# Res Judicata and Related Doctrines

***Res Judicata--Claim Preclusion.***

Under res judicata, "a final judgment on the merits bars further claims by parties or their privies based on the same cause of action."[1] Res judicata prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding.[2] Res judicata thus encourages reliance on judicial decisions, bars vexatious litigation, and frees the courts to resolve other disputes.[3]

The elements of Federal claim preclusion are: (1) there must have been a final judgment on the merits; (2) the decision was rendered by a court of competent jurisdiction; (3) the prior action must have involved the same parties or their privies; and (4) the prior action must have involved the same claim.[4]

***Res Judicata--Dischargeability Actions.***

While res judicata will apply to proceedings in bankruptcy court if the elements are proven,[5] the United States Supreme Court has recognized an exception to this general rule in the area of dischargeability actions. In the case of *Brown v. Felsen*,[6] the debtor argued that since a prior state court collection action had not resulted in a finding of fraud, res judicata barred litigation of that issue in the context of a dischargeability action under § 17a(2) and 17a(4) of the Bankruptcy Act (the predecessors to § 523(a)(2) and 523(a)(4)). The court rejected this argument ruling that res judicata is inapplicable to dischargeability actions for the following reasons:

(1) Considerations material to discharge are typically irrelevant to the ordinary collection proceeding. The creditor often simply sues on the instrument which created the debt. Even if an issue similar to those created by § 523 should arise, the state-law concept is likely to differ from that adopted in the federal statute.[7]

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[1] *Brown v. Felsen*, 99 S.Ct. 2205, 2209 (1979) (Tab 1) (citing *Montana v. United States*, 440 U.S. 147, 153, 99 S.Ct. 970, 973, 59 L.Ed.2d 210 (1979)).

[2] *Id.* (citing *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 378, 60 S.Ct. 317, 320, 84 L.Ed. 329 (1940)).

[3] *Id.*

[4] *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235 (11th Cir. 1999). MOORE'S FEDERAL PRACTICE § 131.01, at 131-11 (hereinafter, "Moore's").

[5] *See, e.g., In re Piper Aircraft Corp., Inc.*, 244 F.3d 1289, 1296 (11th Cir. 2001) (Tab 3).

[6] *Brown v. Felsen*, 442 U.S. 127, 99 S.Ct. 2205, 2209 (1979).

[7] *Id.* at 135.

(2) If a state court should expressly rule on § 523 questions, then giving finality to those rulings would undercut Congress' intention to commit § 523 issues to the jurisdiction of the bankruptcy court. Refusing to apply res judicata here would permit the bankruptcy court to make an accurate determination whether respondent in fact committed the deceit, fraud, and malicious conversion that petitioner alleges.

(3) The facts relevant to the dischargeability of a debt are for the first time "squarely in issue" when the bankruptcy is filed.[8]

***Res Judicata--Same Cause of Action.***

In determining whether the causes of action are the same, a court must compare the substance of the actions, not their form.[9] For purposes of res judicata, if the later case arises out of the same "nucleus of operative facts," or is based upon the same factual predicate, as the former action, then the two cases are really the same claim or cause of action.[10] A transactional approach is followed in making this determination. Among the factors to be considered in determining whether the facts are so woven together as to constitute a single claim are their relatedness in time, space, origin, or motivation, and whether, taken together, they form a convenient unit for trial purposes. If there is substantial overlap with respect to the witnesses or proofs in the second action, the second action should ordinarily be precluded.[11]

A court's task is to compare the factual issues explored in the first action with the factual issues to be resolved in the second.[12] The underlying core of facts must be the same in both proceedings.[13] A court "looks to the substance of the actions, not to the form they take, to determine whether the causes of action are the same."[14]

The same approach is taken by Florida courts. As stated in *Hay v. Salisbury*,[15] "[t]he test of identity of causes of action, for the purpose of determining res adjudicata, is the identity of the facts essential to the maintenance of the suits."

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[8] *Id.* at 138.

[9] *Ragsdale v. Rubbermaid, Inc*., 193 F.3d 1235 (11th Cir. 1999) (Tab 2) (citing *Citibank, N.A. v. Data Lease Financial Corp*., 904 F. 2d 1498, 1503 (11th Cir. 1990)) (Tab 4).

[10] *Id.*

[11] *Ragsdale*, 193 F.3d at 1238 (citing RESTATEMENT (SECOND) OF JUDGMENTS § 24(2) cmt. b (1980)).

[12] *In re Piper Aircraft Corporation*, 244 F.3d 1289, 1302 (11th Cir. 2001) (Tab 3).

[13] *Id.* at 1301.

[14] *In re Brose*, 242 B.R. 531, 533 n. 7 (Bankr. M.D. Fla. 1999) (holding that a settlement agreement approved in a prior bankruptcy case of the debtor precluded relitigation of the issues settled therein under the doctrine of res judicata) (Tab 5).

[15] *Hay v. Salisbury*, 109 So. 617 (Fla. 1926) (Tab 6).

***Collateral Estoppel.***

When claim preclusion does not apply to bar an entire claim or set of claims, the doctrine of collateral estoppel, or issue preclusion, may still prevent the relitigation of particular issues that were actually litigated and decided in the prior suit.[16] Collateral estoppel has the two-fold purpose of protecting litigants from the burden of relitigating identical facts and issues with the same party and promoting judicial economy by preventing needless litigation.[17]

The elements of the federal collateral estoppel doctrine are: (1) the issue at stake must be identical to the one involved in the prior litigation; (2) the issue must have been actually litigated in the prior suit; (3) the determination of the issue in the prior litigation must have been a critical and necessary part of the judgment in that action; and (4) the party against whom the earlier decision is asserted must have had a full and fair opportunity to litigate the issue in the earlier proceeding.[18] The court must also find that the burden of persuasion in the later action is not significantly heavier than the burden of persuasion in the initial proceeding.[19]

Under Florida law, the elements of collateral estoppel are: (1) the identical issue has been fully litigated, (2) by the same parties, and (3) a final decision has been rendered by a court of competent jurisdiction.[20]

***Collateral Estoppel and Default Judgments.***

If federal collateral estoppel law is applied, then a pure default judgment is insufficient to have a preclusive effect.[21] However, the "actually litigated" requirement may be satisfied where a default judgment is entered as a sanction against a party who substantially participated in the prior case. As discussed in *Balfour,* where a party has substantially participated in a prior action but engages in attempts to frustrate the effort to bring the action to judgment, it is not an abuse of discretion for a later court to give collateral estoppel effect to the default judgment to prevent further litigation of the issues involved in the prior action. [22] "We note that whether to allow issue preclusion is within the sound discretion of the trial court.[23]

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[16] *I.A. Durbin, Inc. v. Jefferson Nat'l Bank,* 793 F.2d 1541, 1549 (11th Cir. 1986) (Tab 7).

[17] *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 338 (1979).

[18] *I.A. Durbin*, 793 F.2d at 1549.

[19] *Bush v. Balfour Beatty Bahamas, Ltd.*, 62 F.3d 1319, 1322 (11th Cir. 1995) (Tab 8).

[20] *Community Bank of Homestead v. Torcise*, 162 F.3d 1084, 1086 (11th Cir. 1998) (Tab 9) (citing *Essenson v. Polo Club Assocs*., 688 So. 2d 981, 983 (Fla. 2d DCA 1997)).

[21] *Bush v. Balfour Beatty Bahamas, Ltd.*, 62 F.3d at 1323 (Tab 8).

[22] *Id.*

[23] *Id. at* 1325, n. 8 (citing *Parklane Hosiery Co., Inc.*, 439 U.S. 322, 331 (U.S. 1979)).

However, if the prior judgment was rendered by a state court, then the state collateral estoppel law applies with respect to the judgment's preclusive effect.[24] Under Florida law, a "pure default judgment" is sufficient to satisfy the "actually litigated" element of collateral estoppel.[25] In this respect, the law in Florida is clear that "a default judgment conclusively establishes between the parties, so far as subsequent proceedings on a different cause of action are concerned, the truth of all material allegations contained in the complaint in the first action and every fact necessary to uphold the default."[26] Every allegation of the complaint is conclusively established as true by entry of the default judgment.[27]

An argument that is sometimes advanced by parties against whom default judgments have been entered is that they were not served with the state court papers and therefore, collateral estoppel should not be applied to the state court judgment. As pointed out in *Itzler*,[28] if a bankruptcy court were to address this issue, it would be effectively reviewing the correctness of the state court's entry of the default judgment. As discussed below, under the Rooker-Feldman doctrine, a federal court has no jurisdiction or authority to review final judgments of a state court.[29]

***Difference Between Res Judicata and Collateral Estoppel.***

The basic difference between claim preclusion and issue preclusion is that claim preclusion applies to whole claims, whether litigated or not, whereas issue preclusion applies to particular issues that have been contested and resolved.[30] As stated by the Florida Supreme Court in reference to Florida law,

> Res judicata bar[s] a later suit between the same parties upon the same cause of action, the first adjudication being final as to matters that were or could have been presented, while estoppel by judgment [i.e., collateral estoppel] would be applied to prevent a party from re-litigating questions common to two causes of action when those questions were actually decided in the first.[31]

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[24] *In re* Itzler, 247 B.R. 546, 548 (Bankr. S.D. Fla. 2000) (Tab 10) (citing *St. Laurent, II v. Ambrose* (*In re St. Laurent, II*), 991 F.2d 672, 676 (11th Cir. 1993)).

[25] *Itzler*, 247 B.R. at 549.

[26] *Id.* at 550 (citing *Perez v. Rodriguez*, 349 So. 2d 826, 827 (Fla. 1st DCA 1977)).

[27] *Id.* at 554.

[28] *Id.*

[29] *Id.*, citing *Powell v. Powell*, 80 F.3d 464, 466 (11th Cir. 1996).

[30] Moore's § 131.13[2] at 131-25 (Tab 11).

[31] *Avant v. Hammond Jones, Inc*., 79 So. 2d 423, 423-424 (Fla. 1955).

***Collateral Estoppel and Dischargeability Proceedings.***

As discussed above, in the case of *Brown v. Felsen*,[32] the United States Supreme Court ruled that res judicata is inapplicable to dischargeability actions. Importantly, the *Brown* case concerned res judicata only, and not the narrower principle of collateral estoppel. The Court points out that while res judicata forecloses all that which might have been litigated previously, collateral estoppel treats as final only those questions actually and necessarily decided in a prior suit.[33] "If, in the course of adjudicating a state-law question, a state court should determine factual issues using standards identical to those of [§ 523], then collateral estoppel, in the absence of countervailing statutory policy, would bar relitigation of those issues in the bankruptcy court."[34]

***Consent Judgments.***

Under Federal claim preclusion law, consent judgments are considered to be on the merits for purposes of claim preclusion and are entitled to res judicata effect.[35] While a consent judgment ordinarily supports claims preclusion under federal claims preclusion law, it does not typically support issue preclusion.[36]

However, a consent judgment may "in some instances, by virtue of the parties' intent, be given conclusive effect as to the issues involved."[37] However, as noted in *Balbirer v. Austin*,[38] parties often enter into consent judgments for reasons other than a disposition of the issues in the case. In that event, the requirements that the issue have been actually litigated in the prior case or that the issue in the prior litigation have been a critical and necessary part of the judgment in the earlier action are not met. This requires the court to look beyond the judgment "on its face and ... inquire into the intent of the

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[32] *Brown v. Felsen*, 442 U.S. 127, 99 S.Ct. 2205, 2209 (1979) (Tab 1).

[33] *Id.* at 138, fn. 10 (citing *Montana v. United States*, 440 U.S. 147, 153, 99 S.Ct. 970, 973, 59 L.Ed.2d 210 (1979); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n. 5, 99 S.Ct. 645, 649 n. 5, 59 L.Ed.2d 645 (1979); *Cromwell v. County of Sac*, 94 U.S. (4 Otto) 351, 352-353, 24 L.Ed 195 (1877)).

[34] *Id. See also Grogan v. Garner*, 498 U.S. 279, 284, n. 11 (1991) ("collateral estoppel principles do indeed apply in discharge exception proceedings") (Tab 12).

[35] Moore's § 131.30[3][c] at 131-105 (Tab 11) (citing *inter alia Pelletier v. Zweifel*, 921 F.2d 1465, 1501 (11th Cir. 1991) (Tab 13). *See also Richardson v. Alabama State Bd. of Educ.*, 935 F.2d 1240, 1244 (11th Cir. 1991) (applying res judicata to a Title VII consent decree) (Tab 15).

[36] *Citibank, N.A. v. Data Lease Financial Corp*., 904 F.2d 1498,1504 (11th Cir. 1990) (Tab 4); *In re Brose*, 242 B.R. 531, 532 n. 4 (Bankr. M.D. Fla. 1999) ("[C]ollateral estoppel ... does not apply to a settlement agreement because the issues were not actually litigated.") (Tab 5).

[37] *Citibank*, 904 F.2d at 1504 (citing *Kaspar Wire Works, Inc. v. Leco Eng'g and Mach., Inc.*, 575 F.2d 530, 535 (5th Cir. 1978)) (Tab 15). *See Halpern v. First Georgia Bank*, 810 F.2d 1061, 1065 (11th Cir. 1987) (the parties intended that the consent judgment operate as a final adjudication of the factual issues contained therein) (Tab 16).

[38] *Balbirer v. Austin*, 790 F.2d 1524 (11th Cir. 1986) (Tab 17).

parties."[39] "The central inquiry in determining the preclusive effect of a consent decree is the intention of the parties as manifested in the decree or otherwise."[40] Intent may be inferred from the words of the agreement or the record.[41] Issues precluded by consent decrees are limited to those reasonably foreseen at the time of the agreement.[42]

In the case of prior state court judgments, federal courts are required to give preclusive effect to state court judgments whenever the courts of the state in which the judgments were rendered would do so.[43] Accordingly, in determining whether to give collateral estoppel effect to a prior consent judgment, a federal court must review the holdings as set forth in the relevant state court cases.

There are two Florida cases dealing with this issue. The first is the Florida Supreme Court case of *Eastern Shores Sales Co. v. City of North Miami Beach*.[44] In the *Eastern Shores* case, the Florida Supreme Court had before it the issue of whether the doctrine of collateral estoppel (referred to interchangeably by the court with "estoppel by judgment") precluded the City of North Miami Beach from attacking an annexation agreement that it had entered into in 1956 with certain predecessor landowners that precluded the city from taxing their land until buildings had been constructed on the land. The annexation agreement had been approved and ratified by a final judgment. In the later action, the city sought to be relieved from that portion of the 1957 decree that prohibited the City from taxing the undeveloped land.

In deciding the issue, the Supreme Court quoted from its prior decision in *Gordon v. Gordon*,[45] stating, "[i]f the second suit is bottomed upon a different cause of action than that alleged in the prior case estoppel by judgment comes into play and only those matters actually litigated and determined in the initial action are foreclosed not other matters which 'might have been, but were not, litigated or decided.'" The Court noted that the 1957 decree dealt with some issues that were not before the court in the present litigation. However, the 1957 decree did "unequivocally uphold the validity of the agreement between the city and the predecessors of Eastern Shores. This issue can not now be relitigated by these parties."[46] In its ruling the Court specifically rejected the approach taken by the Fourth District Court of Appeals in the case of *Watson v. City of*

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[39] *Id.* at 1528.

[40] *Richardson v. Alabama State Bd. of Educ.*, 935 F.2d 1240, 1145 (11th Cir. 1991) (Tab 14) (quoting *Barber v. Int'l Bhd. of Boilermakers*, 778 F.2d 750, 757 (11th Cir. 1985)) (Tab 18).

[41] *Id.*

[42] *Id.*

[43] *See Pelletier v. Zweifel*, 921 F.2d 1465, 1501 (11th Cir. 1991) (Tab 13) (citing *Allen v. McCurry*, 449 U.S. 90, 96, 101 (1980)).

[44] *Eastern Shores Sales Co. v. City of North Miami Beach*, 363 So. 2d 321 (Fla. 1978) (Tab 19).

[45] *Gordon v. Gordon*, 59 So. 2d 40 (Fla. 1952).

[46] *Eastern Shores*, 363 So. 2d at 323.

*Hallandale*,[47] holding that "[t]he fact that the decree in Watson was by consent did not make it any less conclusive or binding on the parties to the suit."[48] "We therefore hold in the present case that the doctrine of collateral estoppel does apply."[49]

The other Florida case dealing with this issue is that of *Keramati v. Schackow*.[50] In discussing the issue the court starts with the proposition that in order for collateral estoppel to be applicable, the same issue must have been litigated in the first suit.[51] Further, since the first suit ended in a settlement, the court also noted that it was difficult to argue that any issue was litigated in that case.[52] The Fifth District then, rather than citing to *Eastern Shores,* looked to the Eleventh Circuit case of *Balbirer v. Austin,*[53] as authority for the proposition that, at a minimum, an additional affirmative showing that the parties intended a settlement to operate as a final adjudication of another issue is required. "There is no such showing in this record."[54]

The fact that a state court judgment is a consent judgment does not preclude the application of the doctrine of res judicata. Under Florida law, a consent judgment "is entitled to the same preclusive, res judicata effect as any other judgment issued by a Florida court."[55] As stated by the Florida Supreme Court, "While it is true...that a consent judgment is a judicially approved contract, and not a judgment entered after litigation, it is a judgment nonetheless."[56]

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[47] *Watson v. City of Hallandale*, 193 So. 2d 195 (Fla. 4th DCA 1966).

[48] *Eastern Shores*, 363 So. 2d *at* 324 citing *Hay v. Salisbury*, 109 So. 617 (1926) ("A judgment by default or upon confession is, in its nature, just as conclusive on the rights of the parties before the court, as a judgment upon demurrer or verdict.").

[49] *Id.*

[50] *Keramati v. Schackow*, 553 So. 2d 741 (Fla. 5th DCA 1989) (Tab 20).

[51] *Id*. at 744 citing *Trucking Employees of North Jersey Welfare Fund, Inc. v. Romano*, 450 So. 2d 843 (Fla.1984); holding limited by, *Zeidwig v. Ward*, 548 So. 2d 209 (Fla.1989); *Markel v. Dizney*, 534 So. 2d 1205 (Fla. 5th DCA 1988); *City of Tampa v. Lewis*, 488 So. 2d 860 (Fla. 2d DCA), rev. denied, 494 So. 2d 1151 (Fla. 1986).

[52] *Id.* (citing *United States v. Int'l Bldg. Co*., 345 U.S. 502, 73 S. Ct. 807, 97 L. Ed. 1182 (1953)).

[53] *Balbirer v. Austin*, 790 F.2d 1524 (11th Cir.1986).

[54] *Id.*

[55] *Arrieta-Gimenez v. Arrieta-Negron*, 551 So. 2d 1184, 1186 (Fla. 1989).

[56] *Id.*

**§ 1738--*Application of State Preclusion Law.***

The Full Faith and Credit Act[57] provides as follows:

> State and Territorial statutes and judicial proceedings; full faith and credit.
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> The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> **Such** Acts, records and **judicial proceedings** or copies thereof, so authenticated, **shall have the same full faith and credit in every court within the United States** and its Territories and Possessions **as they have by law or usage in the courts of such State**, Territory or Possession **from which they are taken**.[58]

This statute commands that a federal court must accord a state court judgment the same preclusive effect it would be accorded by the rendering state.[59] The Eleventh Circuit in *In re St. Laurent*,[60] has expressly stated that, "[i]f the prior judgment was rendered by a state court, then the collateral estoppel law of the state must be applied to determine the judgment's preclusive effect."[61] Thus the first question a federal court must address in determining whether relitigation is appropriate is whether the claim would be precluded under state preclusion law.[62]

The statute requires all federal courts to give preclusive effect to state court judgments whenever the courts of the state in which the judgments were rendered would do so.[63] If, however, the prior judgment was entered by a federal court, its preclusive effect is determined by applying federal law.[64]

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[57] 28 U.S.C. § 1738.

[58] *Id.* (emphasis added).

[59] *In re Keene*, 135 B.R. 162 (Bankr. S.D. Fla. 1991) (citing *Marrese v. American Acad. of Orthopedic Surgeons*, 470 U.S. 373 (1985)). Moore's § 133.30[1] at 133-20.

[60] *In re St. Laurent*, 991 F.2d 672, 676 (11th Cir. 1993).

[61] *See also In re Itzle*r, 247 B.R. 546, 548 (Bankr. S.D. Fla. 2000).

[62] Moore's § 133.30[2] at 133-22 (citing *Allen v. McCurry*, 449 U.S. 90, 96 (1980)).

***Rooker-Feldman.***

The Rooker-Feldman Doctrine is a judge-made doctrine establishing the principle that the lower federal courts have no jurisdiction to review state court judgments.[65] It derives from two U.S. Supreme Court cases -- *Rooker v. Fidelity Trust* [66] and *District of Columbia Court of Appeals v. Feldman.* [67] The Doctrine is premised on both prudential and statutory grounds. The prudential rationale for the doctrine is the preservation of system consistency. The statutory grounds are: (1) 28 U.S.C. § 1257, which gives the U.S. Supreme Court exclusive federal jurisdiction to review state court judgments, and (2) 28 U.S.C. §§ 1331 and 1334, which define the jurisdiction of the federal district courts as original, not appellate.

In general, claims barred by res judicata are also barred under the Rooker-Feldman doctrine.[68] There are nevertheless differences between the two doctrines. These are:

(1) Some courts hold that Rooker-Feldman does not bar review of claims that could have been raised but were not, unlike claims preclusion. However, claims that are "inextricably intertwined" with the state court claim fall within the doctrine.[69] A federal claim is inextricably intertwined with a state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before.[70]

(2) Rooker-Feldman, unlike claims or issue preclusion, is jurisdictional, not waivable, and can be raised sua sponte by the court. "Because a federal court is powerless to act beyond its statutory grant of subject matter jurisdiction, a court must zealously insure that jurisdiction exists over a case, and should itself raise the question of subject matter jurisdiction at any point in the litigation where a doubt about the jurisdiction arises."[71]

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[63] *Pelletier v. Zweifel*, 921 F.2d 1465, 1501 (11th Cir. 1991) citing *Allen v. McCurry*, 449 U.S. 90, 96, 101 (1980).

[64] *In re Brose*, 242 B.R. 531, 532 n. 2 (Bankr. M.D. Fla. 1999).

[65] Moore's § 133.30[3][a] at 133-23.

[66] *Rooker v. Fid. Trust*, 263 U.S. 413 (1923).

[67] *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

[68] Moore's § 133.30[3][b] at 133-24.

[69] *Siegel v. LePore*, 234 F.3d 1163, 1172 (11th Cir. 2000) (en banc).

[70] *Id.*

[71] *Smith v. GTE Corp*., 236 F.3d 1292, 1299 (11th Cir. 2001).

(3) Rooker-Feldman is based on Federal law, unlike claim or issue preclusion which, in cases involving state court judgments, looks to state law to determine their preclusive effect. *Id.*

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