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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS
THE HONORABLE R. KEITH KELLY
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2023-000969
CIVIL ACTION NO. 2021-CP-26-05377

Unpublished Opinion No. 2026-UP-016
Submitted October 1, 2025 – Filed January 21, 2026
Withdrawn, Substituted, and Refiled May 13, 2026

Terence Sullivan,

PETITIONER,

v.

Ocean 22 Vacation Owners' Association, Inc.,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

HOPKINS LAW FIRM, LLC

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CERTIFICATION OF COUNSEL

The Court of Appeals issued its decision on January 21, 2026, reversing the trial court's decision. Appx. 308-15. The Respondent, Ocean 22 Vacation Owners' Association, Inc., filed its Petition for Rehearing on March 9, 2026. Appx. 316-341. The Court of Appeals granted the petition for rehearing, withdrew its prior opinion, and issued its opinion affirming the trial court's decision on May 13, 2026. Appx. 353-58.

QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals err in holding that Respondent was entitled to immunity under the South Carolina Workers' Compensation Act by concluding that Respondent complied with S.C. Code Ann. § 42-1-415 despite the absence of contemporaneous documentation of workers' compensation coverage, thereby creating a standard inconsistent with this Court's decisions in *Hardee v. McDowell* and *Hopper v. Terry Hunt Construction*?

STATEMENT OF THE CASE

Respondent, Ocean 22 Vacation Owners Association, Inc. ("Association"), is the owners' association for Hilton Grand Vacations Management, LLC ("Hilton"), a timeshare resort located in Myrtle Beach, South Carolina. Appx. 69-70 ¶¶ 2-7. The Association is a South Carolina nonprofit corporation and does not directly employ workers at the resort. Appx. 69 ¶ 6; *see also* Appx. 70 ¶ 8. Rather, pursuant to a Management Agreement, the Association contracted with Hilton to manage, maintain, and operate the property. Appx. 70 ¶¶ 7–10; *see also* Appx. 218–243.

Under the Management Agreement, Hilton agreed to employ, compensate, supervise, and manage all personnel necessary to operate the resort. Appx. 71 ¶ 12. The Agreement further provided that such personnel would be employees of Hilton and not employees of the Association. *Id.*

Petitioner was employed by Hilton as a bell person at the resort. Appx. 71 ¶ 14. On August 9, 2019, Petitioner sustained injuries after slipping on algae located on a sidewalk at the property.

Appx. 26 ¶ 5. Petitioner subsequently pursued a workers' compensation claim against his direct employer, Hilton, and ultimately resolved that claim through a settlement approved by the South Carolina Workers' Compensation Commission. Appx. 71 ¶ 18.; *see also* Appx. 62–68.

Thereafter, Petitioner filed the underlying civil action against the Association alleging causes of action for premises liability, negligence, gross negligence, and negligent hiring, training, supervision, and retention. Appx. 23–30.

Although the Association acknowledged it was not Petitioner's actual employer and had no direct employees, it moved to dismiss the action, asserting it was entitled to immunity under the South Carolina Workers' Compensation Act (the "Act") as Petitioner's statutory employer. Appx. 50–243. The Association relied primarily upon the Management Agreement and the fact that Petitioner had received workers' compensation benefits through Hilton. *Id.*

The circuit court granted the Association's motion and dismissed Petitioner's claims, concluding that Petitioner's exclusive remedy arose under the Act. Appx. 244-251.

Petitioner moved for reconsideration and argued, among other things, that the Association failed to establish compliance with S.C. Code Ann. § 42-1-415 because it did not produce any documentation demonstrating that workers' compensation coverage existed at the time Hilton was engaged to perform work. The circuit court denied the motion. Appx. 10-22.

Petitioner timely appealed.

On January 21, 2026, the Court of Appeals reversed. Appx. 306-313. The Court held that, "based on the language in the Act as well as case law, that to be entitled to tort immunity as a statutory employer, [Respondent] was required to provide documentation of a workers' compensation insurance policy." *See id.* The Court further noted that the Association admitted it

did not know whether it carried workers' compensation insurance and relied primarily on the fact that Petitioner later settled a workers' compensation claim with Hilton. *Id.*

The Association filed a petition for rehearing. Appx. 314-339. Petitioner submitted a return. Appx. 340-50. The Court of Appeals granted rehearing, withdrew its prior opinion, and issued a substituted opinion on May 13, 2026, affirming the circuit court. Appx. 353-358. In its substituted opinion, the Court held that the Management Agreement, together with Hilton's obligation to comply with applicable law and the subsequent workers' compensation settlement between Petitioner and Hilton, was sufficient to establish compliance with the Workers' Compensation Act. *Id.*

This Petition follows.

The issue presented is whether the Court of Appeals departed from this Court's decisions in *Hardee v. McDowell,* 381 S.C. 445, 673 S.E.2d 813 (2009) and *Hopper v. Terry Hunt Construction*, 383 S.C. 310, 680 S.E.2d 1 (2009) by holding that a management agreement and post-accident workers' compensation settlement constitute sufficient documentation of insurance under S.C. Code Ann. § 42-1-415 despite the absence of any certificate of insurance, ACORD form, carrier verification, or other contemporaneous documentation of coverage.

ARGUMENT

I. The Court of Appeals created a standard for proving compliance with S.C. Code Ann. § 42-1-415 that conflicts with *Hardee* and *Hopper* by holding that a Management Agreement and post-accident settlement agreement constitute sufficient documentation of workers' compensation insurance.[1]

Under the statutory employment doctrine, a higher-tier employer may be held liable for work-related injuries to employees hired by a lower-tier employer. *See* S.C. Code Ann. § 42-1-410 (1985) (stating a "contractor shall be liable to pay to any workman employed in the work [of a subcontractor] any compensation under this Title which he would have been liable to pay if that workman had been immediately employed by him"); *Miller v. Lawrence Robinson Trucking*, 333 S.C. 576, 580, 510 S.E.2d 431, 433 (Ct. App. 1998) ("The concept of statutory employment is designed to protect the employee by assuring workers' compensation coverage by either the subcontractor, the general contractor, or the owner if the work is part of the owner's business.").

The South Carolina Uninsured Employers' Fund (the "Fund") was "created [by the South Carolina Legislature] to ensure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees...." S.C. Code Ann. § 42-7-200(A)(1) (Supp.2008).

Section 42-1-415 provides that a contractor may shift liability to the Fund if the contractor obtains adequate proof that the subcontractor had insurance coverage at the time the subcontractor "was engaged to perform work":

[1] As the Court of Appeals January 21, 2026 Opinion correctly noted, this Court need not address Petitioner's argument that the circuit court erred in finding Respondent was his statutory employer under the Act because Petitioner failed to comply with the Act by neglecting to procure workers' compensation insurance. If Petitioner was, in fact, the statutory employer, then it did not comply with the Act's requirement to provide documentation of a worker's compensation policy. If Respondent was not Petitioner's statutory employer, then it would not be eligible for the immunity protections afforded by the Act.

> (A) Notwithstanding any other provision of law, upon the submission of documentation to the [C]ommission that a contractor or subcontractor *has represented* himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance *at the time the contractor or subcontractor was engaged to perform work*, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section.... The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the [C]ommission to transfer responsibility for continuing compensation to the Uninsured Employers' Fund....
>
> (B) To qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the [C]ommission. *The documentation must be collected at the time the contractor or subcontractor is engaged to perform work* and must be turned over to the [C]ommission at the time a claim is filed by the injured employee.

S.C. Code Ann. § 42-1-415(A)-(B) (Supp. 2008) (emphasis added).

However, to transfer liability to the Fund, the higher-tier contractor "must collect documentation of insurance . . . on a standard form acceptable to the commission." The workers' compensation commission has promulgated a regulation providing that a Certificate of Insurance "shall serve as documentation of insurance" and that the Certificate "must be dated, signed, and issued by an authorized representative of the insurance carrier for the insured." S.C. Code Reg. 67-415 (Supp. 2007). In other words, “liability may be transferred from the higher tier contractor to the Fund only after the higher tier contractor has properly documented the subcontractor's claim that it retains workers' compensation insurance. This statutory scheme provides an ultimate safety net for general contractors against a subcontractor's act of fraud.” *Barton v. Higgs*, 674 S.E.2d 145, 147, 381 S.C. 367 (2009).

The Court of Appeals' interpretation effectively eliminates Section 42-1-415's documentation requirement. The statute does not relieve a contractor of liability because a subcontractor promises to obtain insurance or because insurance is later shown to have existed. It

requires documentation demonstrating coverage when the subcontractor is engaged to perform work. If a contractual promise were sufficient, every commercial contract containing an insurance procurement clause would satisfy Section 42-1-415, rendering the statute's documentation requirement meaningless.

The Court of Appeals' decision therefore presents an important question regarding what documentation a contractor must obtain to qualify for immunity under South Carolina's Workers' Compensation Act and whether this Court's decisions in *Hardee* and *Hopper* continue to require actual, contemporaneous proof of coverage. At bottom, this case asks whether a contractor may obtain statutory immunity without ever obtaining the very documentation the Legislature required.

In fact, the Court of Appeals correctly noted in its original opinion that Respondent failed to present any evidence of sufficient documentation of a workers' compensation policy other than its Management Agreement with Hilton and the fact that Petitioner reached a workers' compensation settlement with Hilton. However, Respondent's Management Agreement does not comply with the plain language requirements of the Act's documentation requirements.

The documentation of insurance must be on "a standard form acceptable to the commission." S.C. Code Ann. § 42-1-415(B) (2015). In regulations promulgated in conjunction with section 42-1-415, the workers' compensation commission clarified that "[t]he ACORD Form 25-S, Certificate of Insurance, as issued by the insurance carrier for the insured, is acceptable documentation of insurance, provided the Certificate of Insurance indicates a valid South Carolina address for the insured, is dated, signed and issued by an authorized representative of the insurance carrier for the insured." S.C. Reg. 67-415(A)(2) (2010). Out-of-state employers may also use an ACORD form to verify workers' compensation coverage "provided the authorized representative

of the insurance carrier for the insured affirms the following in an accompanying statement: South Carolina is a named state in section 3A or 3C of the declaration page of the insured's policy." *Id.*

Critically, the Management Agreement does not establish that Hilton actually obtained workers' compensation coverage. At most, it establishes that Hilton contractually agreed to procure such coverage. Those are fundamentally different concepts. The statutory and regulatory scheme does not permit a higher-tier contractor to rely upon a subcontractor's promise to obtain insurance; it requires documentation demonstrating that insurance was actually obtained.

A promise to procure insurance is not proof of insurance. Section 42-1-415 requires documentation that insurance was obtained — not a contractual promise that insurance would be obtained. If it were, neither Section 42-1-415 nor Regulation 67-415 would serve any practical purpose.

There are two (2) South Carolina appellate decisions that firmly contradict the Court of Appeals' finding that the Management Agreement satisfied the Act's documentation requirements.

In *Hardee v. McDowell*, W.D. McDowell was contracted by Smith Construction to work on a library project. 381 S.C. at 447-48, 673 S.E.2d at 814-15. The parties had worked together on a previous project, at which time McDowell provided Smith with a certificate of insurance. *Id.* at 448, 673 S.E.2d at 814. Smith did not seek updated proof of coverage prior to the library project but instead relied upon the earlier certificate. *Id.* at 448, 673 S.E.2d at 814-15. Unbeknownst to Smith, McDowell's insurance was cancelled the day prior to the employee's injury. *Id.* at 448, 673 S.E.2d at 815. The court held that the language in section 42-1-415(A) requiring proof of insurance at the time the contractor is "'engaged to perform work' means each time the subcontractor is actually hired to perform work." *Id.* at 453, 673 S.E.2d at 817. "Thus, if a contractor enters into a contract . . . in January and then enters into another contract to hire the subcontractor for a second

job in February, the contractor should verify that the subcontractor still has insurance coverage at the time of the February hiring." *Id.* Because Smith did not check for insurance at the start of the library project, Smith was not eligible to transfer liability to the UEF. *Id.* at 454, 673 S.E.2d at 818.

The deficiency here is even more pronounced than in *Hardee*. In *Hardee*, the contractor possessed at least a Certificate of Insurance issued by an insurance carrier and relied upon that Certificate. 318 S.C. at 454, 673 S.E.2d at 818. The Supreme Court nevertheless held that the contractor failed to satisfy Section 42-1-415 because it did not verify coverage when the subcontractor was later engaged to perform work. *Id.* Here, Respondent possessed no Certificate of Insurance, no ACORD form, no policy information, and no carrier verification whatsoever. If the contractor in *Hardee* could not satisfy Section 42-1-415 with an actual Certificate of Insurance, Respondent cannot satisfy the statute with no certificate, no ACORD form, no carrier verification, and no documentation of coverage whatsoever.

Likewise, *Hopper* squarely forecloses the result reached by the Court of Appeals. In *Hopper*, Terry Hunt Construction (Hunt) was the subcontractor contracted by Kajima USA, Inc. (Kajima). 383 S.C. at 313, 680 S.E.2d at 2. The project took place in South Carolina, but Hunt and Kajima were based in Georgia. *Hopper v. Terry Hunt Const.*, 373 S.C. 475, 478, 646 S.E.2d 162, 164 (Ct. App. 2007). During a previous project that the two worked on together, Hunt provided Kajima with an ACORD form that listed Hunt's insurance policy dates. *Hopper*, 383 S.C. at 313, 680 S.E.2d at 2. In the section entitled "DESCRIPTION OF OPERATIONS/LOCATIONS" the project number, subcontract number, and the claim deductible amount appeared. *Id.* The ACORD form presented to Kajima at the start of the Greenwood, South Carolina project, however, lacked key information. Unlike the previous certificate, the second form contained "no information regarding the coverage that the policy provided, the deductible amount, or the project to which the

policy applied." *Id.* at 315, 680 S.E.2d at 3. In addition, the "DESCRIPTION OF OPERATIONS/LOCATIONS" block was blank, and the form showed a policy period that had expired at the time of Claimant's injury. *Id.*

The single commissioner found that the employer could not shift liability to the UEF "because the Certificate of Insurance did not indicate that Hunt had coverage in South Carolina."[2] *Id.* at 313, 680 S.E.2d at 2. On appeal, the Supreme Court held that because the form provided at the onset of the new project did not include "information regarding the coverage that the policy provided, the deductible amount, or the project to which the policy applied" it was incomplete. *Id.* at 315, 680 S.E.2d at 3. The Court stated, "In failing to fill out the entire [ACORD] Form, Hunt essentially submitted an incomplete document purporting to show that it had a workers' compensation policy, which Kajima accepted. In our view, accepting an incomplete A[CORD] form does not constitute proper documentation." *Id.* The Court further found that Kajima could not rely on the policy because the effective date on the form had expired at the time the employee was injured, stating "a general contractor may not rely upon a Certificate showing an expired worker's compensation policy to show 'documentation' of the subcontractor's workers' compensation insurance." *Id.* at 316-17, 680 S.E.2d at 4.

The Court's reasoning in *Hopper* is fatal to Respondent's position. There, the Supreme Court held that even an ACORD form issued by an insurance carrier was insufficient because it lacked information necessary to establish coverage. Here, Respondent seeks to satisfy the statute with something far less reliable than the incomplete ACORD form rejected in *Hopper*. The Management Agreement was not issued by an insurance carrier, was not a certificate of insurance,

[2] The full commission agreed, but the circuit court reversed and found no evidence there was coverage only in Georgia. This court reversed the circuit court in *Hopper v. Terry Hunt Construction*, 373 S.C. 475, 646 S.E.2d 162 (Ct. App. 2007).

contained no policy number, identified no insurer, stated no policy period, provided no coverage limits, and did not establish that coverage actually existed. Under *Hopper*, such a document cannot constitute proper documentation as a matter of law.

In this case, The Management Agreement does not meet all the requirements of Regulation 67-415 in that it fails to include any Certificate of Insurance or acceptable documentation of insurance other than Hilton's agreement to procure insurance. In fact, the Management Agreement specifically recites Respondent's requirements under the Act: "If [Respondent] or such other party is the statutory employer of the employees of [Respondent], then [Respondent] or such other party must obtain workers' compensation and employer's liability coverage in satisfaction of the requirements of this Section 4(g)(iii)." Appx. 225. Under Section 4(g)(iii)(4) of the Management Agreement, Respondent specifically agreed that Hilton would "not be required to provide [Respondent] with copies of the applicable policies." *Id.* In fact, Respondent admitted that it was unaware if there was an actual policy at the hearing on the motion to dismiss.

Further, despite the Management Agreement providing that "[u]pon request, either Party shall make to the other a schedule of insurance obtained by such party…listing the policy numbers of insurance obtained, the names of the companies issuing the policies, the brokers or agents used, the names of the parties insured, the amounts of coverage, the expiration date, and the risk covered[,]" Respondent failed to provide the trial court with any information regarding Hilton's procurement of workers' compensation benefits other than the Settlement Agreement and Release between Hilton and Petitioner.

The Settlement Agreement and Release likewise fail to satisfy the Act's documentation procurement requirements. Evidence generated after an accident cannot satisfy Section 42-1-415's requirement that documentation be obtained when the subcontractor was "engaged to perform

work." The statute focuses upon what the higher-tier contractor knew and documented at the time it engaged the subcontractor — not what may later be discovered through litigation or administrative proceedings years afterward.

Allowing a post-injury settlement agreement to satisfy the statute would fundamentally alter the statutory scheme. Nothing in the Settlement Agreement and Release demonstrates what information Respondent possessed at the time Hilton was engaged to perform work, which is the inquiry mandated by Section 42-1-415. Under such a rule, a contractor could ignore the documentation requirements entirely and later attempt to reconstruct proof of coverage after an employee is injured. That result is irreconcilable with *Hardee* and *Hopper*, both of which emphasize contemporaneous verification of coverage.

There is no ACORD form, no Certificate of Insurance, and no documentation from an insurance carrier contained in the Record. The purpose of requiring employers to properly document their subcontractors' insurance is to prevent a general contractor from "turn[ing] a blind eye to information which is readily evident upon a cursory inspection of the [insurance] Certificate." *Hopper*, 383 S.C. at 316, 680 S.E.2d at 4. Respondent's reliance on the Management Agreement is even less reasonable than Kajima's reliance upon the incomplete ACORD form rejected in *Hopper* because Respondent never possessed documentation from an insurance carrier in the first instance.

Additionally, even if Respondent submitted sufficient documentation to the trial court pursuant to the Act (which it did not), the trial court and the Court of Appeals both failed to find that Respondent complied with Section 42-1-415, which provides that such proof must be obtained when the subcontractor is "engaged to perform work." *Hardee*, 673 S.E.2d at 816, 381 S.C. 445.

Here, there is no evidence Respondent secured any documentation after the Management Agreement was signed on October 25, 2013, until Petitioner's Settlement Agreement and Release with Hilton was filed with the Workers' Compensation Commission on June 4, 2021, arising out of Petitioner's August 9, 2019 accident. Appx. 62-68. Even then, Respondent relied only upon a settlement agreement despite retaining the contractual right to obtain actual insurance information from Hilton. Indeed, when asked by the trial court whether it had an insurance policy, Respondent admitted it did not know. Appx. 47 ¶¶ 5-7 ("Now, Counsel is correct, I am not aware of --- at this point, of whether the association is carrying Workers' Compensation insurance.").

This Court has not permitted a higher-tier employer to rely upon a Certificate of Insurance reflecting an expired policy as documentation of workers' compensation insurance and has held that the Act's "language that the 'subcontractor has represented himself ... as having workers' compensation insurance' in conjunction with 'at the time the contractor or subcontractor was engaged to perform work' encompasses a continuous spectrum and includes the complete time frame in which the subcontractor is engaged to perform the work." *Hopper*, 680 S.E.2d at 3, 383 S.C. 310.

Likewise, a higher-tier employer should not be permitted to rely upon an affirmation contained in a management agreement executed six years before an accident to satisfy the Act's documentation requirements. To hold otherwise would permit contractors to ignore the Legislature's requirement that insurance coverage be documented when the subcontractor is engaged and instead rely upon boilerplate contractual language untethered to any proof that coverage actually existed. "To interpret the language in the statute otherwise would allow a general contractor to turn a blind eye to information which is readily evident upon a cursory inspection of the Certificate. Such an interpretation would lead to an absurd result not possibly intended by the

legislature." *Id.*, 680 S.E.2d at 4 (citing *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)).

Section 42-1-415 creates a narrow safe harbor for contractors who verify and document a subcontractor's workers' compensation coverage. The Court of Appeals transformed that safe harbor into a broad exemption by allowing contractors to rely on contractual promises and post-accident evidence rather than contemporaneous proof of coverage. Nothing in the statute permits such a result.

In *Hardee*, this Court held that a contractor could not rely upon a previously obtained Certificate of Insurance and was required to verify coverage when the subcontractor was engaged to perform work on the project at issue. In *Hopper*, this Court held that even an ACORD form issued by an insurance carrier was insufficient where the document was incomplete or failed to establish valid coverage. Both decisions reflect this Court's consistent insistence upon actual, contemporaneous documentation of insurance coverage.

The decision below departs from those principles by permitting Respondent to rely upon a management agreement that merely required Hilton to procure insurance and a workers' compensation settlement agreement executed years after Petitioner's accident. Neither document was issued by an insurance carrier, neither constitutes a certificate of insurance, and neither demonstrates that Respondent obtained proper documentation when Hilton was engaged to perform work. If allowed to stand, the decision below will substantially weaken the statutory and regulatory documentation requirements imposed by Section 42-1-415 and Regulation 67-415.

The issue presented extends far beyond the parties to this case. General contractors, project owners, property managers, hospitality companies, and subcontractors throughout South Carolina routinely rely upon Section 42-1-415 to determine whether workers' compensation liability may

be transferred to the Uninsured Employers' Fund. Clarification from this Court is therefore necessary to ensure uniform application of the statute and to resolve the apparent conflict between the Court of Appeals' decision and this Court's prior decisions in *Hardee* and *Hopper*.

Respondent produced no document that satisfies Section 42-1-415 or Regulation 67-415. The Record contains no ACORD form, no Certificate of Insurance, no carrier verification, no policy information, and no contemporaneous proof that Hilton maintained workers' compensation coverage when it was engaged to perform work. Instead, Respondent relied on a contractual promise to obtain insurance and a settlement agreement executed years after Petitioner's injury. Neither satisfies the statute. Because Respondent failed to establish compliance with Section 42-1-415, it cannot demonstrate that it secured compensation in the manner required by the Act and cannot claim statutory immunity under S.C. Code Ann. § 42-5-40. The Court of Appeals' contrary holding conflicts with *Hardee* and *Hopper* and substantially weakens, if not disintegrates altogether, the documentation requirements imposed by the General Assembly and the Commission. This Court should grant certiorari and reverse.

CONCLUSION

For the reasons set forth herein, Petitioner respectfully requests this Court to grant the Petition for Writ of Certiorari and to review and reverse the Opinion of the Court of Appeals, which affirmed the trial court’s dismissal of Petitioner’s claims, and remand Petitioner’s claims for further proceedings.

Respectfully submitted,

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June 12, 2026

Pawleys Island, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Hopkins Law Firm, LLC, for Petitioner, Terence Sullivan, do hereby certify that I have this date served the foregoing Petition for Writ of Certiorari, dated June 12, 2026, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated May 6, 2022, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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