

**RECEIVED**

**Apr 29 2024**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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Appeal from Richland County  
Court of Common Pleas  
Jean Hoefer Toal, Circuit Court Judge

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Appellate Case Nos. 2024-000342; 2024-000348  
Circuit Court Case Nos. 2022-CP-40-05543 and 2023-CP-40-03108

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Michael David Link and Sandra Strickland Link,

Respondents,

v.

4520 Corp., Inc.; ABB Inc.; Amentum Environment & Energy, Inc.; Armstrong International, Inc.; Asbestos Corporation Limited; AT&T Corp.; Atlas Turner Inc.; Bahnson, Inc.; BASF Catalysts LLC; BASF Corporation; Beaty Investments, Inc.; Bechtel Corporation; Bellsouth, LLC; Bellsouth Telecommunications, LLC; The Bonitz Company; Brenntag North America, Inc.; Brenntag Specialties, LLC; Carboline Company; Carrier Corporation; Celanese Corporation; CNA Holdings LLC; Cooper Crouse-Hinds, LLC; Covil Corporation; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Ericsson Inc.; Fisher Controls International LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Graybar Electric Company, Inc.; Great Barrier Insulation Co.; Grinnell LLC; Heat & Frost Insulation Company, Inc.; Henry Pratt Company, LLC; Howden North America Inc.; ITT LLC; J. & L. Insulation, Inc.; K-MAC Services, Inc.; Kohler Co.; Metropolitan Life Insurance Company; Michelin Corporation; Michelin North America, Inc.; Milliken & Company; Nokia of America Corporation; Occidental Chemical Corporation; The Okonite Company, Inc.; Paramount Global; PECW Holding Company; Plastics Engineering Company; Presnell Insulation Co., Inc.; Prysmian Cables and Systems USA, LLC; Raytheon Technologies Corporation; REDCO Corporation; Riley Power Inc.; Rockwell Automation Inc.; R.T. Vanderbilt Holding Company, Inc.; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Siemens Industry, Inc.; Spence Engineering Company, Inc.; Spirax Sarco, Inc.; SPX Cooling Technologies, LLC; Standard Insulation Company of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Thermo Electric Company, Inc.; Union Carbide Corporation; Vanderbilt Minerals, LLC; Viking Pump, Inc.; Vistra Intermediate Company LLC; Whittaker, Clark & Daniels, Inc.; The

William Powell Company; Wind Up, LTD.; York International Corporation;  
Zurn Industries, LLC,

Defendants,

Of which Asbestos Corporation Limited and Atlas Turner, Inc. are

Appellants.

AND

Heather Donaghy, as Personal Representative of the Estate of Shirley Smiley  
Potter, deceased,

Respondents,

v.

4520 Corp., Inc.; ABB Inc.; Amentum Environment & Energy, Inc.; Armstrong  
International, Inc.; Asbestos Corporation Limited; Atlas Turner Inc.; Bahnson, Inc.;  
Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brenntag  
North America, Inc.; Brenntag Specialties, LLC; Canvas CT, LLC; Carboline  
Company; Carrier Corporation; Celanese Corporation; CNA Holdings LLC;  
Cooper Crouse-Hinds, LLC; Covil Corporation; Daniel International Corporation;  
Eaton Corporation; Emerson Electric Co.; Ericsson Inc.; Fisher Controls  
International LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors  
International; Fluor Constructors International, Inc.; Fluor Daniel Services  
Corporation; Fluor Enterprises, Inc.; General Cable Corporation; General Cable  
Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps,  
Incorporated; Goulds Pumps LLC; Graybar Electric Company, Inc.; Great Barrier  
Insulation Co.; Grinnell LLC; Henry Pratt Company, LLC; Howden North  
America Inc.; ITT LLC; K-MAC Services, Inc.; Metropolitan Life Insurance  
Company; Occidental Chemical Corporation; Paramount Global; PECW Holding  
Company; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco  
Corporation; Riley Power Inc.; Rockwell Automation, Inc.; R.T. Vanderbilt  
Holding Company, Inc.; Rust Engineering & Construction, Inc.; Rust International  
Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric USA, Inc.; Sequoia Ventures  
Inc.; Siemens Industry, Inc.; Spence Engineering Company, Inc.; Spirax Sarco,  
Inc.; Standard Insulation Company of N. C., Inc.; Starr Davis Company, Inc.; Starr  
Davis Company of S.C., Inc.; Thermo Electric Company Inc.; Union Carbide  
Corporation; Vanderbilt Minerals, LLC; Viking Pump, Inc.; Vistra Intermediate  
Company LLC; The William Powell Company; York International Corporation;  
Zurn Industries, LLC,

Defendants,

Of which Asbestos Corporation Limited and Atlas Turner, Inc. are

Appellants.

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**APPELLANT ATLAS TURNER, INC.'S PETITION FOR REHEARING**

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Stephen L. Brown (SC Bar No. 66468)

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*Attorneys for Appellant Atlas Turner, Inc.*

Appellant hereby petitions this Court for rehearing pursuant to Rule 221, SCACR. Appellant respectfully asserts the order issued in this matter is contrary to the law, unsupported by the facts and creates what is essentially a “hybrid” form of representation never before recognized in this state. Therefore, the order should be withdrawn or altered and the appeal reinstated. <sup>1</sup>

**I. The circuit court’s order is immediately appealable pursuant to section 14-3-330(2) of the South Carolina Code.**

**A. The circuit court’s order effectively terminated Clement Rivers, LLP.**

While the circuit court’s order claims it denied the purported receiver’s motion to terminate Clement Rivers, LLP (“Clement Rivers”), it effectively granted the relief the receiver sought and terminated Clement Rivers from representing Appellant in its asbestos litigation. The circuit court’s order is merely couched as a denial of the purported receiver’s motion to deprive Appellant the ability to appeal the order.

**1. The circuit court’s order expressly vests the purported receiver with control of Appellant’s asbestos litigation.**

The circuit court’s order compels Appellant’s preferred attorney, Clement Rivers, to comply with the purported receiver’s directives if a disagreement arises on matters related to Appellant’s asbestos litigation. To ensure the purported receiver does not disagree with any asbestos litigation decisions, Clement Rivers must obtain his approval before taking any action on behalf of its clients. Therefore, Clement Rivers is unable to take any action on behalf of Appellant in its asbestos litigation without getting approval from the purported receiver. Accordingly, the circuit court’s order effectively terminated Appellant’s preferred attorney because the purported receiver is in control of its asbestos litigation.

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<sup>1</sup> The purported receiver settled the two claims brought against Asbestos Corporation Limited.

**a. The circuit court’s statements reveal that it intended for the appealed order to effectively terminate Clement Rivers.**

At the pretrial hearing on April 10, 2024, the circuit court made clear that it did not terminate Clement Rivers as a mere technicality and curtesy. The circuit court stated that it “tried to respect [Clement Rivers’s] dignity by not . . . having you fired.” (Pretrial hearing transcript p. 79, attached as Exhibit A) The circuit court reiterated that it did “not responded to [the purported] receiver’s request that [Clement Rivers] be terminated . . . as a matter of your status and your dignity as a lawyer.” (Exhibit A, p. 82-83.)

Critically, the circuit court emphasized that its refusal to expressly terminate Clement Rivers did not “take away from the fact that *you have no authority in this matter.*” (Pretrial hearing transcript p. 79 (emphasis added).) The circuit court reiterated that it could not “ignore the rulings that have been made . . . *that give [the purported receiver] the authority and the control of how this litigation proceeds.*” (Pretrial hearing transcript p. 82-83 (emphasis added).)

The circuit court’s comments demonstrate that its order in fact terminated Clement Rivers from representing Appellant in this asbestos litigation. Appellant respectfully urges this Court to consider the effect of the circuit court’s order and the circuit court’s comments so that it can recognize the circuit court’s order for what it is: the termination of Appellant’s preferred attorney, Clement Rivers. The circuit court certainly believes that Clement Rivers has “no authority in this matter” and the purported receiver is in “control of how this litigation proceeds.” (Pretrial hearing transcript p. 79; 82-83.)

**B. The circuit court's order is more akin to *Hagood* than *Hopkins*.**

In ruling that the circuit court's order was not immediately appealable, this Court stated that the circuit court's order was "more akin to the order appealed in *Hopkins*"<sup>2</sup> than the order appealed in *Hagood*.<sup>3</sup> (Order p.2.) Appellant respectfully submits this was error.

**1. Unlike the appealed order in *Hopkins*, the circuit court's order deprives a party of their preferred attorney.**

In *Hopkins*, the court ruled that the denial of a motion to disqualify an opposing party's counsel was not immediately appealable. 401 S.C. at 616, 738 S.E.2d at 478. The court reasoned that the appealed order in *Hopkins* did not implicate the policy consideration that drove its holding in *Hagood* because the party was not deprived of its preferred attorney. *Id.* at 618, 738 S.E.2d at 480.

As discussed above, the circuit court's order expressly takes away control of Appellant's asbestos litigation from their preferred attorney, unlike the appealed order in *Hopkins*. Therefore, Appellant has been deprived their preferred attorney, unlike the appealed order in *Hopkins*. Because the circuit court's order deprives Appellant of its preferred attorney, it affects Appellant's substantial rights implicates the policy considerations the court considered in *Hagood*.

**2. Unlike the appealed order in *Hopkins*, the circuit court's order clearly affects Appellant's substantial rights and implicates the policy considerations the court addressed in *Hagood*.**

In concluding the right to retain counsel of one's choosing is a substantial right for the purposes of appealability, we noted: (1) the importance of the party's right to counsel of his choice in an adversarial system; (2) the importance of the attorney-client

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<sup>2</sup> *EnerSys Delaware, Inc. v. Hopkins*, 401 S.C. 615, 738 S.E.2d 478 (2013).

<sup>3</sup> *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

relationship, which demands a confidential, trusting relationship that often develops over time; . . . and (4) an appeal after final judgment would not adequately protect a party's interests because it would be difficult or impossible for a litigant or an appellate court to ascertain whether prejudice resulted from the lack of a preferred attorney.

*Hopkins*, 401 S.C. at 618, 738 S.E.2d at 479–80.

**a. The importance of Appellant's right to counsel of choice in an adversarial system.**

“Deprivation of the right to ones *preferred* attorney . . . affect[s] the attorney-client relationship, which is extremely important in our adversarial system.” *Hagood*, 362 S.C. at 198, 607 S.E.2d at 710 (emphasis added). Depriving a party of counsel with authority to act is no different, regardless of how one attempts to distinguish the two.

Initially, Appellant notes that neither the circuit court nor this Court's order cites to any authority supporting the circuit court's order. This makes sense because the circuit court's order is unprecedented in our adversarial system. The purported receiver is adverse to Appellant's preferred counsel, but the circuit court's order compels Clement Rivers to comply with the purported receiver's directives. The circuit court's requirement to comply with the purported receiver's directives is a distinction without a difference from terminating Clement Rivers.<sup>4</sup>

Additionally, Appellant is unclear how the rules, logistics, and procedures would work under the circuit court order (or the order of this Court of Appeals). For example, would Clement Rivers need to offer a proffer if the purported receiver disagrees with Clement Rivers' method of examining a witness or asserting a defense? How would the attorney-client privilege

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<sup>4</sup> Again, if the circuit court granted the purported receiver's motion to terminate Clement Rivers, a direct appeal would be allowed.

be impacted? Such issues clearly implicate the importance of Appellant’s right to counsel of its choice in our adversarial system. They have not been addressed.

**b. The importance of attorney-client relationship.**

“The right to be represented by an attorney of ones choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case.” *Hagood*, 362 S.C. at 197–98, 607 S.E.2d at 710. “Moreover, the right to be represented by ones preferred attorney is closely related to the right to a particular mode of trial, a well-established substantial right.” *Id.* at 198, 607 S.E.2d at 710.

The circuit court’s order completely ignores the importance of the attorney-client relationship and foists the purported receiver onto Appellant while also depriving Appellant of its ability to appeal the order.

**c. Difficulty/impossibility to ascertain prejudice.**

“[A]n appeal after final judgment and a new trial, if granted, would not adequately protect a party's interests because it would be difficult or impossible for the affected party or the appellate court to ascertain by any objective standard whether prejudice resulted from the disqualification.” *Hagood*, 362 S.C. at 198, 607 S.E.2d at 710.

How could a litigant or appellate court ascertain whether prejudice resulted from lack of preferred attorney? Rather than allowing the circuit court to proceed with the cases and take on the impossible task of discerning if any prejudice occurred after the fact, this Court should

recognize that the circuit court's order is immediately appealable because it affects Appellant's substantial rights.

**II. Alternatively, the circuit court's order is immediately appealable pursuant to section 14-3-330(4) of the South Carolina Code.**

Initially, Appellant respectfully notes that the Court misapprehended Appellant's argument in its memorandum on appealability. Without waiving any rights or appeals filed and pending, Appellant does not assert that the purported receiver cannot continue during the pendency of this appeal; rather, Appellant asserts that the circuit court's order is immediately appealable pursuant to section 14-3-330(4) of the South Carolina Code.

The circuit court's order expressly continued the ACL receivership and modified the Atlas Turner receivership to give the receiver control of Atlas Turner's asbestos litigation.<sup>5</sup> Therefore, the circuit court's order is clearly an "interlocutory order . . . granting, continuing, [or] modifying . . . the appointment of a receiver." S.C. Code Ann. § 14-3-330(4). Accordingly, the circuit court's order is immediately appealable. S.C. Code Ann. § 14-3-330(4).

**A. The circuit court's order is distinguishable from the appealed order in *Childers*.**

The Court's order cited our supreme court's order in *Childers*, but the appealed order in *Childers* is distinguishable from the circuit court's order here. First, section 14-3-330(4) was not mentioned in any motions or orders in *Childers* until the petition for rehearing. While our supreme court did not specifically address section 14-3-330(4) in its order denying rehearing, it must have found that the appealed order in *Childers* did not grant, continue, modify, or refuse the appointment of a receiver. Indeed, the appealed order in *Childers* denied a motion to dissolve a

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<sup>5</sup> Originally, the purported receiver for Atlas Turner was charged only with marshalling Atlas Turner's insurance assets.

receivership, which is not the situation in these cases. Here, unlike the appealed order in *Childers*, the circuit court’s order expressly continued the ACL receivership and expressly modified the Atlas Turner receivership.

Appellant is merely appealing the circuit court’s “interlocutory order . . . granting, continuing, [or] modifying . . . the appointment of a receiver,” which is immediately appealable. S.C. Code Ann. § 14-3-330(4).

### CONCLUSION

The circuit court’s order is immediately appealable pursuant to section 14-3-330(2) because it effectively terminated Clement Rivers and affected Appellant’s substantial right, like the order in *Hagood*. Alternatively, the circuit court’s order is immediately appealable pursuant to section 14-3-330(4) because it is an “interlocutory order . . . granting, continuing, [or] modifying . . . the appointment of a receiver,” which is immediately appealable. S.C. Code Ann. § 14-3-330(4). I certify this petition is filed in good faith and not for purposes of delay.

Respectfully submitted,  
CLEMENT RIVERS, LLP

By: s/Stephen L. Brown  
Stephen L. Brown (SC Bar No. 66468)  
Russell G. Hines (SC Bar No. 72100)  
James D. Gandy, III (SC Bar No. 11925)  
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*Attorneys for Appellant Atlas Turner, Inc.*

Charleston, South Carolina

April 29, 2024

# Exhibit A

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HEARING

In Re: Flynn v. Atlas Turner (2023-CP-40-000633)  
Goodwin v. 3M (2020-CP-40-004613)  
Mitchell v. Atlas Turner (2022-CP-40-02979)  
Tibbs v. Atlas Turner (2023-CP-40-01759)  
Donaghy/Potter v. Atlas Turner (2023-CP-40-03108)  
Link v. Atlas Turner (2022-CP-40-05543)

In Re: Childers  
Civil Action No. 2021-CP-40-03484

Receiver vs. AIG, et al,  
Civil Action No. 2021-CP-40-05768

Receiver vs. Baker Patterson, et al.,  
Civil Action No. 2023-CP-40-05203

In Re: State of Covil v. Pennsylvania National  
(2023)-CP-40-000633)

Covil v. Penn National (2020-CP-4002098)

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BEFORE THE HONORABLE  
CHIEF JUSTICE (RET.) JEAN TOAL

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DATE TAKEN: Wednesday, April 10, 2024

TIME START: 9:27 a.m.

TIME END: 12:27 p.m.

LOCATION: Richland County Judicial Center  
1701 Main Street  
Columbia, South Carolina

REPORTED BY: Cindy A. Hayden, RMR-CRR  
EveryWord, Inc.

1           been appointed to be the receiver, and the  
2           appellate courts now have three times  
3           approved the authority of the receiver to  
4           move forward?

5           MR. BROWN: Your Honor, I think on  
6           that particular one -- because that was the  
7           day you were coming up with your attempt to  
8           balance out I'm not -- don't want to fire,  
9           but I don't accept receiver --

10          THE COURT: I know -- you know, I may  
11          have accommodated you more than I should  
12          have is all I can say, Mr. Brown. I've  
13          tried to respect your dignity by not --

14          MR. BROWN: I appreciate that,  
15          Your Honor.

16          THE COURT: -- having you fired. But  
17          it doesn't take away from the fact that you  
18          have no authority in this matter.

19          Mr. Protopapas is the receiver in this  
20          matter.

21          So you may be hired by these people,  
22          and that's their business, but I'm running  
23          proceedings that have their own procedure  
24          attached to them. And part of what your  
25          client doesn't want to acknowledge but what

1 MR. BROWN: Yes, ma'am.

2 THE COURT: I think that's a valid  
3 concern.

4 MR. BROWN: Who's going to answer in  
5 light of that order, and then what happens  
6 to that order? That becomes complicated,  
7 and we want to come up with an easier way  
8 to solve it than to come in here and just  
9 sort of --

10 THE COURT: Well -- because my options  
11 are limited. I've appointed a receiver.  
12 The appellate courts that have looked at  
13 this thing have told me and the world that  
14 this receiver has the authority to continue  
15 despite the appeals of the defendant. So  
16 that's, from my standpoint, all I know how  
17 to do.

18 Now, if you-all make some side  
19 agreements that are propounded by the  
20 receiver, then I -- I've got a platform to  
21 go on. But I can't simply do it on the  
22 basis of what you are arguing.

23 MR. BROWN: Yes, ma'am.

24 THE COURT: I've not responded to  
25 receiver's request that you be terminated

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1 in your representation. I did that as a  
2 matter of your status and your dignity as a  
3 lawyer, whom I know well.

4 But I can't ignore the rulings that  
5 have been made and so far blessed that give  
6 Mr. Protopapas the authority and the  
7 control of how this litigation proceeds.  
8 That's what's got me in a bind.

9 MR. BROWN: And I understand what  
10 you're saying, Your Honor. I apologize.

11 THE COURT: But in a -- I -- I think  
12 you're doing a very noble thing and  
13 realizing that despite the confusion that  
14 your client has introduced into this, we  
15 can't let the situation move in such a way  
16 that if -- that any responsibilities of  
17 Atlas Turner or ACL fall in the cracks.

18 MR. BROWN: Yes, ma'am.

19 THE COURT: And that's what you're  
20 trying to prevent --

21 MR. BROWN: Yes, Your Honor.

22 THE COURT: -- from happening.

23 MR. BROWN: That -- without --

24 THE COURT: I mean, I -- I get that.

25 MR. BROWN: Without waiving any of my

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International LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors  
International; Fluor Constructors International, Inc.; Fluor Daniel Services  
Corporation; Fluor Enterprises, Inc.; General Cable Corporation; General Cable  
Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps,  
Incorporated; Goulds Pumps LLC; Graybar Electric Company, Inc.; Great Barrier  
Insulation Co.; Grinnell LLC; Henry Pratt Company, LLC; Howden North  
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**PROOF OF SERVICE**

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*Attorneys for Appellant Atlas Turner, Inc.*

I, Stephen L. Brown, of Clement Rivers, LLP, attorneys for Appellant Atlas Turner, Inc., hereby certify that the **PETITION FOR REHEARING** was served on all other parties to this appeal on April 29, 2024, via email (see attached) to their following counsel of record:

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*Purported receiver for “insurance assets” of Asbestos Corporation Limited per Order being appealed*

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By: *s/Stephen L. Brown*

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Charleston, South Carolina

April 29, 2024

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**Cc:** [Brown, Stephen L.](#); [Olive, IV, Graydon](#); [Hines, Russell](#); [Justman, Aimee](#)  
**Subject:** Link v. Atlas Turner, Inc. Appellate Case No. 2024-000342; Donaghy v. Atlas Turner, Inc. Appellate Case No. 2024-000348 (CR 230681/230599)  
**Date:** Monday, April 29, 2024 4:54:58 PM  
**Attachments:** [image001.png](#)  
[Petition for Rehearing -Atlas Turner.pdf](#)  
[Ex. A.pdf](#)

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Enclosed please find Appellant Atlas Turner, Inc.'s Petition for Rehearing for service upon you in the above-referenced matter.

Thank you,

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