

**Great Lakes Ins. SE v American Steamship Owners
Mut. Protection & Indem. Assn. Inc.**

2022 NY Slip Op 33733(U)

October 31, 2022

Supreme Court, New York County

Docket Number: Index No. 157295/2021

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 60M

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GREAT LAKES INSURANCE SE IN ITS OWN RIGHT
AND/OR AS SUBROGEE OF PACIFIC GULF SHIPPING
CO.,

Plaintiff,

- v -

AMERICAN STEAMSHIP OWNERS MUTUAL
PROTECTION AND INDEMNITY ASSOCIATION INC.
A/K/A THE AMERICAN CLUB, SHIPOWNERS CLAIMS
BUREAU INC., GEORGE GOURDOMICHALIS, IN HIS
OWN CAPACITY AND AS AGENT OF THE AMERICAN
CLUB, and EFSTATHIOS GOURDOMICHALIS,

Defendants.

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INDEX NO. 157295/2021

MOTION DATE 02/18/2022,
02/18/2022

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

HON. MELISSA A. CRANE:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 17, 19, 20, 21, 26

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 18, 22, 23, 25

were read on this motion to/for DISMISS

The court consolidates Motion Seq. Nos. 001 and 002 for disposition.

In Motion Sequence Number 001, defendants American Steamship Owners Mutual Protection and Indemnity Association, Inc. a/k/a The American Club (“The American Club”) and Shipowners Claims Bureau, Inc. (“SCB”) move, pursuant to CPLR 3211(a)(7), to dismiss the Complaint. In Motion Sequence Number 002, defendants George Gourdomichalis, in his own capacity and as agent of The American Club (“George Gourdomichalis”), and Efstathios Gourdomichalis move, pursuant to CPLR 3211(a)(1), (a)(7), and (a)(8), to dismiss the Complaint. Defendants also seek attorneys’ fees and costs in connection with their motions.

BACKGROUND

Plaintiff, Great Lakes Insurance SE in its own right and/or as subrogee of Pacific Gulf Shipping Co. (“Great Lakes”), commenced this action seeking to recover damages from defendants for allegedly conspiring to abandon a vessel, the M/V Adamastos (the “Vessel”), in Brazil in January 2015, and for wrongfully terminating the Vessel’s insurance coverage (*see* Complaint, NYSCEF Doc. No. 1), leaving plaintiff holding the bag.

Plaintiff is an insurance company based in Germany that provides, among other things, “specialized marine insurance polic[ies] for charters,” including “liability protection for ... liability for loss of/damage to the chartered vessel, liability for loss of/damage to the cargo being carried, and other general liability risks associated with the operation and carriage of cargo which might arise” (*id.* ¶ 14). The American Club, an insurance company “duly qualified” to do business in New York, provides “protection and indemnity insurance, which covers vessel owners and charterers against third-party liabilities arising from the ownership and operation of insured vessels” (*id.* ¶ 10). SCB, a New York corporation, manages The American Club (*see id.* ¶ 11). Brothers George Gourdomichalis and Efstathios Gourdomichalis are Greek citizens and residents who “regularly travel[] to and conduct[] business in New York” (*id.* ¶¶ 12-13). George Gourdomichalis is the Chairman of the Board of The American Club (*see id.* ¶ 12).

George Gourdomichalis and Efstathios Gourdomichalis “beneficially own[] and operate[]” nonparty Adamastos Shipping & Trading, S.A. (“Adamastos Shipping”), a Liberia-based company (*id.* ¶¶ 29-30). They also “own[] and operate[]” nonparty Phoenix Shipping & Trading, S.A. (“Phoenix Shipping”), that is incorporated in the Marshall Islands and has its principal office in Greece (*id.* ¶ 32). Great Lakes claims that George Gourdomichalis and Efstathios Gourdomichalis “have a long history of unsuccessful ship-owning interests [that] have

previously failed and left various creditors and contractual partners with significant losses and damages” (*id.* ¶ 31).

The Vessel “was a 39,017 gross ton dry bulk vessel built in 1995 and registered in Liberia” (*id.* ¶ 28). Adamastos Shipping was the “registered owner” of the Vessel (*id.* ¶ 29). “The Vessel had a fair market value of ... \$6,000,000.00,” but “was mortgaged for ... \$24,000,000.00” (*id.* ¶ 38). Under an agreement dated December 7, 2012, Phoenix Shipping “was the technical and commercial manager for the Vessel” (*id.* ¶ 35). “Phoenix Shipping was also the ‘operator’ of the Vessel” (*id.* ¶ 36).

The American Club provided protection and indemnity insurance to the Vessel and its “owning, operating, and managing interests” for the period February 20, 2014 to February 20, 2015 (*id.* ¶¶ 43, 46). “The American Club also issued a Certificate of Entry for Class II – Freight, Demurrage & Defense ... Insurance for the [Vessel] for the period February 20, 2014 – February 20, 2015” (*id.* ¶ 48). “George Gourdomichalis and [Efstathios] Gourdomichalis performed all banking operations, financial recordkeeping, and maintained all accounts on behalf of the Vessel” (*id.* ¶ 42). Great Lakes asserts that The American Club provided the insurance policy for the Vessel “because George Gourdomichalis was a member of The American Club Board of Directors,” without regard to the “viability of Adamastos Shipping [or] the true condition of the Vessel” (*id.* ¶¶ 44-45).

On April 8, 2014, nonparty Pacific Gulf Shipping Co. (“Pacific Gulf”) chartered the Vessel from Adamastos Shipping for use for a period between 90 and 180 days (*id.* ¶ 54). On July 14, 2014, Pacific Gulf sub-chartered the Vessel to nonparty Integris Co. Ltd. (“Integris”) “for a one (1) time charter trip,” and Integris added the Vessel as a “covered vessel” to its insurance (*id.* ¶¶ 58-59). Integris then sub-chartered the Vessel to nonparty Marubeni

Corporation (“Marubeni”). Marubeni “arranged for the transportation of a soybean cargo to be carried by the Vessel” (*id.* ¶ 60).

On July 31, 2014, the Vessel arrived at Sao Francisco Do Sul, Rio Grande and commenced loading the cargo (*id.* ¶ 61). A few days later, authorities in Brazil inspected the Vessel and detained it for further inspection and to rectify certain deficiencies (*id.* ¶ ¶ 62-63). On August 6, 2014, while still loading cargo, the Vessel broke free of its moorings, drifted to the middle of the channel, and grounded (*id.* ¶ 64).

On August 12, 2014, Adamastos Shipping, through George Gourdomichalis, notified The American Club of the grounding incident and the potential claim (*id.* ¶ 69). During the next six months, the Vessel remained under detention, failed to load the remainder of the cargo, and failed to complete the voyage, as required under the various charter party obligations (*id.* ¶ 77). In addition, several parties in Brazil commenced claims and causes of action against the Vessel (*id.* ¶ 80). The American Club declined to cover the Vessel and the cargo (*id.* ¶ 79).

On January 8, 2015, The American Club terminated its coverage of the Vessel “as a result of Phoenix Shipping ceasing its operation/management of [it],” and processed a pro-rata refund of the paid premium (*id.* ¶ 87-88). On February 12, 2015, the Brazilian government declared the Vessel abandoned (*id.* ¶ 94). The Vessel and cargo were eventually sold in Spain (*id.* ¶ 95).

In early 2015, Marubeni commenced arbitration proceedings against Integris in London to recover damages of at least \$32,650,000.00 relating to the lost cargo (*id.* ¶ 96). Integris also commenced arbitration proceedings in London against Pacific Gulf, seeking to recover damages and losses due to the Vessel’s failure to complete the voyage (*id.* ¶ 97). On June 6, 2016, Pacific

Guld commenced arbitration proceedings in London against Adamastos Shipping for breach of the charter agreement (*id.* ¶ 99).

On April 19, 2017, the arbitrator issued a final award declaring that Pacific Gulf was entitled to indemnity from Adamastos Shipping (*id.* ¶ 100). On May 23, 2018, Integris settled Marubeni's claim, agreeing to pay \$18,000,000.00 (*id.* ¶ 101). On March 13, 2019, Pacific Gulf settled Integris' claim for \$18,000,000.00, plus \$500,000.00 for costs (*id.* ¶ 103).

In 2020, Great Lakes commenced an action against the defendants in the Southern District of New York. In that action, Great Lakes asserted various tort claims based on defendants' alleged conspiracy to abandon the Vessel in Brazil and to terminate the Vessel's insurance improperly (*see Great Lakes Ins. SE v American Steamship Owners Mut. Protection & Indem. Assoc., Inc.* (2020 WL 4547218 [SDNY 2020]). The Court dismissed the action for lack of subject matter jurisdiction (*id.*), and the dismissal was affirmed on appeal (*see Great Lakes Ins. SE v American Steamship Owners Mut. Protection & Indem. Assoc., Inc.*, 848 Fed Appx 51 [Mem] [2d Cir 2021]). Great Lakes then commenced this action in State Court in 2021.

Here, Great Lakes alleges, generally, that defendants conspired to abandon the Vessel in Brazil and to terminate the Vessel's insurance coverage improperly (*see Complaint, supra*). Great Lakes claims that defendants abandoned the Vessel when it was unseaworthy and facing millions of dollars in claims, while fully loaded with a cargo of soybeans (*id.* ¶ 1). Great Lakes further claims that defendants abandoned it to avoid contractual or legal liabilities associated with Brazil, in breach of defendants obligations to the Vessel's contractual partners, cargo interests, and crew (*id.* ¶ 93). Great Lakes asserts claims for prima facie tort (first cause of action), promissory fraud (second cause of action), civil conspiracy (third cause of action), unjust enrichment (fourth cause of action), and negligence (fifth cause of action) (*id.*).

The American Club and SCB move to dismiss the Complaint for failure to state a viable cause of action (Motion Sequence Number 001). George Gourdomichalis and Efstathios Gourdomichalis seek to dismiss the Complaint for lack of personal jurisdiction, failure to state a valid cause of action, and failure to commence a timely action (Motion Sequence Number 002). Defendants also seek attorneys' fees and costs in connection with their motions.

During oral argument on February 18, 2022, this Court dismissed the first, second, and third causes of action for prima facie tort, promissory fraud, and civil conspiracy (*see* Transcript, NYSCEF Doc. No. 30, pp. 5, 10-11). The court dismissed the promissory fraud claim with leave to replead (*id.* p. 10). Plaintiff has not sought to amend the complaint to replead that claim since oral argument.

DISCUSSION

Preliminarily, George Gourdomichalis and Efstathios Gourdomichalis seek to dismiss the Complaint for lack of personal jurisdiction. Great Lakes asserts that jurisdiction and venue are proper because defendants were doing business in New York, and the tortious conduct of defendants occurred or had an effect in New York (*see* Complaint, *supra*, ¶ 4). Great Lakes also asserts that the Court may properly exercise jurisdiction over George Gourdomichalis and Efstathios Gourdomichalis under CPLR 301 and 302.

Under CPLR 301, “[a] court may exercise jurisdiction over persons, property, or status as might have been exercised heretofore.” A plaintiff must state a basis for general jurisdiction under the CPLR that satisfies due process protections under the United States Constitution (*see e.g. International Shoe Co. v State of Wash., Office of Unemployment Compensation and Placement*, 326 US 310, 316 [1945]). On a motion to dismiss, it is the plaintiff’s burden to establish that jurisdiction is appropriate (*see Stewart v Volkswagen of America, Inc.*, 81 NY2d

203, 207 [1993] [“[P]laintiffs have the burden of proving satisfaction of statutory and due process prerequisites”).

The court may exercise general jurisdiction over a defendant pursuant to CPLR 301 where the defendant's ties to New York “are so ‘continuous and systematic’ as to render them essentially at home in the forum state” (*Goodyear Dunlop Tires Operations, S.A. v Brown*, 564 US 915, 919 [2011], quoting *International Shoe Co. v Washington*, 326 US 310, 317 [1945]). For a corporation, the paradigm forums are “the place of incorporation and [its] principal place of business” (*Daimler AG v Bauman*, 571 US 117, 137 [2014]). For an individual, the paradigm forum is the individual’s domicile.

Here, Great Lakes alleges that George Gourdomchalis and Efstathios Gourdomichalis regularly travel to and conduct business in New York (*see* Complaint, *supra*, ¶¶ 12-13). In particular, Great Lakes asserts that George Gourdomichalis and Efstathios Gourdomichalis routinely do business in New York and, among other things, purposefully engage with insurers, brokers, attorneys, and other professionals based in New York through letters, notices, electronic communications, phone calls, and in-person meetings. Plaintiff also asserts that defendants, as longstanding members of The American Club, regularly travel to New York for business and social functions with their New York-based insurer, its management, and others. Plaintiff further asserts that George Gourdomichalis has been a member of the Board of Directors of The American Club since 2015, and that he regularly travels to New York to conduct business, including attending meetings and social functions, voting on business matters, and participating in elections. However, plaintiff fails to establish that George Gourdomichalis and Efstathios Gourdomichalis were present in New York “with a fair measure of permanence and continuity” so as to confer the Court’s jurisdiction over them under CPLR 301 (*Landoil Resources Corp. v*

Alexander & Alexander Servs., Inc., supra). Thus, the court finds that plaintiff has not satisfied its burden of establishing general jurisdiction under CPLR 301.

Nevertheless, the Court may properly exercise jurisdiction over George Gourdomichalis and Efstathios Gourdomichalis under CPLR 302(a)(1). Under New York's long-arm statute, "a court may exercise personal jurisdiction over any non-domiciliary ... who in person or through an agent ... transacts any business within the state or contracts anywhere to supply goods or services in the state" (CPLR 302[a][1]). The court may exercise jurisdiction under CPLR 302 (a)(1) even if the non-domiciliary never enters New York, so long as the non-domiciliary's activities here are purposeful and there is a substantial relationship between the transaction and the claim asserted (*see Fischbarg v Doucet*, 9 NY3d 375, 380 [2007]). "Purposeful activities are those with which a defendant, through volitional acts, 'avails itself of the privilege of conducting activities' within [New York], thus invoking the benefits and protections of its laws" (*id.* [internal citations omitted]).

Here, defendants' travels to conduct business in New York, coupled with their performance of all aspects of the Vessel's operations, including their interactions with The American Club, an insurer of the Vessel, and SCB, that manages The American Club, amply demonstrate that defendants purposefully availed themselves of the privilege of conducting business in New York (*see id.*). After the grounding incident in Brazil, George Gourdomichalis notified The American Club of the potential claim. The American Club then transferred the matter to its New York office. Thereafter, George Gourdomichalis and Efstathios Gourdomichalis communicated with The American Club regarding the incident. As such, the Court's exercise of jurisdiction over defendants under CPLR 302(a)(1) would not offend traditional notions of fair play and substantial justice (*see LaMarca v Pak-Mor Mfg. Co.*, 95

NY2d 210, 217 [2000]; *see also Walden v Fiore*, 571 US 277, 283-284 [2014] [stating that “[t]he inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation” and “defendant’s suit-related conduct must create a substantial connection with the forum State” (internal quotation marks omitted)]. Thus, the branch of the motion (Motion Sequence Number 002) that seeks to dismiss the complaint against George Gourdomichalis and Efstathios Gourdomichalis for lack of personal jurisdiction is denied.

The court also rejects the argument that the Complaint should be dismissed against George Gourdomichalis and Efstathios Gourdomichalis individually because they acted in their capacity as owners of Adamastos Shipping and Phoenix Shipping. The general rule is that an officer of a corporation who participates in the commission of a tort may be held individually liable (*see Peguero v 601 Realty Corp.*, 58 AD3d 556, 558 [1st Dept 2009]).

Here, Great Lakes sufficiently alleges that George Gourdomichalis and Efstathios Gourdomichalis participated in the alleged torts. In particular, Great Lakes alleges, among other things, that George Gourdomichalis and Efstathios Gourdomichalis acquired the Vessel through a complex, veiled financing scheme in order to permit defendants to take possession and ownership of the Vessel without risk (Complaint, *supra*, ¶ 39); that defendants were the only corporate officers of Adamastos Shipping (*id.* ¶ 30) and Phoenix Shipping (*id.* ¶ 32); that George Gourdomichalis facilitated the procurement of insurance for the Vessel from The American Club, and that he was a board member of The American Club (*id.* 44); that defendants managed the operations of the Vessel (*id.* ¶ 42); that defendants failed to comply with the requirements for releasing the Vessel from detention in Brazil (*id.* ¶ 76), eventually abandoning it (*id.* ¶ 78); and that defendants conspired to develop a self-serving exit strategy centered on the owners’ and

insurers' abandonment of the Vessel in Brazil to avoid paying multiple claims (*id.* ¶ 93). Thus, the branch of the motion that seeks to dismiss the Complaint against the individual defendants is denied.

The Court also rejects defendants' assertion that the causes of action in the Complaint are time-barred. As stated, the Court dismissed the causes of action for prima facie tort, promissory fraud, and civil conspiracy at oral argument. A three-year statute of limitations governs the remaining claims for unjust enrichment and negligence (*see* CPLR 214; *Ingrami v Rovner*, 45 AD3d 806, 808 [2d Dept 2007] [“(W)ith respect to the unjust enrichment cause of action ... the three-year statute of limitations of CPLR 214(3) governs ... since the plaintiff is seeking monetary, as opposed to equitable relief”]; *Jamison v Crichlow*, 139 AD2d 332, 336-337 [2d Dept 1985] [“A negligence cause of action is ... governed by a three-year Statute of Limitations”]). The statute of limitations generally begins to run when the cause of action accrues, that is, when all of the facts necessary to sustain the cause of action have occurred (*see Aetna Life & Cas. Co. v Nelson*, 67 NY2d 169, 175 [1986]).

George Gourdomichalis and Efstathios Gourdomichalis assert that Great Lake's claims accrued on January 8, 2015 when The American Club notified Adamastos Shipping that coverage for the Vessel had been terminated, and that Great Lakes commenced the action on November 18, 2019, beyond the applicable three-year statute of limitations. Defendants also argue that the claims are untimely under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) to the extent that Great Lakes seeks to enforce the arbitration award entered against Adamastos Shipping on April 19, 2017.

However, Great Lakes satisfactorily alleges that it was prevented from timely filing this action due to its reasonable reliance on “deception, fraud or misrepresentation” by defendants

(see *Putter v North Shore Univ. Hosp.*, 7 NY3d 548, 552-553 [2006]). Specifically, Great Lakes maintains that George Gourdomichalis and Efstathios Gourdomichalis concealed their plan to avoid paying the cargo claim and to cause the cancellation of the insurance coverage for the Vessel. Great Lakes also asserts that the individual defendants conspired with The American Club (of which George Gourdomichalis is a board member) and with SCB to give a misleading pretext to terminate the insurance coverage for the Vessel so defendants could abandon their obligations. Great Lakes also alleges that George Gourdomichalis and Efstathios Gourdomichalis did not notify it that The American Club and SCB terminated coverage. Great Lakes maintains that defendants intentionally concealed their wrongdoing, that it did not uncover until January 2019, during discovery in another action.

Further, as stated, Great Lakes commenced this action to recover damages from defendants for allegedly conspiring to abandon the Vessel and wrongfully terminating the Vessel's insurance coverage, not to enforce a foreign arbitration award entered against Adamastos Shipping. Thus, the Court denies the branch of the motion that seeks to dismiss the action as untimely.

Defendants further contend that dismissal is warranted because plaintiff does not allege viable claims for relief. On a motion to dismiss pursuant to CPLR 3211, the Court must presume the allegations in the Complaint to be true, afford the pleading a liberal construction, and accord the plaintiff the benefit of every favorable inference (see *Godfrey v Spano*, 13 NY3d 358, 373 [2009]). Under CPLR 3211(a)(1), dismissal is warranted "if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Leon v Martinez* 84 NY2d 83, 88 [1994]). In assessing a motion under CPLR 3211(a)(7), the Court may freely consider the affidavits submitted by plaintiff to remedy any defects in the pleading (see

Rovello v Orofino Realty Co., 40 NY2d 633, 364 [1976]). The criteria is whether the plaintiff has a cause of action, not whether it has stated one (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

Because the court already dismissed the claims for prima facie tort, promissory tort, and civil conspiracy, only plaintiff's claims for unjust enrichment and negligence remain. Under New York law, a plaintiff asserting a cause of action for unjust enrichment must allege that the defendant benefitted at the plaintiff's expense, and that equity and good conscience require restitution (*see Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011]). In addition, an unjust enrichment claim requires a relationship or connection between the parties that is not "too attenuated" (*Sperry v Crompton Corp.*, 8 NY3d 204, 215-216 [2007]). To assert a negligence claim, the plaintiff must allege the breach of a duty owed by the defendant to the plaintiff that resulted in damages (*see Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]).

In alleging unjust enrichment, plaintiff asserts that defendants benefitted from their abandonment of the Vessel and cancellation of the insurance coverage, and that defendants then failed to pay the related claims. As to negligence, plaintiff claims that defendants breached a duty to ensure that the Vessel was seaworthy and had proper insurance. Plaintiff also claims that defendants failed to exercise reasonable care when devising the scheme to abandon the Vessel, its cargo, and its crew for the benefit of defendants and to the detriment of plaintiff. For these claims, plaintiff seeks damages of at least \$18,500,000.00, plus interests, costs, and fees.

Construed in the most favorable light, plaintiff adequately asserts that defendants breached a duty of care, resulting in damages, so as to survive a motion to dismiss the negligence claim. However, the Court dismisses plaintiff's unjust enrichment claim since it merely duplicates the negligence claim (*see Corsello v Verizon N. Y., Inc.*, 18 NY3d 777, 790-791

[2012]). The Court denies defendants' request for attorneys' fees and costs (see *Cutone & Co. Consultants, LLC v Riverbay Corp.*, 76 Misc 3d 781, 788 [Sup Ct, NY County 2022]).


The Court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that Motion Seq. Nos. 001 and 002 are granted in part to the extent that the causes of action for prima facie tort, promissory fraud, civil conspiracy, and unjust enrichment are severed and dismissed as against defendants AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION, INC. a/k/a THE AMERICAN CLUB, SHIOWNERS CLAIMS BUREAU, INC., GEORGE GOURDOMICHALIS, in His Own Capacity and as Agent of the American Club, and EFSTATHIOS GOURDOMICHALIS, and the motions are otherwise denied; and it is further

ORDERED that defendants are directed to serve an answer to the remaining allegations in the complaint within 20 days of the date that this decision and order is e-filed on NYSCEF by the Court; and it is further

ORDERED that counsel are directed to appear for a status conference by Microsoft Teams on November 15, 2022, at 12:30 p.m.

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| <u>10/31/2022</u> DATE | | | | |  MELISSA A. CRANE, J.S.C. | | | |
| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | DENIED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | | |
| APPLICATION: | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> | | <input checked="" type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> | OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | | <input type="checkbox"/> | SUBMIT ORDER | <input type="checkbox"/> | REFERENCE |
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