IN THE

Supreme Court of Florida

Case No.: SC21-175
L.T. Case No.: 5D19-2549

BRINDA COATES, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LOIS STUCKY,

Petitioner,

v.

R.J. REYNOLDS TOBACCO COMPANY,

Respondent.

AMICI CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE AMERICAN TORT REFORM ASSOCIATION, AND THE FLORIDA JUSTICE REFORM INSTITUTE IN SUPPORT OF RESPONDENT

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country.

An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

Few issues are of more concern to businesses in the United States than those pertaining to the fair and lawful administration of punitive damages. The Chamber regularly files amicus briefs in significant punitive damages cases, and has done so in all of the United States Supreme Court's punitive damages cases in the past three decades.

The American Tort Reform Association ("ATRA") is a broad-based coalition of businesses, corporations, municipalities,

associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than two decades, ATRA has filed amicus curiae briefs in cases addressing important liability issues like the punitive damages issues in this case.

The Florida Justice Reform Institute ("Institute") is Florida's leading organization of concerned citizens, business owners and leaders, doctors, and lawyers who seek the adoption of fair legal practices to promote predictability and personal responsibility in the civil justice system. The Institute has advocated practices that build faith in Florida's court system and judiciary. It represents a broad range of participants in the business community who share a substantial interest in a litigation environment that treats plaintiffs and defendants evenhandedly. The Institute has an interest in the maintenance of standards for the imposition of punitive damages that ensure an appropriate level of notice, predictability, and rationality.

SUMMARY OF ARGUMENT

The $16 million punitive damages award in this case is 106.7 times the substantial $150,000 compensatory damages award. On its face, this punitive damages award violates federal and Florida law.

"The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003). This prohibition stems from "[e]lementary notions of fairness enshrined in our constitutional jurisprudence," which "dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996).

The U.S. Supreme Court has developed a series of guideposts to ensure that punitive damages are imposed in a reasonable, fair, and consistent way. These guideposts assist courts in deciding whether a punitive award is excessive: (1) the degree of reprehensibility of the defendant's conduct; (2) the ratio of punitive

to compensatory damages; and (3) the civil penalties applicable to comparable conduct.

Although these guideposts do not set a strict mathematical formula that determines what the exact punitive damages award should be in any given case, the U.S. Supreme Court has stated that "few awards exceeding a single-digit ratio between punitive and compensatory damages" will "satisfy due process." *Campbell*, 538 U.S. at 425. And "[w]hen compensatory damages are substantial," that constitutional threshold shrinks to "a lesser ratio, perhaps only equal to compensatory damages." *Id.*

Similarly, this Court's precedents and Florida's statutory law likewise recognize that punitive damages awards that lack a reasonable relationship with the compensatory damages in a case are unlawful. *See Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294, 308 (Fla. 2017) ("Punitive damages must … be reviewed alongside compensatory damages to ensure a reasonable relationship between the two." (quotation omitted)); *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246, 1264 (Fla. 2006) (same); § 768.74(5)(d), Fla. Stat. (in determining whether an award is excessive, requiring

review of "[w]hether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered").

When measured against the U.S. Supreme Court's guideposts and the requirements of Florida law, the $16 million punitive damages award in this case is unmistakably excessive. The $150,000 compensatory damages award is substantial and the ratio of punitive-to-compensatory damages (106.7:1) is off the charts. Thus, the U.S. Supreme Court's ratio guidepost, by itself, dictates that the punitive damages award is unconstitutional under federal law. In addition, under Florida law, there is no reasonable relationship between the punitive damages and the compensatory damages proved in this case.

Ultimately, the U.S. Supreme Court's guideposts and Florida's reasonable-relationship requirement both tether a proper award of punitive damages to the specific harm proved in a specific case. By so linking the proper measure of punitive damages to the specific harm proved in a case, the guideposts and reasonable-relationship requirement each promote the ends of notice, predictability, and rationality. Therefore, upward departures from accepted ratios should be few, far between, and justified by extraordinary and

narrow circumstances that do not threaten to undermine or eliminate the important role that ratios play in evaluating the propriety of a punitive damages award. A punitive damages award that is far beyond the range of lawful punishments cannot be justified by potential harm or punishment for conduct that did not cause the specific harm proved in this case.

ARGUMENT

I. Under well-settled federal and Florida law, a punitive damages award that is 106.7 times a substantial compensatory damages award is unlawful on its face.

The Fifth District Court of Appeal ruled that the $16 million punitive damages award in this case was excessive under both federal and Florida law. As to federal law, the court reasoned:

> Having considered the second factor—"the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award"—and the third factor—"the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases"—we conclude that the award in a ratio of 106.7 to 1 (or even 53.3 to 1) was excessive under federal due process constraints.

R.J. Reynolds Tobacco Co. v. Coates, 308 So. 3d 1068, 1076 (Fla. 5th DCA 2020).

In addressing Florida law, the court concluded that, given "the enormity of the disparity between the punitive and compensatory damages awards," "a punitive damages award of 106.7 (or 53.3) times the compensatory award is, in our mind, excessive and thus is unsustainable under state law." *Id.* at 1073–74.

Both of those rulings correctly apply well-settled law, and neither breaks any new ground.

A. The $16 million punitive damages award is 106.7 times higher than the $150,000 in compensatory damages in this case and therefore is unconstitutional under binding precedents of the United States Supreme Court.

The U.S. Supreme Court has identified three "guideposts" for determining whether a punitive award exceeds the amount necessary to punish and deter: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *See*, *e.g.*, *Campbell*, 538 U.S. at 418; *BMW*, 517 U.S. at 574–85.

The U.S. Supreme Court has addressed the circumstances in which "the ratio between punitive and compensatory damages" exceeds constitutional bounds. *Campbell*, 538 U.S. at 416–17, 425. In *Campbell*, the U.S. Supreme Court stopped short of creating a bright-line limit on the ratio of punitive damages to compensatory damages, but it did give very specific instruction on what the outer constitutional bounds look like. That guidance reveals that "few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process." *Id.* at 425. In fact, due process prohibits awards exceeding single-digit ratios in "all but the most exceptional of cases." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 514–15 (2008). Further, punitive damages that are "more than four times the amount of compensatory damages might be close to the line of constitutional impropriety." *Campbell*, 538 U.S. at 425. In that regard, there are statutory benchmarks with "a long legislative history, dating back over 700 years and going forward to today, providing for sanctions of double, treble, or quadruple damages to deter and punish." *Id.* (citing *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23–24 (1991) and *BMW*, 517 U.S. at 581 & n.33). Moreover, "[w]hen compensatory damages are

substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." *Id.*

In turn, although the U.S. Supreme Court has not put a hard number on what constitutes a "substantial" compensatory award, there is no question that the compensatory damages award in this case is substantial. An award of $150,000 cannot be characterized as minimal or nominal.

The courts agree: Two federal Circuit Courts of Appeals have determined that compensatory damages awards as low as $60,000 and $35,000 fit into the "substantial" category.[1] And a $200,000 compensatory award has been described as "undeniably substantial" by a federal District Court.[2]

Thus, where compensatory damages awards are substantial, there can be no argument for ignoring the U.S. Supreme Court's guidance on the ratio requirement, even in cases where the conduct

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[1] *Payne v. Jones*, 711 F.3d 85, 103 (2d Cir. 2013); *Mendez-Matos v. Guaynabo*, 557 F.3d 36, 54–55 (1st Cir. 2009).

[2] *Allam v. Meyers*, 906 F. Supp. 2d 274, 293 (S.D.N.Y. 2012).

at issue might be deemed highly reprehensible. *See*, *e.g.*, *Ondrisek v. Hoffman*, 698 F.3d 1020, 1030 (8th Cir. 2012) (surveying other Eighth Circuit decisions and concluding that, "[d]espite the exceptionally reprehensible nature of [the defendant's] conduct, it would be unconstitutional to let the punitive damages—and their 10:1 ratio to compensatory damages—stand"); *Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594, 602–03 (8th Cir. 2005) (holding that even though tobacco company's conduct was "highly reprehensible," a $15 million punitive damages award, when measured against $4.025 million compensatory award, was excessive and remitting to a 1 to 1 ratio).

It bears emphasis that, in cases like this, the compensatory damages award already contains a punitive aspect. That is, the punitive aspect of compensatory damages is most pronounced for non-economic damages. With such damages, "'there is no clear line of demarcation between punishment and compensation and a verdict for a specified amount frequently includes elements of both.'" *Campbell*, 538 U.S. at 426 (quoting Restatement (Second) of Torts § 908, cmt. c (1979)). Therefore, because the compensatory damages already contain a punitive element, even less reason exists

to allow an anomalous ratio. *See Turley v. ISG Lackawanna, Inc.*, 774 F.3d 140, 165–66 (2d Cir. 2014) (4:1 ratio "serves neither predictability nor proportionality . . . particularly . . . where the underlying compensation is, as it is in this case, for intangible—and therefore immeasurable—emotional damages. Imposing extensive punitive damages on top of such an award stacks one attempt to monetize highly offensive behavior, which effort is necessarily to some extent visceral, upon another.").

In the end, while the edges of the constitutional line might be somewhat fuzzy, a line certainly exists. The punitive damages award in this case is well over it. Controlling precedent indicates that the ratio in this case should not have exceeded 9:1, 4:1, or perhaps even 1:1. There is no constitutional justification for a punitive damages award that is 106.7 times a $150,000 compensatory award. The U.S. Supreme Court allows disproportionate amounts only under very limited circumstances, and none of those circumstances is present here. Thus, like *Campbell*, "this case is neither close nor difficult." *Campbell*, 538 U.S. at 418.

B. The $16 million punitive damages award bears no reasonable relationship to the $150,000 in compensatory damages in this case and therefore is unlawful under this Court's precedents and Florida's statutory law.

In addition to the federal guideposts described above, this Court has recognized a reasonable-relationship requirement under Florida law. Specifically, Florida law requires a reasonable relationship between a punitive damages award and the compensatory damages award in a case.

In *Engle,* this Court held that "a review of the punitive damages award includes an evaluation of the punitive and compensatory amounts awarded to ensure a reasonable relationship between the two." *Id.* at 1264. More recently, this Court reaffirmed that principle of Florida law in *Schoeff*. 232 So. 3d at 308.

This principle of Florida law also is found in the remittitur statute, section 768.74, Florida Statutes. In particular, section 768.74(5)(d) requires that, in determining whether an award is excessive, the court should review "[w]hether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered."

This reasonable-relationship requirement is further confirmed by the statutory cap enacted by the Florida Legislature. The 1997 version of the statutory cap found in section 768.73(1), Florida Statutes (1997) (the version applicable to this case), makes an award of punitive damages above the 3:1 ratio presumptively invalid.[3]

Because the Court exercised its discretion to accept jurisdiction of this case to decide a certified question of great public importance, the Court should not treat this unlawful, outlier punitive damages award as simply a curiosity that is relevant to only the 1997 statute. Although the current statutory cap clearly would preclude this punitive damages award if it applied to this case, the current statutory cap might not preclude all outlier

[3] Today, although the more general reasonable relationship requirement remains in place, (*see* § 768.74(5)(d), Fla. Stat.), the current statutory cap even more strictly applies the reasonable-relationship requirement by capping most awards of punitive damages at a 3:1 ratio (or $500,000) and forbidding any award of punitive damages above a ratio of 4:1 (or $2 million) in the absence of proof of "specific intent to harm." § 768.73(1)(c), Fla. Stat. (1999). Of course, in this case the jury found liability on only the strict liability claim and the "specific intent to harm" exception is not implicated.

awards, such as in a case implicating the "specific intent to harm" exception. *See* § 768.73(1)(c), Fla. Stat. (1999). And, in any event, even a seemingly one-off ruling approving an outlier punitive damages award would do harm to the important federal and state principles that animate both the former and the current statutory caps and would impose unreasonable, unwarranted costs on private parties and society.[4]

In particular, "[a]part from impairing the fairness, predictability and proportionality of the legal system, judgments awarding unreasonable amounts as damages impose harmful, burdensome costs on society." *Payne*, 711 F.3d at 94. "[A]n excessive verdict that is allowed to stand establishes a precedent for excessive awards in later cases." *Id.* Indeed, "[t]he publicity that accompanies huge punitive damages awards will encourage future jurors to impose similarly large amounts." *Id.* (internal citation omitted). In turn, "[u]nchecked awards levied against significant

[4] If the Court is disinclined to consider the broad ramifications of the certified question of great public importance, the Court should dismiss this case as improvidently granted rather than expend the Court's resources on a curiosity, especially in that the Fifth District reached the correct decision in any event.

industries can cause serious harm to the national economy." *Id.*

For all of these reasons, this is not a difficult case under state law. The Fifth District correctly concluded that "the enormity of the disparity between the punitive and compensatory damages awards" dictates that this punitive damages award is unsustainable under Florida law. *Coates*, 308 So. 3d at 1073–74.

II. Well-settled federal and Florida law requires that punitive damages must be tied to the specific harm proved in this case.

The very purpose of reviewing punitive damage awards is to "ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." *Campbell*, 538 U.S. at 426. By enforcing standards that ensure that punitive damages are tied to the harm caused by the defendant's conduct in a particular case, the courts promote an appropriate level of notice, predictability, and rationality, as required by the U.S. Constitution and by Florida law.

The relevant harm in this case is defined by Florida's Wrongful Death Act, which creates the cause of action and establishes the damages available to the statutory beneficiaries. *See Martin v. United Sec. Servs., Inc.*, 314 So. 2d 765, 769 (Fla. 1975) (The

Wrongful Death Act eliminated "[t]he claim for pain and suffering of the decedent from the date of injury to the decedent" and substituted "a claim for pain and suffering of close relatives, the clear purpose being that any recovery should be for the living and not for the dead.").

Pursuant to those constraints, the jury in this case determined that the magnitude of the harm caused by the defendant's conduct (here, as in most cases, the amount of the compensatory damages) was $150,000.[5] To be sure, the jury was not limited to that amount; rather, the estate urged the jury to award the statutory beneficiaries much more than that in compensatory damages. (*See* Init. Br. at 9). But the jury rejected that invitation and awarded the decedent's estate less than one-eighth of what the estate sought on behalf of the statutory beneficiaries. *Id.*

[5] The jury returned a compensatory damages award of $300,000, which represented an award of $100,000 in non-economic damages to each of the decedent's three adult children. That compensatory damages award was reduced to $150,000 to account for the comparative fault that the jury assigned to the decedent. (*See* Init. Br. at 4; Ans. Br. at 5–6).

The jury determined the specific harm proved and awarded compensatory damages to the statutory beneficiaries. Therefore, the amount of punitive damages must be directly tied to that specific harm proved as expressed in the compensatory damages award. Any suggestion that a claim under the Wrongful Death Act fails to capture the true amount of harm second-guesses the jury and takes issue with the legislature's choices in creating this cause of action and remedy in the first place. Petitioner errs in urging this Court to hypothesize about harm the jury did not find, (Init Br. at 34, 58), and to undermine the legislature's prerogatives over the creation and scope of a wrongful death cause of action and a punitive damages remedy in the first instance. *See* §§ 768.16-768.26, Fla. Stat.; *White v. Clayton*, 323 So. 2d 573, 576 (Fla. 1975) ("An action for wrongful death . . . is a creation of the legislature"); *Sheffield v. R.J. Reynolds Tobacco Co.*, 46 Fla. L. Weekly S346, 2021 WL 5365650 (Fla. Nov. 18, 2021) ("[A] plaintiff's right to a claim for punitive damages is subject to the plenary authority of the Legislature." (quoting *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994)).

At bottom, any punitive damages award in this case must be directly tied to the jury's determination of the specific harm suffered by the statutory beneficiaries (the decedent's adult children). No basis exists for an upward departure from the federal guideposts or the reasonable relationship dictated by Florida law, based upon purported harms that the jury did not find.

A. The 106.7:1 ratio cannot be justified on the basis of potential harm.

In *Campbell*, the U.S. Supreme Court mentioned "potential harm" in stating that the second guidepost measures "the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award." 538 U.S. at 418. Potential harm is not implicated in a case, such as this, where significant actual harm—the decedent's death's impact on the statutory beneficiaries—was presented to and determined by the jury. Rather, potential harm is an appropriate consideration in rare cases where the actual harm is nominal or minimal because the defendant's punishable conduct was thwarted. *See*, *e.g.*, *BMW*, 517 U.S. at 581.

"'[P]otential harm' refers to unrealized risk from the defendant's misconduct, not the possibility that the jury might have

decided to award higher damages or that Plaintiffs might have won a larger award if they had pursued a different litigation strategy." *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, 445 F. Supp. 3d 535, 556 (N.D. Cal. 2020). The *Volkswagen* court directly rejected the argument that it should consider the amount of compensatory damages that the jury could have awarded: "Plaintiffs assert that the compensatory damages 'are small compared to what the jury could have determined,' but the Court is aware of no precedent—and Plaintiffs cite none—directing courts to consider what compensatory damages a jury might have awarded." *Id.*

Beyond finding no precedent for such speculation, the *Volkswagen* court also determined that there is no need to so speculate: "The misconduct Plaintiffs complain of succeeded. . . . There is no need for the Court to try to guess at the harm that [the misconduct] might have caused—the jury evaluated the harm it did cause." *Id.*

As with most cases, this case involves actual harm that was evaluated by the jury and reduced to a determination of the harm suffered in the form of compensatory damages. There is no occasion

to speculate what the jury could have decided differently. In fact, allowing such speculation would undermine (i) the federal guideposts, (ii) Florida's reasonable-relationship requirement, (iii) the legislature's considered approach to recoverable damages in wrongful death actions, and (iv) the important notions of notice, predictability, and rationality. In contrast, applying the well-settled law discussed above helps to ensure that punitive damages awards are tied to the harm found by the jury.

B. The 106.7:1 ratio cannot be justified on the basis of punishment for conduct that did not cause specific harm in this case.

Punitive damages awards are also constrained by the principle that a defendant cannot be punished for conduct that did not harm the specific plaintiff. In *Campbell*, the U.S. Supreme Court explained that "[a] defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages." 538 U.S. at 422. "Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis.... Punishment on

these bases creates the possibility of multiple punitive damages awards for the same conduct." 538 U.S. at 423.

In *Philip Morris USA v. Williams*, 549 U.S. 346 (2007), the U.S. Supreme Court further clarified that a punitive damages award that "permits a jury to base that award in part upon its desire to punish the defendant for harming persons who are not before the court . . . would amount to a taking of 'property' from the defendant without due process." *Id.* at 349. Although "conduct that risks harm to many is likely more reprehensible than conduct that risks harm to only a few [and] a jury consequently may take this fact into account in determining reprehensibility," the U.S. Supreme Court stressed that "the Due Process Clause prohibits a State's inflicting punishment for harm caused strangers to the litigation." *Id.* at 357. That is, the Court explicitly held that "a jury may not punish for the harm caused others." *Id.* at 356–57.

It is the prerogative of other juries, in other cases, to decide whether the defendant may have caused other harm that was not visited on the statutory beneficiaries in this case and, if so, whether punitive damages are warranted for any such harm and in what amount. But the jury in this case could not do that.

As the Eighth Circuit has explained:

> Tying punitive damages to the harm actually suffered by the plaintiff prevents punishing defendants repeatedly for the same conduct: If a jury fails to confine its deliberations with respect to punitive damages to the specific harm suffered by the plaintiff and instead focuses on the conduct of the defendant in general, it may award exemplary damages for conduct that could be the subject of an independent lawsuit, resulting in a duplicative punitive damages award. Where there has been a pattern of illegal conduct resulting in harm to a large group of people, our system has mechanisms such as class action suits for punishing defendants. Punishing systematic abuses by a punitive damages award in a case brought by an individual plaintiff, however, deprives the defendant of the safeguards against duplicative punishment that inhere in the class action procedure.

Williams v. ConAgra Poultry Co., 378 F.3d 790, 797 (8th Cir. 2004).

Allowing an outsized punitive damages award that is not directly tied to the harm the jury found the statutory beneficiaries suffered would, if extrapolated across all cases, lead to an aggregate award of punitive damages against the defendant that would be constitutionally impermissible.

Simply put, the punitive damages award cannot be justified by reference to speculative harms that another statutory beneficiary (*e.g.*, a surviving spouse) may have suffered had the circumstances

been different. The jury determined the actual compensatory harm suffered by these statutory beneficiaries, and the punitive damages award in this case must be directly tied to that amount of compensatory damages.

Moreover, the punitive damages award cannot be justified by conduct that was not the basis of the jury's verdict. In this case, the jury rejected the negligence and intentional tort claims. Liability was premised on only the strict liability claim. It follows that comparisons to punitive damages awards in other dissimilar cases – cases where, for instance, intentional conduct was found by the jury – is misplaced.

In the light of the jury's determination of the specific harm actually suffered by the statutory beneficiaries, the $16 million punitive damages award is unsupportable.

CONCLUSION

For all of the foregoing reasons, the decision of the Fifth District Court of Appeal should be approved.

January 7, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *amici curiae* brief was filed with the Clerk of Court and served via Florida Courts ePortal email on the following this 7th day of January, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rules of Appellate Procedure 9.045 and 9.370, counsel for *amici curiae* hereby certifies hereby certifies that the foregoing answer brief complies with the applicable font requirements because it is written in 14-point Bookman Old Style and contains 4,329 words, excluding those parts exempted by Rule 9.045(e).

January 7, 2022

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