

COPY OF TRANSCRIPT

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON**

TIMOTHY A. NEAL,

Civil No. 01-02

Plaintiffs,

vs.

**CONNECTICUT VALLEY ARMS,
et al.,**

Defendants.

DEPOSITION OF ERIK STEPHEN ZENGER

**TAKEN AT: DEWSNUP, KING & OLSEN
36 South State, #2020
Salt Lake City, Utah**

DATE: October 17, 2002

TIME: 9:49 a.m.

REPORTER: David A. Thacker, RPR



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APPEARANCES

For the Plaintiff:

Colin P. King

DEWSNUP, KING & OLSEN

36 South State, #2020

Salt Lake City, UT 84111

For the Defendant:

James Singer

BOVIS, KYLE & BURCH

53 Perimeter Center East

Third Floor

Atlanta, GA 30346



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15
16
17
18
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20
21
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23
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25

INDEX

Witness	Page
Examination by Mr. King.....	7
Examination by Mr. Singer.....	24

EXHIBITS

Number	Page
1	27
2	27
3	27



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Deposition of Erik Stephen Zenger

October 17, 2002

PROCEEDINGS

THE VIDEOGRAPHER: This is the videotape deposition of Eric Zenger, taken by the Plaintiff in the matter of Timothy A. Neal versus Connecticut Valley Arms, et al., in the United States District Court, Eastern District of Kentucky. This deposition is being held at the offices of Dewsnup, King & Olsen, 36 South State, Suite 2020, on October 17, 2002. My name is Keith Hall, from the firm of Thacker + Co, with offices at 50 West Broadway, Salt Lake City, Utah. I am the video specialist. The reporter is David Thacker from Thacker + Co. We're going on the record at 9:49 a.m. Counsel will now state their appearance appearances for the record and the witness will be sworn.

MR. KING: My name is Colin King. I am the attorney for Eric Zenger. I am assisting Peter Perlman, the attorney for Plaintiff Timothy Neal, with regard to a civil action pending in the United States District Court for the Eastern District of Kentucky in Lexington, entitled Timothy A. Neal versus Connecticut Valley Arms, et



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1 al.

2 MR. SINGER: This is Jimmy Singer, with
3 the firm of Bovis, Kyle & Burch in Atlanta,
4 Georgia. We represent the Defendant in the case,
5 DC1980, formally known as Connecticut Valley Arms,
6 Inc.

7 For purposes of the record, we
8 initially note an objection to the deposition
9 proceeding for a few reasons. First of all,
10 counsel for the plaintiff of record in the case,
11 Mr. Perlman, neither Mr. Perlman nor Mr. Franklin
12 are present at the deposition nor attending. They
13 represented that the deposition was an evidentiary
14 deposition for use at trial in the case in
15 Kentucky. We don't think it's appropriate for a
16 Salt Lake attorney not of record in this case,
17 and who won't be participating in the trial of
18 this case, has not been admitted pro hac vice in
19 the case, to conduct examination of a witness for
20 purposes of those showing that examination, since
21 it is an evidentiary deposition as exposed to a
22 discovery deposition. So we'd object on that
23 basis.

24 In addition to that, I've had a
25 conversation with Mr. King, and it's my



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1 understanding he will be marking as exhibits to
2 the deposition and showing on the videotape,
3 certain documentary or tangible items. We would
4 object initially to the introduction or showing of
5 those on the videotape for a couple of reasons.
6 First and foremost on the issue of relevancy.
7 Second--from the case of the Neal case. Second,
8 we would also object because the tangible items
9 mentioned, which I understand are photographs of
10 Mr. Zenger's injuries, a CT scan and/or x-ray, and
11 then the gun itself, component parts of the gun
12 at issue in Mr. Zenger's incident, those items
13 have not been identified as exhibits on the
14 pretrial to the Federal Court in Kentucky in the
15 Neal case, and the deadline has passed for not
16 only identifying all exhibits, but also for
17 objections to exhibits. We've had two separate
18 pretrial conferences, and it is the defendant's
19 position that it would be inappropriate to either
20 mark or show to the camera in front of the jury
21 or to even inquire of the witness about exhibits
22 which have not been previously identified.

23 Subject to those objections, we're
24 ready to proceed.

25 MR. KING: All right.



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1 Q. Now, you've had some experience with
2 muzzle loaders, have you?
3 A. I have. I've shot muzzle loaders since
4 I was about 14.
5 Q. And you've owned muzzle loading rifles?
6 A. I have.
7 Q. Did you come upon a muzzle loading
8 rifle manufactured under the name of CVA?
9 A. I did.
10 Q. And would you tell the jury when you
11 purchased this and what model you purchased?
12 A. I purchased it in September of '99, and
13 it was a CVA Pro Hunter 50 caliber in-line rifle.
14 Q. And where did you purchase this muzzle
15 loading in-line rifle from?
16 A. I purchased it from a gun dealership in
17 Orem, Utah, AF Gun & Sports.
18 Q. All right. And was the gun new, to
19 your knowledge, at that time point or not?
20 A. It was a used gun that they had on
21 their rack, but it was in new condition.
22 Q. Would you describe the condition of the
23 gun gun for the jury.
24 A. As it was described, as I saw it and as
25 it was described by the sales person, it was in



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1 very good shape. It had not looked like it had
2 been shot very much. And that was the reason I
3 ended up buying the gun, is just because of the
4 good condition it was in.

5 Q. Now, did the salesman in this store in
6 American Fork, Utah provide you ANY manual or
7 literature that was supplied by the manufacturer
8 of this gun, or not?

9 A. He did not. He said that he was--he
10 had been in the past a CVA distributor and that
11 he could tell me what I needed to know about the
12 gun.

13 Q. And did he tell you what you wanted to
14 know about the gun?

15 A. He did.

16 Q. All right. Now, when you bought this
17 gun in September of 1999, were you aware of any
18 recall with regard to the gun?

19 A. I was not.

20 Q. Prior to your accident that we'll
21 discuss in a minute with this rifle, this gun,
22 did you know about any recall?

23 A. Absolutely not.

24 Q. All right. What, if anything, was
25 added to this rifle when you bought it, by the



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1 retail seller of it?

2 A. We added a scope to the rifle. And the
3 rifle came prepared to have a scope mounted.
4 They went ahead and did that for me at the, at AF
5 Gun & Sports.

6 Q. And this was a .50 caliber?

7 A. Yes.

8 Q. In-line muzzle loader?

9 A. Yes.

10 Q. Did you know who man--where this gun
11 had been manufactured?

12 A. I did not.

13 Q. Have you since learned where it was
14 manufactured?

15 A. I have.

16 Q. And where was it manufactured?

17 A. In Spain.

18 Q. All right. And it had a CVA name on
19 it?

20 A. It did.

21 Q. What did you learn about the propriety
22 of the scope that was added by this outfit that
23 sold it to you, for this gun?

24 MR. SINGER: Let me object to the form
25 of the question to the extent of both of



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1 relevance and also to the extent it calls for
2 hearsay.

3 BY MR. KING:

4 Q. What I want you--let me revise the
5 question, Erik. What was your understanding of
6 whether or not a scope on this gun was
7 appropriate or not?

8 A. My understanding was, and it was
9 obvious by looking at the gun that it, the gun
10 was manufactured with the idea of a scope being
11 mounted on it. There was no alterations that
12 needed to be made to the gun, it was just simply
13 adding the scope and, you know, acquiring the
14 proper brackets and then adding the scope to the
15 gun.

16 Q. And that was done?

17 A. By American Fork Gun & Sports.

18 Q. You didn't do it yourself?

19 A. I did not.

20 Q. All right. Let me show you, I'm
21 handing you a rifle, a gun. Would you please
22 identify this item for the jury?

23 A. This was the gun that I was shooting
24 when the accident happened.

25 Q. And is that the scope that was added by



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1 the retail seller?

2 A. It is.

3 Q. And again, is this the gun manufactured
4 and sold by CVA?

5 MR. SINGER: Let me object to the form
6 of the question, that it's compound. Also assumes
7 facts not in evidence.

8 BY MR. KING:

9 Q. I'll restate the question. Is this the
10 gun that you understood to be distributed by CVA?

11 A. Absolutely.

12 Q. Okay. Is this the gun with which you
13 were injured later?

14 A. It is.

15 Q. All right. And you've never turned the
16 gun back to anyone else, you've kept it since the
17 accident?

18 A. Absolutely.

19 Q. All right. Thank you.

20 Now, let's turn to the time of this
21 injury that occurred to you, Mr. Zenger. When
22 did that occur?

23 A. It was November 4 of 2001.

24 Q. So it was over two years after you had
25 purchased this rifle?



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1 A. Yes.

2 Q. In the interim, had you used this gun
3 occasionally?

4 A. I had. I had shot the gun probably 10
5 to 20 times myself, and my brother had shot it
6 probably 20 or so times.

7 Q. All right. And did you know what kind
8 of grain bullet and what kind of cap and what
9 kind of--what method of shooting it?

10 A. Absolutely. One, just because of the
11 experience I've had with black powder, I had a
12 very good idea as to how to shoot and maintain
13 the gun. But also the sales person at American
14 Fork Gun & Sport, or AF Gun & Sport as they're
15 known, explained to me what I should and should
16 not do with it and what--

17 Q. All right. So prior to the day in
18 which you were injured, did you maintain this gun?

19 A. I did.

20 Q. How did you maintain it?

21 A. Basically just followed standard
22 procedures in maintaining a black powder rifle.
23 We'd clean it after every, you know, couple of
24 shots. Do a quick cleaning. And then when we
25 were done shooting it and we were getting ready



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1 to store the gun, we'd do a thorough cleaning it
2 and prepare it for the next time.

3 Q. At the end of the day's use you mean?

4 A. Yes.

5 Q. All right. Describe for the jury where
6 you were and what you were doing the day you were
7 injured.

8 A. I was at a shooting range, Squaw Peak
9 shooting range, in Provo, Utah, and I was up with
10 my brother, we were sighting the gun in and just,
11 you know, taking practice shots.

12 Q. All right. And your brother Mike?

13 A. Yes.

14 Q. Did he shoot the gun?

15 A. He did. He shot the gun eight times,
16 and then he handed it to me and I loaded it and
17 got it ready and I shot it once, and it was that
18 one time when the gun malfunctioned.

19 Q. All right. And what grain were you
20 using, what--describe what materials you used with
21 the gun.

22 A. We were using pellets, and we were
23 using three 30 grain pellets. We were using a
24 total of 90 grains of powder.

25 Q. Okay. Was that appropriate for this



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1 gun, as far as you knew?

2 A. Absolutely.

3 Q. Would you please tell the jury then
4 what happened.

5 A. Like I mentioned, my brother had shot
6 the gun on eight times, on eight occasions. He
7 then handed the gun to me. We were at a bench, I
8 sat down at the bench and aimed at the target and
9 pulled the trigger. The first time I'd forgotten
10 to take the safety off and so we chuckled about
11 that. And then took the safety off and pulled
12 the trigger. The next thing I knew, I was laying
13 on the ground, and I thought maybe the scope had
14 kicked me or something, I wasn't sure what had
15 happened. And then I guess I passed out or
16 blacked out and came to a couple minutes later,
17 my brother was hovering over me frantic, wondering
18 if I was alive or dead.

19 About that time I heard some other
20 people coming around who had been off shooting in
21 other areas of the rifle range there. They--

22 Q. What did--what had happened to you?

23 A. Well, I felt a pain in my cheek, and
24 like I said, I wasn't sure what had happened.
25 When I came to I had blood in my eye, I couldn't



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1 hear out of my right ear. I had blood in my
2 mouth. And I knew that--I knew it was bad. And
3 about that time, my brother was still on the
4 phone with 911, and I heard him say that, you
5 know, that I had been shot and he didn't know if
6 I was alive or dead.

7 Q. Was an ambulance called?

8 A. Yes, they called an ambulance. And I
9 guess fire truck and everyone else.

10 Q. And then what happened? Were you taken
11 by ambulance to a hospital?

12 A. I was. I was taken by ambulance to
13 Timpanogos Hospital and treated there.

14 Q. All right.

15 A. For the injuries.

16 Q. Were images taken of your head?

17 A. They did x-rays, CT scans, and we also
18 took some pictures.

19 Q. And what did the imaging show that was
20 in your face?

21 A. The imaging showed that there was--

22 MR. SINGER: Let me object to this for,
23 obviously to the witness, to the lay witness
24 testifying to interpretation of images or x-rays.
25 Also object, renew the objection to any of those



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1 photographs or CT scans or x-rays being marked or
2 any questions concerning them.

3 Colin, for my purposes, I don't want to
4 the keep interrupting you or Mr. Zenger. If we
5 have agreement I can have a standing objection to
6 those, you can just proceed.

7 MR. KING: Yes. I agree that you've
8 made a record with regard to our exhibiting the
9 CT scans or the pictures of his injuries.

10 MR. SINGER: And also questions
11 concerning that.

12 MR. KING: All right.

13 BY MR. KING:

14 Q. Before we go to, then, any questions
15 about those, let me just ask you, Mr. Zenger.
16 Would you describe from your own knowledge of what
17 happened to you and what you've gone through, what
18 occurred and what your injuries consisted of.

19 A. What had happened is, that the rifle,
20 being an in-line rifle, had a plug at the back of
21 the, at the back of the barrel. The plug somehow
22 failed, or the barrel somehow failed, blowing the
23 explosion out the back of the gun. It caused the
24 bolt mechanism, which is a steel bolt about 3-1/2
25 inches long and a half-inch diameter or so, it



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1 blew it backwards out of the back of the gun, it
2 entered into my cheek about right here.

3 Q. Your right cheek you're showing?

4 A. My right cheek.

5 Q. Okay. Is this the bolt with the spring
6 attached that--

7 A. It is.

8 Q. --that blew into your right cheek?

9 A. It is. Basically--

10 Q. Would you show the jury that so they
11 can see that?

12 A. Basically, the spring typically comes
13 right out the back of this. As you cock the gun
14 it loads the spring up. When you pull the
15 trigger, the spring releases and causes this to
16 launch forward. This is what strikes the
17 percussion cap, causing the explosion into the
18 barrel, into the powder. As you can see, this is
19 all banged up there.

20 But it blew out backwards, the spring
21 came out. This, with the spring in place, went
22 into my face right here, crushed the maxilla, went
23 back into the maxillary sinuses, and lodged back
24 into my inner here. And this portion of the
25 spring was left sticking out of my face. And



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1 that's basically all they could see, the doctors
2 in the emergency room and the paramedics when they
3 arrived, they didn't understand what was going on,
4 because I just had a portion of a spring hanging
5 out of my face.

6 Q. And the bolt was entirely embedded in
7 your face?

8 A. The bolt was entirely embedded in my
9 face.

10 Q. All right. Now, what did the doctors
11 do, to your understanding? They removed it?

12 A. Yeah, they removed it after taking CT
13 scans and--

14 Q. Okay. Now, at this point I'm going to
15 fade out of here, off of him, and we're going to
16 show the x-ray just showing the location. I'm
17 sorry, it's a CT scan. And this CT scan that
18 we'll mark as Exhibit 1 to this deposition, do
19 you know, does it depict what you've just
20 described?

21 A. Absolutely.

22 Q. Is it a CT scan of your face with the
23 bolt and a spring--

24 A. Yes, it is.

25 Q. --inside your face before the removal?



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1 A. Yes, it is.

2 Q. All right.

3 MR. SINGER: Let me also object on the
4 basis of authenticity, and he's not a radiologist,
5 nor legally qualified to identify that document.
6 And it would be based upon hearsay representation
7 as well.

8 BY MR. KING:

9 Q. All right. And, Erik, while we're
10 setting this up so the jury can see the CT scan,
11 what was the date that this occurred again?

12 A. November 4, 2001

13 Q. And what was the date of this CT scan
14 we're showing?

15 A. November 4, 2001.

16 Q. All right. Thank you.

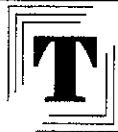
17 And it was taken where?

18 A. Timpanogos Hospital, in Orem, Utah.

19 Q. All right. Thank you.

20 Let's turn this box on and we'll just
21 show for a few seconds, we'll switch the camera
22 to the CT scan and identify that.

23 Okay. Now I'm going to turn that off,
24 and we'll now go back to you, Erik. After your
25 initial surgery then there at the hospital, what



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1 did you understand your injuries to be?

2 A. At the time I understood it just as
3 obviously some broken bones and tore some, tore
4 through some of the muscles and the nerves of my
5 face. At the time I was concerned about my
6 hearing because I couldn't hear out of the ear.
7 They felt like that it would probably come back
8 with time, or at least a portion of it would come
9 back with time.

10 Q. Okay. Since then, what have you
11 learned about your own injuries? And just briefly
12 describe all of the injuries and the nature of
13 those to the injury, please.

14 A. As soon as the swelling went down I
15 realized that I didn't have any motor control over
16 my eye, I couldn't wink or blink my eye. I also
17 lost motor control over most of the right side of
18 my face and all of the nerve sensation. I can't
19 feel any of this portion of my face.

20 I've also lost a portion of my hearing.
21 And continue to have issues with nerve damage and
22 pains and headaches and whatnot.

23 Q. And you still have sensory loss on your
24 face?

25 A. Still have sensory loss. Cannot move



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1 this portion of my lip. This is all numb and, I
2 guess, in a sense paralyzed.

3 Q. So you have motor loss and sensory loss
4 still?

5 A. Still.

6 Q. All right. And you've had several
7 surgeries and procedures. What are they, very
8 briefly?

9 A. One was they inserted a gold weight
10 into my eyelid so that I could wink and blink my
11 eye. They've gone in on several occasions and
12 tried to reconstruct the cheek bone. And that's
13 basically--that's basically it. They've tried to,
14 you know, clean it out as much as possible, and I
15 had an infection in my parotid gland for a while
16 and they tried to get rid of that.

17 Q. All right. And we see on your right
18 cheek some evidence of the scarring still.

19 A. Yes.

20 Q. And you've had some revision surgeries
21 by a plastic surgeon?

22 A. I have.

23 Q. Now, I'm going to show you now a
24 photograph of you during the surgery, and this
25 is--can you identify this photograph?



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1 A. Yeah. That's me right after the doctor
2 pulled the spring and the bolt from my cheek.

3 Q. All right. I'm going to hand this to
4 you as Exhibit 2 to this deposition.

5 A. Okay.

6 Q. Would you just show that, hold that to
7 the jury for a moment so the videographer can get
8 a photo of that, until he signals you that that's
9 enough.

10 All right. Thank you.

11 Let me show you what's been marked as
12 Exhibit 3 to your deposition. What, is this a
13 picture, are these two pictures of you?

14 A. Yes. These were taken two days after
15 the accident.

16 Q. All right. Would you please hold that
17 up so the jury can see those, the status of you
18 two days after the accident.

19 Have you filed an action against CVA
20 and the Spanish company, Dikar, here?

21 A. I have. I have.

22 Q. And am I your attorney in that action?

23 A. I are.

24 Q. And where is that action filed?

25 A. Here in Salt Lake City, Utah.



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1 Q. All right. And when was that action,
2 the original action, filed, approximately?
3 Earlier this year?

4 A. Yeah, a couple months ago. Three
5 months ago.

6 MR. KING: All right. Thank you.
7 That's all I have. Mr. Singer may have some
8 questions for you.

9 EXAMINATION

10 BY-MR.SINGER:

11 Q. Good morning, Mr. Zenger. We've met
12 before. Correct?

13 A. We have.

14 Q. And as Mr. King just asked you, you
15 filed a lawsuit against the American Fork and gun
16 that sold you the gun?

17 A. Yes.

18 Q. And also Dikar that manufactured the
19 gun?

20 A. Yes, sir.

21 Q. Correct?

22 A. Yes, sir.

23 Q. And also CVA, DC1980, who imported the
24 gun into the United States and distributed it
25 here. Right?



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A. Yes. Yes.

Q. Now, let me ask you, is it true you do not know of your own personal knowledge when this gun was purchased new?

A. When--excuse me?

Q. When the gun was purchased new?

A. I do not.

Q. Okay. And, likewise, you don't know of your own personal knowledge where the gun was first purchased?

A. I do.

Q. And you don't know who the first owner was?

A. I do not.

Q. And you don't know how many owners there were before you?

A. I do not.

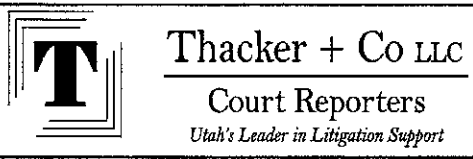
Q. And, again, you first purchased this in 1999?

A. Yes, I did.

Q. Now, is it your testimony that the scope was the only thing that you had added, that was the only modification you did to the gun?

A. Yes, it is.

Q. Now, you're familiar with muzzle



1 loaders generally, and have you also looked at
2 CVA's catalog?

3 A. I'm sure that I have from time to time.
4 But haven't spent a lot of time looking at them.
5 But I am familiar with black powder rifles, yes.

6 Q. All right. Do you know who took the
7 original breach plug that came with this gun and
8 replaced it with a breach plug that contains a
9 shotgun primer?

10 A. I do not.

11 Q. Okay. Do you know who would have
12 changed the bolt from what was originally sold to
13 put in the bolt that would allow the striking for
14 the shotgun primer?

15 A. Again, I do not.

16 Q. This has, or had, did it not, a shotgun
17 primer nipple and breach plug?

18 A. I don't know. I was using what came
19 with the rifle and what the distributor told me
20 to use.

21 Q. Okay. And as you've described, it
22 would, the bolt would come down and strike the
23 percussion cap which would sit over the end of
24 the breach plug?

25 A. Yes.



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Q. And that was a female, the end of the breach plug was a female adaptation?

A. Yes.

MR. SINGER: I think that's all I have. Thank you.

MR. KING: All right. I think we're done. Thank you, Mr. Zenger.

MR. SINGER: Thank you, Mr. Zenger.

THE WITNESS: Thank you.

MR. SINGER: Once we go of the record let me chat with you a second, Colin.

MR. KING: Okay.

THE VIDEOGRAPHER: This concludes the videotape deposition of Erik Zenger. The time is 10:15 a.m. This is the end of tape one.

Exhibits-1thru3 marked.

(Deposition concluded at 10:15 a.m.)



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