

MORTON INTERNATIONAL, INC.	:
100 North Riverside Plaza	:
Chicago, Illinois 60606	:
and	:
	:
ROHM AND HAAS CHEMICALS LLC	:
5005 Barnard Mill Road	:
Ringwood, Illinois 60072	:
and	:
	:
HUNTSMAN	:
500 Huntsman Way	:
Salt Lake City, Utah 84108	:
and	:
	:
HUNTSMAN POLYURETHANES	:
5015 Barnard Mill Road	:
Ringwood, Illinois 60072	:
and	:
	:
MODINE MANUFACTURING CO.	:
1500 DeKoven Avenue	:
Racine, Wisconsin 53403	:
Defendants	:

COMPLAINT

Introduction

1. Multiple families, neighbors in a tiny residential development in Northern Illinois, have been devastated by malignant brain cancer and by decades of neglect and reckless conduct on the part of defendants.

2. In December of 2004, Bryan Freund, 44, was diagnosed with oligodendroglioma, an exceedingly rare form of malignant brain cancer for which there is no known cure and which occurs only once per 3 million individuals per year.

3. A few months earlier, in May of 2004, Mr. Freund's next door neighbor, Franklin

Branham, 63, was diagnosed with glioblastoma, another form of rare malignant brain cancer similar to oligodendroglioma.

4. In January of 2005, Mr. Freund's other next door neighbor, Kurt Weisenberger, 64, was diagnosed with oligodendroglioma.

5. In July 2002, Scott Milliman, a young police officer with the McHenry County Sheriff's Department who spent considerable time working in and around McCullom Lake Village, was also diagnosed with the ultra-rare oligodendroglioma.

6. In April 2006, former McCullom Lake Village resident Judith Weisheit was diagnosed with glioblastoma multiforme.

7. Earlier this month, another McCullom Lake Village resident, Sandy Wierschke, was also diagnosed with glioblastoma.

8. All of these individuals contracted brain cancer because, for more than five decades, defendants have been spilling, leaking, and dumping into the air, soil and groundwater massive quantities of highly toxic chemicals, including trichloroethene ("TCE"), 1,1-dichloroethylene ("1,1-DCE") and vinyl chloride ("VC").

9. These chemicals, particularly VC, invaded the air and water in and around McCullom Lake Village. Unbeknownst to them or their families, these individuals breathed contaminated air and used contaminated water for bathing, drinking and other home uses.

10. Exposure to these chemicals, particularly VC, has been shown to cause cancer, specifically brain cancer in human beings.

11. As a result of their exposure to these chemicals, Mr. Branham died from his brain

cancer on June 18, 2004 at the age of 63. The other individuals have been forced to undergo extensive medical treatment for their brain cancer, including surgery and chemotherapy.

Parties

12. Plaintiff Bryan Freund, 44, is a citizen of the State of Illinois who currently resides at 4821 West McCullom Lake Road, McHenry, Illinois 60050. Mr. Freund has lived in McCullom Lake Village for more than twenty (20) years.

13. McCullom Lake Village, where the plaintiff lived and still resides, is a community of some 500 homes located approximately one mile downstream from the defendants' manufacturing facilities.

14. Defendant Rohm and Haas Company ("Rohm and Haas"), is an international specialty chemicals company, with sales of approximately \$8 billion, operations in more than 27 countries and corporate headquarters located at 100 Independence Mall West, Philadelphia, Pennsylvania 19106.

15. Defendant Morton International, Inc., ("Morton") is a wholly owned subsidiary of Rohm and Haas, with its principal place of business at 100 North Riverside Plaza, Chicago, Illinois 60606. Until January 1, 2005, Morton operated a specialty chemicals manufacturing facility at 5005 Barnard Mill Road, Ringwood, Illinois 60072, ("the Rohm/Morton Facility"). The Rohm/Morton Facility is located directly north and hydrologically and hydrogeologically up gradient from the Freund home.

16. Defendant Rohm & Haas Chemicals, LLC is a wholly owned subsidiary of Rohm

and Haas, with its principal place of business at 5005 Barnard Mill Road, Ringwood, Illinois 60072. As of January 1, 2005, Rohm and Haas Chemicals has been operating the Rohm/Morton Facility.

17. Defendant Huntsman is an international specialty chemicals company with sales in excess of \$13 billion, operations in more than 22 countries and corporate headquarters located at 500 Huntsman Way, Salt Lake City, Utah 84108.

18. Defendant Huntsman Polyurethanes (“Huntsman”) is a wholly owned subsidiary of Huntsman, with its principal place of business at 5015 Barnard Mill Road, Ringwood, Illinois 60072. Huntsman shares space on the property of the Rohm/Morton Facility and operates there a specialty chemicals manufacturing facility at 5015 Barnard Mill Road, Ringwood, Illinois 60072 (the “Huntsman Facility.”)

19. Defendant Modine Manufacturing Company (“Modine”), is an international manufacturer of heating and cooling technology, with sales in excess of \$1.5 billion, operations in more than 14 countries. Its corporate headquarters is located at 1500 DeKoven Avenue, Racine, Wisconsin 53403. At all relevant times, Modine operated a manufacturing plant at 440 Ringwood Road, Ringwood, Illinois 60072, (the “Modine Facility”). The Modine Facility is located directly north and hydrologically and hydrogeologically up gradient from the Freund home.

20. Over the years, defendants have spilled, leaked, and dumped enormous amounts of highly toxic chemicals including TCE, 1,1-DCE and VC, suspected and known carcinogens, which have invaded the plaintiffs’ air and water supply.

21. Defendants, as well as their corporate parents, subsidiaries, predecessors in

interest, and successors in interest, are all legally liable, jointly and severally for the severe harm that has been caused to plaintiffs on account of air and groundwater contamination with toxic and cancer-causing chemicals.

22. The Rohm/Morton Facility has operated as a chemical manufacturing business for more than 50 years and continues to actively use volatile organic compounds, primarily 1,1-DCE, in chemical manufacturing operations.

23. In June 1999, defendant Rohm and Haas acquired the Rohm/Morton Facility as part of a \$5 billion acquisition of Morton International.

24. In 2001, Rohm and Haas sold its Thermoplastic Polyurethane (TPU) business to defendant Huntsman, which included part of the Rohm/Morton Facility's operations as well as a facility in Germany.

25. The Modine Facility has operated as a manufacturing plant for more than 10 years and continues to actively use volatile organic compounds, primarily TCE in its operations.

Facts

26. From approximately 1962 to 1975 defendant Morton dumped liquid chemical waste into a lagoon/landfill located on the southwest portion of the Rohm/Morton facility, which defendants named the "the Highlands."

27. An environmental assessment was initiated at the site in 1984 following the detection of elevated concentrations of ammonia nitrogen and chloride contaminating the groundwater beneath the Rohm/Morton site.

28. Between 1984 and 1985 Morton installed groundwater monitoring wells and

collected and analyzed water samples. The test results revealed high concentrations of volatile organic compounds (“VOCs”), including 1,1-DCE and VC, in the groundwater beneath the site.

29. Morton determined that the presence of VOCs in the groundwater was attributable to (1) the closed lagoon/landfill (on the western part of the sprawling property) and discharge of waste water containing VOCs into the above ground retention ponds at the facility and (2) the release of a massive amount of 1,1-DCE in 1978 from a railroad tank car spill that had occurred on the eastern end of the property.

30. Throughout the years, Morton, and its successor Rohm and Haas, added monitoring wells on its property and adjacent properties to track the extensive spread of groundwater contamination.

31. In 1991, Morton for the first time installed a groundwater remediation system, consisting of three recovery wells and an air stripper, particularly designed to remove 1,1-DCE from the groundwater.

32. This groundwater remediation system was inadequate and ineffective in containing the groundwater contamination because it was never operated at more than 25 percent of its design flow rate.

33. After implementation of the groundwater remediation program in 1991, the Rohm/Morton Facility continued to release substantial quantities of 1,1-DCE and VC among other chemical toxins into the environment and groundwater.

34. In addition, the “air stripping” equipment at the Rohm/Morton Facility caused

tens of thousands of pounds of 1,1-DCE to be released into the air. The Rohm/Morton Facility has been the number two source of 1,1-DCE air discharges in the country.

35. In 1997, Morton determined that its contamination of the groundwater, referred to as the “plume,” was commingling with toxic chemicals being released into the groundwater from the Modine Facility.

36. In 1990, after the removal of two underground storage tanks¹, Modine determined that the groundwater beneath the Modine Facility was contaminated with toxic VOCs, including TCE, cis-1,2-dichloroethene (“cis-1,2-DCE”), 1,1,1-trichloroethane (“1,1,1-TCA”), 1,1-DCE, toluene, and VC.

37. From then on Morton, Rohm and Haas, Modine and, later, Huntsman all began acting in concert and conspired to keep the public, particularly the residents of McCullom Lake Village, from knowing the true extent of the groundwater contamination.

38. In 1999, Morton determined that there were elevated concentrations of VOCs in both the shallow and deeper zones of the glacial outwash aquifer at the down gradient edge of the Rohm/Morton Facility, i.e. south toward McCullom Lake Village where the plaintiffs resided.

39. In 2000, Morton determined that the groundwater plume extended off-site and beneath properties south of the Rohm/Morton Facility.

40. Although never alerting the public, Rohm and Haas has acknowledged in documents submitted to state authorities that the underground toxic plume extends to a distance sufficiently down gradient from the facility to reach the homes of plaintiffs.

¹One tank contained naphtha and toluene and the other contained gasoline.

41. VOCs naturally degrade along expected chemical degradation pathways, such that, for example, TCE and 1,1-DCE naturally degrade to form related chemicals including vinyl chloride, a known cancer causing agent in humans.

42. Other than in submissions to the Illinois Environmental Protection Agency (“IEPA”), none of the defendants took any steps to inform the public of the groundwater contamination.

43. Defendants actively concealed documents and information that was submitted to the IEPA, such as by sending copies of these documents to the Public Library in Johnsberg, Illinois instead of to the McHenry Public Library.

44. Defendants also intentionally misrepresented the true extent of the groundwater plume in their submissions to the IEPA.

45. Knowing that their chemical and manufacturing operations were upgradient from McCullom Lake Village and that the residents of that community depended on wells as their source of water, none of the defendants placed monitoring wells directly south of the Modine and Rohm/Morton Facilities.

46. None of the defendants tested any domestic wells along West McCullom Lake Road proper or at any of the homes that are part of McCullom Lake Village, including the home of plaintiff.

47. In submissions to IEPA, defendants ignored the fact that McCullom Lake Village, a residential community where hundreds of families lived within several thousand feet of the massive toxic chemical spills, was downhill and down gradient from defendants' facilities, stating only that "the main plant is bounded by residential areas to the north and west, the railroad right of way to the east and the Modine Manufacturing Company to the south."

48. As early as 1985 and as recently as October of 2005, it was known to the defendants that there was extensive vinyl chloride contamination of the groundwater south of the Rohm/Morton, Huntsman and Modine Facilities.

49. The IEPA in 2005 found that the Rohm/Morton Facility's waste water storage ponds were periodically overflowing and spilling into Dutch Creek, a tributary of the Fox River, that runs to and/or near McCullom Lake Village.

50. In 2005, Dutch Creek tested positive for elevated concentrations of 1,1-DCE, ammonia, vinyl chloride and other noxious and toxic substances.

51. 1,1-DCE and vinyl chloride are highly toxic chemicals and are classified by the EPA as cancer causing agents. Vinyl Chloride in particular has been linked to human brain cancer in epidemiological studies.

52. Defendants are legally responsible for contaminating the air and the groundwater that was and is the source of drinking water for plaintiffs who have developed brain cancer and for the McCullom Lake Village in general.

53. At all relevant times, defendants knew or should have known of:

- a. the highly toxic nature of 1,1-DCE and VC;
- b. the fact that 1,1-DCE and VC should not have been spilled, leaked,

dumped or otherwise released into the environment and groundwater; and

- c. the fact that if 1,1-DCE and VC is released into the environment and groundwater it should be promptly contained and cleaned up.

54. Despite this knowledge, from approximately 1962 until present defendants spilled, leaked, dumped and/or otherwise released thousands of pounds of 1,1-DCE and VC onto the Rohm/Morton, Huntsman and Modine properties.

55. As a result of the spilling, leaking, and dumping, 1,1-DCE and VC migrated through the soil, contaminating hundreds of square feet of land and invaded the groundwater flowing beneath the Rohm/Morton, Huntsman and Modine Facilities.

56. The groundwater thus contaminated by 1,1-DCE and VC at the defendants' properties was permitted to migrate unimpeded near to and into the community of homes south of and hydrologically down gradient from defendants' facilities, which community includes the home of the plaintiff.

57. There is no other source of this contamination other than that which came from defendants' properties.

58. Defendants did nothing to test the groundwater or air serving the homes of the plaintiff or his neighbors.

59. Defendants did nothing to warn plaintiff or his neighbors that they might be at risk from 1,1-DCE and VC exposure.

60. During each year and continuously throughout the years, the water and air entering the plaintiffs' homes was contaminated by 1,1-DCE and VC from the defendants' chemical spills and manufacturing operations.

61. Plaintiff Bryan Freund contracted malignant brain cancer through exposure to water and air containing TCE, 1,1-DCE and vinyl chloride, among other chemical toxins emanating from the contaminated groundwater plume.

62. The well underneath plaintiff's home was contaminated toxic chemicals, including 1,1-DCE and vinyl chloride, that had migrated south over a period of many years from the defendants' facilities.

63. Plaintiff was not aware of the environmental contamination and so used contaminated water for all purposes, including, inter alia, showering, bathing, drinking, and preparation of food.

64. Because of plaintiff's repeated contact with 1,1-DCE and VC, he contracted a rare and deadly brain cancer.

65. In December of 2004, plaintiff Bryan Freund, 44, was diagnosed with oligodendroglioma, a rare form of malignant brain cancer for which there is no known cure.

66. In May of 2004, Mr. Freund's next door neighbor Franklin Branham, was diagnosed with glioblastoma, another rare and malignant brain cancer similar to oligodendroglioma.

67. In January of 2005, Mr. Freund's other next door neighbor, Kurt Weisenberger, 64, was also diagnosed with oligodendroglioma.

68. Other McCullom Lake Village residents have also been diagnosed with malignant brain cancer and brain tumors.

69. Pathology records show that the genetic characteristics of the oligodendroglioma

cells in both Mr. Freund and Mr. Weisenberger are identical.

70. Plaintiff's brain cancer was caused by his exposure to contaminated water, vapor and air at and near his home.

71. As a consequence of having contracted brain cancer through environmental exposure to TCE, 1,1-DCE and VC, plaintiff Bryan Freund has suffered devastating injuries and losses, including:

- a. Malignant brain cancer;
- b. Past medical treatment, including craniotomy;
- c. Future medical treatment, including chemotherapy;
- d. Diminished life expectancy;
- e. Lost opportunity for cure;
- f. Loss of availability of treatment modalities that would have been available with earlier diagnosis and treatment;
- g. Past pain and suffering;
- h. Future pain and suffering;
- i. Past mental anguish;
- j. Future mental anguish;
- k. Past lost earnings;
- l. Future loss of earnings and earning capacity;
- m. Past medical care costs;
- n. Future medical care costs;
- o. Depression;

- p. Complications of surgery and other medical therapy;
- q. Disfigurement;
- r. Humiliation;
- s. Embarrassment;
- t. Loss of property value
- u. Out of pocket costs; and
- v. Loss of life's pleasures.

**COUNT I
NEGLIGENCE**

72. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.

73. At all relevant times, it was the duty of defendants to exercise a reasonable degree of care for plaintiff, including but not limited to:

- a. preventing TCE, 1,1-DCE and VC or other hazardous substances from being released into the environment and invading the air and water supply of the plaintiff's home.
- b. promptly responding to any releases of TCE, 1,1-DCE and VC or other hazardous substances in a manner sufficient to prevent them from reaching the plaintiff;s home; and
- c. exercising ordinary and reasonable care in the use and handling of hazardous substances, including TCE, 1,1-DCE and VC.

74. The negligence of defendants included the following acts and/or omissions:

- a. carelessly and improperly allowing and causing hazardous substances including TCE, 1,1-DCE and VC to be spilled, leaked, dumped onto and into the soil of defendants' facilities;
- b. failing to establish procedures for the delivery of TCE, 1,1-DCE and VC to the defendants' facilities so that TCE, 1,1-DCE and VC and other toxic chemicals would not be released into the environment;
- c. failing to test the plaintiff's home for TCE, 1,1-DCE and VC contamination and contamination with other toxic chemicals;
- d. failing to alert or warn the plaintiff to the possibility of water and air contamination with TCE, 1,1-DCE and VC and other toxic chemicals;
- e. failing to exercise reasonable care and caution in operating and maintaining defendants' chemical and manufacturing facilities;
- f. failing to provide appropriate safeguards and security measures to prevent, monitor and/or remedy the release of hazardous substances, including TCE, 1,1-DCE and VC into the environment and groundwater;
- g. carelessly and improperly using a production and disposal process that permitted hazardous substances, including TCE, 1,1-DCE and VC to escape into the environment and to migrate to the plaintiff's home;
- h. carelessly and improperly using hazardous substances, including TCE, 1,1-DCE and VC at defendants' chemical and manufacturing facilities;

- i. carelessly and improperly storing toxic chemicals including TCE, 1,1-DCE and VC in tanks, lagoons, ponds, and landfills not equipped with necessary safeguards to prevent discharge, spillage and/or escape into the environment and groundwater;
- j. carelessly and negligently storing toxic chemicals including TCE, 1,1-DCE and VC in tanks, lagoons, ponds, and landfills in a manner that allowed the release, discharge, spillage or escape of 1,1-DCE and VC;
- k. failing to properly install and maintain said tanks, lagoons, ponds, and landfills knowing that such a failure would allow the release of toxic chemicals into the environment and groundwater including TCE, 1,1-DCE and VC;
- l. failing to warn area residents, including plaintiff, of the hazardous conditions created by defendants' release of hazardous substances, including TCE, 1,1-DCE and VC into the environment and groundwater;
- m. failing to take reasonable and prompt action to contain and clean up the TCE, 1,1-DCE and VC releases into the environment and groundwater;
and
- n. failing to comply with state and federal regulations regarding the handling, storage, and removal of toxic chemicals including TCE, 1,1-DCE and VC, known cancer causing agents.

75. As a direct and proximate result of defendants' negligent acts and omissions, hazardous substances, including TCE, 1,1-DCE and VC, migrated from the defendants' properties to the plaintiff's home and contaminated the water used by the plaintiff.

76. As a direct and proximate result of defendants' forgoing acts and omissions, plaintiff has suffered great personal injury, as described above.

COUNT II NUISANCE

77. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.

78. The contamination of the soils and groundwater at, in, on or beneath the defendants' properties, and the residential homes adjacent to and in the area of defendants' facilities occurred and persists because of defendants' acts and omissions including, but not limited to, their operation and maintenance of their facilities and equipment; their handling, storage, use and disposal of hazardous substances; and/or their failure to promptly and effectively address such contamination to prevent further migration of the contaminants.

79. Defendants' contamination of the soils and groundwater and their failure to address such contamination constitutes an unreasonable, unwarranted and unlawful use of the properties and substantially interferes with plaintiff's reasonable use, development and enjoyment of his property.

80. As alleged above, plaintiff has incurred substantial damage as a result of defendants' creation and maintenance of such contamination, constituting a nuisance.

COUNT III
ULTRAHAZARDOUS ACTIVITY-STRICT LIABILITY

81. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.

82. The defendants' generation and disposal of toxic and hazardous substances at their facilities and operation of their facilities using toxic and hazardous substances in the densely populated area of McHenry County, Illinois, close to private drinking water wells and public lakes, constitutes an ultrahazardous activity.

83. As a direct result of the defendants' engaging in the aforementioned ultrahazardous activities, TCE, 1,1-DCE and VC and other hazardous chemicals have been released from defendants' facilities into the groundwater used by the plaintiff.

84. Defendants are strictly liable for any harm caused by the abnormally dangerous activity described above pursuant to the doctrine of strict liability set forth in the Restatement of Torts, Second Section 402A.

85. Dumping, releasing and disposing of toxic chemicals, including TCE, 1,1-DCE and vinyl chloride, is an unreasonably dangerous activity because these chemicals are strongly associated with brain cancer in human beings.

86. As a direct and proximate result of defendants' highly dangerous activity, as set forth above, plaintiff has suffered the injuries and losses described above.

COUNT IV
RES IPSA LOQUITUR

87. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.

88. Defendants owed a common law duty to plaintiff to prevent the release of TCE, 1,1-DCE and VC and other hazardous chemicals into the groundwater used by plaintiff.

89. If ordinary care is used, TCE, 1,1-DCE and VC and other hazardous chemicals would not be released from defendants' facilities into the air and groundwater used by plaintiff.

90. The release of TCE, 1,1-DCE and VC and other hazardous chemicals would not have occurred but for the negligent acts or omissions of the defendants.

91. Plaintiff would not have contracted malignant brain cancer but for his exposure to hazardous chemicals released by defendants into the environment and groundwater.

92. Multiple cases of malignant brain cancer occurring in close proximity in a tiny residential population would not have occurred but for exposure to TCE, 1,1-DCE and VC and other hazardous chemicals.

93. As a direct or proximate result of the defendants' engaging in the aforementioned ultrahazardous activities, plaintiff has suffered substantial damages, as described above.

**COUNT V
COMMON LAW CONSPIRACY, FRAUD, MISREPRESENTATION**

94. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.

95. Defendants had a common law duty to warn plaintiff when they became aware that hazardous substances at their properties were migrating toward and onto adjacent residential properties and groundwater.

96. Defendants had a common law duty to warn plaintiffs of risk to health and well-being from toxic emissions coming from their facilities.

97. Upon information and belief, defendants breached these duties by conspiring

among themselves to hide the fact and extent of the groundwater contamination, as described above.

98. Defendants' breach of their duty to plaintiff has caused substantial injury and damage to the plaintiff, as described above.

**COUNT VI
WILFUL AND WANTON MISCONDUCT**

99. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.

100. At all relevant times defendants knew that TCE, 1,1-DCE and VC should not be spilled, leaked, or dumped into the environment at the defendants' properties.

101. At all relevant time, defendants also knew that, if spilled, leaked, or dumped, the TCE, 1,1-DCE and VC was to be immediately contained and/or cleaned up in order to prevent migration into groundwater systems used by human beings in the immediate area, particularly by those homes downstream from defendants.

102. Furthermore, defendants knew or should have known of the likelihood that TCE, 1,1-DCE and VC spilled, leaked and dumped at their facilities would invade the air and drinking water supply of the community of homes to the south, including plaintiffs' homes.

103. Defendants also knew that the homes in and around McCullom Lake Village should be tested for 1,1-DCE and VC contamination, or, at a minimum, that their occupants should be alerted to the possibility of such contamination.

104. Despite this knowledge, and in wilful, wanton and reckless disregard for the safety and health of the plaintiff, defendants:

- a. failed to prevent the spilling, leaking and dumping of TCE, 1,1-DCE and VC and other hazardous substances onto their properties and into the groundwater;
- b. failed to contain or clean up the TCE, 1,1-DCE and VC spilled, leaked and dumped on their properties;
- c. failed to take adequate measures to prevent the migration of the 1,1-DCE and VC into the groundwater beneath their properties and the groundwater flowing to and near the plaintiff's home;
- d. failed to test the plaintiff's home for contamination with TCE, 1,1-DCE and VC and other toxic and hazardous chemicals;
- e. failed to test any home on West McCullom Lake Road, proper or any of the homes in McCullom Lake Village;
- f. failed to alert plaintiff to the likelihood that the TCE, 1,1-DCE and VC dumped, leaked and spilled had invaded the air and groundwater used for everyday purposes by plaintiff; and
- g. engaged in the other misconduct set forth above.

105. As a direct and proximate result of the wilful, wanton and reckless acts and/or omissions of the defendants, plaintiff came into repeated contact with TCE, 1,1-DCE and VC contaminated water and contracted malignant brain cancer.

106. As a direct and proximate result of defendants' foregoing acts and omissions, plaintiff has been caused to suffer great personal injury, as described above.

WHEREFORE, plaintiff prays for judgment against defendants and for compensatory and punitive damages, exclusive of costs, pre-judgment interest, post-judgment interest and cost and in an amount in excess of the local mandatory arbitration limits.

LAYSER & FREIWALD, P.C.

BY: _____

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