

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
2ND DIVISION DIVISION

FILED
2011 MAY 23 AM 11 35
RHONDA WHARTON, CLERK
BY LP PLAINTIFFS DC

**JESSE and SUSAN FREY, on behalf of themselves and
all others similarly situated,**

v.

CASE NO. 23CV-11-488

**BHP BILLITON PETROLEUM (ARKANSAS) INC.,
BHP BILLITON PETROLEUM (FAYETTEVILLE) LLC,
CHESAPEAKE OPERATING, INC., and
CLARITA OPERATING, LLC**

DEFENDANTS

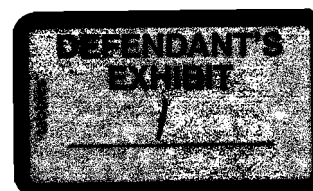
CLASS ACTION COMPLAINT

COME NOW the Plaintiffs, Jesse and Susan Frey (collectively "Plaintiffs"), on behalf of themselves and on behalf of similarly situated persons, and for their complaint against BHP Billiton Petroleum (Arkansas) Inc., BHP Billiton Petroleum (Fayetteville) LLC, Chesapeake Operating, Inc., and Clarita Operating, LLC (sometimes collectively referred to as "Defendants")¹ state and affirmatively allege as follows:

NATURE OF THE ACTION

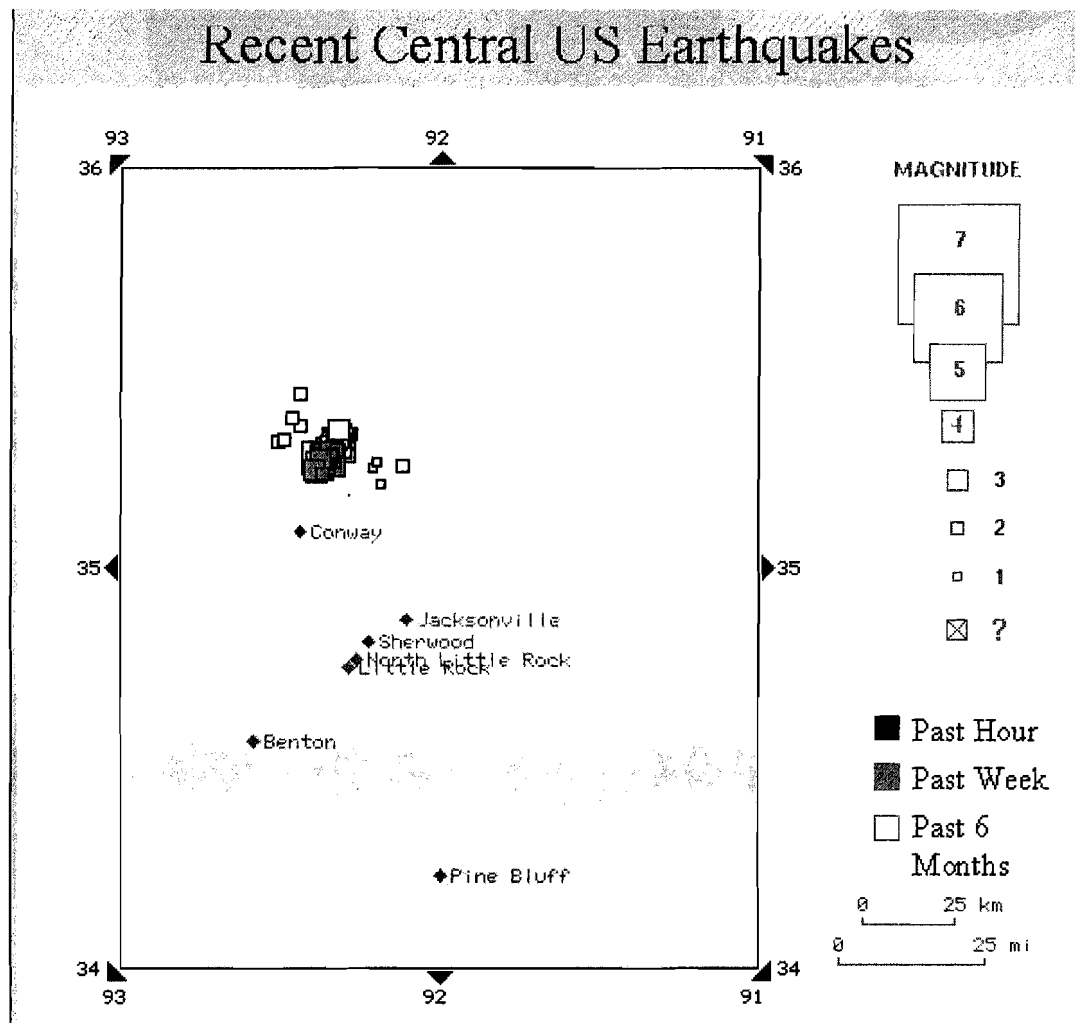
1. This is a class action complaint brought on behalf of the Plaintiffs and other similarly situated residents of central Arkansas that have experienced the recent earthquakes in

¹ Separately, BHP Billiton Petroleum (Arkansas) Inc., BHP Billiton Petroleum (Fayetteville) LLC will sometimes be referred to collectively as "BHP;" Chesapeake Operating, Inc. as "Chesapeake;" Clarita Operating, LLC as "Clarita."



Arkansas, and which are related to, and caused by, the oil and gas drilling operations conducted by Defendants.

2. Recently, Central Arkansas has seen an unprecedented increase in seismic activity, occurring in the vicinity of Defendants' injection wells, near Greenbrier and Guy, Arkansas. Indeed, according to the Arkansas Geological Survey ("AGS"), there have been 599 "events" in Guy, Arkansas, alone since September 10, 2010.



3. On Sunday, February 28, 2011, Arkansas had the largest earthquake in 35 years. Centered just north of Greenbrier, residents reported "waking up last night to the sound of my

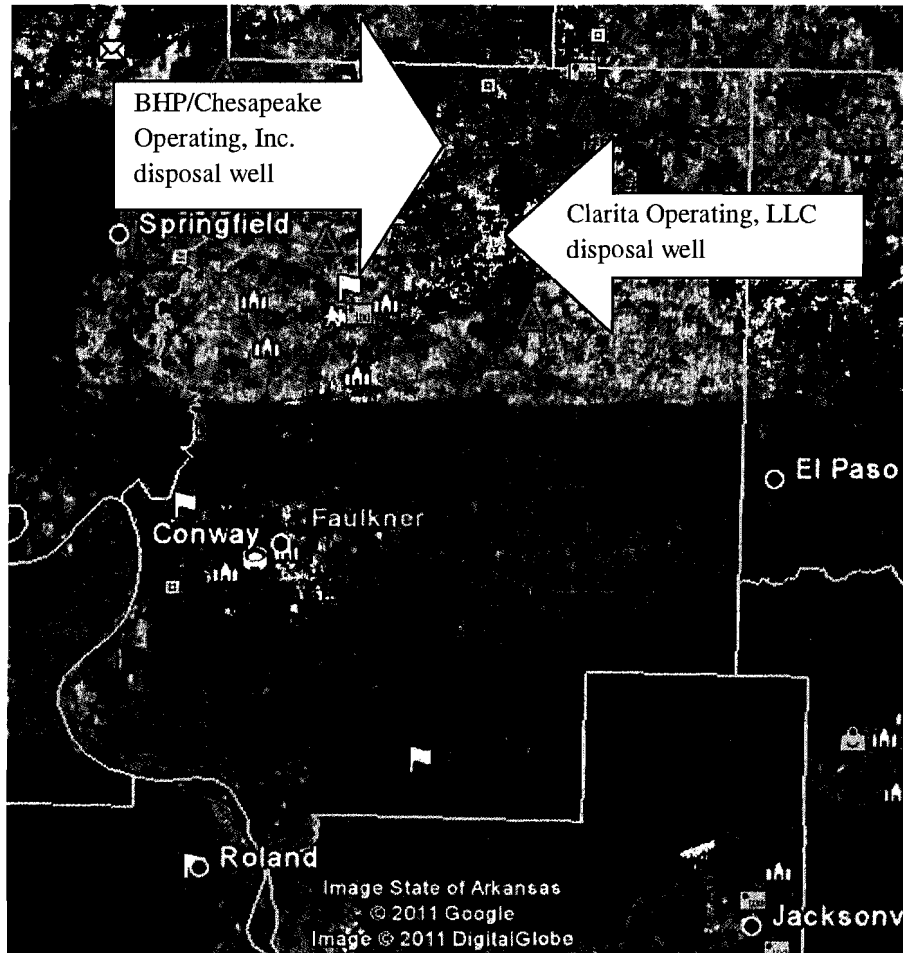
house shaking” and some residents have reported seeing gradual damage to their homes and cracks in their driveways and walls.

4. The February 28, 2011 earthquake occurred just after 11:00 pm CST, centered near Greenbrier and Guy, Arkansas, and measured at 4.7 in magnitude. On that same day, the United States Geological Survey (“USGS”) recorded as many as 29 earthquakes around Greenbrier and Guy, Arkansas, and ranged in magnitude from 1.7 to 4.7 in magnitude.

5. A major source of the natural gas in Arkansas comes from places in Faulkner County, and its surrounding counties as well, from what is called the Fayetteville Shale.

6. The process of extracting natural gas from the Fayetteville Shale involves hydraulic fracturing or “fracking.” This process requires drillers to inject pressurized water, sand and other chemicals to create fractures deep into the ground.

7. The fracking process results in water that has to be disposed of, primarily because it is contaminated with salt and other materials. Although some of this water is recycled and reused, some water is shipped by trucks to injection wells, where it is injected back into the earth. Defendants operate two wastewater disposal injection wells in Faulkner County, Arkansas to accomplish this end.



8. Recently, in connection with the increased seismic activity in the Central Arkansas area, the Staff of the Arkansas Oil and Gas Commission has requested a Commission Order requiring Defendants to “immediately cease all injection operations in its SRE 8-12, 1-17 SWD Well in Sec. 17-T8N-R12W, and Clarita Operating, LLC to immediately cease all injection operations in its Walyne L. Edgemon No. 1 SWD Well in Sec. 6-T7N-R12W, both in Faulkner County, through the last day of the regularly scheduled AOGC Hearing in March.” The order was entered on March 4, 2011.

9. This seismic activity is directly linked and contributed to by Defendants’ operations and injection wells, and substantially and unreasonably interferes with the Plaintiffs

and the Class' use and enjoyment of their property and causes reasonable fear of the safety of the Class.

10. Defendants' activities are also ultrahazardous and subject them to strict liability for all damages caused.

11. Furthermore, Defendants' actions have caused the price and deductibles for earthquake insurance in the Central Arkansas area to skyrocket as well as detrimentally impacted property values.

PARTIES

12. Plaintiffs Jesse and Susan Frey are Arkansas citizens and reside in Faulkner County, Arkansas.

13. Defendant BHP Billiton (Arkansas) Inc. is an Arkansas Corporation doing business in the State of Arkansas and its registered agent is The Corporation Company, 124 West Capitol Avenue, Suite 1900, Little Rock, AR 72201.

14. Defendant BHP Billiton (Fayetteville) LLC is a Delaware LLC doing business in the State of Arkansas and its registered agent is The Corporation Company, 124 West Capitol Avenue, Suite 1900, Little Rock, AR 72201. The BHP entities recently purchased all of Chesapeake's assets and interests in the Fayetteville Shale for approximately \$4.75 billion.

15. Defendant Chesapeake Operating, Inc., is an Oklahoma Corporation doing business in the State of Arkansas and its registered agent is The Corporation Company, 124 West Capitol Avenue, Suite 1900, Little Rock, AR 72201. Defendant Chesapeake Operating, Inc., owned and operated the injection well located in SRE 8-12 1-17 SWD Well in Sec. 17-T8N-R12W in Faulkner County, Arkansas (the "Chesapeake Well") described herein. The well is now owned and operated by BHP.

16. Defendant Clartia Operating, LLC, is an Arkansas LLC doing business in Arkansas and its registered agent is Perkins & Trotter, PLLC, John Peiserich, 101 Morgan Keegan Drive, Suite A, Little Rock, AR 72202. Defendant Clarita Operating, LLC, owned and operated the injection well known as the Wayne L. Edgemon No. 1 SWD Well in Sec. 6-T7N-R12W in Faulkner County, Arkansas (the “Clartia Well”) at all times relevant as described herein.

JURISDICTION AND VENUE

17. Jurisdiction in this Circuit Court is proper, under Ark. Const. Amend. 80, § 6(A) and Ark. Code. Ann. § 16-13-201. Defendants are subject to personal jurisdiction in this Court because they transact business in this State, have engaged in actionable conduct within this State, and their acts and omissions giving rise to Plaintiff’s and the class claims occurred in this State and caused damages in this State.

18. Venue is proper in this Court as Faulkner County is the county in which a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred.

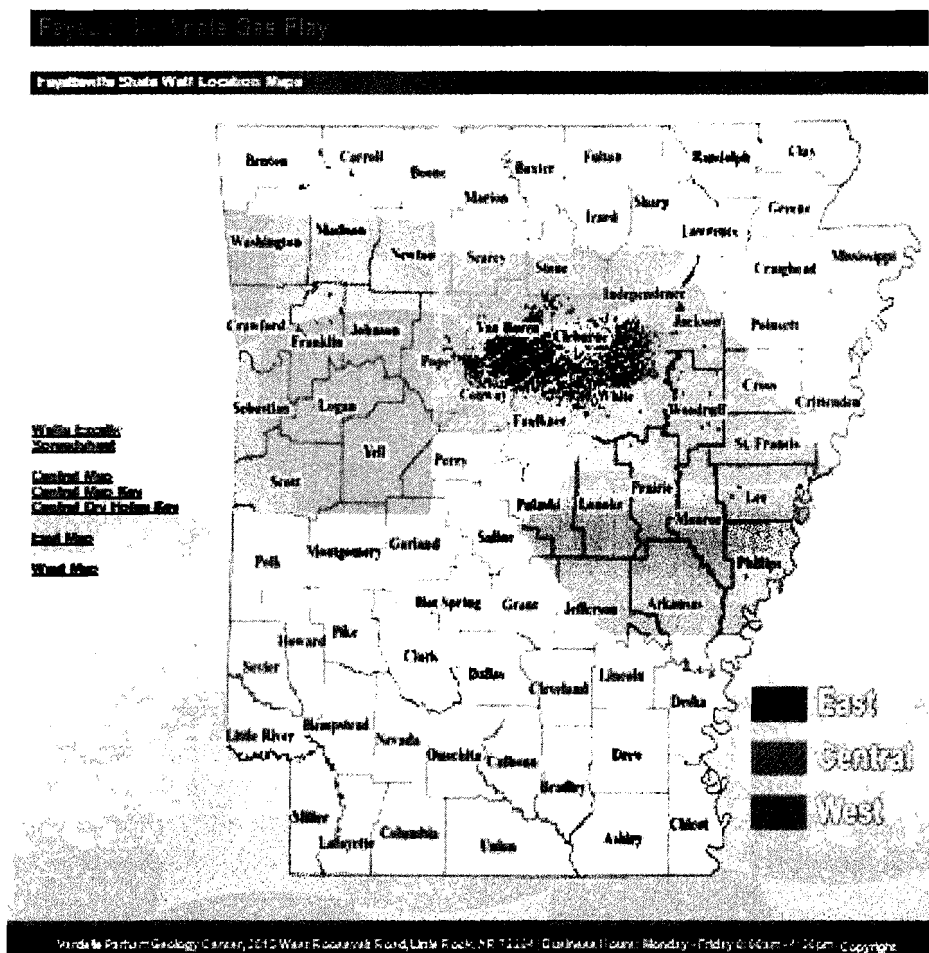
FACTUAL BACKGROUND

19. The Fayetteville Shale is “an unconventional gas reservoir located on the Arkansas side of the Arkhoma Basis, ranging in thickness from 50 to 325 feet and ranging in depth from 1,500 to 6,500 feet . . . it is aerially extensive and may be present across numerous counties in central and eastern Arkansas, including the counties of Cleburne, Conway, Faulkner, Independence, Johnson, St. Francis, Prairie, Van Buren, White and Woodruff.” *Projecting the Economic Impact of the Fayetteville Shale Play for 2005-2008*, Sponsored by SEECO, Inc.,

University of Arkansas Center for Business and Economic Research (May 2006), *available online at <http://cber.uark.edu/FayettevilleShaleEconomicImpactStudy.pdf>*.

20. Beginning around 2004, because of primarily higher natural gas prices and more economically efficient oilfield service and drilling techniques, companies began to invest “capital in leasing land and mineral rights, drilling, completion and production activities . . . and the potential for installation of major gas gathering and transportation systems.” *Id.*

21. Although the Fayetteville shale extends across the state of Arkansas, the majority of the drilling and production activities are centered in Conway, Van Buren, Faulkner, Cleburne and White Counties, Arkansas:



http://www.geology.ar.gov/home/fayetteville_play.htm.

22. According to records available from the Arkansas Oil and Gas Commission, Defendants own and operate numerous natural gas production wells in Conway, Van Buren, Faulkner, Cleburne and White County.

23. Upon information and belief, the Chesapeake Well was completed in mid-2008 and began operations in early 2009.

24. Upon information and belief, the Clartia Well was completed in July 2008 and began operations in early 2009.

CLASS ALLEGATIONS

25. Plaintiffs hereby re-allege and incorporate the foregoing Paragraphs, as if fully set forth herein, word-for-word.

26. Certification of this case is appropriate under Rule 23 of the Arkansas Rules of Civil Procedure for the following Class:

All residents of the Counties Conway, Van Buren, Faulkner, Cleburne, Perry and White Counties within the period of time which Defendants have owned and operated the Chesapeake Well and the Claritia Well. Excluded from the Class are Defendants' directors, officers, employees and agents, as well as the judicial officer presiding over this case and his immediate family members.

A. NUMEROSITY

27. Records from the United States 2010 Census show that Faulkner county alone has a total population of over 100,000 people and the United States 2000 census showed that there were 31,882 households and 22,444 families residing in Faulkner County.

28. The members of the class are so numerous and scattered throughout the counties that joinder of all members is impracticable.

B. TYPICALITY

29. The Plaintiffs' claims described herein are typical between the members of the Class and Defendants.

30. The Defendants' drilling operations have caused earthquakes, which have been a private and public nuisance, pose a significant danger, and have caused damages to Plaintiffs and the Class in a similar manner.

C. COMMONALITY

31. Plaintiffs' claims raise issues of fact or law which are common to the members of the putative class. These common questions include, but are not limited to the following:

- (a) whether the Defendants' drilling operations caused earthquakes in central Arkansas;
- (b) whether Defendants' drilling operations amount to a nuisance;
- (c) whether Defendants' drilling operations are an ultrahazardous activity;
- (d) whether Defendants' drilling operations were negligently performed;
- (e) whether Defendants' intentionally caused a trespass; and
- (f) whether Plaintiffs and the Class members have suffered damages proximately caused by Defendants' operations.

32. These issues are common among all putative class members, are superior and predominate over any issues affecting individual members of the putative class.

D. SUPERIORITY

33. The predicate issues relate to the Defendants' drilling operations, their actions and activities, and whether such activities pose a nuisance, are an ultrahazardous activity, were negligently performed, or caused trespasses. As such, the focus of this action will be on the common and uniform conduct of the Defendants in conducting their drilling operations.

34. In the absence of class-action relief, the putative class members would be forced to prosecute hundreds of thousands of similar claims in different jurisdictions and venues around the state of Arkansas. Such an event would cause tremendous amounts of waste, but the prosecution of these claims as a class action will promote judicial economy.

E. ADEQUACY

35. Plaintiffs is interested in the outcome of this litigation and understands the importance of adequately representing the Class.

36. Plaintiffs will fairly and adequately protect the interests of the Class sought to be certified in this case.

37. Counsel for Plaintiffs and the Class are experienced in class-action and complex consumer litigation and are qualified to adequately represent the Class.

CAUSES OF ACTION

COUNT I: PUBLIC NUISANCE

38. Plaintiffs hereby re-allege and incorporate the foregoing Paragraphs as if fully set forth herein, word-for-word.

39. The Defendants' conduct herein constitutes a substantial and unreasonable interference with the rights common to the general public.

40. This unreasonable interference is imposed on the community at large and on a considerable diverse number of persons and entities. It arises from Defendants' drilling operations (a) without adequate precautions to prevent earthquakes; and/or (b) with the knowledge that there was a substantial risk of seismic problems in the State of Arkansas.

41. Plaintiffs and the Class have suffered harm as a result of Defendants' creation of a public nuisance.

42. Plaintiffs and the Class are also entitled to injunctive relief.

COUNT II: PRIVATE NUISANCE

43. Plaintiffs hereby re-allege and incorporate the foregoing Paragraphs as if fully set forth herein, word-for-word.

44. The Defendants' conduct herein constitutes a private nuisance.

45. Plaintiffs and the Class have property rights and are privileged in respect to the use and enjoyment of their homes and land. Defendants' actions and operations as described above have unlawfully and unreasonably interfered with those rights and privileges.

46. Plaintiffs and the Class have suffered harm as a result of Defendants' creation of a public nuisance.

47. Plaintiffs and the Class are also entitled to injunctive relief.

COUNT III: ABSOLUTE LIABILITY

48. Plaintiffs hereby re-allege and incorporate the foregoing Paragraphs as if fully set forth herein, word-for-word.

49. Defendants' drilling operations and actions described above are ultra-hazardous activities that necessarily involve a risk of serious harm to a person or the chattels of others that cannot be eliminated by the exercise of the utmost care and is not a matter of common usage.

50. As a direct and proximate result of Defendants' ultra-hazardous activities, the Plaintiffs and the Class have sustained damage, which are the direct and proximate result of Defendants' ultrahazardous or abnormally dangerous activities, to which Defendants are strictly liable.

COUNT IV: NEGLIGENCE

51. Plaintiffs hereby re-allege and incorporate the foregoing Paragraphs, as if fully set forth herein, word-for-word.

52. The Defendants owed a duty to Plaintiffs and the Class to use ordinary care and not to operate or maintain their injection wells in such a way as to cause or contribute to seismic activity. Defendants, experienced in these operations, were well aware of the connection between injection wells and seismic activity, and acted in disregard of these facts.

53. As a direct and proximate result of these facts, omissions, and fault of the Defendants, the Plaintiffs and the Class have suffered damages and injuries reasonably foreseeable to the Defendants, including:

- a. Damages to the Plaintiffs' personal and real property;
- b. Annoyance, discomfort and inconvenience occasioned by the nuisance created by the defendants on their property;
- c. The loss of peace of mind; and
- d. Economic loss from business interruption.

COUNT V: TRESPASS

54. Plaintiffs hereby re-allege and incorporate the foregoing Paragraphs, as if fully set forth herein, word-for-word.

55. The Defendants, without the Plaintiffs' consent and without legal right, intentionally engaged in activities that resulted in concussions or vibrations to enter Plaintiffs' property. Such unauthorized invasion of the Plaintiffs' property interests by concussions or vibrations by Defendants constitutes a trespass. *See Smith v. Lockheed Propulsion Co.*, 247 Cal.

App. 2d 774 (1967) (actionable trespass may be committed indirectly through concussions or vibrations activated by defendant's conduct).

PUNITIVE DAMAGES

56. The Defendants' actions, in knowingly causing seismic activity as a result of its Injection Wells operations, constitutes wanton or reckless disregard for public safety and is subject to a claim for punitive damages, for which Plaintiffs seek in an amount sufficient to punish the Defendants and to deter them and others similarly situated from such conduct in the future.

REQUEST FOR JURY TRIAL

57. Plaintiffs respectfully demand a trial by jury.

PRAYER FOR RELIEF

Plaintiff respectfully requests the following relief:

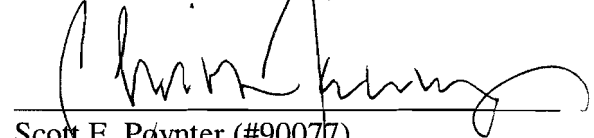
- A. Certifying the Class as requested herein;
- B. A joint and several judgment against Defendants for all general and special compensatory damages caused by the conduct of the Defendants in an amount exceeding the minimum amount required for federal court in diversity of citizenship cases;
- C. Costs of litigating this case;
- D. Appropriate injunctive relief restraining Defendants from engaging in further conduct that is substantially likely to lead to further seismic activity and to take affirmative steps to remediate the damages it has already caused in favor of Plaintiffs and the Class;
- E. Punitive damages;
- F. Attorney's fees;

- G. Prejudgment interest;
- H. All other relief to which Plaintiffs are entitled or that the Court deems just and proper.

DATED: May 23, 2011

Respectfully Submitted,

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