UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	:	Chapter 11
WASHINGTON MUTUAL, INC., et al.,	:	Case Nos. 08-12229 (MFW)
	:	(Jointly Administered)
Debtors.	:	
	:	**Hearing Date: July 13, 2011 at 9:30 a.m.**
	:	**Related to Docket Nos. 7919, 8107, and 8185**

POST-CONFIRMATION HEARING SUBMISSION OF THE WASHINGTON MUTUAL INC. NOTEHOLDERS GROUP IN SUPPORT OF CONFIRMATION OF THE MODIFIED SIXTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

The Washington Mutual, Inc. Noteholders Group (the "WMI Noteholders"), whose members hold in the aggregate approximately $2 billion in face amount of outstanding debt securities issued by Washington Mutual, Inc. ("WMI," and collectively with WMI Investment Corp., the "Debtors"), submits this post-confirmation hearing submission in support of confirmation of the Debtors' Modified Sixth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code, subject to, and incorporating by reference, the Limited Objection of the Washington Mutual Inc. Noteholders Group to the Debtors' Modified Sixth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 7919] and the Statement of the Washington Mutual Inc. Noteholders Group in Support of Confirmation of the Modified Sixth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code and Response to the Limited Objection of Normandy Hill Capital L.P. and the Statement of Wells Fargo Bank, N.A. [Docket No. 8107]. In support thereof, the WMI Noteholders respectfully represent as follows:

STATEMENT IN SUPPORT OF CONFIRMATION

1. From the beginning of these cases, the single most significant threat to creditor recoveries has been the myriad of litigation claims and multitude of issues between, among others, the Debtors, JPMC, and the FDIC, that taint virtually all of the Debtors' assets. In the end, the Debtors successfully negotiated and achieved a settlement that brings to the estates billions of dollars and removes billions of dollars of uncertainty and potential liabilities. That settlement, if consummated, will make available in excess of $7 billion dollars of cash for distribution to creditors, providing near payment in full to all creditors.

2. This Court, in a thoroughly reasoned decision, already approved the

settlement as fair and reasonable. An independent examiner appointed by this Court at the behest of the Equity Committee reached the same conclusion. Although approved, the settlement remains conditioned upon consummation of a plan of reorganization. While the Court approved the settlement, it denied confirmation of the Debtors' initial plan based upon certain identified defects. After a seven day confirmation hearing with respect to the current Plan, it is clear that the issues identified by the Court in its prior decision denying confirmation have been adequately addressed by the Debtors.

3. The Equity Committee, however, seeks a reconsideration of the Court's decision finding that the settlement was fair, reasonable and in the best interests of the estates, a maneuver designed to get through the back door what the Equity Committee is simply not entitled to get going through the front door. The Equity Committee was required to seek reconsideration within 14 days of the Court's original decision, and they cannot now seek to revisit the adequacy of the settlement months after that deadline has passed. See Bankr. R. 9023 (motions for a new trial or to alter or amend a judgment must be filed no later than 14 days after entry of judgment). As both the Court and the Equity Committee have recognized, the decision that the settlement was fair and reasonable is the law of the case and should not be revisited.[1]

4. Regardless of how the Equity Committee's attack is characterized, the Equity Committee has not offered any new evidence that undercuts the Court's decision approving the settlement. In approving the settlement, the Court engaged in a detailed evaluation of the different litigation claims and ultimately determined that the settlement is in the best interests of the estates and provides a reasonable return in light of the possible results of the litigation. In re Washington Mutual, 2011 WL 57111 at *22-23 (Bankr. D. Del. January 7,

[1] See Jan. 20, 2011 Tr. at 51:22-52:3.

2011). Nothing that the Equity Committee has alleged in the most recent incarnation of its objection goes to the litigation risks and potential recoveries of the different claims, and there is nothing that the Equity Committee has argued that undermines this Court's prior determination that the settlement is fair and reasonable. At the first confirmation hearing, the Court soundly rejected the Equity Committee's allegations that JPMC hijacked the settlement negotiations and exerted improper influence. In re Washington Mutual, 2011 WL 57111 at *5. Simply aiming these allegations at different stakeholders does not change the fact that the Equity Committee fails to offer any evidence regarding the likelihood of whether the Debtors would have actually succeeded on the litigation claims, and failed to provide any evidence that would support even the notion that litigating would achieve a result significantly better than what was achieved under the settlement. Nor has the Equity Committee offered any evidence that the Debtors relinquished responsibility for negotiating the deal to the Settlement Noteholders. While they may complain about equity being out of the money, the Court expressly concluded that the fact that recoveries may not reach shareholders is not enough to find the settlement unreasonable. In re Washington Mutual, 2011 WL 57111 at *23.

5. Furthermore, an important principle seems to have been ignored among all the vitriol and allegations put forward by the Equity Committee: debtors have an obligation to engage with principal stakeholders during the pendency of chapter 11 cases and attempt a consensual resolution. These Debtors' efforts to include major constituencies in settlement and plan negotiations is something that is expressly favored by courts and should be praised, not criticized. See, e.g., In re J.E. Jennings, Inc., 96 B.R. 500, 503 (E.D. Pa. 1989) ("Manifestly, it is important that creditors be encouraged to participate in the reorganization process, since the Bankruptcy Code is so structured as to contemplate negotiations and give and take between the

debtor and the creditors.") (quoting In re Toy and Sports Warehouse, Inc., 38 B.R. 646, 648 (Bankr. S.D.N.Y. 1984)). And as this Court has already recognized, compromise between constituencies is favored in bankruptcy. In re Washington Mutual, 2011 WL 57111 at *6.

6. Here, the Debtors did everything by the book based on well established precedent with respect to engaging with major constituencies in settlement and plan negotiations. The parties went through a painstaking and detailed process of negotiating confidentiality agreements with specific lock-up periods and cleansing mechanisms. Negotiations occurred under highly structured circumstances, pursuant to carefully negotiated, detailed confidentiality agreements that spelled out the parties' obligations.[2]

7. These types of negotiations are essential to building a consensus and resolving disputes in bankruptcy proceedings. Any ruling to the contrary may have a chilling effect on future chapter 11 cases and plan negotiations, particularly in cases involving large companies with complex capital structures and disparate stakeholders. Stakeholders will refuse to participate in any negotiations where they are not allowed to rely on well established procedures governing active participation in bankruptcy proceedings. The process used in these cases has been at the heart of innumerable bankruptcy cases, including the ongoing bankruptcy proceedings of Lehman Brothers (which is poised to avoid years of litigation as a consequence of a pending highly negotiated settlement)[3] and the recently successfully concluded Visteon

[2] See July 21 Tr. 100:11 - 102:21; 122:21 - 25 (Kosturos) (describing the nature of March and November 2009 confidentiality agreements entered into with certain creditors); July 18 Tr. 51:9 – 55:19; 104:2 – 17 (Gropper) (describing terms and requirements of March and November 2009 confidentiality agreements as set forth by Debtors).

[3] Linda Sandler, Lehman Gets Goldman, Paulson Consent on Liquidation Plan, Bloomberg Businessweek, June 30, 2011, http://www.businessweek.com/news/2011-06-30/lehman-gets-goldman-paulson-consent-on-liquidation-plan.html (last visited August 10, 2011).

chapter 11 cases.[4]

8. The Equity Committee has targeted certain conduct which they believe warrants specific relief with respect to a small number of creditors. To the extent those allegations cannot be summarily dismissed here, those allegations and issues will be disposed of, and should be disposed of, in the adversary proceeding initiated by the Equity Committee. But, even assuming *arguendo* that the Equity Committee's allegations have any merit (which we submit they do not), none of the allegations form any basis for denying confirmation of the Plan. No matter how hard the Equity Committee tries, none of these arguments present any basis to overturn the twice approved settlement or deny confirmation of the Plan. Even if the Equity Committee's unsupported allegations had some merit, the alleged misconduct of a small number of creditors for their own individual benefit is simply not a basis to deny confirmation of the Plan. Denying confirmation of the Plan would have the effect of penalizing all of the Debtors' other stakeholders for the misconduct of a few -- an outcome that would defeat the very basic principles of equity.[5]

9. We respectfully submit that the time has come to bring these cases to a conclusion and allow those stakeholders with an economic interest in the estates to receive distributions. The Equity Committee's continued opposition should not derail a settlement that this Court and an independent examiner have already determined to be fair, reasonable and in the best interests of the estates. We also respectfully request that if the Court finds some defects in the Debtors' Plan that are capable of being cured, that the Court not deny confirmation, but instead confirm the Plan subject to the Debtors curing such defects to the Court's satisfaction.

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[4] Visteon reaches Global Settlement with Ford, Reuters, September 28, 2010, http://www.reuters.com/article/2010/09/28/visteon-ford-idUSN2816645920100928 (last visited August 10, 2011).

[5] These concerns are also important should the court consider applying the federal judgment rate as a matter of equity, as the rate of interest to be paid to any party other than the Settlement Noteholders is simply not at issue.

INCORPORATION OF THE WMI NOTEHOLDERS' LIMITED OBJECTION AND RESPONSE TO THE LIMITED OBJECTION OF NORMANDY HILL CAPITAL L.P. AND THE STATEMENT OF WELLS FARGO BANK, N.A.

10. We have already submitted argument with respect to the enforcement of the Senior Notes' subordination rights and it is not necessary to repeat those arguments here. Those arguments are set forth in the WMI Noteholders' Limited Objection [Docket No. 7919] and the WMI Noteholders' Statement in Support of Confirmation and Response to the Limited Objection of Normandy Hill Capital L.P. and the Statement of Wells Fargo Bank, N.A. [Docket No. 8107], both of which are incorporated herein. The relevant subordination agreements were entered into evidence as WMI-NG 1 through WMI-NG 7. See Exhibit A.

RESPONSE TO THE LIMITED OBJECTION OF AURELIUS

11. In its Omnibus Response to Certain Objections to Confirmation [Docket No. 8134] (the "Aurelius Response"), Aurelius raised certain arguments with respect to the WMI Noteholders objections and the Senior Notes' contractual subordination rights. While the WMI Noteholders do not intend to repeat their prior arguments in response to Aurelius' positions, a few of Aurelius' more erroneous points are addressed below.

12. As an initial matter, Aurelius contends that the Plan properly provides that Senior Subordinated Notes are not subordinated to the payment of the Senior Notes' post-petition interest because the Rule of Explicitness applies. (Aurelius Response at 75) The WMI Noteholders do not intend to rehash their argument with respect to the question of whether the Rule of Explicitness is still a valid doctrine after the enactment of Rule 510. However, it is significant that Aurelius does not dispute that the only two circuit courts that have considered the issue have both concluded that the Rule of Explicitness no longer applies. See HSBC Bank USA v. Branch (In re Bank of New England Corp.), 364 F.3d 355, 359 (1st Cir. 2004); In re

Southeast. Banking Corp., 156 F.3d 1114, 1123 (11th Cir. 1998). Similarly, Aurelius' suggestion that the doctrine can be bootstrapped back into bankruptcy law by way of state law was rejected by the First Circuit in In re Bank of New England Corp., and it is not appropriate to allow a state law version of the Rule of Explicitness to take the field now that the doctrine is a dead letter as a matter of bankruptcy law. 364 F.3d at 364. The Court should instead apply general New York rules of contract interpretation as the applicable non-bankruptcy law.

13. Applying general rules of contract interpretation, Aurelius contends that the operative phrase "paid and satisfied in full" contained in the Subordinated Indenture is ambiguous because post-petition interest is generally disallowed in bankruptcy pursuant to Section 502(b)(2) of the Bankruptcy Code. (Aurelius Response at 79, n.25) However, even if post-petition interest may be disallowed in certain circumstances that does not take away from the conclusion that the phrase "paid and satisfied in full" by its plain meaning and viewed in the full context of the indenture includes all amounts owing in connection with Senior Debt (defined to include Senior Notes), and thus all interest due on the Senior Notes. There is no dispute that the Senior Noteholders are entitled to receive post-petition interest along with their prepetition claims, and a "full" and "complete" payment of their claims, which satisfies in full such claims, would necessarily include payment of the post-petition interest due upon the Senior Notes. Aurelius does not dispute that unsecured creditors are entitled to receive post-petition interest from a solvent debtor such as is the case here, and even with an insolvent debtor post-petition interest continues to accrue and can be payable from another source such as the Senior Subordinated Notes pursuant to a contract. See, e.g., Kitrosser v. CIT Group/Factoring, Inc., 177 B.R. 458 (Bankr. S.D.N.Y. 1995).[6]

[6] The fact that the PIERS Indenture may include different language providing for the payment of post-petition interest does not take away from the plain meaning of the phrase "paid and satisfied in full."

14. Aurelius also contends that the Tranche 2 distributions in the Debtors' Subordination Model are properly allocated using only the Senior Notes post-petition interest claims. (Aurelius Response at 79-80) Aurelius offers no basis for excluding the full amount of the Senior Notes Claims (both pre-petition and post-petition claims) other than to assert that the only outstanding amount that will be owing to the holders of Senior Notes when Tranche 2 distributions are made will be post-petition interest and therefore that should be the only amount to consider when calculating the pro rata pay-over distributions in Tranche 2.

15. Aurelius' argument misses the point. The PIERS Indenture provides that "holders of Senior Indebtedness shall be entitled first to receive payment of the full amount due thereon in respect of all such Senior Indebtedness...before the [subordinated] Holders are entitled to receive any payment...." (WMI-NG 7 at § 6.1(a)) The amount "due thereon" is the amount due to the holders of Senior Notes *before* accounting for their subordination rights. That amount unquestionably includes the repayment of principal *and* payment of post-petition interest.

16. Aurelius attempts to use the Senior Notes' subordination rights vis-à-vis the Senior Subordinate Notes against the Senior Notes, by arguing that the payment of Senior Notes' prepetition claims by way of pay-over from the Senior Subordinated Notes is a basis to disregard the full amount of the Senior Notes Claims for purposes of calculating the pro-rata pay-over from the PIERS Claims to both Senior Notes and Senior Subordinated Notes. This position is without merit. There is nothing in the PIERS Indenture to suggest that other, separate and independent contractual subordination arrangements dictate how the pay-over obligations under the PIERS Indenture should work. To the contrary, the PIERS Indenture provides that distributions to holders of PIERS Claims are subordinated to the payment of

Senior Indebtedness, which is defined to mean "the principal of, premium, if any, interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding) on...(1) all indebtedness...of the Company for borrowed money...." (WMI-NG 7 at § 1.1) The PIERS Indenture comes into play at the time distributions are made, at which time "Senior Indebtedness" and the "full amount due thereon" correspond to the full amount of the Senior Notes' claims, both principal and post-petition interest. That the Senior Notes have separate subordination rights enforceable against the Senior Subordinated Notes and the Debtors elected to give effect to those rights in Tranche 1 of their waterfall matrix does not provide any basis to disregard the prepetition amounts due to Senior Notes for purposes of determining the "pro rata" distribution of amounts subject to pay-over from holders of PIERS Claims. For purposes of enforcing their similar subordination rights under the PIERS Indenture, the full pre-distribution claims amount of the Senior Notes and Senior Subordination Notes must be taken into account and treated equally.[7]

17. Aurelius' argument regarding the Plan's election mechanism for the distribution of non-cash consideration is similarly off the mark. Aurelius does not dispute that the holders of PIERS Claims cannot receive any consideration, whether in cash, securities or other property, before Senior Notes are paid in full. However, Aurelius contends that the provision of Liquidating Trust Interests to holders of Senior Notes at the same time holders of PIERS Claims receive Reorganized Common Stock does not violate the PIERS Indenture which

[7] That is not to say that the outstanding amount of the full Senior Notes Claims is not relevant to the pay-over obligations of the PIERS Claims. The pay-over obligations of the PIERS Claims only continue so long as there remains some portion of the Senior Notes Claims (both pre-petition and post-petition amounts) that remains outstanding. However, while the outstanding amount of the Senior Notes Claims is relevant when determining if the PIERS Claims still have pay-over obligations, it is not relevant to determining the appropriate pro-rata distribution of such pay over obligations between the Senior Notes and Senior Subordinated Notes. For that, the total and full amount of the Senior Notes and Senior Subordinated Notes must be taken into account.

explicitly provides for the priority payment of the Senior Noteholders' claims. In support of this argument, Aurelius relies on language in the PIERS Indenture that provides the "holders of all Senior Indebtedness shall be entitled first to receive payment of the full amount due thereon in respect of all such Senior Indebtedness and all other amounts due or provision shall be made for such amounts in cash, or other payments satisfactory to the holders of Senior Indebtedness, before the [PIERS Claims] are entitled to receive any payment or distribution...." WMI-NG 7 (PIERS Indenture) at § 6.1(a).

18. Aurelius contends that the Liquidating Trust Interests represent an appropriate "provision" for payment of cash sufficient to comply with the subordination obligations in the PIERS Indenture. (Aurelius Response at 81) However, the Liquidating Trust Interests do not constitute an appropriate "provision" of cash to holders of the Senior Notes sufficient to allow holders of PIERS Claims to get a distribution of common stock before the Senior Notes are paid in full. The Liquidating Trust Interests are contingent interests involving the potential payment of some uncertain amount at an uncertain date in the future. Such uncertain and contingent interests do not qualify as cash sufficient to comply with the subordination requirements of the PIERS Indenture. See In re WestPoint Stevens, Inc., 600 F.3d 231, 257-8 (2d Cir. 2010) (affirming District Court determination that satisfaction of creditor claims in non-cash proceeds was in violation of their contractual rights to cash satisfaction).

19. Furthermore, the language in the PIERS Indenture regarding some "provision" for the payment of cash makes clear that such an arrangement must first be satisfactory to the holders of Senior Notes. WMI-NG 7 at § 6.1(a). Here, the holders of Senior Notes did not consent to the Debtors forcing them to accept contingent Liquidating Trust

Interests while junior stakeholders receive distributions of common stock. The holders of Senior Notes are entitled to payment of their claims in full in cash before holders of PIERS and CCB Claims may receive any payment or distribution, including stock.[8]

20. Finally, Aurelius takes issue with the idea that holders of Senior Floating Rate Notes are entitled to receive post-petition interest at a rate that is the greater of the applicable floating rate or the federal judgment rate. (Aurelius Response at 82-83) The WMI Noteholders will not repeat the relevant arguments contained in their Limited Objection (see, e.g., WMI Noteholders' Limited Objection at 18-20), but note that the Debtors acknowledged in their omnibus response that it is consistent with the Court's prior decision denying confirmation that the Debtors should pay post-petition interest to unsecured creditors at a rate that is at least the federal judgment rate. (Debtors Omnibus Reponses to Objections at 9)

CONCLUSION

21. For the foregoing reasons, the WMI Noteholders respectfully request that the Court confirm the Plan. The WMI Noteholders further respectfully request that in the event that the Senior Noteholders are not paid in full in Cash on the Effective Date and the parties do not otherwise reach an agreement concerning the Senior Noteholders' subordination rights, the Court enter an order that (i) modifies the waterfall to provide for payment in Tranche 1 of all Senior Noteholders Claims, including Postpetition Interest Claims or (ii) provides for pro rata distribution of pay-over amounts in Tranche 2 that takes into account the total amount of Senior Notes Prepetition Claims and Postpetition Interest Claims. The WMI Noteholders further

[8] That certain holders of Senior Notes may have elected not to receive Reorganized Common Stock is of no consequence and does not relieve the holders of PIERS Claims from their obligation to payover any distributions until the Senior Notes are paid in full in cash. The election mechanism in the Plan improperly seeks to force Senior Noteholders to give up consideration that, in the absence of the election mechanism, would flow to the Indenture Trustee for the benefit of all Senior Noteholders. The WMI Noteholders objected to the election mechanism and the Senior Noteholders are entitled to exercise their contractual subordination rights with respect to any consideration provided to junior stakeholders notwithstanding the improper election rights set forth in the Plan.

respectfully request that the election mechanism for Reorganized Common Stock be modified to provide that there will be no distributions of any kind to subordinated creditors until Senior Notes are paid in full in Cash (or via other payments satisfactory to the Senior Noteholders) and that Senior Noteholders are permitted to exercise their contractual subordination rights with respect to any consideration provided to junior stakeholders notwithstanding the election rights set forth in the Plan. Furthermore, to the extent post-petition interest is paid by the Debtors' estates, the WMI Noteholders respectfully request that the Court require that the Senior Floating Rate Notes receive payment of post-petition interest at an interest rate that is at least equal to the federal judgment rate, and grant the WMI Noteholders such other and further relief as the Court deems appropriate.

Dated: August 10, 2011
Wilmington, Delaware

FOX ROTHSCHILD LLP

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EXHIBIT A

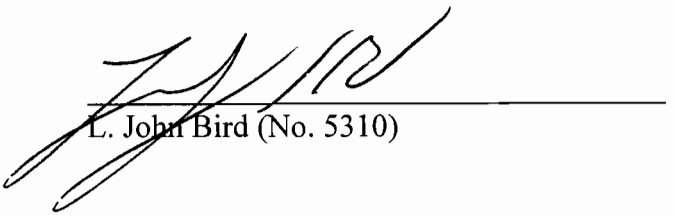
In re Washington Mutual Inc. Admitted Confirmation Exhibit List Binder Index

Exhibit	Document	Doc Date	Bates Range
CONF DX 253	Revised Supplemental Disclosure Statement for the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the U.S. Bankruptcy Code (Solicitation Version) ("Revised Supplemental Disclosure Statement")	03/25/2011	N/A
CONF DX 253A	Exhibit "A" – Prior Disclosure Statement		N/A
CONF DX 253B	Exhibit "B" – Modified Sixth Amended Plan		N/A
CONF DX 253C	Exhibit "C" – Chart of Modifications to Modified Sixth Amended Plan		N/A
CONF DX 253D	Exhibit "D" – Updated Liquidation Analyses		N/A
CONF DX 253E	Exhibit "E" – Valuation Analysis		N/A
CONF DX 254	Notice of Filing of Updated Liquidation Analyses [Dkt. No. 7430]	05/07/2011	N/A
CONF DX 255	Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the U.S. Bankruptcy Code [Dkt. #6696]	02/07/2011	N/A
CONF DX	Exhibit "A" – CCB-1 Guarantee Claims	02/07/2011	N/A

Exhibit	Document	Doc Date	Bates Range
TPS 5	Application of Debtor Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Rule 2014 for Authorization to Employ and Retain Klee, Tuchin, Bogdanoff & Stern LLP, as Special Litigation Counsel to Washington Mutual, Inc., Nunc Pro Tunic to June 24, 2011 Filed by Washington Mutual, Inc. [Dkt. No. 8111]	07/08/11	N/A
WMI-NG 1	First Supplemental Indenture (BONY)	08/01/2002	N/A
WMI-NG 2	Standard Multiple-Series Indenture Provisions	04/2002	N/A
WMI-NG 3	CCB Capital Trust IV Guarantee	11/01/2007	N/A
WMI-NG 4	CCB Capital Trust Floating Rate Junior Subordinated Debt Securities	09/25/2003	N/A
WMI-NG 5	CCB Capital Trust VI Guarantee	11/01/2007	N/A
WMI-NG 6	CCB Capital Trust Junior Subordinated Indenture	03/31/2004	N/A
WMI-NG 7	First Supplemental Indenture	04/30/2001	N/A

CERTIFICATE OF SERVICE

I, L. John Bird, hereby certify that on the 10th day of August, 2011, I caused a copy of the **Post-Confirmation Hearing Submission of the Washington Mutual Inc. Noteholders Group In Support of Confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code** to be served upon the parties listed on the service list attached hereto *via* the manner indicated.



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