LEE V. STATE: THE MAILBOX RULE AND ITS APPLICABILITY TO NOTICES OF CLAIMS AGAINST THE STATE

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INTRODUCTION

In *Lee v. State*,[1] the Arizona Supreme Court held that filing a notice of claim against a public entity may be accomplished through regular mail, and that proof of mailing is evidence that the public entity actually received the notice. Additionally, the Court held that if the claimant presents proof of proper mailing of the notice of claim and the public entity denies receipt, the fact finder must determine whether the claim was, in fact, received within the statutory deadline.[2] A spirited dissent accompanied this 3-2 decision.

I. FACTS AND PROCEDURAL HISTORY

On August 4, 2004, James Lee's car crashed through a highway guardrail, seriously injuring Lee and killing three passengers.[3] Nearly a year later, Lee and the surviving family members and representatives of the other victims filed a complaint against the State of Arizona alleging negligence in the design, construction, and maintenance of the highway guardrail.[4]

The State moved for dismissal of the case on the grounds that it never received notice of the claim, as required by Arizona law.[5] Dismissal for failure to comply with the statute would mean no further recourse for Lee, as it would bar

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1. 182 P.3d 1169 (Ariz. 2008).
2. *Id.*
3. *Id.* at 1170.
4. *Id.*
5. *Id.*; *see* ARIZ. REV. STAT. § 12-821.01(A) (2003). The Arizona notice of claim statute affords, in relevant part:

> Persons who have claims against a public entity or public employee shall file claims with the person or persons authorized to accept service for the public entity or public employee as set forth in the Arizona rules of civil procedure within one hundred eighty days after the cause of action accrues.

Id.

him from pursuing the underlying cause of action.[6] In support of its motion, the State offered the affidavit of a state attorney general's office employee whose job duties included maintaining a log of received notices of claim.[7] The employee declared that she had searched the Arizona Attorney General's records and had not found a notice of claim submitted by the plaintiffs.[8]

In response, Lee offered a certificate of service indicating that his counsel's secretary had sent a notice of claim via regular U.S. mail in a sealed, postage-paid envelope addressed to the Arizona Attorney General's office.[9] He did not provide any further proof of delivery aside from the certificate of service, arguing that delivering the notice to the U.S. Postal Service was sufficient to meet the filing requirement set forth in Arizona Revised Statutes (A.R.S.) section 12-821.01(A).[10]

The trial court granted the State's motion to dismiss and disposed of Lee's claim.[11] The Arizona Court of Appeals affirmed the trial court's decision, reasoning that the statute required Lee to show that the notice actually arrived at the attorney general's office without relying on the common law rule that a letter properly mailed is presumed to reach its destination.[12] The Arizona Supreme Court granted Lee's petition for review.[13]

II. BACKGROUND

A. The Common Law Mailbox Rule

Under the long-established common law "mailbox rule," when a letter "properly directed is proved to have been either put into the post-office or delivered to the postman, it is presumed . . . that it reached its destination at the regular time, and was received by the person to whom it was addressed."[14]

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6. ARIZ. REV. STAT. § 12-821.01(A) (2003); Lee v. State, 161 P.3d 583, 585 (Ariz. Ct. App. 2007) (citing Salerno v. Espinoza, 115 P.3d 626, 627–28 (Ariz. Ct. App. 2005); Crum v. Super. Ct., 922 P.2d 316, 318 (Ariz. Ct. App. 1996); State v. Barnum, 118 P.2d 1097, 1101 (Ariz. 1941)). Both Lee and the State agreed that "file" means actual delivery of the notice of claim to a person authorized to accept service and that Lee was free to use regular United States mail to accomplish the filing. *Lee*, 182 P.3d at 1171.

7. *Lee*, 161 P.3d at 584.

8. *Id.* at 585.

9. *Id.*

10. *Id.*

11. Lee v. State, No. CV2005-012207 (Maricopa County Super. Ct. Sept. 30, 2005). Citing ARIZ. R. CIV. P. 12(b), the trial court treated the State's motion to dismiss as one for summary judgment because the State attached evidence outside the pleadings. *Lee*, 161 P.3d at 585.

12. *Lee*, 161 P.3d at 586. The court concluded that because Lee had no evidence of delivery other than the fact of mailing, "plaintiffs did not raise a material issue of fact regarding whether the State actually received their notice." *Id.* at 588.

13. Lee v. State, 182 P.3d 1169, 1171 (Ariz. 2008).

14. Rosenthal v. Walker, 111 U.S. 185, 193 (1884); State v. Mays, 395 P.2d 719, 721 (Ariz. 1964) ("It is the settled law of this state that there is a strong presumption that a letter properly addressed, stamped and deposited in the United States mail will reach the addressee.").

Generally, a party may invoke the mailbox rule only when the fact of receipt is contested,[15] as in *Lee*, and an addressee's "bare assertion of non-receipt is insufficient" to rebut the presumption.[16] In other words, proof of mailing creates an "inference of fact" that the intended party received the letter[17] and the denial of receipt creates an issue of fact that the fact finder must resolve.[18] The mailbox rule, essentially a risk allocation tool, allocates the risk of nondelivery to the addressee.

B. Filing Notice of a Claim Under Arizona Rule of Civil Procedure 4.1(h)

In *Lee*, the majority and the dissenters disagreed on a fundamental question—whether the delivery of a notice of claim that satisfies the mailbox rule qualifies as "filing" pursuant to A.R.S. section 12-821.01(A) and the Arizona Rules of Civil Procedure. The question turned on the level of proof required when the governmental entity denies receipt of the filing, with the majority viewing the dissent's reading of section 12-821-01(A) as "an abrogation of the long-held understanding that mail properly sent will reach its destination."[19]

Rule 4.1 of the Arizona Rules of Civil Procedure describes how to accomplish service of summons upon the State,[20] a county, municipal corporation, or other governmental subdivision,[21] and other governmental entities.[22] Simply, the Rules require that "service upon the state shall be effected by delivering a copy of the summons and of the pleading to the attorney general."[23] While the dissenters viewed the mailbox rule in terms of a party's receipt of documents, the majority used the mailbox rule to satisfy the filing requirement of section 12-821.01(A).[24]

The fact remains that neither the Arizona Rules of Civil Procedure nor section 12-821.01(A) provide sufficient specificity on this matter. As Justice Bales says in writing for the majority opinion, "[t]he legislature could have specified

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15. Payan v. Aramark Mgmt. Servs. Ltd. P'ship, 495 F.3d 1119, 1123 n.4 (9th Cir. 2007).

16. United States v. Ekong, 518 F.3d 285, 287 (5th Cir. 2007) (quoting Custer v. Murphy Oil USA, Inc., 503 F.3d 415, 420 (5th Cir. 2007)).

17. Merchs. & Mfrs. Ass'n v. First Nat'l Bank, 14 P.2d 717, 720 (Ariz. 1932) (upholding presumption that defendant received letter because it was not returned to sender and because defendant complied with one request contained in the letter). *See also* Thompson v. Mecey, 416 P.2d 558, 558 (Ariz. 1966) ("The facts show that notice was mailed by the clerk of the court. Upon such proof of mailing, a presumption arises that the notice was received."); Oney v. Barnes, 428 P.2d 124, 127 (Ariz. Ct. App. 1967) ("Testimony that a notice has been duly mailed raises the presumption of receipt. . . . The contrary testimony of the interested parties that they did not receive such notice is not binding upon the trier of fact.").

18. *Lee*, 182 P.3d at 1171.

19. *Id.* ("This language [in A.R.S. § 12-821.01(A)], the State contends, means that Lee must present direct evidence that the notice was timely delivered, for instance, by presenting evidence of the receipt of claim sent by certified mail or of physical delivery by the claimant or a courier.").

20. ARIZ. R. CIV. P. 4.1(h) (2006).

21. *Id.* 4.1(i).

22. *Id.* 4.1(j).

23. *Id.* 4.1(h).

24. Lee, 182 P.3d at 1175.

what sort of delivery constitutes a filing, or restricted the evidence relevant to showing something was filed, but it did not."[25] Neither is the legislative intent clear in the text of the Arizona Rules of Civil Procedure, which do not define how filing must occur and do not prohibit mail as a form of filing. If a party is to file with a governmental entity in a particular manner, then the legislature has a responsibility to clarify its intentions by rewriting or amending either the statute or the Rules.

III. THE MAILBOX RULE AND NOTICES OF CLAIM IN ARIZONA

Lee addresses a relatively narrow issue—the filing of a notice of claim with a public entity—that may have broad implications. The primary discrepancies between the majority opinion and the dissent center around the statutory language—both the meaning of the word "file" and the determination of whether cases that address the mailbox rule when a party is required to file with a court clerk apply to cases where a litigant is filing with another litigant. The Court also addressed the policy concerns behind the statute.

Justice Bales concluded that the State could not avoid Lee's negligence claim simply by arguing that it had never received notice of the claim.[26] Because of "the commonly recognized fact that the mail almost always works,"[27] the Court decided that (1) the mail delivery rule applies to the filing of notices of claim and (2) proof of mailing a notice of claim creates a material issue of fact as to its filing when the State denies receiving the notice.

The Court described the common law "mail delivery rule" as consisting of two components: a presumption and a rule regarding the sufficiency of evidence.[28] The presumption holds that a "letter, properly addressed, stamped and deposited in the United States mail will reach the addressee,"[29] and absent any evidence to the contrary, proof of the fact of mailing establishes that delivery occurred.[30] If the addressee denies receipt, however, the presumption disappears, but the fact of mailing retains its "evidentiary force."[31]

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25. *Id.* at 1172 (comparing Arizona's statute to that of New York, which requires many claims to "be filed with the clerk . . . and . . . served upon the attorney general . . . either personally or by certified mail, return receipt requested.") (citing N.Y. CT. CL. ACT § 11(a)(i) (McKinney Supp. 2008)).

26. *Id.* at 1171.

27. *Id.*

28. *Id.*

29. *Id.* (quoting State v. Mays 395 P.2d 719, 721 (Ariz. 1964)); *see* Rosenthal v. Walker, 111 U.S. 185, 193 (1884) ("The rule is well settled that if a letter properly directed is proved to have been . . . put into the post-office . . . it is presumed . . . that it reached its destination . . . .").

30. *Id.*

31. *Id.* (quoting Andrews v. Blake, 69 P.3d 7, 13 n.3 (Ariz. 2003) ("the presumption is rebutted, however, when the addressee denies receipt . . . ."). Since a simple denial of receipt is sufficient to rebut the presumption, logic seems to suggest that the presumption is useless. There is no need to presume the addressee received the mailing if the recipient does not deny receiving it. The presumption only becomes an issue if the

A. Statutory Language

The State argued that the mail delivery rule did not apply to Lee's case because A.R.S. section 12-821.01(A) specifically requires that a claimant "file" the notice of claim.[32] It interpreted "file" to mean that the statute required Lee to present direct evidence that the notice was delivered within the statutorily prescribed time by "presenting evidence of the receipt of the claim sent by certified mail or of physical delivery by the claimant or a courier."[33]

The majority viewed the State's interpretation of the statute and of the word "file" as "an abrogation of the long-held understanding that mail properly sent will reach its destination"[34] and cited *Andrews v. Blake*[35] for the proposition that even when a statute, rule, or private contract requires actual receipt by the addressee, the mail delivery rule applies.[36]

Furthermore, the majority explained that the legislature could have specified the type of delivery required under the statute, as in other jurisdictions, but did not.[37] The Court contrasted the wording of the Arizona statute with that of a New York law requiring many claims to "be filed with the clerk . . . and . . . served upon the attorney general . . . either personally or by certified mail, return receipt requested."[38]

In a spirited dissent, Chief Justice McGregor, joined by Vice Chief Justice Berch, took issue with the majority's implication that the legislature had not spoken on the issue of delivery under section 12-821.01, interpreting the filing requirement under the statute as analogous to the formal requirements of filing documents with a court.[39] By "requiring that a claimant file his notice of claim 'as set forth in the Arizona rules of civil procedure[,]'" the dissent stated that the legislature was "clearly restrict[ing] the definition of 'file.'"[40] "File," as interpreted

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addressee denies receipt, and upon doing so, the presumption disappears such that it may as well never have been there to begin with.

32. *Id.*

33. *Id.*

34. *Id.*

35. 69 P.3d 7, 12, 13 n.3 (Ariz. 2003).

36. *Lee*, 182 P.3d at 1171. In *Andrews*, a lease addendum's provision stating that an option to purchase "shall terminate if not exercised in writing" did not preclude the exercise of the option sent by regular mail, despite another provision stating that notices "shall be deemed given if given in writing and delivered personally, delivered by commercial delivery service, delivered by courier, or mailed by certified mail." *Andrews*, 69 P.3d at 12–13. The purchase provision did not require the exercise of notice in a particular manner. *Id.*

37. *Lee*, 182 P.3d. at 1172. See *infra* Part IV for a discussion of other jurisdictions' rules.

38. *Id.* (citing N.Y. CT. CL. ACT § 11(a)(i) (McKinney Supp. 2008)).

39. *Id.* at 1174 (McGregor, J. dissenting) ("The legislature directs the manner in which a claimant may bring suit against the state.") (citing ARIZ. CONST. art. 4, pt. 2, § 18 and *State v. Barnum*, 118 P.2d 1097, 1101 (Ariz. 1941) (noting that the state is immune from suit "except upon its own terms and conditions")).

40. *Id.* According to Arizona Rule of Civil Procedure 3, "[a] civil action is commenced by filing a complaint with the court."

within the Rules, "requires actual delivery and receipt of a claim."[41] The majority rejected the dissent's argument that the Arizona Rules of Civil Procedure preclude Lee from relying on proof of mailing, noting that the Rules do not specify how filing must occur.[42]

The dissent also contends that the requirements for notices of claim are the same as filings with a court, both requiring actual delivery and receipt of a claim.[43] The majority rejected this conclusion, noting the distinction between the clerk of a court and parties to litigation.[44] Justice Bales writes: "The clerk of the superior court . . . is a constitutionally authorized officer of a neutral body, one who is statutorily required to 'take charge of and safely keep . . . all books, papers and records which may be filed[,]'"[45] while "[t]here is no similar position in the attorney general's office or in many of the local-level public offices that accept notices of claim."[46]

B. Policy

The majority also rejected the State's argument that the Court would best serve the purpose of the statute by placing the burden on the claimant to ensure actual receipt. Returning to the idea that service of notice on party litigants is different than filing with a court clerk, the majority's policy rationale protects the claimant, illustrating concern about a large governmental entity's ability to consistently and competently receive a notice of claim.[47] Unlike the court clerk, the procedures in place for receiving such notices may not be as refined in a governmental office created for other purposes as in the clerk's office. Ultimately, the attorney general's office's "inability to locate a notice of claim may indicate it was never received, but it may also indicate that it was received and later misplaced[,]" depending on the circumstances of both the initial mailing and the receiving party's procedures for receiving such notice.[48]

The State and the dissenters also proposed policy considerations that the majority recognized as having some force but also deemed not sufficiently within the purview of section 12-821.01(A).[49] The purpose of a notice of claim is to give the government notice of potential liability and the opportunity to investigate claims and possibly avoid costly litigation through settlement.[50] The dissent argues

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41. *Id.* (citing Houston v. Lack, 487 U.S. 266, 274 (1988); United States v. Lombardo, 241 U.S. 73, 76 (1916); Casalduc v. Diaz, 117 F.2d 915, 916 (1st Cir. 1941); Creasy v. Coxon, 750 P.2d 903, 906 (Ariz. Ct. App. 987)).

42. *Id.* at 1172.

43. *Id.* at 1174–75 ("As far as I can determine, Arizona . . . has never regarded a mailing affidavit as evidence sufficient to establish actual delivery and receipt.")

44. *Id.* at 1172.

45. *Id.* (citing ARIZ. REV. STAT. § 12-282(A) (2003 & Supp. 2007)).

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* at 1173.

50. *Id.* (citing Deer Valley Unified Sch. Dist. No. 97 v. Houser, 152 P.3d 490, 492 (Ariz. 2007); *see also* Martineau v. Maricopa County, 86 P.3d 912, 915–16 (Ariz. Ct. App. 2004) ("The purposes of the notice of claim requirements . . . [are] to allow the public

that these functions are "frustrated, indeed made impossible to accomplish, if the court allows an assertion of mailing to substitute for actual receipt of a notice of claim."[51]

IV. ARIZONA'S APPLICATION OF THE MAILBOX RULE AS COMPARED WITH MAJORITY JURISDICTIONS

As a result of *Lee*, Arizona joins a minority of jurisdictions in applying the mailbox rule to notices of claim against the state.[52] The reason for the Court's decision, however, apparently results from ambiguous statutory language rather than judicial interpretation.[53] In comparing A.R.S. section 12-821.01(A) with similar statutes in other jurisdictions, the majority's broad interpretation is understandable—the plain language of both the statute and the Arizona Rules of Civil Procedure is far from "clear," as the dissent contends.[54]

The approaches of the majority jurisdictions illustrate a tension between the common law presumption of delivery and other rules adopted by legislatures for various purposes. For example, in *Lange v. Iowa Department of Revenue*,[55] the Supreme Court of Iowa noted that applying the mailbox rule and its ancillary rules of proof of mailing was "directly contrary to the rule of evidence adopted by the

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entity to investigate and assess liability, to permit the possibility of settlement prior to litigation, and to assist the public entity in financial planning and budgeting.").

51. *Lee*, 182 P.3d at 1177.

52. *See, e.g.*, Phay v. City of San Francisco, 133 Cal. App. 4th 437, 441–42 (2005); McClintock v. Bi-State Dev. Agency, 591 N.E.2d 967, 970–72 (Ill. App. 1992) (holding that because the statutory notice requirement was in derogation of the common law, it must be strictly construed against the local public entity and rigid compliance was not required).

53. In other jurisdictions, the statutes at issue detail specifically how notice must be sent—usually by registered mail or personal service. *See, e.g.*, Regional Transp. Dist. v. Lopez, 916 P.2d 1187, 1190 (Colo. 1996) ("Here, the statute specifically states that 'notice shall be effective upon mailing by registered mail or upon personal service.'"); *McClintock*, 591 N.E.2d at 970–72 (holding that although statute specified service by registered mail or personal service, rigid compliance was not required); Feinberg v. State Dep't of Envtl. Prot., 644 A.2d 593, 596 (N.J. 1994) (citing to N.J. STAT. ANN. § 59:8-10a, which provides that notice of claim must be either delivered to a public entity or sent via certified mail). California actually accounts for notice by U.S. mail. Him v. City of San Francisco, 34 Cal. Rptr. 3d 838, 841 (Cal. Ct. App. 2005) (citing CAL. GOV'T CODE § 915.2 (West 2002)). Section 915.2 provides:

> If a claim, amendment to a claim, or application to a public entity for leave to present a late claim is presented or sent by mail under this chapter, or if any notice under this chapter is given by mail, the claim, amendment, application, or notice shall be mailed in the manner prescribed in this section. The claim, amendment, application or notice shall be deposited in the United States post office, a mailbox, sub-post office, substation, mail chute, or other similar facility regularly maintained by the government of the United States, in a sealed envelope, properly addressed, with postage paid.

Id.

54. *Lee*, 182 P.3d at 1176–77.

55. 710 N.W.2d 242 (Iowa 2006).

legislature for [tax return] filings with the State."[56] The statute at issue in *Lange* set forth the manner in which proof of mailing would establish the required filing of a tax return.[57] In so doing, the statute required the sender to prove by "competent evidence that the . . . tax return . . . was deposited in the United States mail" on or before the due date.[58] Significantly, the term "competent evidence" was defined as "evidence, in addition to the testimony of the sender, sufficient or adequate to prove that the document was mailed on a specified date."[59] In *Lange*, the more stringent statutory evidentiary requirement overcame the common law proof requirement, which could be satisfied by "testimony of office custom."[60]

Similarly, in federal jurisdictions under the Federal Tort Claims Act (FTCA),[61] "a claimant with a cause of action against the United States must have first 'presented' the claim to the appropriate federal agency."[62] As the dissent correctly noted, many federal courts have concluded that "present," as used in the statute, is inconsistent with the mailbox rule.[63] For example, in *Vacek v. U.S. Postal Service*, the Ninth Circuit rejected the argument that the government received a claim under the FTCA.[64] In *Vacek*, federal regulations governed the question of when an administrative claim was presented for purposes of the FTCA and waiver of sovereign immunity, and the federal regulation specifically mentioned the agency's receipt of the claim.[65] Although a long series of communications took place between Vacek and the administrative agency, Vacek's counsel did not send the required form by certified mail and did nothing to verify that the agency had received the claim, thus foreclosing Vacek's mailbox rule argument.[66]

Judging from the available caselaw, the dissent's analysis appears similar to that of the majority jurisdictions—the mailbox rule does not overcome statutory requirements and proof of mailing does not qualify as "filing" for the sake of notice requirements.

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56. *Id.* at 247–48 (citing IOWA CODE § 622.105 (2001)).

57. *Id.* at 247.

58. IOWA CODE § 622.105.

59. *Id.*

60. *Lange*, 710 N.W.2d at 248 (citing Montgomery Ward, Inc. v. Davis, 398 N.W.2d 869, 871 (Iowa 1987)).

61. 28 U.S.C. § 2675(a) (2006).

62. Lee v. State, 182 P.3d 1169, 1177 (Ariz. 2008).

63. *See, e.g.*, Vacek v. U.S. Postal Serv., 447 F.3d 1248 (9th Cir. 2006); Bellecourt v. United States, 994 F.2d 427 (8th Cir. 1993); Drazan v. United States, 762 F.2d 56 (7th Cir. 1985); Bailey v. United States, 642 F.2d 344 (9th Cir. 1981).

64. *Lee*, 182 P.3d at 1177 (citing 447 F.3d 1248, 1251–52 (9th Cir. 2006)).

65. *Id.* at 1251 (citing 28 C.F.R. § 14.2 ("a claim shall be deemed to have been presented when a Federal agency *receives* from a claimant . . . an executed Standard Form 95 or other written notification of an incident. . . .")). *See also* 39 C.F.R. § 912.5 (governing damages arising out of the operation of the U.S. Postal Service and maintaining that "a claim shall be deemed to have been presented when the U.S. Postal Service *receives* from a claimant . . . an executed Standard Form 95 . . . or other written notification of an incident").

66. *Vacek*, 447 F.3d at 1251–52.

The dissent is probably correct that, as a result of this decision, determinations such as whether a party "filed" notice and how the notice filing determination is actually made remain unanswered questions.[67] Additionally, in allocating the risk of nondelivery to the addressee by allowing proof of mailing to create an issue of fact, this ruling arguably runs counter to the policy behind the notice of claim statute, which is "to provide notice to the state 'to allow the public entity to investigate and assess liability, to permit the possibility of settlement prior to litigation, and to assist the public entity in financial planning and budgeting.'"[68] Without notice of the claim, the state misses out on the opportunity to investigate the validity of the claim and conduct a cost-benefit analysis to determine whether it would be in the state's best interest to settle or fight the claim. The state could potentially squander public resources, which pay for the investigation and litigation. Still, because the Court bases much of its holding upon statutory language and interpretation, the option remains for the legislature to amend the statutes involved so that the language better conforms to that of similar statutes in majority jurisdictions, particularly by specifying methods of filing.

CONCLUSION

After *Lee v. State*, Arizona joins a minority of jurisdictions in applying the common law "mailbox rule" to the filing of a notice of claim against a public entity. In so doing, the fact of mailing is evidence that the entity actually received the notice, unless the public entity denies receipt, in which case the issue becomes one for the fact finder to decide. While the dissent stresses the potential implications of this ruling, the statutory nature of the issue leaves open the possibility of legislative intervention.

67. Lee, 182 P.3d at 1178.

68. *Id.* at 1177 (citing Falcon *ex rel.* Sandoval v. Maricopa County, 144 P.3d 1254, 1256 (Ariz. 2006)).

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