OA 5-5-94

IN THE SUPREME COURT OF FLORIDA

CASE NO. : 82,260

MICHAEL GRANT,

Petitioner,

vs.

STATE FARM FIRE AND CASUALTY COMPANY,

Respondent.

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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INTRODUCTION

Throughout this Brief the Petitioner, MICHAEL GRANT, will be referred to as "GRANT" or "Petitioner". The Respondent, STATE FARM FIRE & CASUALTY COMPANY, will be referred to as "STATE FARM" or "Respondent". All citations to the Record on Appeal will be designated by the Letter "(R.)". Additionally, the terms "uninsured/underinsured motorist coverage" and "personal injury protection coverage" shall be abbreviated as "UM" and "PIP", respectively.

All emphasis is supplied by the writer unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Although GRANT's Statement of Case and Facts is for the most part acceptable, STATE FARM is compelled to provide further facts for the determination of this appeal.

Prior to the car accident involved in this case, GRANT contracted with STATE FARM for a policy of motor vehicle insurance. In addition to PIP, comprehensive and liability insurance coverages, STATE FARM also offered GRANT uninsured motorist (UM) coverage.

Different levels of UM coverage were available to GRANT. After being informed as to the different coverages, GRANT knowingly elected to buy U3 coverage. U3 is "non-stacking" UM coverage which provides benefits only in certain limited circumstances. It is specifically authorized by law as a

limited form of UM coverage and is purchased at a substantial discount.

STATE FARM's U3 coverage provides, in accordance with the statute:

"There is no coverage...

> (3) For bodily injury to an insured while occupying a motor vehicle owned by you, your spouse, or any relative if it is not insured for this coverage under this policy".

This limitation is not found in the "stackable" or standard UM coverage offered to but not selected by GRANT.

GRANT purchased the limited coverage on his 1978 Corvette. That vehicle was the only vehicle listed on his policy. On the date of accident giving rise to this action, GRANT was operating an uninsured motorcycle owned by him. Subsequently, he sought UM benefits from STATE FARM under the policy insuring his Corvette. STATE FARM denied coverage based upon the above policy language which limited coverage only for accidents involving vehicles owned by the insured and listed in the policy. GRANT contended that this limitation did not apply because the motorcycle did not constitute a "motor vehicle" within the meaning of the language of the policy.

The provisions of GRANT's UM coverage do not contain a definition for the word "motor vehicle". The only definition of that term in his policy is found in provisions for mandatory

personal injury protection coverage. Under PIP the term is defined as "...a vehicle with four or more wheels...".

Therefore, as set forth by GRANT in his recitation of the case and facts, the only issue in dispute in the litigation below was the legal application of the U3 policy language to a situation involving a motorcycle. The trial court found that the term "motor vehicle" as used in the U3 coverage clause included a motorcycle and entered summary judgment on behalf of STATE FARM. (R.152-153).

On appeal to the Fourth District Court of Appeal, GRANT argued that the term "motor vehicle" was ambiguous and that the "4-wheel" definition of "motor vehicle" in the PIP provisions should be grafted onto the UM provisions. STATE FARM responded that the term "motor vehicle" is not ambiguous and is not, then, in need of judicial construction. Further, it argued, the public policy of the state required a broad interpretation of the term "motor vehicle", should a construction of the term be required, and that, therefore, a motorcycle should be deemed to be a "motor vehicle".

The Fourth District held that GRANT's motorcycle was a motor vehicle for the purposes of STATE FARM's coverage clause. Based on that finding, it determined that GRANT was not entitled to UM benefits under the policy insuring his Corvette. On rehearing, the Fourth District determined that its decision expressly conflicted with Petersen v. State Farm Fire & Casualty Company, 615 So.2d 181 (Fla. 3rd DCA 1993), a case

which, it found, reached an opposite result on virtually identical facts.

POINT ON APPEAL

WHETHER A MOTORCYCLE IS WITHIN THE DEFINITION OF THE TERM "MOTOR VEHICLE" FOR THE PURPOSES OF CONSTRUING THE APPLICABILITY OF NON-STACKING UNINSURED MOTORIST COVERAGE?

SUMMARY OF ARGUMENT

When the legislature amended the Florida Uninsured Motorist Statute to allow an insurer to offer limited UM coverage to its insureds for a reduced premium, it created a statutory exception to the general proposition announced in Mullis v. State Farm Mutual Automobile Insurance Company, 252 So.2d 229 (Fla. 1971). Mullis announced the lodestar principle that UM coverage cannot be limited in any way as to Class I insureds. The Legislature created a statutory exception to that overriding principle in its enactment of §627.727(9), Florida Statutes. Accordingly, GRANT's argument that Mullis applies to the case at bar has no foundation in the law. As such, the rule of Mullis does not require a determination that GRANT is entitled to coverage from the limited-UM policy covering his Corvette when he was injured while driving a motorcycle he owned but chose not to insure.

GRANT takes the position in his Brief that the Court should look to the definition of the term "motor vehicle" as contained in his PIP policy provision in determining the application of the UM provisions of his policy. This is contrary to the settled law in the State of Florida as enunciated in Standard Marine Insurance Company v. Allyn, 333 So.2d 497 (Fla. 1st DCA 1976). There an insurance company urged upon the Court the same argument that GRANT does here in attempting to avoid the application of UM coverage where an insured was struck by an uninsured motorcycle. Allyn held that the statutory definition of "motor vehicle" found in Florida's Financial Responsibility Act was more consonant with the public policy of this State as to uninsured motorist coverage than the PIP definition of that term as found in the insurance policy.

This Court, in Carguillo v. State Farm Mutual Automobile Insurance Company, 529 So.2d 276 (Fla. 1988), also determined that, in construing the term "motor vehicle" under uninsured motorist coverages, the definition of that term as found in the Financial Responsibility Act should be applied. The Financial Responsibility Act defines a motor vehicle in such a manner as to include a motorcycle. Accordingly, GRANT's argument that the definition as found in the PIP section of the policy is likewise lacking in legal foundation.

Finally, GRANT argues that the term "motor vehicle" is ambiguous and should be defined by the Court in a narrow manner so as to exclude motorcycles. While it is true that

ambiguities should be construed against an insurance carrier, that rule applies only when a genuine inconsistency or uncertainty remains after resort to the ordinary rules of construction. Insurance policies must be given practical and sensible interpretations in accordance with the natural meaning of the words employed. It is submitted that the plain and everyday common usage of the term "motor vehicle" necessarily includes a motorcycle.

The Opinion of the Third District Court of Appeal in Petersen v. State Farm Fire and Casualty Company, 615 So.2d 181 (Fla. 3rd DCA 1993) is incorrect. That Court determined that the term "motor vehicle" is ambiguous because it is not defined in the uninsured motorist provisions of the policy although it is defined in the PIP section of the policy. The Third District Court failed to follow its own precedents in reaching its decision in Petersen and further failed to follow the rule of "plain meaning" in construing insurance policy language.

The public policy of the State of Florida requires that the term "motor vehicle" include a motorcycle. To find otherwise would impermissably limit UM coverage in situations as set out in Allyn. Simply put, a motorcycle cannot, on the one hand, be a "motor vehicle" when ascertaining the applicability of UM benefits and, on the other hand, not be a "motor vehicle" in determining whether a UM coverage limitation applies. Public policy and common sense militate in favor of a consistent definition to be applied in both circumstances.

applies. Public policy and common sense militate in favor of a consistent definition to be applied in both circumstances.

Accordingly, the decision of the District Court of Appeal, Fourth District of Florida, entered in the case sub judice, should be affirmed and the decision of the Third District Court of Appeal, in Petersen v. State Farm Fire and Casualty Company, should be disapproved.

ARGUMENT

A.

In 1987 the legislature amended the Florida Uninsured Motorist Statute (§627.727, Florida Statutes) to allow an insurer to offer limited UM coverage to its insureds for reduced premiums. The statute provided that UM coverage may be limited to exclude benefits to an insured for injuries while occupying vehicles owned by the insured but not listed on the policy. The statute provides, in part, that:

> "(9) Insurers may offer policies of uninsured motorist coverage containing policy provisions, in language approved by the department, establishing that if the insured accepts this offer:
> (d) The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in his household who are injured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased".
>
> §627.727(9)(d), Florida Statutes (1989).

Thus, if this limitation to coverage is accepted by an insured, a carrier is not obligated to provide UM coverage for injuries occurring while an insured is operating a owned, but uninsured, vehicle.

Contrary to the argument contained in GRANT's Brief, the principle announced in Mullis v. State Farm Mutual Automobile Insurance Company, 252 So.2d 229 (Fla. 1971), is not applicable to the case sub judice. Unlike Mullis, the Petitioner here purchased his UM coverage with specific coverage limitations duly authorized by the Legislature. Therefore, although Mullis dictates the public policy and doctrine governing uninsured motorist coverage in general, the Legislature, in enacting Florida Statute §627.727(9)(d), created a statutory exception to it. Florida courts have recognized and approved this legislative exception. In Nationwide Mutual Fire Insurance Company v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992), the Fifth District Court of Appeal noted that the statute permits an insurer to narrow the parameters UM coverage where the insured knowingly accepts the limitation. That Court held:

> "Section 627.727(9)(d) creates a statutory exception to the Mullis rule invalidating UM coverage exclusions as to Class I insured".

Therefore, the historical perspective and public policy reasons advanced in Mullis as to Class I insureds are not controlling in the case at bar. GRANT accepted and purchased, for a reduced premium, a form of UM coverage which contained statutorily approved limitations. In order to offer the

limited coverage, the statute requires the insurer to revise its premium rates to reflect at least a 20 percent reduction and to inform an insured of the limitations imposed under the subsection.[1] This was presumptively done here.

Accordingly, Mullis does not provide a basis for finding the limited coverage here is either invalid or against public policy. While Petitioner is a Class I insured under his STATE FARM policy, he voluntarily elected to purchase the limited form of UM coverage permitted by law. This limited coverage does not apply to injuries sustained while occupying other vehicles owned by an insured but not insured for UM coverage under the policy. Contrary to Petitioner's argument, the underlying policy and rule of Mullis do not, then, apply to the case sub judice to invalidate the policy provision applicable to this situation.

B.

GRANT is correct that STATE FARM's uninsured motorist coverage, like the uninsured motorist statute, does not define the words "motor vehicle". Because of this, GRANT argues that the court should look to the portion of the policy defining

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[1] The statute provides in part: "Any insurer who provides coverage which includes the limitations provided in this subsection shall file revised premium rates with the department for such uninsured motorist coverage to take effect...". Additionally,, "...insurers shall inform the named insured..., of the limitations imposed under this subsection and that such coverage is an alternative to coverage without such limitations.

"motor vehicle" under the PIP coverage and apply that definition to the policy's uninsured motorist coverage. As will be seen, this argument runs counter to the existing case law on the issue, common sense, and the public policy of the State of Florida.

In Standard Marine Insurance Company v. Allyn, 333 So.2d 497 (Fla. 1st DCA 1976), the insured, Allyn, was struck while a pedestrian and severely injured by an uninsured motorcycle. Allyn filed an uninsured motorist claim against his insurance company, Standard Marine Insurance Company, as a result of his injuries. The insurance company argued there that a motorcycle was not an uninsured motor vehicle within the terms of the insurance policy. It urged, as GRANT does here, the court to look to the definition of the term "motor vehicle" appearing in the no-fault (PIP) coverage and to apply it to the uninsured motorist coverage. There, as here, under the PIP coverages, a motor vehicle was limited to a "four-wheel self-propelled vehicle".

The court, in Allyn, rejected the insurance company's limited interpretation of the terms "motor vehicle". It noted:

> "We do not perceive that the legislature, by enacting the Florida Automobile Reparation Reform Act, intended to exclude those motor vehicles enumerated above from the umbrella of uninsured motorists. The statutory definition of a motor vehicle found in the Financial Responsibility Act is far more consonant with the public policy of this state as to uninsured motorist than the PIP definition in the instant policy..."
>
> At page 499.

The insurance company in Allyn, as GRANT does here, argued that the courts, in interpreting an insurance policy, should follow the definitions given in the policy itself. In refuting that argument, the Allyn court cited to Standard Accident Insurance Company v. Gavin, 184 So.2d 229 (Fla. 1st DCA 1966):

> "It is well settled in this state that where a contract of insurance is entered into on a matter surrounded by statutory limitations and requirements, the parties are presumed to have entered into such agreement with reference to the statute, and the statutory provisions become a part of the contract..."

The rationale is Allyn was followed in a non-stacking context, as presented here, in Indomenico vs. State Farm Mutual Automobile Insurance Company, 388 So.2d 29 (Fla. 3rd DCA 1980) and State Farm Mutual Automobile Insurance Company vs. Kuhn, 374 So.2d 1079 (Fla. 3rd DCA 1979), appeal dismissed, 383 So.2d 1197 (Fla. 1980).

This Court has held, in Carguillo v. State Farm Mutual Automobile Insurance Company, 529 So.2d 276 (Fla. 1988), that in construing the term "motor vehicle" under uninsured motorist coverages, the definition of that term as found in Florida's Financial Responsibility Act should be applied. In other words, that the uninsured motorist statute should be read in pari materia with the financial responsibility law.

In so doing, it specifically disapproved and overruled Allstate Insurance Company v. Almgreen, 376 So.2d 1184 (Fla.

2nd DCA 1979).[2] Petitioner here has relied on Almgreen and Johns v. Liberty Mutual Fire Insurance Co., 337 So.2d 830 (Fla. 2nd DCA 1976), cert. denied, 348 So.2d 949 (Fla. 1977), for the proposition that the Financial Responsibility Acts are not to be read in pari materia to the UM laws. As seen, however, Carquillo disapproved Almgreen and specifically relied upon the Financial Responsibility laws to arrive at a definition for the term "motor vehicle".

Florida's Financial Responsibility Act defines a "motor vehicle" as follows:

> "Motor vehicle. - every self-propelled vehicle which is designed and required to be licensed for use upon a highway,...but not including any bicycle or moped. However, the term "motor vehicle" shall not include any motor vehicle as defined in §627.732(1) when the owner of such vehicle has complied with the requirements of §§627.730-627.7405, inclusive, unless the provisions of §324.051 apply..."
>
> §324.021(1), Florida Statutes (1989).

The Financial Responsibility Act specifically excludes from its definition of "motor vehicle" the definition of that term found under the Florida No-Fault (PIP) Act. Accordingly, GRANT's argument that the PIP definition of "motor vehicle" (which is limited to vehicles with four wheels) should be applied in this case has no foundation.

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[2] Almgreen held that the Financial Responsibility Law, is not to be read in pari materia with the UM laws.

It should be noted that, save for the definition of motor vehicle as it appears in the No-Fault Act, each other statutory definition of the word "motor vehicle" includes a motorcycle, either specifically or by implication. See, e.g. §316.003(21), Florida Statutes (1989) ("motor vehicle. - any self-propelled vehicle not operated upon rails or guideway, but not including any bicycle or moped."); §320.01(1), Florida Statutes (1989) ("motor vehicle means: an automobile, motorcycle, truck, trailer, semi-trailer, truck tractor and semi-trailer combination, or any other vehicle operated on the roads of this state..."); §322.01(26), Florida Statutes (1989) ("motor vehicle means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles..."); and, §520.02(7), Florida Statutes (1989) ("motor vehicle means any device or trailer, including automobiles, motorcycles, motor trucks, trailers, mobile homes, and all other vehicles operated over the public highways and streets of this state and propelled by power other than muscular power...").

Despite the fact that all of these statutory definitions of motor vehicle are broad enough to encompass a motorcycle, it is the position of STATE FARM that, in accordance with Carguillo, the definition of the words "motor vehicle", when used in an uninsured motorist context, should be taken from the

definition appearing in the Florida Financial Responsibility Act.

As stated in Allyn, the parties to the insurance contract here incorporated these relevant statutory provisions in entering their agreement.

Petitioner also relies on the cases of Valdes v. Prudential Mutual Casualty Company, 207 So.2d 312 (Fla. 3rd DCA 1968), and Dorrell v. State Farm Fire and Casualty Company, 221 So.2d 5 (Fla. 3rd DCA 1969) as giving support to his argument that a motorcycle is not a motor vehicle. However, both of these cases are clearly distinguishable. In Valdes, the insurer was relying on an exclusion in the policy under which uninsured "automobiles" were not covered. The Court held that a Vespa motor scooter was not an "automobile" and that the exclusion did not therefore apply. First of all, the plain meaning of the term "automobile" is more restrictive than that of "motor vehicle". Secondly, the Court in reaching its decision relied upon a out-of-state Iowa policy which defined the term "automobile" as not including a motor scooter. In the case at bar, the term in dispute is "motor vehicle", which is more expansive and broad a term than "automobile". The Dorrell decision also involved the definition of the term "automobile". Interestingly, the Dorrell Court extended the definition of a automobile to include a motorcycle and afforded coverage. Although neither of these cases are on point, the Dorrell decision does tend to lend support to STATE FARM's argument here.

c.

The Petitioner argues the term "motor vehicle" is ambiguous and should be therefore construed strictly against STATE FARM. A term does not become ambiguous however merely because it is not defined in an insurance policy. If this were true, an insurer would be faced with the impossible task of defining each and every term in its policies to avoid any argument over ambiguities.

Courts are not free to extend insurance coverage beyond the plain language of a policy absent waiver, estoppel or some overriding public policy. American Casualty Company of Reading, Pa. v. Fernandez, 490 So.2d 1340, 1341 (Fla. 3rd DCA 1986).

While it is true that ambiguities must be construed against an insurer, the rule applies only when a genuine inconsistency, uncertainty, or ambiguity remains after resort to the ordinary rules of construction. AAA Life Insurance Company v. Nicolas, 603 So.2d 622 (Fla. 3rd DCA 1992); Hess v. Liberty Mutual Insurance Company, 458 So.2d 71, 72 (Fla. 3rd DCA 1984). This is true even if policy provisions operate to limit an insurer's liability. American Motors Insurance Company v. Farrey's Wholesale Hardware Company, Inc., 507 So.2d 642 (Fla. 3rd DCA 1987).

If one assumes, arguendo, as urged by GRANT, that the provision in question is an exclusionary clause, this fact does not automatically militate for a finding of coverage here. It

is well settled that although exclusionary clauses are construed strictly, the doctrine is tempered by the rule of reason. The principle being that even insurance policies must be given practical and sensible interpretations, in accordance with the natural meaning of the words employed. Allstate Insurance Company v. Shofner, 573 So.2d 47, 49 (Fla. 1st DCA 1990); Simmons v. Provident Mutual Life Insurance Company, 496 So.2d 243, 245 (Fla. 3rd DCA 1986).

Petitioner's entire argument on ambiguity rests on the fact that the term is not defined in the insuring agreements outlining the UM coverage or in the UM statute itself. Because of this lack of a precise definition, Petitioner argues that the term is ambiguous. However, the failure of a policy to provide a definition for a term does not in itself render that term ambiguous. Old Dominion Insurance Company v. Elysee, Inc., 601 So.2d 1243, 1245 (Fla. 1st DCA 1992); Jefferson Insurance Company of New York v. Sea World of Florida, Inc., 586 So.2d 95, 97 (Fla. 5th DCA 1991). The dispute involved in Old Dominion was the definition of the words "sewer" and "drain" as found in an exclusionary clause of the insurer's policy. There, the policy failed to include a definition of those terms. The Court held that the mere failure to provide a definition for the term does not result in an ambiguity and the plain meaning of the terms should be employed to arrive at a definition. That Court noted:

> "Where the plain meaning of terms contained in a exclusion is not ambiguous,

> there is no occasion for employing the rule of construction against the insurer, and the Court simply applies the plain meaning provision".
>
> Old Dominion, at 1245.

It appears obvious that the plain and common everyday usage of the term "motor vehicle" necessarily includes a motorcycle. Such an interpretation is in accord with the common usage of the term. Courts should not put a strained and unnatural construction on terms in a policy in order to create ambiguities. Jefferson, supra. When a term remains undefined, the Court should apply the common everyday usage to determine its meaning. Security Insurance Company of Hartford v. Commercial Credit Equipment Corporation, 399 So.2d 31, 34 (Fla. 3rd DCA), pet. for rev. denied, 411 So.2d 384 (Fla. 1981). In applying the everyday common usage of the term "motor vehicle" to the case at bar, it appears manifest that a motorcycle is such a vehicle. This is the natural intent of the parties when they entered into this contract for the limited form of UM coverage.

D.

The Third District Court of Appeal in Petersen v. State Farm Fire and Casualty Co., 615 So.2d 181 (Fla. 3rd DCA 1993), was incorrect in finding that the term "motor vehicle", as used in the uninsured motorist policy, was ambiguous, and that the ambiguity required a finding that coverage was afforded by that policy. In Petersen, the insured was, as here, driving a

motorcycle for which he had not purchased insurance. Following the accident, the insured sought benefits under his limited-coverage UM policy on another vehicle he owned. The insurer, however, declined coverage since the motorcycle was not an insured vehicle under its policy. The UM provision in Petersen is identical to the one in the case at bar. Just as here, the Petersen insured elected to buy a limited form of UM coverage which did not apply to any vehicles not specifically listed in the policy. The Petersen Court held that since the term motor vehicle was not defined in the UM section, and the PIP section defined motor vehicle as not being a motorcycle, then an ambiguity existed which required coverage to be afforded.

The opinion of the Third District however is wholly inconsistent with prior opinions of that Court and with decisions from other districts. That Court summarily declared the term "motor vehicle" ambiguous because no definition of that term was contained in the UM section of the policy. It found that since the PIP portion, which undisputedly is not related to UM coverage, defined the term with a different meaning, ambiguity arose.

The Third District, however, failed to apply the ordinary and plain meaning of the term before resorting to any rules of construction. It is axiomatic that when a term is unambiguous, it must be given its plain meaning prior to adhering to the rules of construction. 30 Fla.Jur.2d, Insurance §404 (1981). The Court in Petersen failed to acknowledge its own prior

decisions in State Farm Automobile Insurance Company v. Kuhn, 374 So.2d 1079, 1081 (Fla. 3rd DCA 1979) (motorcycle is motor vehicle for UM stacking purposes); and, Indomenico v. State Farm Insurance Company, 388 So.2d 29, 30 (Fla. 3rd DCA 1980) (statutory definition in Financial Responsibility Acts used to define motor vehicle). As such, the Petersen Court was wrong in its conclusion that the term was ambiguous.

As has been previously stated, merely because a term remains undefined in a policy does not render it ambiguous. See, Old Dominion Insurance Company v. Elysee, supra.; and Jefferson Insurance Company of New York v. Sea World, Inc., supra. Contrary to the Petersen decision, the term is not ambiguous and the plain meaning of the word should determine its application (i.e. a motor-cycle is a motor vehicle).

The words "motor vehicle" are not, then, ambiguous. The courts of this state (e.g., Allyn) have had no difficulty in construing those words in situations involving uninsured motorist coverage. To find otherwise, and to adopt the reasoning of GRANT would impermissibly limit the scope of uninsured motorist coverage in this state. If GRANT's argument was adopted by this court then uninsured motorist coverage would not be available, as in Allyn, in situations where an individual is struck by an uninsured motorcycle. It is submitted that a restrictive definition of this term (requiring that a "motor vehicle" always have four wheels), is contrary to the stated public policy of this state as to uninsured motorist

coverage. The District Court below, then, was correct in finding that a motorcycle was a motor vehicle for the purposes of uninsured motorist coverage and giving effect to the statutorily authorized exclusion involved sub judice.

CONCLUSION

For all of the reasons outlined above, the decision of the Fourth District Court, below, should be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed this _____ day of February, 1994, to: MARK R. McCOLLEM, ESQUIRE, 201 S.E. 12th Street, Ft. Lauderdale, Florida 33316. Telephone: (305) 462-8484; and, FRED LEWIS, ESQUIRE, Magill & Lewis, P.A., 7211 S.W. 62nd Avenue, Suite 200, Miami, Florida 33143. Telephone: (305) 662-9999.

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