CFA CFAnews
May-June 1988
Volume 13, No. 4
ISSN #0732-8281

State Insurance Regulation Called Inadequate

Insurance regulators in most states lack the resources to provide adequate consumer protection and to monitor insurance companies for solvency, according to a new national study on insurance departments. These findings are reinforced by separate studies of insurance regulation in California and Wisconsin.

"Most state insurance departments have inadequate funds, personnel, and technical capabilities to adequately regulate one of the largest industries in the United States," said Esther Peterson, chairperson of the Consumer Insurance Interest Group (CIIG). "At minimum, states should consider allocating at least 10 percent of their insurance premium taxes to these departments," she said.

"A Study of State Insurance Department Operations" was undertaken jointly by CIIG and the National Association of Professional Insurance Agents (PIA National) to evaluate insurance regulation on the state level. CIIG also includes Stephen Brobeck, CFA Executive Director; Bob Hunter, President of the National Insurance Consumer Organization; and Joan Claybrook, President of Public Citizen.

Regulation Lags Behind Changing Industry

Although the quality and effectiveness of state insurance regulation have advanced significantly during the last decade, state regulation has not kept pace with the advances and complexities of insurance companies and their products, according to the study. Key findings include:

- less than six percent of annual insurance premium taxes collected by states is spent on insurance regulation;
- consumer affairs activities are often relegated to clerical personnel or entry-level professionals;
- salaries for consumer affairs staff, actuaries, examiners, and attorneys are well below national scales on average;
- the average number of complaints received by insurance departments totalled 23,555 in 1986;
- one in three departments interviewed has no specific written procedures for handling consumer complaints;
- only half the insurance departments surveyed maintain a ratio of complaints by insurance company; and
- one-fifth of insurance departments do not conduct market conduct examinations.

Additional Funding Essential But Not Sufficient

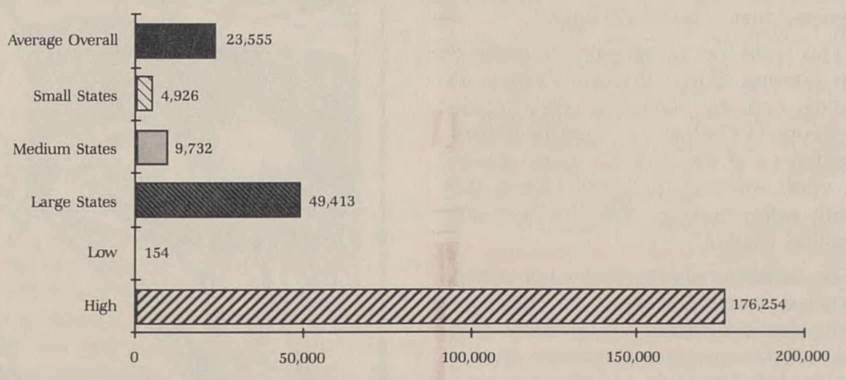
"Additional funding of state insurance departments is essential but won't guarantee insurer solvency and consumer protection," Brobeck said. "Most of these agencies must also upgrade technical systems and more aggressively monitor the finances and conduct of insurance companies," he added.

- state governments should allocate a minimum of 10 percent of the insurance premium taxes they collect to insurance department budgets;
- each insurance department should have at least one consumer affairs professional and one full-time actuary on staff;
- salaries for consumer staff, attorneys, actuaries, and examiners should be competitive with the private sector;
- ongoing examinations of insurance companies should be conducted to ensure financial stability and to uncover abuses in the marketplace;
- computer systems should be upgraded to monitor consumer complaint trends and to track complaints against insurance companies; and
- insurance departments should take the lead in initiating aggressive outreach programs to consumers on insurance education and how to achieve proper redress for valid complaints.

As a followup to the study, CIIG and PIA National plan to take recommendations to selected states and push for adoption.

CIIG is an independent consumer organization initiated last year by Esther Peterson to give consumers a greater voice in the insurance industry. PIA National represents more than 43,000 independent insurance agents. While CIIG and PIA National hold different views on many issues, they have agreed to work together on areas of mutual concern, including enhancing state insurance regulation.

CFA's Stephen Brobeck discusses the CIIG-PIA National Insurance regulation study at an April news conference. Pictured from left to right are: Bob Hunter of NICO, Willis Hargrave, President of PIA National, Brobeck, and Esther Peterson, CIIG Chairperson.



California Department Improvements Insufficient

The findings of the CIIG study are further illustrated by 1987 reports of insurance departments in California and Wisconsin. Last year, Consumers Union updated its 1986 evaluation of the California Department of Insurance, which documented numerous problems.

The 1987 study, entitled "Bark But No Bite," found that, in response to criticisms, the department had made improvements. These included providing auto insurance price comparisons, installing a toll-free complaint number, filing charges against agents selling unnecessary and costly medigap policies, and appointing consumer leaders to its Consumer Advisory Panel.

Yet, the update also concluded that these reforms were far from adequate. The price surveys were based on questionable rate quotes from agents; the hotline number was nearly always busy; and the consumer panel had been discontinued. Moreover, the department has continued to neglect to warn consumers of insurers in danger of insolvency, has failed to enforce minimum benefits required of medigap policies, and has relied too heavily on informal persuasion in correcting insurer abuses.

Wisconsin Agency Fails to Resolve Complaints

In 1987, an investigation of the Wisconsin Office of the Commissioner of Insurance (OCI) by the Wisconsin Public Interest Research Group and the Center for Public Representation found that its consumer complaint-handling was inadequate. OCI did not solicit complaints or even advertise the existence of its complaint section, did not actively seek to resolve these grievances, and provided no complaint hearing or means of appeal. Thus, it is not surprising that the insurance office was much less successful resolving complaints than were comparable state agencies.

In addition, this study concluded that the consumer perspective "rarely gets an adequate airing when insurance rules and legislation are proposed." Most input in OCI decision-making is from the industry. Accordingly, the two consumer groups proposed establishing an insurance ombudsperson to advocate consumer interests before the legislature and OCI, review rate filings, track complaints, and have the authority to file lawsuits under the insurance statutes.

CONSUMER FEDERATION OF AMERICA

Consumers Push for Stronger Banking Bill

An inability to strike the delicate balance required to pass major bank powers legislation left the House Banking Committee still without a majority supported committee print by mid-May.

During this period of debate and discussion, consumer advocates have increased their push for stronger consumer protections in the print, particularly in the area of low income banking services. They also clarified their stand that any bill must include these key protections to win their support.

Early in April, the banking industry began to gain considerable momentum in its efforts to win a strong securities powers package similar to that passed by the Senate in March. Rep. Doug Barnard, Jr. (D-GA) claimed to have a clean majority of the full Banking Committee for such a package.

Recognizing that the existing committee print, which provided for a much narrower expansion of bank powers, would probably be rewritten, consumer advocates have insisted that additional consumer protection legislation—including improved community reinvestment, lifeline banking, and government check cashing—be included with such changes.

Although the banking industry has resisted making any concessions to consumers, members of the committee, including Chairman Fernand St Germain (D-RI), have been willing to reexamine consumer issues.

"We are being told that, if the committee decides to move in favor of far stronger securities powers, consumers will probably get more also," said CFA Legislative Representative Peggy Miller. "Still, nothing is decided, and the committee could move in an unexpected manner."

"Our national bank system, in addition to offering services to meet the needs of the 14 percent of American consumers who want to purchase mutual funds, should meet the needs of all Americans, including those with only a few dollars to spend or save," Miller said. "And this means providing low cost checking accounts and cashing of government checks."

A 1987 Government Accounting Office study on banking fees found that only 15 percent of banks currently offer lifeline accounts. Of these, only six percent were free; the rest had fees which sometimes made them costlier than regular accounts. Furthermore, only three percent of the banks interviewed stated that they planned to offer lifeline accounts in the future.

The same GAO study found that 82 percent of banks charge for services unless an average minimum balance of $400 is maintained. "This minimum balance in itself is prohibitive for most low income consumers," Miller said. "When you add on the costs for bounced checks, stop payments, money orders, check statements, (which have risen 7.6 percent in this last year alone) these accounts are not affordable for many Americans."

CFA and other consumer advocates are working to get language into the committee print that would require all banks to offer at least a small basic banking package that includes the ability to deposit and conduct a set number of transactions for a small set fee. In addition, discriminatory practices—such as restriction of transactions in basic accounts to the use of Automatic Teller Machines, direct deposit requirements, or credit card identification requirements—would be prohibited, and banks would be required to notify consumers of the availability of these accounts.

Furthermore, consumer advocates have taken this new opportunity to improve the government check cashing proposal by making it "more workable" for banks and consumers.

In this effort, CFA has spearheaded an amendment that would allow banks to charge a $2 fee to cash government checks, limit the check size to $5,000, and exclude out-of-state, locally issued checks. In response to bank fears about possible fraud, CFA has also been working to improve the I.D. and check fielding provisions.

Joined in these efforts by the American Association of Retired Persons, CFA has found support for this position from Rep. Don Bonker (D-WA), Chairman of the Select Committee on Aging. Concerned about the ability of senior citizens to cash their Social Security checks and to pay their bills as cheaply as possible, Rep. Bonker has drafted a letter to Rep. St Germain asking him to include a substitute amendment in the new committee print that would improve the language on basic banking and government check cashing and maintain their mandatory provision.

Markup of government check cashing legislation is scheduled for June in the Senate, in time to be included in the conference bill. "This pending markup is helping to encourage even more serious consideration on the House side on the issue," Miller said.

Rep. Joseph Kennedy II (D-MA) has led the fight to improve the Community Reinvestment Act (CRA) reform language to be included in the new committee print.

Rep. Kennedy's proposal, which CFA supports, would establish a Consumer Affairs Division in each of the banking regulatory agencies, create a new rating and exam system which would help to enforce the CRA provisions overall, and tie these CRA provisions to a broad array of bank powers.

Consumer advocates will not know how effective their efforts in these areas have been until the House Banking Committee produces a new committee print, which is not expected to occur until close to markup.

Even then, the battle will be far from over. Once the bill emerges from Banking Committee markup, it will proceed to Energy and Commerce Committee, where Chairman John D. Dingell (D-MI) and subcommittee chairmen James J. Florio (D-NJ) and Edward J. Markey (D-MA) are expected to make their own mark on the banking package.

Final floor action is not expected until September, with a conference probably delayed until immediately before adjournment in early October. At that time, all the major pending banking legislation—including home equity loan protections, credit card disclosure, and truth in savings—are expected to be rolled into one major banking bill.

Bills Call for Warning Labels on Alcohol

Bills have been introduced in both houses of Congress to require health and safety warning labels on all alcoholic beverage containers.

The companion measures, S. 2047 and H.R. 4441, propose five labels to be placed in rotation on beer, wine, and liquor containers covering proven risks related to alcoholic beverages. Specifically, the labels would warn about the dangers to fetuses, about driving after drinking, and about the risks of addiction, hypertension, liver disease, and cancer.

H.R. 4441 has been assigned to the House Energy and Commerce Committee, S. 2047 to the Senate Commerce Committee.

"Since 1977, when Food and Drug Administration Commissioner Donald Kennedy first recommended warning labels on alcoholic beverages, over one million people have died from alcohol-related problems, one-fourth due to drinking and driving," said Pat Taylor, Director of the Alcohol Policies Project for Center for Science in the Public Interest. "The economic costs have been equally staggering—over one trillion dollars," she said.

CSPI and the National Council on Alcoholism are leaders in the broad-based coalition of more than 90 local and national consumer, public health, and citizen organizations supporting passage of the bills. CFA is a member of that coalition.

One indication of just how broad-based support for the bills is can be found in the list of Senate co-sponsors. The bill was originally introduced jointly by Senators Strom Thurmond (R-SC), John Glenn (D-OH), Howard M. Metzenbaum (D-OH), Daniel J. Evans (R-WA), Spark M. Matsunaga (D-HI), Tom Harkin (D-IA), and Orin G. Hatch (R-UT). Since then, Senators Lawton Chiles (D-FL) and Paul Simon (D-IL) have joined as co-sponsors. Rep. John Conyers, Jr. (D-MI) has been joined by 26 co-sponsors for the House bill.

"Despite political differences, all of us agree that, based on any reasonable standard, those who spend $2 billion per year marketing the most abused drug in America, which costs us over $116 billion annually, should provide consumers with factual health information on its adverse consequences," Sen. Thurmond said.

"This issue transcends partisan politics," Rep. Conyers added. "It touches society as a whole. And, after waiting for over a decade for the alcohol industry to heed the recommendations of the FDA, Congress should act upon warning the public about the health, safety and cost risks involved with drinking alcohol."

The legislation faces strong opposition from the powerful alcoholic beverages industry, but supporters are optimistic that this will be the year it passes. Taylor predicted that the bills would either pass by the end of June or die for another year.

Clearly, public support for such a measure is growing, she said, citing a Gallup Poll finding that 79 percent of the American public favors such a law.

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FERC's PURPA Reform Proposals Debated

The Federal Energy Regulatory Commission has begun what many believe will be a thorough restructuring of the electric utilities industry—or at least a thorough debate about restructuring.

The nearly 200 participants in the April conference on Electric Utilities and their Residential Customers were given a taste of that debate when FERC Chairman Martha Hesse outlined the commission's proposals for beginning the process of change and Peter Bradford, Chairman of the New York State Public Utilities Commission, voiced some strongly worded concerns over the direction in which FERC is headed. The conference was jointly sponsored by CFA, American Public Power Association, Edison Electric Institute, and the National Rural Electric Cooperative Association.

Reform, not deregulation, is imperative, Hesse said, because "the electric industry has not been performing efficiently for years. . . PURPA has been a success," she said. "But now, 10 years after enactment, its implementation needs to be updated to reflect what we have learned from the experience and to better integrate PURPA generation with the rest of the electric industry."

FERC has proposed three rules to accomplish that goal:

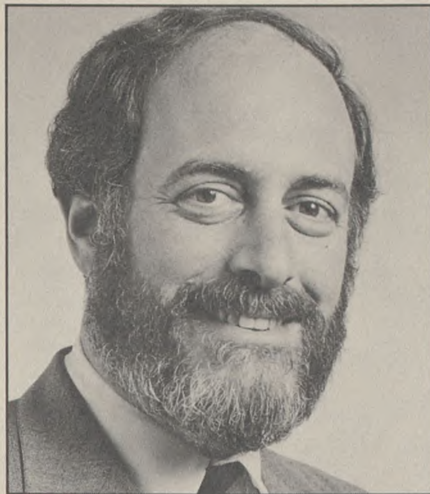
- the first is designed to provide additional guidance to states and non-regulated utilities for determining avoided cost rates administratively;

- the second would clarify the rights of states and non-regulated utilities to use competitive bidding as an alternative means of pricing power from PURPA qualifying facilities (QFs); and

- the third is designed to "streamline" rate and non-rate regulation for certain non-QF independent power producers.

Proposals Will Lower Rates, Hesse Says

Hesse argued that the proposals will lower rates by helping to ensure greater accuracy in setting avoided costs, increasing options open to utilities and states seeking to expand generating capacity, shifting more risks from ratepayers and traditional utility investors to the investors and decision-makers in independent power facilities, and decreasing the bias in PURPA toward technologies "that often are inefficient."



New York PUC Chairman Peter Bradford. . . 'FERC's proposals are misdirected.'

FERC Chairman Martha Hesse. . 'FERC's proposals will save consumers money.'

The proposals also will enhance reliability, she said, by encouraging life-cycle cost comparisons among all types of generating units, leading to greater diversity, and by encouraging expanded participation by the most efficient producers.

In a panel discussion responding to Hesse's remarks, CFA Research Director Mark Cooper said that, while he agrees with Hesse that the consumer would benefit from an "open, fair, all-source, all-capacity" electric industry, he does not agree that the FERC proposals will promote these goals.

There will not be a truly open system until FERC deals with the transmission bottleneck, he said, because "those who control the bottleneck will use it to their advantage." Cooper added that the rules "do not ensure fair competition, because they leave the door open for local distribution companies to get into the bidding process." At the very least, he said, the bidder should not be able to select the winner.

Cooper said that it is also unclear that all sources will have access to the competitive system, citing as an example conservation, which he said should be considered as a supply side source.

Finally, Cooper expressed concern that the rules not be used to preempt state authority to make decisions, particularly about capacity.

Restructuring Will Occur in Court, Cooper Says

Nevertheless, Cooper said, "it is clear FERC is determined to impose the rules," so opponents need to be prepared to challenge their implementation in court.

"The rules won't restructure the electric utilities industry," he said. "Court cases over the next decade will restructure the industry. Only by watching each and every decision, by contesting every decision, will we be able in the long run, no matter who writes the rules, to get to that open access, fair, all-source, all-capacity electric utilities industry."

Paul Fry, Deputy Executive Director of APPA, argued that the rules are unnecessary. "We are quite able to apply the PURPA rules right now without any change in FERC rules," he said. Furthermore, establishing new categories of independent power producers is simply a means of replacing tougher state regulation of these producers with looser regulation by FERC, he said.

On the other hand, David Owens, Vice President for Power Supply Policy at EEI, said he believes the FERC proposals will make "some very important changes which will work toward the long-term benefits of consumers." In particular, he said, the FERC rules would help to eliminate a system in which utilities have to pay for capacity that they do not need, and consumers have to pay more for electricity from cogenerators than they would from facilities utilities would have built themselves.

Owens, however, also voiced a note of caution. There is no current crisis, he said, that calls for major restructuring.

Orange and Rockland Case Debated

Owens also joined Hesse in defending as "pro-consumer" FERC's decision in the Orange and Rockland case, which was the focus of a harsh critique by Bradford. Bradford said the decision was "deceptively arrived at, silly in its substance, and malignant in its implications."

The Orange and Rockland decision will deprive states of the right to give a premium above avoided costs, he said, even when a clear benefit to consumers would be the result. "States do not pay rates above avoided costs for the fun of it. They do so in furtherance of legitimate state objectives, such as the encouragement of trash burners or economic development or reduction in oil dependence or diversity of fuel mix," Bradford said.

FERC's decision has opened the way for utilities to challenge state decisions about amounts to be paid for generation, load management, and conservation before FERC or in the federal courts, he said. "Thus, every party who alleges that a competitor has been uneconomically chosen, every utility that wants to resist third party power production, every third party power producer that does not want to compete with the demand side has overnight been given a new forum, a forum renowned for its slowness and imprecision," he said.

Among the other topics discussed at the conference were low income issues, including energy in public housing; future supply problems; residential conservation; electrical safety, including electro-magnetic fields in the home and nuclear waste disposal; and electricity rate structures.

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CFAnews is published eight times a year. Annual subscription rate is $25 per year.

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Design & Typeset by: Design Consultants, Inc.

CFA Faults Investor Complaint Arbitration

"Investors have increasingly been denied adequate means of redress," CFA Executive Director Stephen Brobeck told the House Telecommunications and Finance Subcommittee at a hearing on the arbitration of broker-dealer disputes.

Today, virtually all broker contracts contain mandatory arbitration clauses denying investors the right to sue. Instead, investors with complaints against brokers can appeal only to arbitration systems controlled by the brokerage industry. This practice was approved by a 1987 U.S. Supreme Court decision.

The specific faults of these systems are numerous and well-publicized, according to Brobeck. Arbitration panels are frequently dominated by individuals with direct or indirect ties to the securities industry. With no rules of evidence, no consistent standards of judgement, and little or no outside oversight of the disposition of individual cases, the outcome of an individual arbitration proceeding is impossible to estimate beforehand.

Also, since punitive damages are rarely awarded, the most an aggrieved investor can hope to recover is all the money lost, yet they rarely do. One study revealed that only 13 percent of those filing claims were awarded as much as 60 percent of claimed losses.

Brobeck recommended that "Congress overturn the Supreme Court's decision by declaring mandatory arbitration contracts illegal." At minimum, it should pass legislation that would make two changes. First, it should prohibit any contractual restriction to broker arbitration. Aggrieved investors should have the option of submitting grievances to the more neutral American Arbitration Association.

Second, the legislation should require that mandatory arbitration clauses be disclosed clearly, simply, and separately. Investors should know what legal rights they may be asked to give up. Then they would have the option of choosing brokers who did not restrict these rights.

Investor complaints against brokers are often serious, sometimes involving millions of dollars. Moreover, they have grown rapidly. Just between 1982 and 1984, grievances filed with the Securities and Exchange Commission rose from 7,500 to 15,000.

Product Safety Protections Advance

Progress was made in April on two key product safety issues. A bill was introduced in the House to require informative labeling on toys, and the all-terrain vehicle consent decree was finalized with some improved language.

Toy Labeling Bill Introduced

Rep. Samuel Gejdenson (D-CT) introduced the "Toy Safety and Child Protection Act" in April to require informative labeling on toys in order to adequately warn parents about potential choking hazards.

CFA and Americans for Democratic Action have endorsed the bill, which would require that any product labeled "not for children under 3" or "ages 3 and older" would have to explain on the label that the product poses a choking hazard.

CFA and ADA praised Rep. Gejdenson's legislation—which follows a decision earlier this year by the Consumer Product Safety Commission to reexamine its small parts standard—as the important next step in reducing tragic deaths and injuries from the ingestion of small parts by small children.

"A more stringent small parts standard must be coupled with informative labeling to assure that dangerous toys are kept out of the hands of small children," said Susan Weiss, CFA Legislative Representative.

A problem arises when parents assume that the age labels refer to educational abilities rather than to safety. "The label has nothing to do with smarts; it has to do with danger," warned Ann Brown, Chairman of ADA's Consumer Affairs Committee.

CFA's Susan Weiss endorses Rep. Gejdenson's (left) toy labeling bill at an April news conference.

ATV Consent Decree Finalized

On April 27, 1988, the U.S. District Court in Washington, D.C. entered the final consent decree between the Department of Justice, on behalf of the Consumer Product Safety Commission, and the ATV industry.

Although provisions for refunds and improved child safety measures sought by consumer groups were not added to the decree, language that would have prevented the CPSC, possibly indefinitely, from pursuing additional administrative relief in the form of refunds, recalls, or other actions was eliminated.

The change came after a hearing April 18 at which Katherine Meyer of Public Citizen Litigation Group—representing CFA, the American Academy of Pediatrics, the American Public Health Association, U.S.PIRG, Public Citizen, and a private individual—presented objections to the terms of the final decree. Following the hearing and subsequent meetings with the parties to the action, the Judge entered the final decree which incorporated several changes.

Specifically, in the original decree CPSC had agreed to forego its Section 15 administrative authority to seek a refund, recall, or other remedy for at least one year. After that time, CPSC could have proceeded only upon the finding of "new and substantial evidence."

At the April 18 hearing, the ATV industry, confirmed by the DOJ, said that "new and substantial evidence" would refer only to an increase in deaths and injuries one year later. If deaths and injuries had remained the same in the future, the CPSC would have been barred from acting.

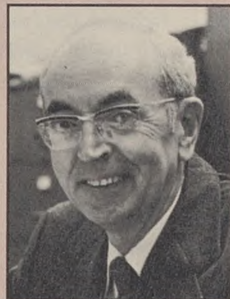
It is this language that was deleted from the decree. Instead, the parties agreed that CPSC cannot commence a Section 15 action until after December, 1990.

Consumer and health groups have called the change a small victory but continue to look to Congress for stronger protections.

18th Annual Awards Dinner

Sen. Robert T. Stafford

Rep. Ted Weiss



Dr. Stewart M. Lee

Erin Moriarty

The Consumer Federation of America will honor distinguished consumer service at its 18th Annual Awards Dinner Thursday, June 9. Sen. Robert T. Stafford (R-VT) and Rep. Ted Weiss (D-NY) will receive the Philip Hart Public Service Awards. The Philip Hart Distinguished Service Award will be presented to Dr. Stewart M. Lee, editor of the American Council on Consumer Interests Newsletter. Erin Moriarty, consumer correspondent for CBS This Morning, will receive the Outstanding Media Service Award. Special recognition will also be given to the late Rep. James J. Howard (D-NJ), who was longtime Chairman of the Public Works Committee.

The awards dinner, CFA's major fundraising event of the year, will be held at the Capital Hilton Hotel in Washington, D.C. A 6 p.m. reception will be followed by a buffet dinner at 6:45 p.m. For more information, contact Erika Landberg, CFA Conference Manager, or Janice Kohn, Conference Assistant, at 1424 16th Street, N.W., Washington, D.C. 20036, (202) 387-6121.

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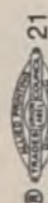

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