

No. A23-0519

**STATE OF MINNESOTA
IN SUPREME COURT**

Great Northwest Insurance Company,

Petitioner,

vs.

Hector A. Campbell and Betty L. Campbell,

Respondents.

**BRIEF OF AMICUS CURIAE
UNITED POLICYHOLDERS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

STATEMENT OF INTEREST OF *AMICUS CURIAE*.....1

INTRODUCTION.....2

ANALYSIS.....2

 I. THE DISTRICT COURT AND COURT OF APPEALS CORRECTLY
 INTERPRETED AND APPLIED MINN. STAT.
 §65A.10.....2

 A. The language of Minn.
 Stat. § 65A.10 is unambiguous.....3

 B. The legislative intent of the 1987
 amendment to § 65A.10 is clear
 from the plain language of the
 statute.....3

 C. Minn. Stat. § 65A.10 requires that
 replacement cost insurance policies
 cover more than direct physical loss.....5

 II. PUBLIC POLICY DEMANDS THAT
 INSURANCE POLICIES COVER
 CODE-REQUIRED REPAIRS 9

 A. Insureds reasonably expect insurance
 will cover code-required repairs.....11

 B. Insureds must be allowed to
 recover the replacement cost
 benefits of the Policy.....12

 III. THIS COURT SHOULD
 ADOPT A BUT-FOR TEST.....14

CONCLUSION.....14

CERTIFICATE OF BRIEF LENGTH.....16

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Amaral v. St. Cloud Hosp.</i> , 598 N.W.2d 379 (Minn. 1999).....	4
<i>Am. Fam. Ins. Grp. v. Schroedl</i> , 616 N.W.2d 273 (Minn. 2000).....	4
<i>Colby Lake Fourth Ass’n. v. Hiscox Ins. Co., Inc.</i> , 2021 WL 3611276 (Minn. Ct. App. Aug. 10, 2021).....	13
<i>Grill v. N. Star. Mut. Ins. Co.</i> , No. A13-1012, 2014 WL 274089 (Minn. Ct. App., Jan. 27, 2014).....	3
<i>Hansen v. Robert Half Intern., Inc.</i> , 813 N.W.2d 906 (Minn. 2012).....	3
<i>Hans Hagen Homes v. City of Minnetrista</i> , 728 N.W.2d 536 (Minn. 2007).....	3
<i>Humana, Inc. v. Forsyth</i> , 525 U.S. 299 (1999).....	1
<i>Miller-Wohl Co. v. Comm’r of Labor and Indus.</i> , 694 F.2d 203 (9th Cir. 1982).....	2
<i>Olmanson v. LeSueur County</i> , 693 N.W.2d 876 (Minn. 2005).....	3
<i>St. Matthews Church of God and Christ v. State Farm Fire and Casualty Company</i> , N.W.2d 760 (2022).....	7
<i>State v. Townsend</i> , 941 N.W.2d 108 (Minn. 2020).....	3
STATUTES AND RULES	
Minn. Admin. Code 1300.0030.....	6
Minn. Stat. § 65A.10.....	<i>passim</i>

Minn. Stat. § 645.17.....5

SECONDARY SOURCES

COUCH ON INSURANCE, § 1:9,
Transfer of Risk.....9

Bruce J. Ennis,
Effective Amicus Briefs, 33 CATH U. L. REV. 603 (1984).....2

Homeowner’s Insurance
Can you pay your deductible?
<https://www.bankrate.com/insurance/homeowners-insurance/policyholders-cant-afford-claims/>.....12

Minnesota State Building Codes
Minnesota Department of Labor and Industry
<https://www.dli.mn.gov/business/codes-and-laws/2020-minnesota-state-building-codes>.....6

Minnesota Uniform Conveyancing Blanks,
Form 20.1.1 (2011).....13

Robert L. Stern et al,
Supreme Court Practice (6th ed. 1986).....2

STATEMENT OF INTEREST OF AMICUS CURIAE

United Policyholders respectfully submits this brief as *amicus curiae* in support of Respondents Hector A. Campbell and Betty L. Campbell (the “Campbells”) to assist the Court in interpreting the minimum coverage requirements of Minn. Stat. §65A.10.¹

United Policyholders is a non-profit 501(c)(3) organization who provides information and resources for insurance consumers and policyholders in all 50 states, including Minnesota. United Policyholders’ mission is to educate individuals and businesses about their consumer rights as related to insurance; empowering them to take personal responsibility in the protection of their homes and assets.

United Policyholders leverages its institutional experience to bridge the gap between the sophisticated insurance industry and individual insurance consumers through claim help, financial literacy, and advocacy work as an unbiased third-party resource. United Policyholders does not accept any funding from insurance companies.

United Policyholders advocates for the interests of policyholders through participation as *amicus curiae* in insurance claim and coverage cases throughout the United States. Since its inception in 1991, United Policyholders has filed *amicus curiae* briefs in more than 500 state and federal cases. United Policyholders’ arguments have been favorably cited by the U.S. Supreme Court and state appellate courts. *See, e.g., Humana, Inc. v. Forsyth*, 525 U.S. 299 (1999).

¹ This brief was authored by Smith Jadin Johnson, PLLC in its capacity as attorneys for Amici. Neither Respondent Hector A. nor Betty L. Campbell nor its counsel participated in the drafting of this brief in any way, in whole or in part. Respondent made no monetary contribution toward the preparation or submission of this brief. No person or entity other than *amicus curiae* United Policy Holders, its members, or its counsel made a monetary contribution intended to fund its preparation, contents, or submission.

In the instant matter, United Policyholders seeks to fulfill the “classic role of *amicus curiae* by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration.” *Miller-Wohl Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). As commentators have stressed, an *amicus curia* are often in a superior position to “focus the court’s attention on the broad implications of various possible rulings.” Robert L. Stern et al., *Supreme Court Practice*, 570-71 (6th ed. 1986) (quoting Bruce J. Ennis, *Effective Amicus Briefs*, 33 CATH U. L. REV. 603, 608 (1984)).

INTRODUCTION

Amicus curiae United Policyholders submit this brief to assist the Court in interpreting and applying the minimum coverage requirements afforded by Minn. Stat. § 65A.10. This Court has been asked to determine whether Minn. Stat. § 65A.10 requires that a replacement cost insurance policy include coverage for repairs that are mandatory to comply with the building code after a covered loss.

As discussed more fully below, the statute unambiguously requires such coverage, and the clear legislative intent supports such an interpretation. Additionally, public policy requires that insurance policies cover repairs that only arise out of necessity born from a covered loss. Thus, the Court should adopt a clear test that requires building code coverage where, but for the covered peril, the repair would not have been required.

ANALYSIS

I. THE DISTRICT COURT AND COURT OF APPEALS CORRECTLY INTERPRETED AND APPLIED MINN. STAT. § 65A.10.

A. The language of Minn. Stat. § 65A.10 is unambiguous.

A statute is ambiguous when “the language is subject to more than one reasonable interpretation.” *Hansen v. Robert Half Intern., Inc.*, 813 N.W.2d 906, 915 (Minn. 2012), quoting *Hans Hagen Homes v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007). “When the Legislature’s intent is not clearly discernible from the explicit words of the statute, [the Court] advance[s] to other steps to ascertain the intent of the Legislature.” *Id.* A court need only look to the plain language when the words of a statute are free from all ambiguity; no further interpretation is necessary. See *Olmanson v. LeSueur County*, 693 N.W.2d 876 (Minn. 2005); *State v. Townsend*, 941 N.W.2d 108 (Minn. 2020).

Here, the plain language of the statute is clear. The relevant provision states:

...the insurance must cover the cost of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities...

Minn. Stat. § 65A.10, subd. 1(i). The only reasonable interpretation of this language is that in addition to covering the cost of replacing, rebuilding, or repairing the property, the policy must *also* cover any costs related to adhering to the minimum code requirements of the related work that only arose as a result of that covered loss. This requirement is limited to the code-required repairs associated with the property damaged by the covered loss, and not all code incompliances need correction. *Id.*; see also *Grill v. N. Star. Mut. Ins. Co.*, No. A13-1012, 2014 WL 274089 (Minn. Ct. App., Jan. 27, 2014), *rev. denied*.

B. The legislative intent of the 1987 amendment to § 65A.10 is clear from the plain language of the statute.

Minn. Stat. §65A.10 was enacted in 1967. In a legislative effort for clarification as to statutory intent, the relevant provision was added in 1987. Prior to this Amendment, the Statute simply read:

Nothing contained in sections 65A.08 and 65A.09 shall be construed to preclude insurance against the cost, in excess of actual cash value at the time any loss or damage occurs, of actually repairing, rebuilding or replacing the insured property.

Minn. Stat. § 65A.10 (1967). The following provision was added twenty years later:

Subject to any applicable policy limits, where an insurer offers replacement cost insurance: (i) **the insurance must cover the cost of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities;** and (ii) the insurance coverage may not be conditioned on replacing or rebuilding the damaged property at its original location on the owner's property if the structure must be relocated because of zoning or land use regulations of state or local government. In the case of a partial loss, unless more extensive coverage is otherwise specified in the policy, this coverage applies only to the damaged portion of the property.

Minn. Stat. § 65A.10 (1987) (emphasis added). “A statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000), *internal quotations omitted*; see *Amaral v. St. Cloud Hospital*, 598 N.W.2d 379, 384 (Minn. 1999). “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” *Amaral*, 597 N.W.2d at 384.

The provision added in 1987 makes the legislature’s intent clear. The 1967 version failed to prescribe the benefits afforded under replacement cost insurance. The Minn Stat. §65A.10 of 1987 and today clearly states that replacement cost coverage extends to the

cost of repairs *in accordance with the minimum code*. The only reasonable interpretation of the Statute is that coverage of building-code triggered repairs as related to the covered loss is required under a replacement-cost policy.

Great Northwest’s restrictive interpretation of Minn. Stat. §65A.10 as only applying to “the damaged **portion** of the property” in the case of a partial loss results in a disharmonious tension between subd. (i) and subd. (ii). The plain language of subdivision (i) requires coverage for “the cost of replacing, rebuilding, or repairing **any loss or damaged property**.” To read the subsequent subdivision as a limitation to “any loss or damaged property” is illogical and negates the effect of the whole provision. The Court must presume the legislature did not intend an absurd or unreasonable result. Minn. Stat. § 645.17(1) (2023). It also must presume the Legislature intended to favor the public interest (all policyholders who depend on insurance) over the private (insurance carriers). *Id.* To effectuate the legislature’s intent for full indemnity for covered losses, including those required by building code, subsections (i) and (ii) must be read in harmony.

C. Minn. Stat. § 65A.10 requires that replacement cost insurance policies cover more than direct physical loss.

The Court of Appeals correctly interpreted and applied the relevant statutory provision. The Court required Great Northwest to cover the repair cost bringing the roof to a code compliant condition that was only a necessity because that portion of the property was damaged by the storm. The damaged shingles could not be replaced according to code unless the decking was repaired and they are a part of a single roof assembly. *See* Minn. Admin. R. 1309.0010 adopting the 2018 International Residential Code; Chapter 9 of the

International Residential Code (A roof assembly *includes* the roof deck, substrate or thermal barrier, insulation, vapor retarder and roof covering). Therefore, the repair to the decking was part of the cost necessary to repair the roof assembly.

Replacement cost insurance policies, by definition, provide coverage for repairs resulting from direct physical loss due to a covered peril. Section 65A.10 would be superfluous if it only applied when a discrete building component is damaged—the primary purpose of an insurance policy is to provide such coverage. Said another way, the damaged shingle is always covered as it was here, under the policy’s primary coverage. The Statute necessarily contemplates coverage for the *additional* costs arising from the repair of that direct physical loss beyond just replacing the shingle.

This is likely why the legislature used the word “portion” of the property rather than limiting coverage only to “the discrete building component that was damaged.” Naturally, Minn. Stat. § 65A.10 requires coverage for costs arising from building code issues *in addition* to the primary coverage which policy already provides. When the “but-for” cause of the building code-required repair is a covered loss, Minn. Stat. 65A.10 guarantees the insured will have coverage for those additional costs.

The building code changes every six years in Minnesota, meaning that every home six years or older is susceptible to code-required repairs after a covered loss. *See* <https://www.dli.mn.gov/business/codes-and-laws/overview-minnesota-state-building-code>. The purpose of building codes is to establish minimum requirements to safeguard the public health, safety, and general welfare. Minn. Admin. R. 1300.0030. Recognizing the importance of building code compliance is for the common good, the legislature revised

Minn. Stat. § 65A.10 to ensure that in the event of a covered loss, Minnesota citizens would be guaranteed replacement cost coverage that met the applicable newer codes.

By way of example, an exterior wall in a residential home consists of many layers including a frame foundation, a plywood layer, insulation, a water-resistant barrier, and siding. When a covered loss occurs requiring replacement of siding, if any of these parts are code non-compliant, the other parts are less likely to perform their overall function, which is to resist the elements and keep the occupants safe. Accordingly, when replacing the siding, the other layers must be brought up to code to allow the newly-installed siding to perform its function. These components are parts of the same “**portion** of the property,” the wall. *See* Minn. Stat. § 65A.10. Accordingly, the entire wall must be covered as “the damaged portion of the property” to be repaired in accordance with code requirements. *Id.* As simply stated by the dissent in *St. Matthews Church of God and Christ v. State Farm Fire and Casualty Company*, “a wall is a wall.” 981 N.W.2d 760, 770 (2022).

In order to effectuate the plain language of the statute and the clear intent of the legislature in the 1987 Amendment, insurance coverage must extend to the overall **portion** of the property that was damaged, rather than just the materials that suffered a direct physical loss. The meaning of “the damaged portion of the property” must include more than the directly physically damaged material. The *St. Matthews* dissent acknowledged that the wall exists as a **portion** of the entire insured building structure. *Id.* at 771. To view an isolated component of a roof rather than seeing the roof as a single integrated system that comprises the whole leads to the “infinitely narrow view” that worried the *St. Matthews* dissent. *Id.* at 772. To avoid the slippery slope that narrow interpretation encourages, when

code requires the damaged material be installed pursuant to a specific standard or in a particular manner, insurance must provide coverage for the full code-compliant repair lest policyholders be left in a worse position after a storm than they were before it.

If the Court of Appeals' ruling is overturned, homeowners in Minnesota would suffer. As is the case here, a homeowner whose roof is damaged by a falling tree would only be entitled to coverage for the shingles and would not receive any coverage for the updates to the decking that must be completed in order to pass inspection. Taken to an extreme, coverage would not even be required to cover the nails that affix the shingles or siding to the rest of the wall or roof structure. Shingles are only nailed to the roof to comply with the Minnesota State Building Code. Without the obligation to pay for all "cost[s] of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities," insurers could just pay someone to lay the shingles on the roof affixed with Scotch tape without regard to the code or safety and welfare of the property owner.

Those outcomes are contrary to the basic purposes of indemnity and are certainly contrary to the obvious intent of Minn. Stat. § 65A.10. The Court must presume that the Statute was intended to favor the citizens of Minnesota and the common good over the private interests of insurance companies seeking to reduce costs. Minn. Stat. § 645.17(5) (2021). The *St. Matthews* dissent acknowledged that Minnesota property owners will face unforeseen and unmanageable costs where no lines nor limits are placed on insurers' coverage denials for code upgrades except for individual, discrete, storm-damaged elements. 981 N.W.2d 760, 773 (2022).

If the Court of Appeals' decision is overturned, it will have a dramatic and dire effect for thousands of policyholders who cannot afford additional home repairs which would not otherwise have been necessary absent a covered loss. The Court should establish a bright line rule that building code coverage is triggered when the but-for cause of a building code repair is a covered loss. That benefits policyholders who will have the necessary coverage for all the costs incidental to repairing covered damage. It will benefit insurers to have a bright line rule. It will benefit the courts to remove thousands of disputes over what constitutes a "portion" or "part" of the damage. It has the added benefit of aligning completely with the plain language of the Statute.

II. PUBLIC POLICY DEMANDS THAT INSURANCE POLICIES COVER CODE-REQUIRED REPAIRS.

Insurance is a system designed to provide security and minimize the impact of significant damage by spreading the risk of an individual loss among a large number of policyholders.

As explained by Couch on Insurance, "[i]t is characteristic of insurance that a number of risks are accepted, some of which will involve losses, and that such losses are spread over all the risks in a way that enables the insurer to accept each risk at a slight fraction of the possible liability upon it." § 1:9. Nature of agreement as determining insurance character—Transfer of risk, 1 Couch on Ins. § 1:9. Accordingly, every mortgage company in Minnesota requires homeowners to purchase property insurance, both as protection for the homeowner and to protect the bank's collateral on the mortgage.

Homeowners pay their set premiums and applicable deductibles to insurance companies for the comfort of knowing that *if* a disaster strikes, they will be made whole. This peace of mind is the **qualitative** benefit of insurance, the conceptual “why” behind the entire industry. Policyholders reap the qualitative benefits each day they are covered by insurance but can only derive **quantitative** benefits after suffering a loss. Many insureds will never need know the quantitative benefit of insurance because most insureds will never suffer a significant loss. The quantitative benefit of insurance, the cost of damage suffered, can only be known *after* disaster strikes. Though the odds of suffering catastrophic loss are low, they can never be zero, so insureds contribute to the insurance pool for the qualitative benefit that *if* tragedy strikes, they won’t be made to bear the full cost.

If insurance policies are not required to cover code-required repairs, insureds will suffer an individualized catastrophic loss even after paying their insurance premiums and deductibles, and the insurance policy would not serve its purpose. In countless claims, insureds’ roofs or walls are damaged by storms, fire, or other causes. The shingles and the siding are often the part of these structures that take the brunt of the damage. Upon removing the shingles or the siding, the underlying component parts of the roof or wall may require repair or replacement to meet current code requirements. Specifically, the code requirements for installation of the new shingles or siding may require repairs to the underlying surface so they can be properly affixed and positioned.

If this repair to underlying roof or wall structure is not covered by insurance, homeowners will be forced to pay a significant amount of money to make repairs that were only necessary because they experienced a covered loss. A homeowner is not required to

inspect their home and bring every component up to code when the code changes every six years. However, when damage occurs and repairs are required, they must be completed in accordance with the code applicable at the time of the repairs. Common sense dictates the adoption of the proposed “but-for” standard.

A. Insureds reasonably expect insurance will cover code-required repairs.

Insureds logically expect that when they suffer a loss, they will pay their predetermined deductible and their home will be restored to the condition it is prior to the loss. If insurance does not cover the cost of making repairs in accordance with building code standards, insureds will be left with a significant and unexpected cost that most cannot afford. To pay out of pocket for repairs resulting from a covered loss defies all logical expectations of insureds and nullifies both the qualitative and quantitative benefits of insurance, rendering the policy effectively meaningless.

An even more egregious scenario arises when an insured does not discover the underlying code deficiency until after removing the outer components. Insureds often discover that the internal portions of a wall or roof do not meet code only after they remove the external portions of the wall or roof. This leaves them with an exposed portion of the property that is not weatherproof, and repairs cannot continue until someone pays to restore the internal components to code. This can lead to further damage while the insured finds a way to obtain additional funds, or the property remains in disrepair because the insured cannot afford uninsured repairs that were only made necessary because of a covered event.

Insureds do not anticipate incurring large out of pocket costs beyond their deductible when they experience a covered peril. Most property owners in Minnesota cannot afford

an unexpected bill for thousands of dollars to repair a problem they only had due to a covered loss that they believed they had purchased insurance to guard against. See <https://www.bankrate.com/insurance/homeowners-insurance/policyholders-cant-afford-claims/> (explaining that 57% of homeowners do not have sufficient funds to pay their deductible). No premium-paying policyholder expects to end up worse-off following a covered loss. The Minnesota legislature saw fit to require code coverage for all code-required repairs necessary to restore the damaged property, beyond just the material that is directly physically damaged. Otherwise, the legislature would have written Minn. Stat. § 65A.10 to provide code coverage only “to that material that is damaged” instead of “that **portion** of the property.”

B. Insureds must be allowed to recover the replacement cost benefits of the policy.

Basic property insurance provides for payment of the actual cash value (“ACV”) of the lost or damaged property. However, nearly all policies for residential and commercial buildings in Minnesota provide for replacement cost value (“RCV”) coverage. Insurance companies charge an additional premium to provide RCV coverage to policyholders, and this insurance is required by virtually all mortgage companies with a security interest in real property. The additional 1987 provision specifically addresses replacement cost coverage.

After a claim is made, the insurer will pay the ACV amount of the coverage. The insurer will only issue payment of the RCV portion upon a showing that the insured actually incurred that cost and made the subject repair. Repairs must be completed within

a specified timeframe, otherwise the RCV amount will not be recoverable. Many policies require repairs be completed within two-years of the date of loss, while some provide only 6 months to make repairs. *See e.g. Colby Lake Fourth Ass'n. v. Hiscox Ins. Co., Inc.* 2021 WL 3611276 at *3 (Minn. Ct. App. Aug. 10, 2021) (referencing a requirement that repairs be made within 200 days of the loss in order to receive RCV benefits).

If insurers are not required to pay to bring the other component parts up to code, then the policyholder must pay this additional unexpected expense out of their own pocket to make any repairs. If an insured cannot pay these extra costs, they will not be able to make repairs to the directly damaged property, as building inspectors will not allow non-compliant work to continue. Accordingly, the insured will not have a way to recover the RCV portion of the insurance coverage. The insurance company will substantially benefit because repairs will be impossible and the RCV payment will not become due. This will almost certainly also constitute a breach of any applicable mortgage contract, which includes provisions requiring that the homeowner make necessary repairs following a loss. *See, e.g., Minnesota Uniform Conveyancing Blanks, Form 20.1.1 (2011), Mortgage by Individual(s).* Policyholders who have already suffered a significant loss that they are unable to fully repair will also face foreclosure for breaching their mortgage agreement.

The end result will be that most insureds will not be able to afford to bring the underlying components up to code to collect the RCV benefit that they paid for, leaving many properties with damaged exteriors that are never repaired. In turn, home values will decrease, homeowners will face foreclosure, and sellers will have incentive to conceal

damage when selling the property. The Court must guard against and protect the insureds' ability to claim their replacement cost coverage.

III. THE COURT SHOULD ADOPT A BUT-FOR TEST.

The only way to provide meaning to Minn. Stat. § 65A.10 is to create a clear test that requires building code coverage where, but for the covered peril, the repair would not have been necessary. Such a test would provide necessary coverage when the code-required work is necessary to fully repair the covered peril but would also protect against snowballing into overly broad coverage.

For example, in order to install drywall, the wall support must meet code or there is nothing to install the drywall on. As here, a roof must have stable decking to properly affix the shingles. When an insured is required to make repairs to their property that they would not have been required to make prior to the covered loss, it must be covered.

If the covered peril is the but-for cause of code required work to the property, then the plain language and clear legislative intent of Minn. Stat. § 65A.10 require that it be covered under a replacement cost value policy.

CONCLUSION

For the foregoing reasons, *amicus curiae* United Policyholders respectfully requests that this Court uphold the judgment of the District Court and Court of Appeals and adopt a clear test that requires building code coverage where, but for the covered peril, the repair would not have been required.

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Dated: July 18, 2022

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for *amicus curiae* United Policyholders certifies that this brief complies with the requirements of Minn. R. Civ. App. P. 132.01 in that it is printed in 13-point proportionally spaced typeface, and the length of this brief is 4027 words. This document was prepared using Microsoft Word 360.

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Dated: July 18, 2024

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