



July 22–23, 2020



VIRTUAL CONFERENCE



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CREDITS**

11TH ANNUAL ADVANCED FORUM ON

MANAGED CARE DISPUTES AND LITIGATION

The only forum designed specifically for Managed Care Organizations and their counsel!

NEW in-depth discussions on:

- The Impact of **Surprise Billing Legislation** on Providers and MCOs
- The Legal Implications of **Vertical Integration** in the Healthcare Industry
- **Pre-emption Challenges** in Healthcare Litigation
- The Impact of **Private Equity Ownership** of Providers on Managed Care
- What Litigators Should Know about **Value-Based Reimbursement**
- **COVID-related Disputes** Between Payers, Providers, and Patients

Distinguished In-House Faculty:



James Cash
Senior Counsel, Litigation and Government Investigations Group
Humana



Jerome Kearns
Director of Regulatory Compliance, Medicaid and Medicare Compliance Officer
Horizon Blue Cross Blue Shield of New Jersey



J. Gabriel McGlamery
Senior Health Care Policy Consultant
Florida Blue Center for Health Policy



Joel A. Mintzer
Deputy General Counsel
Blue Cross and Blue Shield of Minnesota



Lou Patalano
Chief Legal Officer
Sentara Healthcare and Optima Health



Archana Rajendra
Senior Counsel
Henry Ford Health System and Health Alliance Plan of Michigan



Amanda G. Schreiber
Associate Senior Counsel
Cigna



Matthew R. Varzally
Senior Associate General Counsel – Recovery
Blue Cross and Blue Shield of Texas



Ray Walker
Managing Counsel – Litigation
Blue Cross and Blue Shield of Texas

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From COVID-related disputes to surprise billing legislation, to vertical integration, and the private equity takeover of provider practices, the healthcare industry is undergoing significant transformations with profound consequences for payors, providers, and patients alike.

ACI's **11th Annual Advanced Forum on Managed Care Disputes and Litigation** will be offered as a virtual conference this year to help you make sense of these developments and their profound impact for managed care.

Attend this event and hear from and connect with an outstanding line-up of speakers with a wide range of experience in everything from regulatory developments to class action trends, fraud and antitrust enforcement, payor-provider disputes, risk adjustment, and PBM litigation.

We hope you will join us at the only MCO-focused conference in the country for an unparalleled learning experience. This is your opportunity to engage in dialogue with industry leaders, gather the timeliest industry intelligence, and identify concrete strategies to limit your liability.

Plus, do not miss our pre-conference **think tank on litigating fraudulent billing cases and recovering funds** from providers—one of the greatest challenges facing MCOs today. Learn from experienced counsel who have been successful in initiating these actions and take away best practices for your own organization.

Do not delay—register today by phone at **1-888-224-2480** or online at **AmericanConference.com/ManagedCare!**

We look forward to seeing you at this virtual gathering.

A MUST-ATTEND EVENT FOR

In-house counsel for the managed care industry responsible for:

- » Litigation
- » Risk management
- » Claims/strategic payments
- » Provider relations and disputes

Law firm attorneys practicing in:

- » Healthcare and health insurance
- » Healthcare/managed care litigation
- » Payor-provider disputes
- » Managed care contracting



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ACI Healthcare

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Archana Rajendra
Senior Counsel
Henry Ford Health System and Health Alliance Plan of Michigan (Detroit, MI)



Ray Walker
Managing Counsel – Litigation
Blue Cross and Blue Shield of Texas (Richardson, TX)

Speakers:



Sarah Oxenham Allen
Chair, Antitrust Taskforce
National Association of Attorneys General (NAAG)
Antitrust Unit Manager
Office of the Virginia Attorney General (Richmond, VA)



Danielle Asaad
Partner
Squire Patton Boggs (Cleveland, OH)



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Holland & Knight LLP (Dallas, TX)

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Partner
Duane Morris LLP (Bangor, ME)



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Of Counsel
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Reed Smith LLP (Washington, DC)



Andrew Cookingham
Partner
Thompson & Knight LLP (Dallas, TX)



Mike Cowie
Partner
Dechert LLP (Washington, DC)



Tara Dwyer
Member
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (Washington, DC)



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Former Federal Prosecutor; Professor
Seton Hall School of Law (Newark, NJ)



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JAMS (Los Angeles, CA)



Jonathan Herman
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Partner
Pillsbury Winthrop Shaw Pittman LLP (Los Angeles, CA)



Leigh Anne Hodge
Partner
Bradley Arant Boult Cummings LLP (Birmingham, AL)



Kirstin B. Ives
Partner and Chair of Healthcare Litigation Practice
Falkenberg Ives LLP (Chicago, IL)



Jerome Kearns
Director of Regulatory Compliance, Medicaid and Medicare Compliance Officer
Horizon Blue Cross Blue Shield of New Jersey (Newark, NJ)



Michael S. Kolber
Partner
Manatt, Phelps & Phillips, LLP (New York, NY)



Michael M. Maddigan
Managing Partner
Hogan Lovells (Los Angeles, CA)



Francis X. Manning
Partner in Charge
Stradley Ronon Stevens & Young, LLP (Cherry Hill, NJ)



J. Gabriel McGlamery
Senior Health Care Policy Consultant
Florida Blue Center for Health Policy (Jacksonville, FL)



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Deputy General Counsel
Blue Cross and Blue Shield of Minnesota (Eagan, MN)



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Clifford Chance (Washington, DC)



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Partner and Co-Chair, Cybersecurity and Privacy Practice
WilmerHale (Washington, DC)



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Chief Legal Officer
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Michelle M. Skipper
Vice President
American Arbitration Association (Charlotte, NC)



Katherine Strahan
Partner
Hunton Andrews Kurth LLP (Houston, TX)



Thomas J. Sullivan
Partner
Shook, Hardy & Bacon LLP (Philadelphia, PA)



Ursula A. Taylor
Founding & Managing Partner
The Law Offices of Ursula Taylor (Chicago, IL)



Matthew R. Varzally
Senior Associate
General Counsel – Recovery
Blue Cross and Blue Shield of Texas (Richardson, TX)

Linda A. Wawzenski
Assistant U.S. Attorney and Deputy Chief, Civil Division
U.S. Attorney's Office, Northern District of Illinois (Chicago, IL)



Stuart M. Widman
Arbitrator
Widman Law Offices, LLC (Chicago, IL)

PRE-CONFERENCE THINK TANK: Tuesday, July 21, 2020

🕒 2:00 – 4:00 PM Central Daylight Time

Advanced MCO Think Tank on Litigating Fraudulent Billing Cases and Recovering Funds



Francis X. Manning
Partner in Charge
Stradley Ronon Stevens & Young, LLP (Cherry Hill, NJ)

As a private payor, deterring and disputing fraudulent billing is an ongoing concern. Whether you are billed for services that the patient never received, billed for unnecessary services, or are confronted with upcoding practices, you must acquire the tools to successfully litigate and win claims against providers. Attend this think tank to learn from and engage in dialogue with experienced litigators who will share strategies that work.

- Learn from the experience of carriers that have been proactive in initiating actions against providers for fraudulent billing



Adam J. Petitt
Partner
Stradley Ronon Stevens & Young, LLP (Philadelphia, PA)

- Gain insights into leveraging recoveries to achieve successful business outcomes
- Examine and challenge billing practices in an efficient manner, demanding transparency while containing administrative burdens
- Know how to uncover common forms of fraud, including falsified diagnoses, unnecessary treatment, and upcoding
- Identify successful approaches and pitfalls to avoid in attempting to recover payment

DAY 1 Wednesday, July 22, 2020

8:45 Central Daylight Time

Log-in

9:00

Opening Remarks from the Co-Chairs



Archana Rajendra
Senior Counsel
Henry Ford Health System and Health Alliance Plan of Michigan (Detroit, MI)



Ray Walker
Managing Counsel – Litigation
Blue Cross and Blue Shield of Texas (Richardson, TX)

9:15

In-House Counsel Roundtable: Managing Key Legal Challenges in Managed Care Operations



Jerome Kearns
*Director of Regulatory Compliance,
Medicaid and Medicare Compliance Officer*
Horizon Blue Cross Blue Shield of New Jersey (Newark, NJ)



Lou Patalano
Chief Legal Officer
Sentara Healthcare and Optima Health (Norfolk, VA)



Matthew R. Varzally
Senior Associate General Counsel – Recovery
Blue Cross and Blue Shield of Texas (Richardson, TX)



Amanda L. Genovese – Moderator
Counsel
O'Melveny & Myers LLP (New York, NY)

- Gain insights into the main day-to-day preoccupations of in-house counsel at leading managed care organizations (MCOs)
- Identify the ways in which the shift to a value-based contracting is changing the nature of relationships between payors and providers
- Learn how technological solutions are enabling greater efficiency in discovery and dispute resolution and often reducing need to retain outside counsel
- Explore the ways in which leading MCOs are deploying artificial intelligence to monitor patient behavior and avert need for costly treatment
- Analyze the trend in Medicaid expansion by states and how it will affect MCOs
- Engage in dialogue with fellow in-house counsel about managing COVID-related litigation

10:15

Assessing the Impact of Surprise Billing Legislation on Providers and MCOs

Gregory A. Brodek
Partner
Duane Morris LLP (Bangor, ME)



Joel A. Mintzer
Deputy General Counsel
Blue Cross and Blue Shield of Minnesota (Eagan, MN)



Maren R. Norton
Partner
Stoel Rives LLP (Seattle, WA)

- Analyze proposed state legislation on out-of-network balance billing (or "surprise" billing) in New York, Connecticut, Oregon, Texas, and other states
- Know what to expect from similar proposed legislation at the federal level (H.R.861)
- Understand how managed care agreements between payors and providers are likely to evolve in a context of decreased patient liability
- Understand objections to the legislation by industry groups including the Federation of American Hospitals (FAH) and the American Hospital Association (AHA)
- Get insight into the current status of challenges to the constitutionality of surprise billing legislation
- Examine surprise billing disputes in the context of the pandemic

11:00 | Break

Join the Conversation



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11:15

Regulatory State of the Union for Managed Care



Michael S. Kolber

Partner

Manatt, Phelps & Phillips, LLP (New York, NY)



Ursula A. Taylor

Founding & Managing Partner

The Law Offices of Ursula Taylor (Chicago, IL)

- Assess the state of challenges to the *Affordable Care Act* (ACA)'s constitutionality
- Navigate the complex sea of new ACA-related regulations issued by Centers for Medicare and Medicaid Services (CMS)
- Examine the status of the multi-billion-dollar dispute over the ACA's risk corridor program currently before the Supreme Court (*Maine Community Health Options v. United States*)
- Analyze trends in insurer-HHS disputes over unpaid cost sharing reduction (CSR) payments
- Understand how HHS's proposed reforms to the Stark and the Federal AKS laws may impact providers and the managed care space more broadly
- Learn about pricing transparency legislation for providers and litigation by hospital associations challenging its constitutionality
- Know what insurers should expect from the Transparency of Coverage rule
- Gain insights into new legislation and regulations governing Pharmacy Benefit Managers (PBMs), including transparency requirements

12:00

How Health Insurers Should Approach Hospital Mergers



Sarah Oxenham Allen

Chair, Antitrust Taskforce

National Association of Attorneys General (NAAG)

Antitrust Unit Manager

Office of the Virginia Attorney General (Richmond, VA)



James Cash

Senior Counsel, Litigation and Government Investigations Group

Humana (Louisville, KY)



Mike Cowie

Partner

Dechert LLP (Washington, DC)

- Gain insights into recent antitrust investigations and enforcement proceedings against providers, which are merging at a rapid pace
- Understand how regulatory scrutiny is derailing merger plans, such as that of UnityPoint Health and Sanford Health
- Examine the consequences of consolidation, including excessive power among hospital systems and higher pricing
- Determine avenues through which health insurers can prevent undue hospital consolidation, as employers and individuals rely on them to negotiate competitively priced hospital care
- Identify effective advocacy mechanisms for insurers and explore ways in which they can respond when contacted by federal agencies or state AGs

12:45 | Break

1:45

Payor-Provider Litigation: An Assessment of Frequently Litigated Disputes



Andrew Cookingham

Partner

Thompson & Knight LLP (Dallas, TX)



Katherine Strahan

Partner

Hunton Andrews Kurth LLP (Houston, TX)

- Analyze disputes between payors and providers resulting from unique reimbursement scenarios in the context of the pandemic, where decisions in providing care are precipitated
- Engage in discussion about disputes specific to the laboratory billing process
- Explore disputes over determination of coverage through Utilization Management and Medical Management Decision Making
- Gain insights into the growing number of disputes over air ambulance billing, which payors are covering in amounts lower than those demanded by providers
- Recognize the role and current limits of regulatory frameworks in addressing dispute resolution
- Assess mixed successes in overpayment recovery by payors as well as trends in provider underpayment litigation

2:30

Examining Class Action Trends in the Managed Care Space



Michael M. Maddigan

Managing Partner

Hogan Lovells (Los Angeles, CA)



Geoffrey M. Sigler

Partner

Gibson, Dunn & Crutcher LLP (Washington, DC)



Thomas J. Sullivan

Partner

Shook, Hardy & Bacon LLP (Philadelphia, PA)

- Analyze recent class action activity and take away successful defense strategies employed by MCOs
 - » Case study on actions initiated by prostate cancer patients who were denied coverage for proton beam radiation therapy
- Explore theories of liability asserted by plaintiffs' attorneys and their assessment by the courts
- Assess the latest class actions over determination of coverage and rates of payment
- Learn about trends in disputes arising from alleged improper coding practices
- Hear about recent moves by provider groups and plaintiff attorneys to challenge payor medical policy provisions relating to individualized benefit determinations that make it difficult to obtain class certification
- Examine reasons for decrease in opioid class action activity, as plaintiffs are instead opting for individual lawsuits
- Anticipate class action developments in the aftermath of the pandemic

3:15 | Break



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3:30

The Impact of Private Equity Ownership of Providers on Managed Care



Danielle Asaad
Partner
Squire Patton Boggs (Cleveland, OH)



Gerry Hinkley
Partner
Pillsbury Winthrop Shaw Pittman LLP (Los Angeles, CA)

- Understand the significance of an increasing number of private equity (PE) entities infusing capital into the provider space
- Assess the ramifications of PE ownership for provider-payer relationships and their contracting strategy, as providers resist becoming part of payor networks due to alternative long-term objectives for the acquired facility or cannot join networks due to high rates for services
- Recognize the tension between serving patients and PE's primary goal of maximizing profitability
- Examine the great volume of actions initiated by PE-owned providers against patients
- Learn how the pandemic is heightening PE interest in healthcare providers
- Understand the significance of increasing FCA scrutiny towards PE firms in the healthcare space

4:15

Analyzing Disputes Over Fraud and Abuse in Government Healthcare Programs



Michael E. Clark
Of Counsel
Baker Donelson (Houston, TX)



Jacob T. Elberg
Former Federal Prosecutor; Professor
Seton Hall School of Law (Newark, NJ)



John C. Richter
Partner
King & Spalding (Washington, DC)

Linda A. Wawzenski
Assistant U.S. Attorney and Deputy Chief, Civil Division
U.S. Attorney's Office, Northern District of Illinois (Chicago, IL)

- Analyze recent *False Claims Act* (FCA) matters involving Medicare and Medicaid managed care
- Examine recent DOJ criminal and civil actions taken against MCOs and know what AUSAs look for in their investigations
- Navigate the complexities of Medicaid managed care and identify states' enforcement priorities
- Learn how the nature and frequency of insurer and provider fraud in the public payor market has evolved over the years

5:15 | Closing Remarks, Conference Adjourns

5:20 – 5:50

Virtual Cocktail Reception

DAY 2 Thursday, July 23, 2020

9:00 Central Daylight Time

Opening Remarks from the Co-Chairs



Archana Rajendra
Senior Counsel
Henry Ford Health System and Health Alliance Plan of Michigan (Detroit, MI)



Ray Walker
Managing Counsel – Litigation
Blue Cross and Blue Shield of Texas (Richardson, TX)

9:15

Arbitrators' Insights into Managed Care Disputes



Elliot K. Gordon
Arbitrator/Mediator
JAMS (Los Angeles, CA)



Myra C. Selby
Partner
Ice Miller Legal Counsel (Indianapolis, IN)



Michelle M. Skipper
Vice President
American Arbitration Association (Charlotte, NC)



Stuart M. Widman
Arbitrator
Widman Law Offices, LLC (Chicago, IL)

- Identify the kinds of disputes that are most commonly resolved through arbitration and why parties opt for this dispute resolution mechanism
- Examine the rules that govern arbitration that are specific to payor-provider disputes
- Know what makes for a persuasive claim or defense from the perspective of experienced arbitrators
- Learn what pitfalls to avoid in the process in order to maximize your chances of obtaining a favorable decision
- Explore how best to structure an efficient arbitration process

10:15

Safeguarding Patient Privacy – Preventing Data Breaches and Resulting Liability



Kirk J. Nahra
Partner and Co-Chair, Cybersecurity and Privacy Practice
WilmerHale (Washington, DC)

- Monitor class action activity for data privacy breaches, including recent actions against Arizona-based Banner Health, the University of Missouri Health Care, and the University of Chicago Medical Center
- Learn about regulatory scrutiny over information-sharing with non-healthcare parties, as in HHS' ongoing investigation of Ascension, a major hospital chain and health insurer, for transfer of patient data to Google
- Analyze HHS' proposed interoperability rule, which would require transfer of health information among parties in healthcare delivery, including between insurers
- Reconcile demands for data sharing with data privacy requirements dictated by the Health Insurance Portability and Accountability Act (HIPAA)

11:00 | Break

Join the Conversation



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11:15

Addressing Pre-emption Challenges in Healthcare Litigation



Kevin D. Feder
Partner
O'Melveny & Myers LLP (Washington, DC)



Jonathan Herman
Managing Member
Herman Law Firm (Dallas, TX)

- Identify the most important pre-emption disputes in the managed care landscape
- Explore case law developments relating to the ACA's reach in state court disputes, including situations in which essential health benefits mandated by the ACA are superior to those mandated by states
- Assess the latest positions taken by federal courts on pre-emption in Medicare Advantage-related cases and ERISA cases

12:00

Navigating the Future of American Healthcare: What Litigators Should Know about Value-Based Reimbursement



Selina P. Coleman
Partner
Reed Smith LLP (Washington, DC)



Greg Russo
Managing Director
Berkeley Research Group (Washington, DC)

- Learn how the shift to a value-based contracting is changing the nature of relationships between payors and providers
- Recognize recent regulatory changes aiming to reduce impediments to value-based care, such as the Department of Health and Human Services (HHS)'s reforms to the Stark Law and the Federal Anti-Kickback Statute (AKS)
- Anticipate disputes that may arise in relation to this payment methodology
- Gain the knowledge you need to successfully manage the complexities of a highly technical and multi-variable model while staying compliant and avoiding liability

12:45 | Break

1:45

Analyzing the Legal Implications of Vertical Integration in the Healthcare Industry



Peter J. Mucchetti
Partner
Clifford Chance (Washington, DC)

- Learn how integration of carriers and providers (such as hospitals and PBMs) is impacting managed care arrangements
- Identify ways in which carrier intervention in care delivery can increase efficiency and decrease costs
 - » Assess the extent to which such improvements have materialized following recent mergers
- Analyze the regulatory response to megamergers including CVS Health-Aetna and Cigna-Express Scripts
- Understand what regulators look for in assessing a proposed merger and how to best resist antitrust scrutiny
- Explore the conflicts of interest and litigation challenges that may arise as payors, which are typically involved in disputes with providers, are compelled to take positions that defend the providers that they own
- Comprehend the reasons for consumer pushback and anticipate future litigation

2:30

The Current Risk Adjustment Litigation and Regulatory Landscape



Tara Dwyer
Member
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (Washington, DC)



J. Gabriel McGlamery
Senior Health Care Policy Consultant
Florida Blue Center for Health Policy (Jacksonville, FL)

- Grasp the evolution of the regulatory and enforcement environment in Risk Adjustment, including investigations resulting from COVID
- Explore the causes of action and disposition of cases brought by insurers against CMS over alleged underpayment
- Learn about regulatory actions brought against insurers over alleged overpayment
- Develop proactive strategies for Medicare Advantage plans to protect against litigation in light of shifting government positions
- Gain insights into the impact of Risk Adjustment Data Validation (RADV), the audit program for risk adjustment, on insurers and how best to manage audit requirements
- Assess the status of potential changes to HHS' risk adjustment formula

3:15 | Break

3:30

Navigating Coverage Considerations for Behavioral Therapy and Substance Abuse Treatment



Michael H. Bernstein
Partner
Robinson & Cole LLP (New York, NY)



Kirstin B. Ives
Partner and Chair of Healthcare Litigation Practice
Falkenberg Ives LLP (Chicago, IL)



Amanda G. Schreiber
Associate Senior Counsel
Cigna (Hartford, CT)

- Learn about actions taken under the *Mental Health Parity and Addiction Equity Act* by the Department of Labor (DOL)'s Employee Benefits Security Administration (EBSA) in the past year
- Examine new arguments made in recent class actions over denied claims for mental health treatment
- Gain insights into disputes between payors and providers over coverage of behavioral therapies for conditions including autism, substance use disorder (SUD), and psychiatric illness
- Develop best practices for resolving reimbursement disputes in which the provider is alleged to have continued treatment beyond what was considered necessary
- Explore the growing landscape of alternative therapy including wilderness outdoor programs



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Managing Disputes Involving PBMs



Eliot M. Burriss

Partner

Holland & Knight LLP (Dallas, TX)



Leigh Anne Hodge

Partner

Bradley Arant Boult Cummings LLP (Birmingham, AL)

- Learn how PBMs are being implicated in litigation in which they are not directly parties by insurers seeking recovery from pharmacies for drug expenditures (where reimbursement is alleged to have been artificially high)
- Examine trends in litigation by pharmacies against PBMs over lack of coverage for compounded drugs and exclusion from networks
- Assess the recent wave of litigation against PBMs over allegations that they contributed to the opioid epidemic by facilitating access to highly addictive drugs
- Gain insights into antitrust, racketeering, and various state law-based common law claims being made against PBMs for alleged failure to control drug costs

5:00 | Closing Remarks, Conference Concludes



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As the current global situation continues to unfold, we understand that it may not be possible to attend our events in person.

At the same time, we also understand that collaboration is more vital than ever and for that, you can still rely on ACI to bring the industry together *but* in a different way. We are transforming quickly to ensure you can now connect virtually and continue to gain unparalleled access to market leading intelligence and to the facilitation of a global exchange of expertise. Our new virtual events continue to be guided by our unifying philosophy: we believe that growth and success occurs when the power of people and the power of information come together. We may not be able to gather in person, but nothing stops connection and innovation.



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