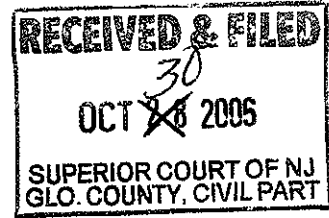


STUART RABNER
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By: Carol Lynn DeMarco
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - GLOUCESTER COUNTY
DOCKET NO. *Gh0-h-1687-06*

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
THE ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION
FUND,

Plaintiffs,

v.

GENERAL ENGINES CO.; ESTATE OF
FRANCIS W. FLOWERS, SR.;
PARKWAY THEATERS, INC. OF NEW
JERSEY; "ABC CORPORATIONS" 1-
10 (Names Fictitious); and
"JOHN DOES" 1-10 (Names
Fictitious),

Defendants.

Civil Action

COMPLAINT

Plaintiffs New Jersey Department of Environmental Protection
("DEP"), and the Administrator of the New Jersey Spill Compensation
Fund ("Administrator") ("the Plaintiffs"), having their principal

offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendants ("the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and the common law, for reimbursement of the cleanup and removal costs they have incurred, and will incur, as a result of the discharge of hazardous substances at the General Engines site in West Deptford Township, Gloucester County. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the General Engines site. The Plaintiffs further seek an order compelling the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the General Engines site.

THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve and protect natural resources, protect the environment,

prevent pollution, and protect the public health and safety.
N.J.S.A. 13:1D-9.

3. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for which plaintiff DEP is vested with the authority to protect this public trust and to seek compensation for any injury to the natural resources of this State. N.J.S.A. 58:10-23.11a.

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

5. Defendant Estate of Francis W. Flowers, Sr. (the "Estate") is the estate of Francis W. Flowers, Sr., an individual who died on or about October 22, 1989, the address for which is Estate of Francis W. Flowers, Sr., c/o Joanne Duncan, 151 Rose Lake Road, Lexington, South Carolina, and which is being named as a defendant herein pursuant to N.J.S.A. 2A:15-4.

6. Defendant General Engines Co. ("GE") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 14893 Highway 27, Lake Wales, Florida.

7. Francis W. Flowers, Sr. was an officer of defendant GE at all times relevant to this Complaint.

8. Defendant Parkway Theaters, Inc. of New Jersey ("Parkway") is a corporation organized under the laws of the State of New Jersey, with its last known address located at 1 North Warner Street, Woodbury, New Jersey.

9. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are successors to, predecessors of, or are otherwise related to, defendant GE, other owners of some or all of the real property comprising the General Engines site, and/or other entities that discharged hazardous substances at the General Engines site, or were in any way responsible for the hazardous substances discharged at the General Engines site.

10. Defendants "John Does" 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are, or may be, owners of some or all of the real property comprising the General Engines site, individuals who discharged hazardous substances at the General Engines site, individuals in any way responsible for the hazardous substances discharged at the General Engines site, and/or individual who are partners, officers, directors,

responsible corporate officials of, or are otherwise related to, defendant GE or one or more of the ABC Corporation defendants.

AFFECTED NATURAL RESOURCE

Ground Water

11. Ground water is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

12. Not only does ground water serve as a source of potable water, it also serves as an integral part of the State's ecosystem.

13. Ground water provides base flow to streams and other surface water bodies, and influences surface water quality and wetland ecology and the health of aquatic ecosystems.

14. Ground water provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

15. Ground water is a unique resource that supports the State's tourism industry, and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

16. There are more than 6,000 sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

GENERAL ALLEGATIONS

17. The General Engines site consists of approximately 29.4 acres of real property located on Crown Point Road, West Deptford Township, Gloucester County, New Jersey, this property being also known and designated as Block 130, Lots 6 and 7, on the Tax Map of West Deptford Township ("the GE Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 030628.

18. In January 1950, Richard H. Neely and Lillian M. Neely purchased the portion of the GE Property otherwise known and designated as Block 130, Lot 6, on the Tax Map of West Deptford Township ("Lot 6").

19. William J. Neely and Cora Neely inherited Lot 6 from Lillian M. Neely in 1975, and subsequently conveyed Lot 6 to Mary C. Paarz on or about October 5, 1977.

20. Mary C. Paarz conveyed Lot 6 to William C. Henning on or about April 16, 1985, who, in turn, conveyed Lot 6 to Francis W. Flowers, Sr. shortly thereafter on or about April 18, 1985.

21. In April 1956, defendant Parkway purchased that portion of the GE Property otherwise known and designated as Block 130, Lot 7, on the Tax Map of West Deptford Township ("Lot 7").

22. In October 1985, defendant Parkway conveyed Lot 7 to Francis W. Flowers, Sr.

23. In December 2004, the defendant Estate sold the GE Property to TH Realty Inc., which, as of the filing of this Complaint, was the owner of record of the GE Property.

24. During the time the defendants Estate, Parkway, one or more of the ABC Corporation defendants, and/or John Doe defendants, owned the GE Property, or portions thereof, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included trichloroethene ("TCE").

25. From approximately the 1950s through 1992, defendant GE, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, operated a truck bed assembly plant at the GE Property, which involved the generation, storage, and handling of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included TCE.

26. In July 1994, defendant Estate entered into a Memorandum of Agreement ("MOA") with plaintiff DEP, pursuant to which defendant Estate agreed to remediate the Site.

27. From approximately 1993 to 2002, defendant Estate performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E to determine the nature and extent of the contamination at the Site.

28. Sampling results from the remedial investigation revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water at the Site, which substances included chlorinated volatile organic compounds such as TCE.

29. In 2001, defendant Estate submitted a Remedial Action Workplan ("RAWP") for the Site to plaintiff DEP pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2., which plaintiff DEP subsequently reviewed and approved in 2002.

30. The RAWP, which described the remedial alternative the Estate selected for the Site, primarily provided for the natural attenuation of the groundwater contamination, and the establishment of a Classification Exception Area ("CEA"), which would restrict the usage of the designated ground water.

31. Defendant Estate has established a CEA for the Site, which, as of the filing of this Complaint, plaintiff DEP was re-evaluating.

32. In December 2004, defendant Estate entered into an agreement with plaintiff DEP supplementing the 1994 MOA to reflect the sale of the GE Property to TH Realty, Inc., which amendment did not relieve defendant Estate of its remediation obligations.

33. Although defendant Estate has initiated the remediation of the Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

34. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 33 above as though fully set forth in its entirety herein.

35. Each defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

36. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the GE Property.

37. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, or may approve, other appropriations for the Site.

38. The Plaintiffs also have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the GE Property.

39. The costs and damages the Plaintiffs have incurred, and will incur, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

40. Defendant GE, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, are the

dischargers of hazardous substances at the GE Property, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the GE Property. N.J.S.A. 58:10-23.11g.c.(1).

41. Defendants Estate, Parkway, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, as the owners, or as the successors-in-interest to the owners, of the GE Property at the time hazardous substances were discharged there, are persons in any way responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the GE Property. N.J.S.A. 58:10-23.11g.c.(1).

42. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its

unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs or damages plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

43. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the GE Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the

Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the GE Property;

- c. Enter judgment against defendant Estate, compelling defendant Estate to perform any further cleanup of hazardous substances discharged at the GE Property under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the GE Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the GE Property;
- e. Award the Plaintiffs their costs and fees in this action;
and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

44. Plaintiffs repeat each allegation of paragraph nos. 1 through 43 above as though fully set forth in its entirety herein.

45. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

46. The use, enjoyment and existence of uncontaminated natural resources are rights common to the general public.

47. The groundwater contamination at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

48. As long as the ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

49. Until the ground water is restored to its pre-injury quality, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean ground water.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured

as a result of the discharge of hazardous substances at the GE Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the GE Property;
- c. Enter judgment against defendant Estate, compelling defendant Estate to abate the nuisance by performing any further cleanup of hazardous substances discharged at the GE Property under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the GE Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the GE Property;
- e. Award the Plaintiffs their costs and fees in this action;
and

- f. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

50. Plaintiffs repeat each allegation of paragraph nos. 1 through 49 above as though fully set forth in its entirety herein.

51. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

52. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the GE Property.

53. As long as the ground water remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the GE Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the GE Property;
- c. Enter judgment against defendant Estate, compelling defendant Estate to cease the trespass by performing any further cleanup of hazardous substances discharged at the GE Property under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the GE Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the GE Property;
- e. Award the Plaintiffs their costs and fees in this action;
and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Carol Lynn DeMarco
Carol Lynn DeMarco
Deputy Attorney General

Dated: 10/25/06

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Carol Lynn DeMarco, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such

non-party later becomes known to the Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Carol Lynn DeMarco
Carol Lynn DeMarco
Deputy Attorney General

Dated: 10/25/06

CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under R. 4:5-1. Pleadings will be rejected for filing under R. 1:5-6(c) if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY
PAYMENT TYPE: CK CG CA
CHG/CK NO.:
AMOUNT:
OVERPAYMENT:
BATCH NUMBER:

ATTORNEY/PRO SE NAME: Carol Lynn DeMarco, DAG TELEPHONE NO.: (609) 984-5189 COUNTY OF VENUE: Gloucester County

FIRM NAME (If Applicable): NEW JERSEY ATTORNEY GENERAL DOCKET NUMBER (When Available): 660-1687-06

OFFICE ADDRESS: Richard J. Hughes Justice Complex 25 Market Street P.O. Box 093 Trenton, NJ 08625-0093 DOCUMENT TYPE: Complaint JURY DEMAND: YES X NO

NAME OF PARTY (e.g., John Doe, Plaintiff): Plaintiffs New Jersey Department of Environmental Protection & Administrator, New Jersey Spill Compensation Fund CAPTION: New Jersey Department of Environmental Protection, et al. v. General Engines Co., et al.

CASE TYPE NUMBER (See reverse side for listing): 156 IS THIS A PROFESSIONAL MALPRACTICE CASE? YES X NO If You Have Checked "Yes," See N.J.S.A. 2A:53A-27 and Applicable Case Law Regarding Your Obligation to File an Affidavit of Merit.

RELATED CASES PENDING? YES X NO IF YES, LIST DOCKET NUMBERS:

DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of the same transaction or occurrence)? X YES NO NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN NONE X UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

A. DO THE PARTIES HAVE IF YES, IS THAT EMPLOYER-EMPLOYEE FRIEND-NEIGHBOR X OTHER (explain) Regulatory A CURRENT, PAST OR RELATIONSHIP: RECURRENT RELATIONSHIP? X YES NO FAMILIAL BUSINESS

B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE X YES NO FOR PAYMENT OF FEES BY THE LOSING PARTY?

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION. RECEIVED & FILED NOV 30 2006 SUPERIOR COURT OF NJ GLoucester COUNTY CIVIL PART

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? YES X NO IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:

WILL AN INTERPRETER BE NEEDED? YES X NO IF YES, FOR WHAT LANGUAGE:

ATTORNEY SIGNATURE: Carol Lynn DeMarco

CASE TYPES (Choose one and enter the number of case type in appropriate space on the reverse side.)

TRACK I - 150 Days' Discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY
- 502 BOOK ACCOUNT
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM OR UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

TRACK II - 300 Days' Discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (OTHER THAN CEPA OR LAD)
- 602 ASSAULT AND BATTERY
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 699 TORT - OTHER

TRACK III - 450 Days' Discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLE BLOWER/CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

TRACK IV - Active Case Management by Individual Judge/450 Days' Discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 613 REPETITIVE STRESS SYNDROME
- 701 ACTIONS IN LIEU OF PREROGATIVE WRIT

Mass Tort (Track IV)

- | | |
|---|--------------|
| 240 REDUX/PHEN-FEN (formerly "DIET DRUG") | 264 PPA |
| 246 REZULIN | 601 ASBESTOS |
| 247 PROPULSID | 619 VIOXX |
| 248 CIBA GEIGY | |

999 OTHER (Briefly describe nature of action) _____

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

Verbal Threshold	Putative Class Action	Title 59
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