

**IN THE SUPREME COURT
STATE OF GEORGIA**

CASE NO. S17G0832

CHRYSLER GROUP LLC n/k/a “FCA US LLC”,

Petitioner,

v.

**JAMES BRYAN WALDEN and LINDSAY NEWSOME STRICKLAND,
Individually and on behalf of the estate of their deceased son, REMINGTON
COLE WALDEN,**

Respondents.

**AMICUS CURIAE BRIEF OF THE
GEORGIA DEFENSE LAWYERS ASSOCIATION**

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TABLE OF CONTENTS

I. STATEMENT OF INTEREST5

II. INTRODUCTION7

III. ARGUMENT AND CITATION OF AUTHORITY9

 A. Evidence Offered to Show Witness Bias Is Subject to Exclusion
 under the Traditional Balancing Test of O.C.G.A. § 24-4-403..9

 B. The Deeply Inflammatory Evidence of Mr. Marchionne’s
 Compensation Delegitimized the Jury’s Damages Award and
 Invites Equally Flawed Awards in Future Cases.....14

 C. The Compensation Chrysler Paid to Mr. Marchionne Was a
 Direct Reflection of Chrysler’s Financial Wealth, and Should
 Have Been Excluded under Established Georgia Law
 Prohibiting Evidence of a Party’s Wealth or Worldly
 Circumstances.....16

IV. CONCLUSION21

TABLE OF AUTHORITIES

Cases

Bailey v. Edmundson, 280 Ga. 538 (2006)17

Blige v. State, 264 Ga. 166 (1994).....12

Calhoun v. Couch, 232 Ga. 467 (1974)18

Chrysler Group, LLC v Walden, 339 Ga. App. 733 (2016)..... 10, 17

Heaton v. State, 214 Ga. App. 460 (1994).....11

Johnson v. State, 267 Ga. 77, 475 S.E.2d 595 (1996)10

L-3 Comm. Corp. v. OSI Systems, Inc., 2006 WL 988143 *6 (S.D.NY. April 13, 2006).....16

Lockett v. State, 217 Ga. App. 328 (1995).....11

Macon and W.R. Co. v. Winn, 26 Ga. 250 (1858)18

Miller v. Georgia Ports Auth., 266 Ga. 586, 470 S.E.2d 426 (1996).....10

Moore v. Moore, 240 Ga. 588 (1978).....18

Mulkey v. State, 250 Ga. 444 (1983).....9

Orkin Exterminating Co. v. McIntosh, 215 Ga. App. 587 (1994) 10, 12, 13

Postell v. Hankla, 317 Ga. App. 86 (2012), *aff'd* 293 Ga. 692 (2013)19

Reed v. State, 238 Ga. 457 (1977)17

Smith v. Satilla Pecan Orchard & Stock Co., 152 Ga. 538 (1922)18

State v. Griffin, 268 Ga. 540 (1997)10

Statutes

O.C.G.A. § 24-4-403..... 7, 12, 13, 21

O.C.G.A. § 24-6-622..... passim

O.C.G.A. § 24-9-68.....11

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**AMICUS CURIAE BRIEF OF
THE GEORGIA DEFENSE LAWYERS ASSOCIATION**

COMES NOW the Georgia Defense Lawyers Association (“GDLA”) and files this Brief as *amicus curiae* in the above-styled appeal, showing this honorable Court as follows:

I. STATEMENT OF INTEREST

The GDLA is an association of approximately 900 Georgia lawyers, including sole practitioners and members of law firms of all sizes, who engage in litigation, primarily for defendants in civil lawsuits. The GDLA is dedicated to, among other purposes, supporting and improving the civil defense bar, improving

the adversary system of jurisprudence in our courts, eliminating court congestion and delay in litigation, and otherwise promoting improvements in the administration of justice.

The GDLA submits this amicus brief out of concern that the opinion below creates an unjustified and ill-advised exception to the general prohibition on the admission of evidence of a party's relative wealth or poverty at trial. This rule, which is a bedrock principle of Georgia's evidentiary scheme, has served litigants of all types well for many years. The GDLA respectfully submits that allowing evidence of the often-substantial compensation paid by a corporate party to its executives creates an exception that will, in many instances, swallow this longstanding rule.

Today, many companies based in or doing business in Georgia have the resources to pay their executives large salaries. As with any witness, a corporate executive who testifies at trial is subject to impeachment on the issue of bias. The Court of Appeals, however, under the guise of enforcing a party's right to prove the bias of an adverse corporate employee witness, has now created a backdoor through which evidence of the wealth of a corporate party—as demonstrated by what it pays its' executives—is *always* admissible. This one-sided new rule reflects flawed reasoning and sets a dangerous precedent. This Court should reverse and make clear that evidence offered to show bias should be excluded at

trial if 1) its probative value is, for any reason, substantially outweighed by the risk of undue prejudice, or 2) the proffered evidence violates Georgia's traditional bar to the admission of evidence of a party's wealth.

II. INTRODUCTION

In its opinion below, the Court of Appeals held that evidence of compensation paid to an employee witness by an employer party is always admissible to show bias, without regard to the risk that such evidence might result in unfair prejudice. But that has never been the law in Georgia, and for good reason. Rather, evidence offered under O.C.G.A. § 24-6-622 to show the bias of a witness—as with evidence offered for any other purpose—is subject to exclusion under O.C.G.A. § 24-4-403 if the probative value of the proffered evidence is substantially outweighed by the risk that its admission would unduly prejudice a party or the proceeding.

In this case, the evidence of Mr. Marchionne's compensation should have been excluded on that basis alone. The Court of Appeals, however, with one conclusory and misguided sentence, has now undone the longstanding interplay of these rules. If the opinion below stands, any evidence offered to show the bias of a witness, no matter how inflammatory or prejudicial, will no longer be subject to exclusion. Further, this new rule will disproportionately inure to the detriment of corporate defendants, as evidence of executive compensation will be used, just as it

was here, as a backdoor through which to reveal to the jury the extent of a corporate party's financial resources.

To understand how dire the consequences will be, this Court need only look to what happened at the trial below. The record plainly shows that Plaintiffs' counsel used the evidence of the substantial money Chrysler paid to Mr. Marchionne for one purpose: as a benchmark for the jury's assessment of damages against Chrysler. The jury's historically large award of non-economic wrongful death damages proves the effectiveness of the tactic, especially considering that the verdict was in the exact amount requested by Plaintiffs, which Plaintiffs' counsel characterized as "less than two years of what Mr. Marchionne made just last year." (T14-2177-78.) As such, it can be expected that future plaintiffs will do the same thing to similar effect. Further, unless this Court intercedes, trial courts will be *required* to let it happen, no matter how prejudicial and unreasonable the consequences.

Evidence of Mr. Marchionne's compensation also should have been excluded on the separate basis that the wealth of a party is rarely admissible. While Mr. Marchionne was not a named party, that fact alone is not determinative. Common sense reveals that, under the facts of this case, evidence of Mr. Marchionne's significant compensation as the chief executive officer—which was obviously paid entirely by Chrysler—was also direct proof of Chrysler's

significant financial resources. As such, this minimally relevant and highly inflammatory evidence should have been excluded, and the fact that it was admitted plainly tainted the jury's verdict.

III. ARGUMENT AND CITATION OF AUTHORITY

A. Evidence Offered to Show Witness Bias Is Subject to Exclusion under the Traditional Balancing Test of O.C.G.A. § 24-4-403.

The Court of Appeals' error arises from the fact that it fundamentally misconstrued the meaning of Georgia's witness bias statute. Under O.C.G.A. § 24-6-622, "[t]he state of a witness's feelings towards the parties and the witness's relationship to the parties may always be proved for the consideration of the jury." The statute means simply that witness bias is always a legitimate issue to be proven. *See, e.g., Mulkey v. State*, 250 Ga. 444, 445 (1983) ("Of course, exposing potential bias on the part of a witness and witness motivation for testifying is a proper and important function of cross-examination.")

The statute does *not* mean that any evidence offered to show bias is automatically relevant, let alone automatically admissible. Rather, as with evidence offered for any other purpose, there are other evidentiary rules which apply when determining relevance and admissibility.

In the case below, Chrysler repeatedly objected at trial to the admission of evidence of the compensation it paid to Mr. Marchionne. (T11-1777, 1779, 1780.) The Court of Appeals affirmed the trial court's ruling admitting the evidence,

holding that “any ‘concerns regarding prejudice in this instance must yield to the statutory mandate of O.C.G.A. § [24-6-622]: The state of a witness’s feelings towards the parties and his relationship to them *may always be proved.*” *Chrysler Group, LLC v Walden*, 339 Ga. App. 733, 764 (2016) (quoting *Orkin Exterminating Co. v. McIntosh*, 215 Ga. App. 587, 593 (1994) (emphasis in original)).

Under that reasoning, the statute means not only that bias, as a general issue, may always be proven, but rather that evidence offered to prove bias is always admissible no matter how prejudicial and no matter whether such evidence would be cumulative, repetitive, confusing, or even relevant. For several reasons, this novel and expansive interpretation of O.C.G.A. § 24-6-622 is incorrect and ill-advised.

First, in reaching its conclusion, it appears the Court of Appeals has read into the statute words that are not there. As the Court is aware, “the cardinal rule of statutory interpretation is to look to the intent of the General Assembly . . . [and] [i]n so doing, words are to be given their plain meaning.” *State v. Griffin*, 268 Ga. 540, 542 (1997) (citing *Johnson v. State*, 267 Ga. 77, 78, 475 S.E.2d 595 (1996) and *Miller v. Georgia Ports Auth.*, 266 Ga. 586, 587(1), 470 S.E.2d 426 (1996)). By its plain terms, the General Assembly did no more and no less than codify the near-universal principle that a litigant may always seek to prove the bias of an

adverse witness. In doing so, the General Assembly made no pronouncements whatsoever as to the admissibility of any type of evidence offered. Thus, under the customary rules of statutory interpretation, there is no viable basis to conclude, as the Court of Appeals did, that the statute mandates that evidence of a witness's compensation—or any other type of evidence offered to show bias—is always admissible.

Second, the Court of Appeals' decision to immunize evidence offered to show witness bias from the requirements of Georgia's other rules of evidence is—with one exception—wholly unsupported in Georgia caselaw. To the contrary, Georgia's statute on witness bias is to be construed in *pari materia* with the rest of Georgia's evidentiary scheme. *See, e.g., Lockett v. State*, 217 Ga. App. 328, 329-30 (1995) (affirming exclusion of putative bias evidence as irrelevant under Georgia's relevance statute, and holding that “[t]hese two statutes should be considered in *pari materia*; thus, even if the testimony sought to be admitted does relate to the feelings a witness has toward a party, if that particular feeling would have no relevance to the questions being tried by the jury, then such evidence may be excluded in the sound discretion of the trial court.”); *Heaton v. State*, 214 Ga. App. 460, 461 (1994) (affirming exclusion of evidence offered under O.C.G.A. § 24-9-68 (statutory predecessor to O.C.G.A. § 24-6-622) to show witnesses' gang affiliations as irrelevant to issue of victim's feelings or relationship to defendant);

see also Blige v. State, 264 Ga. 166, 167 (1994) (holding that the statutory predecessor to O.C.G.A. § 24-6-622 “must not be read in a vacuum, but in the context of other rules relating to witnesses and evidence.”).

The lone exception appears to be *Orkin Exterminating Co. v. McIntosh*, 215 Ga. App. 587, 593 (1994), which the Court of Appeals quoted in its ruling below. In *Orkin Exterminating*, the Court of Appeals held that evidence that a witness was romantically involved with a party should have been admitted at trial to show bias. The court held in pertinent part that “while the trial court determined disclosure of this relationship would be prejudicial, concerns regarding prejudice in this instant must yield to the statutory mandate of OCGA [§ 24-6-622]: ‘The state of a witness’s feelings towards the parties and his relationship to them *may always be proved* for the consideration of the jury. (Emphasis supplied).”

No court, prior to the Court of Appeals below, has cited this language from *Orkin Exterminating* for the proposition that evidence offered to show witness bias under Section 24-6-622 is exempt from exclusion for undue prejudice under Section 24-4-403. Nonetheless, there are now two intermediate appellate opinions holding that trial courts are statutorily mandated to admit evidence offered to show witness bias, without regard to the prejudicial effect or cumulative or confusing nature thereof.

In both cases, the Court of Appeals appears to have reasoned that, because the proffered evidence was (in its view) relevant, the trial court was thus required to admit it. As is often the case, however, a relevance determination is not the end of the inquiry, but the beginning. *See, e.g.*, O.C.G.A. § 24-4-403 (“Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”).

The opinion below and *Orkin Exterminating* impose a statutory mandate on trial courts (to ignore the prejudicial effect of bias evidence) that does not exist. In fact, the undersigned is unaware of any type of evidence to which concerns about the risk of undue prejudice “always must yield.” To the contrary, the trial court is *always* charged under O.C.G.A. § 24-4-403 with guarding against the risk of undue prejudice or jury confusion. This Court should reverse the opinion below and overrule the offending language from *Orkin Exterminating* to clarify that trial courts, when weighing the admissibility of bias evidence, must incorporate the balancing test of O.C.G.A. § 24-4-403, just as they would in any other context.

B. The Deeply Inflammatory Evidence of Mr. Marchionne's Compensation Delegitimized the Jury's Damages Award and Invites Equally Flawed Awards in Future Cases.

In determining the admissibility of evidence offered to show a witness's potential bias, the balancing safeguards of O.C.G.A. § 24-4-403 apply even when the evidence offered is highly relevant to the issue. The purported "bias" evidence in this case, however, was no close call. Rather, the evidence of Mr. Marchionne's compensation added nothing to the jury's understanding of his alignment with Chrysler, nor did Respondents' trial counsel even attempt to use it to impeach Mr. Marchionne's testimony on the issue of bias. To the contrary, the *only* function this information served was to improperly inject evidence of the wealth and worldly circumstances of a party in order to increase a non-punitive damages award. The trial court should have considered whether the probative value of the evidence of Mr. Marchionne's compensation was substantially outweighed by the risk that, if admitted, it would unfairly prejudice Chrysler. Under this standard, the evidence should have been excluded.

First, the evidence of Mr. Marchionne's compensation was of negligible relevance at best. Any reasonable juror would surmise that Mr. Marchionne, as the Chief Executive Officer of the company, was employed and compensated by Chrysler. The jury did not need to know his salary to deduce that his interests, as a general matter, are aligned with those of his employer. Thus, the admission of his

compensation added little to what was already known about the relationship between witness and party. Further, there was no evidence that any component of Mr. Marchionne's compensation hinged on the outcome of this case. Thus, the jurors already knew Mr. Marchionne was aligned with Chrysler, and his compensation package told them little that was new about his potential for bias because, in fact, there was nothing more to be told.¹

Second, any relevance of Mr. Marchionne's salary was substantially outweighed by the risk that the jury would be unduly influenced by the disclosure of Chrysler's substantial financial resources. Of course, as the record makes clear, from the perspective of the Respondents and their trial counsel, the fact that this information was highly inflammatory was precisely the point.

One court under analogous circumstances involving the wealth of a CEO of a large company has excluded such evidence as irrelevant and unduly prejudicial. *L-3 Comm. Corp. v. OSI Systems, Inc.*, 2006 WL 988143 *6 (S.D.N.Y. April 13,

¹ Plaintiffs' suggestion that Mr. Marchionne's compensation was admissible on the theory that "more money means more bias" conveniently ignores the full impact of the Court of Appeals' holding. In many instances, such as those where an employee witness has no financial interest in the case beyond the tenuous link to his own compensation as an employee, there is a meaningful risk that such argument will only arouse among the jury improper suspicions of a well-compensated witness. On the other hand, it is conceivable that different circumstances could support such an argument. The point, however, is that the Court of Appeals has removed the trial courts' ability to distinguish between the two, and instead mandated that any such evidence and argument are permissible no matter the circumstances and no matter the consequences.

2006) (unreported) (granting motion in limine as to evidence of the wealth of Deepak Chopra, CEO of defendant OSI Systems, Inc., on the basis that said evidence was “clearly irrelevant . . . and its inclusion would be unfairly prejudicial.”).

To be sure, juries have wide latitude in awarding wrongful death damages, but there is no credible way to link Mr. Marchionne’s salary with a proper valuation of the damages sought by Plaintiffs in this case. If, as the Court of Appeals held below, evidence of executive compensation cannot be excluded as unfairly prejudicial, then the roadmap for future claimants is clear and simple: first, adduce evidence of executive compensation; second, offer it to show bias under O.C.G.A. § 24-6-622; and third, use it instead as a basis to inflate a damages award. The result will be an increase in damages awarded against corporate defendants based not on the extent of their liability, but on the financial resources they possess. No Georgia defendant should be made to pay more in damages just because they “can afford” it, and this Court should act to prevent this significant, unwarranted and inequitable departure from prior law.

C. The Compensation Chrysler Paid to Mr. Marchionne Was a Direct Reflection of Chrysler’s Financial Wealth, and Should Have Been Excluded under Established Georgia Law Prohibiting Evidence of a Party’s Wealth or Worldly Circumstances.

The evidence of Mr. Marchionne’s compensation should have been excluded on the separate basis that it was evidence of the wealth of Chrysler and thus subject

to the near-universal prohibition on evidence of a party's wealth. As this Court has held, "[t]he general rule is that evidence of the wealth or worldly circumstances of a party litigant is never admissible, except in those cases where position of wealth is necessarily involved." *Bailey v. Edmundson*, 280 Ga. 538, 534 (2006). The Court of Appeals, however, dismissed the issue, stating only that "as Chrysler conceded at trial, Marchionne was not a party, so the rule that the financial circumstances of a party are generally inadmissible does not apply." *Chrysler Group, LLC*, 339 Ga. App. at 764.

The court's reflexive reasoning ignores the common-sense impact of the evidence at issue. While Mr. Marchionne's compensation package was certainly proof of Mr. Marchionne's wealth, it was also proof of Chrysler's financial resources, given that Chrysler pays Mr. Marchionne's salary.²

This is not to suggest that an employee witness's salary in every case (or even most cases) would constitute improper evidence of the employer party's

² GDLA agrees with Chrysler that evidence of Mr. Marchionne's compensation should have been excluded as improper wealth evidence on the basis that, as this Court has held, the prohibition on wealth evidence applies equally to witnesses as to parties. *Reed v. State*, 238 Ga. 457, 459 (1977) (reciting the rule on prohibition of evidence as to a party's wealth and holding that "[t]he same rule would apply to witnesses. . ."). Even if the rule would not apply to all witnesses in all contexts, it should apply here given that, on a practical level, the CEO of a large consumer-oriented company such as Chrysler is the public face of the company, with authority to legally bind the Company in many matters, and a unique ability to speak for the company on public matters.

wealth. But, in the context of the compensation typically paid to the executives of large companies, the numbers are simply too large to avoid the inference that both the employee witness and the employer party possess tremendous financial resources.

Thus, to suggest, as the Court of Appeals did, that the evidence shows only Mr. Marchionne's wealth is to acknowledge only one side of a two-sided coin. It also ignores the sound reasons why Georgia, dating back to before the Civil War, has prohibited the admission of evidence showing the relative wealth or poverty of the parties. *See, e.g., Macon and W.R. Co. v. Winn*, 26 Ga. 250, 259 (1858) (J. McDonald concurring) ("The wealth or poverty of the defendant cannot be given in evidence to augment or diminish the damages, and if it cannot be given in evidence, it cannot be considered by the jury."); *see also Moore v. Moore*, 240 Ga. 588, 589 (1978) (reversing judgment where, "[i]n his argument to the jury counsel for the appellee-wife used language which the jury could infer that they may consider the wealth of appellant's father. This was improper and could have led to the rather large alimony and child support verdict."); *Calhoun v. Couch*, 232 Ga. 467, 468 (1974) ("[I]t is true that any disparate treatment of indigents and the affluent runs afoul of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution."); *Smith v. Satilla Pecan Orchard & Stock Co.*, 152 Ga. 538, 541 (1922) ("The general rule is that evidence of the wealth or worldly

circumstances of a party is never admissible, unless in those exceptional cases where position or wealth is necessarily involved.”).

The Court of Appeals’ decision below also ignores what we know of human nature. In our own minds, almost all of us are underpaid, yet most of us will never know extreme financial wealth, nor will many of us ever know true poverty. Because of this, perhaps, the risk of prejudging those who have too much, or those who have too little, is an itch that can be easily inflamed. It may happen all too often in life, but it is never supposed to happen in a courtroom. The Court of Appeals, in its haste to safeguard the right of a party to prove the bias of an adverse witness, has opened a door that, for good reason, has long been closed.

To be sure, the jury may have assumed or otherwise known that Chrysler had significant financial resources, that Mr. Marchionne as CEO was likely to be highly compensated, and that his interests were closely aligned with those of his employer. In fact, one questions whether a jury, in a case involving testimony from the CEO of a “Big Three” domestic automaker, would need to be expressly told any of these things. Even assuming that the relationship between Marchionne and Chrysler warranted further explanation, it could and should have been accomplished without disclosing the inflammatory details of his compensation. *See, e.g., Postell v. Hankla*, 317 Ga. App. 86, 90 (2012), *aff’d* 293 Ga. 692 (2013) (holding that trial court properly limited cross-examination of employee witness to

the fact that witness “was a shareholder in the defendant firm; that he had been a shareholder in the firm for over thirty years; and that the he earned his livelihood from the defendant firm,” while prohibiting examination “into the amount of money [the witness] derived from the practice and whether a plaintiff’s verdict in this case would ‘come out of his pocket . . .’”).

Further, it is nothing new for parties and their lawyers to argue to juries that witnesses who are employed by or otherwise identified with an opposing party should not be believed. However, it is the fact that a witness is on the party’s payroll that creates the possibility of bias, not the size of the payroll. If a witness were to deny receiving compensation from the employer party, then the door would arguably open to evidence of the witness’s compensation. But nothing like that occurred in the case below. To the contrary, the *only* reason this jury learned of the money Chrysler paid to Mr. Marchionne was so that Respondents’ trial counsel could use it as a multiplier for the damages he asked for in closing.

Put simply, the evidence of the large salary paid to Mr. Marchionne was proof of Chrysler’s wealth. Plaintiffs’ counsel used the evidence solely to incite the jury to award damages based on Chrysler’s financial position. If Plaintiffs wanted to present such evidence, they should have alleged and proven a punitive damages claim and then presented the evidence of wealth pursuant to Georgia law on punitive damages. In the context of this case, evidence of Marchionne’s wealth

was irrelevant and unduly prejudicial as to the matters before for the jury. Georgia's courts should not be so easily fooled by this transparent attempt to circumvent the rules of evidence and longstanding principles of fairness.

IV. CONCLUSION

The trial court should have excluded the evidence of the compensation paid by Chrysler to Mr. Marchionne on either of two grounds. First, even if the evidence was minimally relevant to show the bias of Mr. Marchionne under O.C.G.A. § 24-6-622, it was nonetheless highly inflammatory and should have been excluded as unduly prejudicial under O.C.G.A. § 24-4-403. Second, the evidence that Chrysler paid its CEO a large salary was proof of its financial position, which Plaintiffs' counsel unabashedly used as the basis of his request for damages. For good reason, this has long been forbidden by Georgia law.

This Court granted certiorari, in part, to determine whether the Court of Appeals erred in holding that evidence such as the compensation paid to Mr. Marchionne is always admissible to show bias. The error is made plain based on the two primary consequences of the holding below: 1) no matter how great the risk of undue prejudice, trial courts will no longer be able to exclude bias evidence offered under O.C.G.A. § 24-6-622; and 2) the general prohibition on evidence of a party's wealth will be effectively eviscerated as relates to corporate defendants. For Georgia evidence law to depart in either direction is neither warranted nor

wise. For these reasons, GDLA respectfully submits that this Court should reverse the judgments below.

Respectfully submitted this 18th day of September, 2017.

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*On Behalf of the Georgia
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing **AMICUS CURIAE BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION** in the above-listed case on all parties by depositing a copy of same in the United States Mail with sufficient postage thereon to ensure delivery, addressed as follows:

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