocal preference for trial on the merits may force it to vacate the default judgment. In fact, *Coin Meter* disregards the policies which weigh against the setting aside of default judgments—"finality of judgments and the termination of litigation."[96]

Coin Meter signals a major restriction of the trial court's discretion in dealing with rule 60(b) motions in the Sixth Circuit. It appears that unless a trial court explicitly applies the three factors outlined by the *Coin Meter* court with all doubts resolved in favor of the defaulter, the court of appeals will set the default judgment aside. Thus, the utility of default judgments in the Sixth Circuit has been severely reduced. As the decision indicates, a default judgment will be set aside unless the defaulter has been guilty of gross neglect and/or cannot produce a plausible defense to the complaint. Assuming this interpretation of *Coin Meter* is accurate, rule 55 may as well be stricken from the Federal Rules of Civil Procedure in the Sixth Circuit.

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92. *Id.* at 846. The record showed that Seaboard's default was far from willful, making it difficult to conclude that any real prejudice would accrue to Coin Meter if the default judgment were set aside because Coin Meter filed for an entry of default too soon. *Id.* at 843.

93. *Id.* at 846.

94. *Id.*

95. "Judgment by default is a drastic step which should be resorted to only in the most extreme cases." *Id.* at 845.

96. 10 C. WRIGHT, A. MILLER & M. KANE, *supra* note 5, § 2693, at 479.