



ASBESTOS CLAIMS AND LITIGATION

***UPDATE AND REVIEW: 2012 NEW CASE FILING
SUMMARY AND ANALYSIS***

December 1, 2013

PURPOSE AND SUMMARY OF THIS REPORT

The Asbestos Liability Risk Assessment Group (ALRA Group) provides informed, timely, and sophisticated advice to affected parties, including defendants, potential defendants, the insurance and reinsurance industry, financial institutions, financial analysts, and policymakers, with respect to asbestos liability risk assessment issues. The ALRA Group arose as an outgrowth of a prior group, composed of the same principals, the Asbestos Trust Fund Services Group (ATFS),¹ which was formed to offer advice and counsel concerning proposed, and pending, federal legislation to channel asbestos claims, and pending litigation, into a federally-administered, and privately funded, trust fund for asbestos claims. The ATFS Group issued its first comprehensive Report,² containing a review and analysis of American asbestos litigation from its inception, with an emphasis of the science, medicine, and government regulatory issues which underlay the litigation, and traced the development of the litigation, including significant developments, and defendant strategies, and company bankruptcies, ending with an analysis of the trend in the cases through calendar year 2005, on December 31, 2006. Following that Report, a demand for annual update Reports was created. This Group responded with its annual updates of the asbestos litigation in 2007, 2008, 2009, 2010 and 2011.³

These reports were timely and well received, as parties with an interest in trends in the asbestos litigation have a continuing need to obtain accurate data about recent case filings, and the rapidly-developing changes and trends in the cases. It remains difficult to obtain an accurate reading of the cases filed in the courts throughout the United States, because of the fact that most cases are initiated in the state courts where there are no centralized, national, easily-available databases to review new case filings. While the situation is improving with many courts adapting electronic filing systems, the data remains scattered.

¹ The ATFS changed its name, and formally became the ALRA Group on August 1, 2007.

² **ASBESTOS CLAIMS AND LITIGATION: ISSUES AND STRATEGY; AN ANALYSIS OF THE CASES THROUGH 2005 AGAINST AN HISTORICAL CONTEXT**, © Asbestos Trust Fund services Group, Dec. 1, 2006. The Report may be accessed in the Archive on this site under “News and Updates.”

³ **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2006 NEW CASE FILING SUMMARY AND ANALYSIS**, July 1, 2007, **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2007 NEW CASE FILING SUMMARY AND ANALYSIS**, May 18, 2008, **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2008 NEW CASE FILING SUMMARY AND ANALYSIS**, June 20, 2009, **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2009 NEW CASE FILING SUMMARY AND ANALYSIS**, October 1, 2010; **2010 NEW CASE FILING SUMMARY AND ANALYSIS**, November 1, 2011, **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2011 NEW CASE FILING SUMMARY AND ANALYSIS**, October 15, 2012.

With this, the seventh in a series of annual Reports, the ALRA Group has again successfully filled this gap with a compilation of new case filing data in jurisdictions where its members are active in representing defendants in the litigation. Its prior Reports provided a list of new cases, filed in 2005, 2006, 2007, 2008, 2009, 2010, and 2011 in selected jurisdictions. This is the annual update for 2012. This Report also contains an additional review of trends in asbestos case initiation over the 2005-2012 time period as described more fully below. The ALRA Group is able to present this information as a compilation of its proprietary data collected and published in its earlier Reports. As with the annual data, these summaries are the result of the ALRA Group members' work in defending the asbestos cases in courts around the country.

As over the last several years, there continue to be a number of developments which show that asbestos liability in 2012 has evolved from historical trends. New trends are emerging, and many commentators continue to find themselves behind the curve, relying upon older, historical data. Efforts to scientifically, or statistically, predict asbestos litigation trends have been inconsistent, and often contradictory. However, the best assessment of where the trends in case filings are headed continues to be in actual cases filed. As practicing asbestos defense counsel, the members of the ALRA Group have been able to compile those case data in key, representative jurisdictions as compiled below.

As to these cases filed in 2012, a number of general observations can be made. As has been the case over the last several years, and as was true in 2011, the trend in disease mix from pulmonary cases, to malignancies, and, in particular, malignant mesotheliomas, continues. There seem to be a number of reasons for this, including the fact that there are simply fewer cases of asbestos-related pulmonary disease, particularly asbestosis. Such diseases result from historically high, prolonged exposures to asbestos, something that has generally not occurred over the past few decades, especially since the passage of the OSHA asbestos standard and the continued reduction of its permissible exposure level to asbestos in the workplace.⁴ In addition, an important development has been the large scale abandonment of litigation over non-impaired claimants with asbestos-related pleural disease. This has resulted from the fact that Plaintiffs' firms are no longer employing extensive mass pulmonary screenings, from which most such cases resulted, the adoption by the courts of inactive or non-impaired dockets for such cases, and a general reluctance for Plaintiffs' counsel to take and pursue such cases.⁵ There was an increase, however, in 2012 in non-malignant cases, which we take to be an anomaly. In contrast, there was

⁴ For an in depth treatment of asbestos regulations and their decreasing permissible airborne levels over time, in the occupational workplace, and non-occupational settings, see, Brownson, Robert D., Warner, Kristi K., and Rosenthal, Jessie E., *Current and Historical American Asbestos Regulations, 2012 Update*, www.brownsonballou.com, News and Recent Cases, June 1, 2012.

⁵ See, Cloud, Ian P., *Future of Asbestos Litigation - Plaintiff Perspective, Current Concepts in Asbestos Related Lung Disease*, Fifth Annual Course, Harvard School of Public Health, April 10-11, 2009.

an increase in lung cancer cases, which may be a continuing trend, and which we attribute to the relative scarcity of mesothelioma cases, and certain Plaintiffs' firms moving downstream more aggressively into lung cancer cases.

A development described in our last Reports, which continues, is an increasing portability of mesothelioma cases, and, now, in lung cancer cases. Traditionally, these malignancy-based cases, like other asbestos cases, with some exceptions, have generally been commenced in the jurisdiction where the Plaintiff resided. This resulted from the fact that such cases typically were handled by Plaintiffs' counsel in those jurisdictions. While they often associated with national asbestos counsel, the cases were generally venued locally. More recently, national advertising on television, and through the internet,⁶ has resulted in mesothelioma cases, and lung cancer cases, being handled by referring counsel,⁷ who appear to shop such cases around to the most favorable jurisdiction. Given that venue is often dependent upon where the Defendant did business, and most Defendants did business in many states, this remains a viable option.

There has also been an accelerating trend of the multi-district federal court, the MDL 875 docket in the United States District Court for the Eastern District of Pennsylvania at Philadelphia, disposing of the asbestos cases filed in federal court, and finally resolving its large and long standing docket. Since assuming control of that docket in 2008, Judge Eduardo C. Robreno has resolved some 112,323 cases.⁸

Another important trend is the continued emergence of the bankruptcy trusts based upon chapter 524(g) of the U.S. Bankruptcy Code, resulting from successful chapter 11 Bankruptcy plans from former asbestos product manufacturers, suppliers, and contractors, formerly defendants in the asbestos litigation.⁹ Much of the publically available and reviewed data concerning asbestos claims results from the trusts, with the result that there is less analysis available about the cases in litigation in the courts.¹⁰ For example, 98 asbestos bankruptcies have

⁶ "Mesothelioma Lawyer" is one of the expensive search terms on Google, and with other search engines on the internet. See, Cloud, *The Future of Asbestos Litigation -Plaintiff Perspective*, Note 4.

⁷ See, *The Law Firm That Operates Like an Ad Agency*, AdAge, March 23, 2009; Sokolove, J., *Sokolove Means Success*, Vol. 1, April, 2009.

⁸ Stegmann, M., and McKeekin, J., III, *Specifically Speaking/ Environmental, Making Waves*, Litigation Management, Spring, 2012.

⁹ 11 U.S.C. 524(g), from the Bankruptcy Reform Act of 1994, Pub L. No. 103-394.

¹⁰ See, Biggs, Jenni, Gwilliam, Tina, Lattin, Chris, and Lin, Steve, *Asbestos & Environmental Liabilities*, Towers Watson University, October 18, 2011 (noting that the Manville Trust ended public disclosures of detailed

occurred or are in process, and more are inevitably to come.¹¹ It is this hole which the ALRA Group fills with its series of Reports.

It is against this dynamic background that we present the new case information from selected jurisdictions around the country for 2012, together with our proprietary analysis of the trends now seen in the numbers, types, and locations of new case filings over the past seven years. These data continue to be important because the projection of future asbestos-related disease, most importantly, malignant mesothelioma, and, increasingly, lung cancer, is uncertain. According to one respected commentator, the time asbestos-related mesotheliomas are projected to gradually decline from approximately 2300 per year to 500 per year in another 45 years.¹² However, it is also believed by some that traditional models of future mesothelioma are in fact forecasting incidence rates that are too low.¹³

The following is a summary of asbestos case filings in 2012, together with an analysis of case filings over time in selected jurisdictions.

data after 12/31/2006).

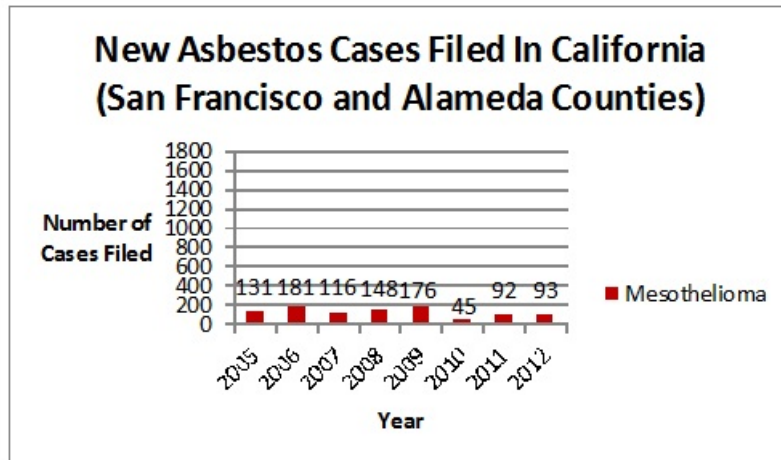
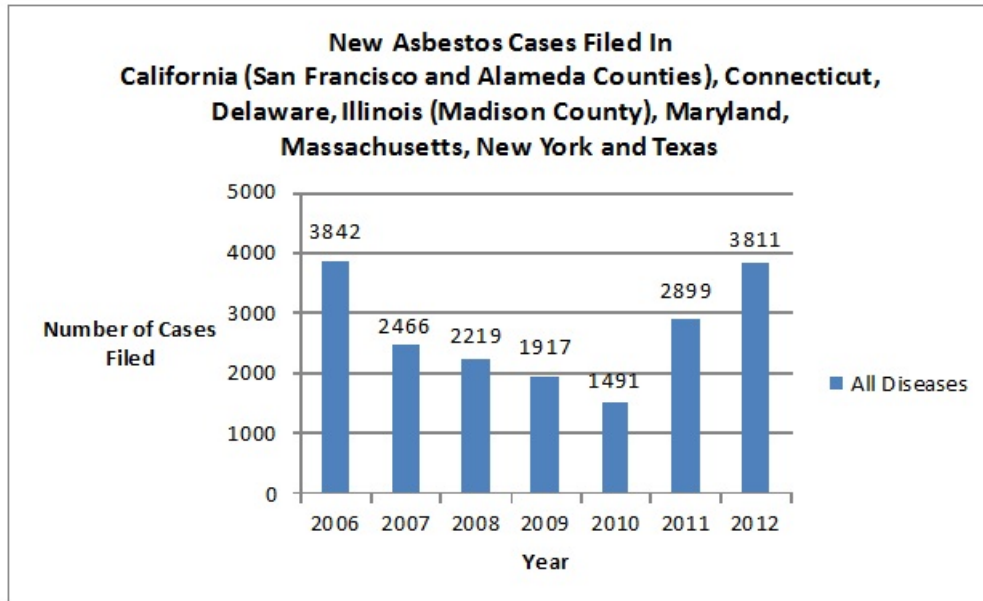
¹¹ The ALRA Group has worked to provide guidance and early warning into the potential for such bankruptcies to unwary parties assuming asbestos liabilities in corporate transactions. See, *Hidden Asbestos Liability in Corporate Transactions and Acquisitions*, ALRA Group, 2012, www.alragroup.com ; **PFIZER PAPER** For a general review of asbestos-related bankruptcies, see also, Dixon, Lloyd, McGovern Geoffrey, and Coombe, Amy, *Asbestos Bankruptcy Trusts An Overview of Trust Structure and Activity With Detailed Reports on the Largest Trusts*, RAND Corporation, Institute For Civil Justice, 2010; See also, Bentley, P., Blabey, D., Jr., *Commentary: Asbestos Estimation in Today's Bankruptcies: The Central Importance of the New Trusts*, Mealey's Litigation Report: Asbestos, vol. 26, No. 24, January 18, 2012.

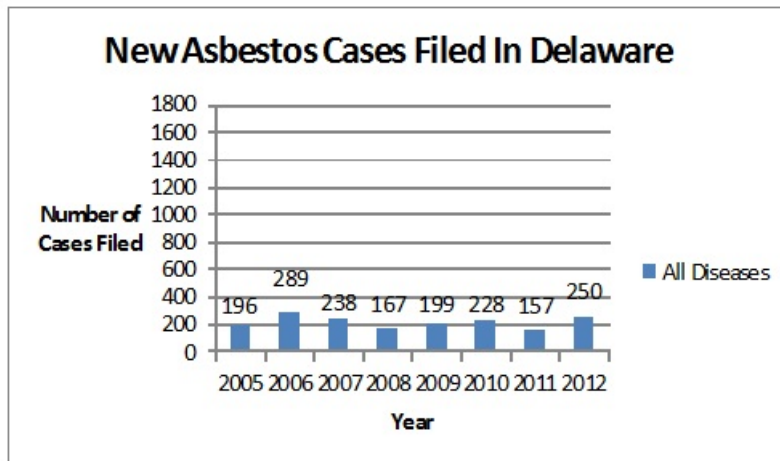
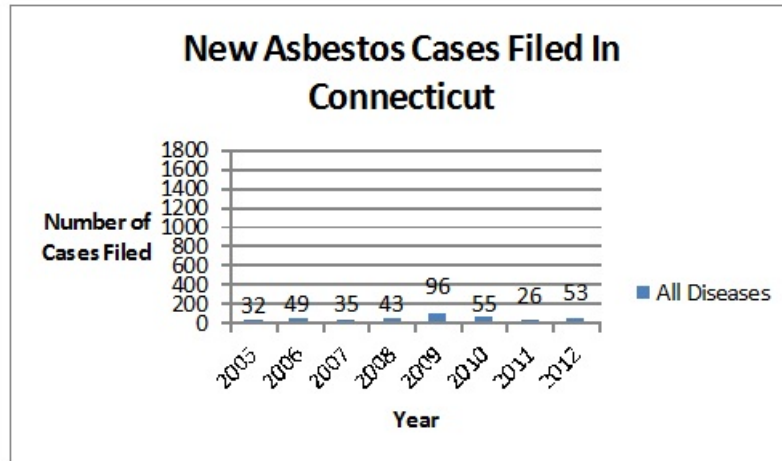
¹² Price, Bertram, *Trends in incidence of mesothelioma and Evaluation of Exposure to Asbestos, The Health Effects of Chrysotile Asbestos; Contribution of Science to Risk-Management Decisions*, The Canadian Mineralogist, Special Publication 5, p. 75, Mineralogical Assoc. of Canada, R.P. Nolan, et al., eds., 2001.

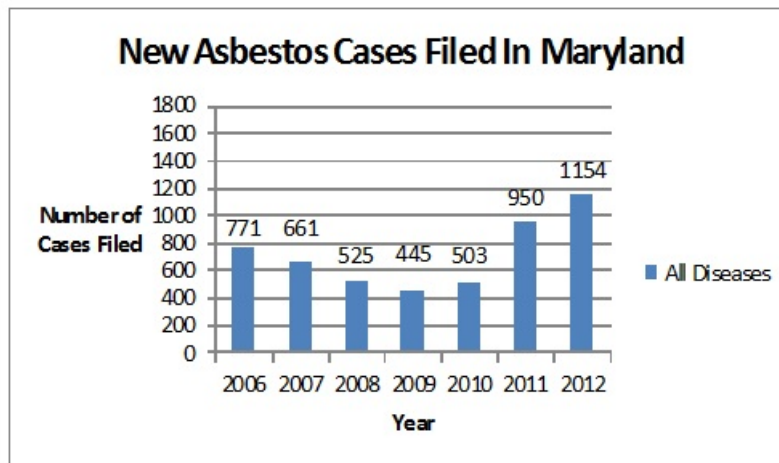
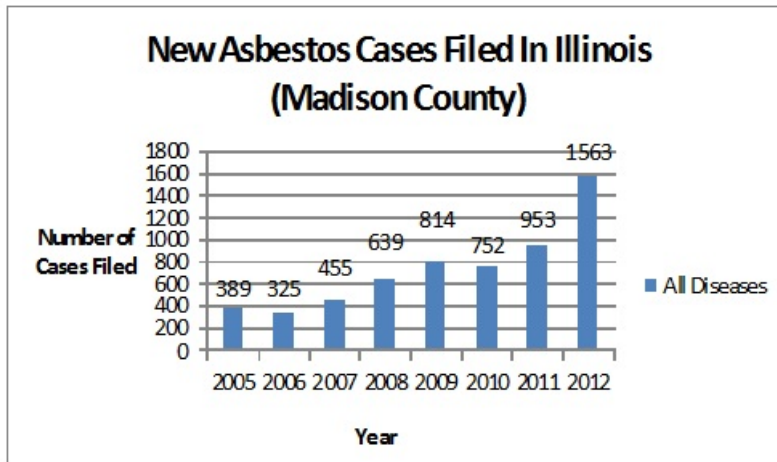
¹³ Horewitz, Jessica, and Sirgo, Jorge, *Forecasting Mesothelioma: Improvements in the Nicholson Methodology are Better Predictors of the Recent Past*, John Liner Review, vol. 23, n. 1, Summer, 2009, Standard Publishing Corp., Boston, MA.

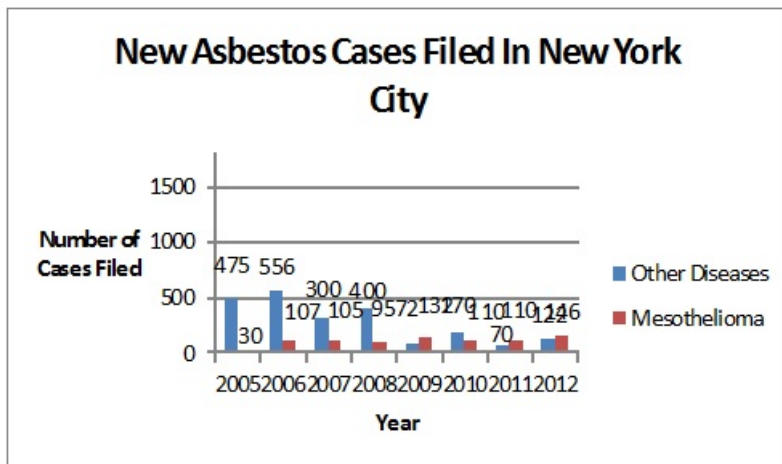
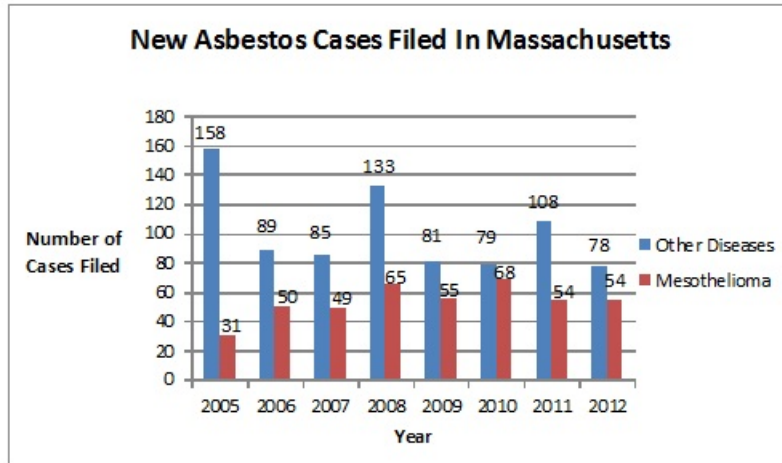
NEW ASBESTOS CASES FILED IN SELECTED JURISDICTIONS - 2012

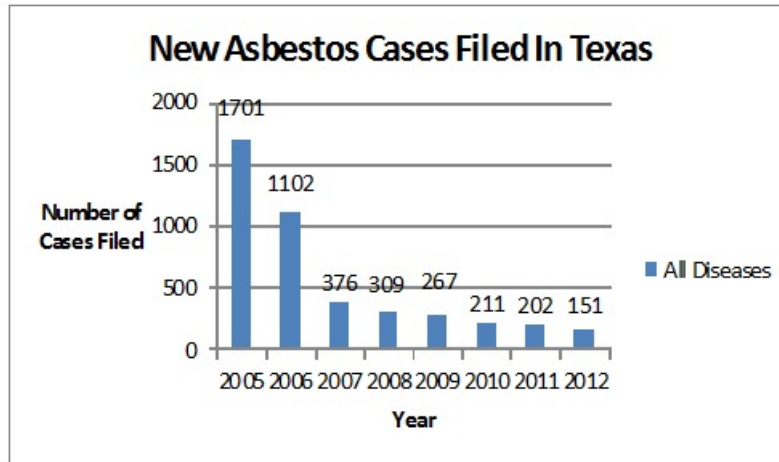
<i>State Courts</i>	<i>2012 - Mesothelioma</i>	<i>2012 - Other Diseases</i>
Alabama	6	5 lung cancer , 18 (all other diseases)
California (San Francisco & Alameda Counties)	24 (San Francisco) 69 (Alameda)	24 lung cancer (78 all other diseases) (San Francisco) 19 lung cancer (26 all other diseases) (Alameda)
California (Los Angeles County)		256 (all diseases) (most mesothelioma, lung cancer)
Connecticut	31	8 lung cancer, 14 (all other diseases)
Delaware		250 (all diseases)
Florida	27	8 lung cancer, 5 (all other diseases)
Georgia	9	1 lung cancer
Illinois (Cook County)		202 (all diseases, including mesothelioma)
Illinois (Madison County)		1,563 (all diseases, including mesothelioma)
Illinois (St. Clair County)		140 (all diseases, including mesothelioma)
Iowa	5	
Maine	1	1 lung cancer
Maryland (Baltimore City Circuit Court)		1,154 (all diseases)
Massachusetts	54	50 lung cancer, 28 (all other diseases)
Michigan	16	71 lung cancer, 270 (all other diseases)
Minnesota	28	3 lung cancer, 50 (all other diseases)
Mississippi	6	6 lung cancer, 15 (all other diseases)
Missouri		140 (all diseases) (Twenty Second Judicial District Circuit Court (City of St. Louis))
New Jersey		123 (all diseases)
New York (New York City)	146	97 lung cancer (25 approx., all other diseases)
North Dakota	4	2 lung cancer, 6 (all other diseases)
Ohio (Cuyahoga County)		116 (all diseases)
Pennsylvania (Philadelphia)		327 (all diseases)
Pennsylvania (Pittsburgh)		66 (all diseases)
Rhode Island	50	8 lung cancer, 2 (all other diseases)
Texas		151 (all diseases)
Washington	73 (approx.)	97 (all diseases)
West Virginia (Kanawha County)		140 (approx., all diseases)
U.S. District. Court., E.D. Pa., MDL 875 (Multi-district Asbestos Litigation) Docket		247 cases (including multi-plaintiff cases) (all diseases)











CONCLUSION

In this Report, the ALRA Group has provided a review of new case filings during 2012 in the asbestos litigation in jurisdictions around the country to summarize how the litigation is progressing in the courts and to present data about the new cases based upon the actual experience of ALRA Group members in the asbestos litigation. This Report following a series of similar annual Reports, supplements the data presented in the ALRA Group's 2006, 2007, 2008, 2009, 2010 and 2011 Update Reports. In addition, it analyzes the trends in case filings in selected jurisdictions over the past seven years.

For further information concerning the matters expressed in this Report, please contact members of the ALRA Group through <http://www.ALRAGroup.com>.

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