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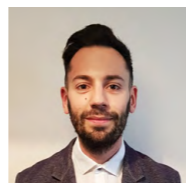
INSURANCE & RISK MANAGEMENT 2020 VIRTUAL ROUND TABLE

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Introduction & Contents

In this roundtable, we examine the global impact of the COVID-19 pandemic on the insurance & risk management sector, as well as discussing the implications of Brexit, climate change and the recent upturn in disputes in insurance and reinsurance. Featured countries are: Canada, Finland, United Kingdom and the United States.



James Drakeford
Editor In Chief



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Meet The Experts



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Q1. Can you summarise the latest market and regulatory developments in your jurisdiction?



Paul Wordley

Wordley: Major development is the FCA test case on business interruption (BI) triggers as a result of COVID-19 ([2020] EWHC 2448 (Comm)). As well as deciding at first instance specific issues relevant to non-damage BI triggers the issue of BI cover for wide area damage has been rejected. On balance the judgement is policyholder friendly and most of the impacted policyholders are UK based SMEs. A fast track appeal to the Supreme Court has been agreed. The outcome will be relevant to all policyholders globally with English law policies. The issue of how insurers have responded to BI claims as a result of COVID-19 has put them in the limelight and there has been significant national press coverage. Some of them haven't looked too smart and have damaged their brands. This is the first time the FCA has used its regulatory powers to clarify what coverage has been provided to insureds.



Darcy Ammerman

Ammerman: Although this is not a new development in the insurance marketplace per se, due to the COVID-19 pandemic, insurers and reinsurers are paying particular attention these days to policy exclusions, especially exclusions for communicable diseases. As claims under insurance policies for losses arising out of the pandemic pour in, and as the courts interpret the wording of these exclusions, insurers will be keeping a close eye on the courts' decisions and will be making wording changes to existing policies as necessary to attempt to limit their exposure to unanticipated/unpriced losses.

On the regulatory side, the Canadian federal insurance regulator, Office of the Superintendent of Financial Institutions (OSFI), has advised the insurance industry that, in the current COVID-19 environment, it will not permit Canadian incorporated insurers to pay dividends, nor will it permit Canadian branches of foreign insurers to repatriate capital, regardless of the robustness of the institutions' solvency ratios. These restrictions will remain in place until further notice.

Certain OSFI guidance – such as recent revisions to Guideline B-3 relating to sound reinsurance practices on the part of ceding companies – has yet to be finalised. Guideline B-3, as originally revised, proposed significant limitations on cessions of reinsurance by primary companies – both qualitatively and quantitatively – and was met with much controversy. It remains to be seen how the proposed restrictions on reinsurance practices will be implemented when the final version of the revised guideline is issued (expected 2021).



Carolyn Snow

Snow: We are just going into the renewal and the market is very difficult; specifically for cyber, professional liability and D&O. While prior pricing has not necessarily supported the market, many of the decisions are so arbitrary and coverage conditions are not reasonable as they take away coverage that is central to an insureds operations.

“Guideline B-3, as originally revised, proposed significant limitations on cessions of reinsurance by primary companies – both qualitatively and quantitatively – and was met with much controversy.”
- Darcy Ammerman -

Q2. Have there been any recent regulatory changes or interesting developments?



Paul Wordley

Wordley: We would say that the interesting development over time has been the hardening market. This started well before COVID-19 emerged and has created a significant amount of pressure on insureds. What insurance is available and on what terms has become an issue. Availability and affordability hasn't been an issue in the market for perhaps 15 years. In some cases insureds are closing down because they can't obtain or can't afford the insurance cover.

Also from a legal perspective, in a hardening market there is more push back on the payment of insurance claims. It is in such times that the clarity of the insurance wording is tested and as a result there are often more coverage disputes. Claims take longer to negotiate and are more likely to litigate.

We have also seen insurers using a request by an insured to amend the terms of cover mid-term or where the insured is seeking the insurer's agreement to add on, for example, property to a property policy, and to take that opportunity to introduce more exclusions, such as COVID-19 exclusions, into a policy mid-term.

We have also noticed a change in the definition of “circumstances”, mainly in liability policies. A move away from the historic definition of “may give rise to a claim” to “likely to give rise to a claim”. This increases the knowledge thresholds that insureds need to have in order to notify circumstances. This causes particular issues when it comes to blanket notifications.

What we are seeing in the hardening market are brokers being requested by insureds to look at non-admitted / foreign insurers, insurers who are not regulated by the FCA (and therefore an insured doesn't have the protection of the FSCS or Financial Ombudsman). There are heightened risks when it comes to receiving payment of claims from a liability insurer where those claims are being paid by an insurer based overseas, say based in France or in the Seychelles. There are increased risks to the insureds and we are being asked by brokers to review their retainer terms in order to tighten up their limitations of liability. Often if brokers are asked to source cover from non-admitted insurers or insurers based abroad, then brokers are seeking to agree with clients that they are acting on an execution only basis and not advisory. Their terms also need to set out all the usual warnings and limitations of liability.



Darcy Ammerman

Ammerman: Policy development work was effectively put on hold as a result of the COVID-19 pandemic. However, in July, 2020, OSFI indicated that it will gradually be restarting its policy development work. OSFI is seeking input from the insurance and other sectors it supervises to ensure that the content and pace of what OSFI does reflects the new economic and operational environment.

In addition to OSFI's work on Guideline B-3 (discussed above), OSFI is re-focusing on a number of policy developments. For instance, OSFI is working on the final version of new Guideline E-25 entitled Internal Model Oversight Framework, a draft of which was first published in June of 2019. The purpose of Guideline E-25 is to articulate OSFI's expectations for an internal model oversight framework (including internal model and data oversight, internal model risk control, roles and responsibilities of certain stakeholders (e.g. internal audit) and documentation). The Guideline is expected to provide a common source of reference for P&C insurers and ultimately reduce the risk resulting from the flexibility currently afforded by the use of internal models.

In terms of new developments, the implementation of International Financial Reporting Standard (IFRS) 17 Insurance Contracts (IFRS 17) has been deferred until annual reporting periods beginning on or after 1 January 2023. In connection therewith, OSFI distributed revised drafts of Guideline A: Life Insurance Capital Adequacy Test (LICAT) (for life insurers), Guideline A: Minimum Capital Test (MCT) (for P&C insurers) and Guideline A: Mortgage Insurer Capital Adequacy Test (MICAT) (for mortgage insurers) directly to insurers and select stakeholders for comment in autumn

Q2. Have there been any recent regulatory changes or interesting developments?



Darcy Ammerman

2020, with the final versions to be published in August 2022. The revised guidelines will be effective as of 2023 to align with the implementation date of IFRS 17.

OSFI also initiated a consultation in September, 2020, with the publication of a discussion paper entitled: *Developing Financial Sector Resilience in a Digital World: Selected Themes in Technology and Related Risks*. The paper seeks stakeholder feedback on a number of issues relating to technology, including operational risk and resilience, the role of prudential regulators in data risk management and the development of core principles to guide future regulatory guidance in relation to cyber security, advanced analytics (including artificial intelligence), and the use of third party services (for example, cloud services).

Q3. How has the COVID-19 pandemic impacted the insurance landscape?



Paul Wordley

Wordley: The obvious one here is the BI test case and the effects on insurers who might have to pay out in circumstances where they are not obtaining a return on their investment income and so are facing potentially significant losses on both fronts.

On the back of insurers' reaction (denying cover to BI claims), we are seeing (and have drafted) quite a few blanket notifications by insurance brokers to their PI insurers. We recently drafted a blanket notification for a broker notifying a potential 5,000 clients in relation to their BI cover which it placed. Absolute COVID-19 exclusions are being included in all broker E&O renewals.

We are also seeing the commodities sector hit significantly with the lockdowns across the world and that alone is generating insurance claims. There are also knock on effects as commodity traders go to the wall as their investment financiers are making insurance claims on Trade Credit policies. As mentioned above, many of these policies are badly drafted and thus we are seeing an increase in insurance coverage disputes. We have a number of these multinational coverage disputes on that the moment.



Darcy Ammerman

Ammerman: In Canada, a number of policyholders have initiated class action lawsuits against their insurers for denial of coverage for BI claims associated with business closures, including those resulting from government-mandated lockdowns. In addition, numerous individual plaintiffs have filed suit against various organisations, such as healthcare related facilities (e.g. long-term care homes), airlines, and vacation and event planning companies for physical injury or financial loss stemming from the pandemic. These suits, if successful, could result in insurance recoveries, depending on the underlying policy wordings. At this point, it is uncertain what the result of these lawsuits will be from the perspective of insurance coverage as substantive rulings have yet to be rendered.

On the flipside, it is unclear whether there will be a strong push on the part of Canadian policyholders for insurers to extend coverage with respect to BI where otherwise excluded. In addition, communicable disease exclusions appear to have been widely adopted in the Canadian marketplace, and insurers will continue to be proactive in seeking these exclusions for property and casualty coverages going forward. Such proactive actions may include unilateral changes by insurers to the policy wordings relating to these exclusions, as courts interpret the existing policy wordings in the context of COVID-19 related coverage claims.



Clive O'Connell

O'Connell: COVID-19 has caused significant losses to the insurance industry although perhaps not as large as initially feared. In the UK, the action brought by the FCA to clarify the meaning of wordings of business interruption cover has gone a long way to resolving what would otherwise have been years of litigation allowing insureds to receive money sooner and insurers to reserve more accurately. The reinsurance issues arising will, however, take longer to resolve. Going forward, the impact of COVID-19 to the economy will have a necessary impact on the insurance industry and it remains to be seen how quickly recovery can occur. Working practices in the insurance industry will change and increased remote working as well as less frequent travel could be consequences.



Carolyn Snow

Snow: We are closely watching the court cases concerning BI and worker's compensation. It seems some jurisdictions are rewriting the coverage in court decisions. Both parties to the contract need certainty around coverage, insureds need to understand coverage and companies have a right to underwrite and charge for the exposure they think they are covering.



Jaava Myllyniemi

Myllyniemi: As lockdown continues in some form or another in most parts of the world, it has offered or forced the insurance industry to rethink its role in society and towards its clients. Insurance companies have succeeded in this in different ways, and it remains to be seen who the winner in the category of empathy will be and therefore gain a bigger market share and more clients in the future. As finance institutions, insurance companies should play a big role in getting societies back to normal – whatever that 'new normal' might look after people start meeting each other again and companies can open their doors without any pandemic sanctions. Now is the perfect time to illustrate why policyholders transferred their risks to carriers and what is the true essence of insurance, and how it can support society and take its part of overall finance meltdown.

Q4. What risk analysis trends have emerged as a result of COVID-19?



Paul Wordley

Wordley: Something already alluded to above is the making of blanket notifications. Across all liability and property product lines we are seeing insurers introduce broad COVID-19 exclusions whenever they get the opportunity to do so.

What we saw, particularly in the weeks leading up to the traditional renewal dates, were an increase in instructions from new clients seeking advice on their insurance policies and advice on making blanket notifications. This was because, on renewal, insurers were including COVID-19 exclusions, and as such insureds wanted to make broad notifications to their liability insurers of circumstances because such circumstances would be excluded under the renewed policy. Blanket notifications are also made more complicated as a result of a shift in wording in the definition of circumstances from "may" to "likely". It is likely that there will be circumstances which fall between two stools (the expiring and renewing covers).

Q4. What risk analysis trends have emerged as a result of COVID-19?



Darcy Ammerman

Ammerman: One practical impact of COVID-19 on the ability of insurers to conduct risk analyses relates to the incidental travel and related restrictions limiting in-person, physical meetings. In the current COVID-19 environment, assessing and/or inspecting the risk is, where practicable, being conducted on a virtual basis. This capability, and other technological advances, will mitigate the impact of these restrictions from an underwriting perspective.

On the claims side, delays in an insurer's ability to adjust losses due to pandemic-related resource restrictions have slowed the claims settlement process (for example, in the case of property losses due to natural catastrophes). As a result, insurers are experiencing lengthier than usual timeframes for quantification of the total impact of these events and, consequently, insurers' ability to analyse the incurred losses has been affected. Technological initiatives that are already trending in loss adjustment (for example, in the case of personal passenger automobile insurance) include computer applications provided by insurers to policyholders that allow for online claims adjustment and settlement.

For many years, insurers have been modelling the potential effects of pandemics. The data eventually collected as a result of COVID-19 will be utilised by the insurance industry to augment and refine existing modelling techniques for predicting and pricing pandemic related losses.



Clive O'Connell

O'Connell: CROs and C-suite executives are now painfully aware of the impact that unexpected events can have on their businesses and will look to find ways to mitigate such risk. Clearly, the possibility of a pandemic is no longer unexpected and neither are risks associated with climate change. Risk managers will find increasing support in their attempts to protect companies against the impacts of these developing risks. Insurers will need to find ways to assess such risks in order to ensure that the demand can be met and the risks properly priced. At the same time, there has to be investigation into ways of protecting businesses against completely unanticipated risks and the solutions to such problems will probably not be found in traditional insurance products.



Jaava Myllyniemi

Myllyniemi: Each one of us is liable to one or many of us. The new normal will stress liabilities among us as a private person or business owners. We are responsible for risk management in homes, offices and factories in many roles and functions. Insurance covers should be practical at dealing with these situations, but they mainly seem to be stuck in the past where employees work on-site. Worker's compensation is one example of this, as remote work is often regarded as being a different class of work it therefore requires extra efforts or risks to be covered.

Indeed, most accidents happen at home, yet the growing phenomena of working without specific space or time is encouraging us to find a new type of liability to be covered. Health insurances have also reached their limitations in many places. Traditional aspects do not apply anymore and insurance covers have vague values. Most important of all, we are responsible for the safety of our families and employees. As restrictions ease, we need to concentrate on safety and wellbeing more than before, and also transfer this risk to carriers who will have an opportunity to restructure the liability cover of all sorts.

Companies are also going to struggle with different kinds of lawsuits and class actions due to the pandemic in the next few years. D&O, legal expenses insurance cover and similar products are being tested around the world with various results. For the insurance industry this will display how well products fit the new normal and give boost to develop more tailor-made or flexible products to satisfy demand. Term and conditions in products could be marketed by emphasising exclusions and safety regulations rather than highlighting what insurance products can cover.

The new normal will bring us all together for a while. Whether it is families or employees, it is time to broaden our view on insurance, cover and risk management. The new normal will need more risk management than before, and it is the insurance industry's time to follow with best risk prevention tools, premiums based on usage, terms and conditions as flexible as possible to avoid misunderstanding, and safety as the primary interest.

Q5. How will it impact general and professional liability? How can businesses best protect themselves?



Paul Wordley

Wordley: There is already a hardening market in the professional liability market. This is only going to get harder.

If businesses are able to obtain what is considered to be good PI insurance terms then you may see insureds seeking to take up 18 months to two year policies as opposed to the traditional 12 month period to reduce the risk of taking on more stringent, restricted cover in another 12 months.

Businesses need to ensure their internal compliance and risk management procedures are enforced regularly because the effect of having a claim is a dramatic increase in premium at renewal. Sometimes the increases in premium can make or break businesses.



Clive O'Connell

O'Connell: The pandemic will impact upon professional liability in a number of ways. The first is straightforward. Policyholders who find that their policies do not protect them may well seek redress from their insurance brokers for alleged failure to provide the cover that the policyholder sought. These disputes will be very factual in nature. The economic downturn will impact on professional liability in the same way that it always does. A fall in property and other prices will expose poor legal work; increased insolvencies, will increase claims against accountants and other business advisors.



Carolyn Snow

Snow: It is too early to know the impact on professional liability but I expect there would be a long range outcome. Insureds can best protect themselves by strict adherence to COVID protocols and heightened awareness in continuing to manage chronic conditions, prompt referrals to specialists and just continue to do what they already do well.

"Insureds can best protect themselves by strict adherence to COVID protocols and heightened awareness in continuing to manage chronic conditions, prompt referrals to specialists and just continue to do what they already do well."

- Carolyn Snow -

Q6. What are the main insurance implications surrounding Brexit?



Paul Wordley

Wordley: From a policyholder's perspective it is contract certainty and clarity in their policies and claims protocols to ensure that the cover they have responds and that they will be paid. If you have business units throughout Europe then the insurance architecture/map might become that bit more complicated depending upon the regulatory changes moving forwards.

From an insurance industry perspective, we would have expected most brokers and insurers to have put in place corporate changes to ensure that they are prepared for Brexit and thus minimise disruption to their business.



Clive O'Connell

O'Connell: Brexit impacts upon the way in which insurers operate and the risks that need to be covered. By and large, UK insurers have prepared for Brexit and have established hubs in the EU. It will be interesting to see to what extent these hubs operate as hubs or start to move operations out of London. With the increase in remote working following the pandemic, it is possible that the importance of a London presence will diminish.

At the same time, the way in which businesses operate must change and with it, their insurance needs will change. Changes to the supply chain and transportation will impact on insurance needs.

Q7. How has the threat of climate change and rising concern for the environment affected risk management?



Paul Wordley

Wordley: Climate change is having a significant impact on the strategies of corporations. However when it comes to the C-Suite level there are increasing personal exposures at board room level and so increased pressure on directors and officers to take into account the company's footprint.

Insurers will expect and impose tighter conditions precedents to cover in order to restrict their liability to failures in risk management.

Certainly if you are in an industry sector that is perceived to be a polluting sector then there is an increasing focus on risk management to ensure that internal, greener, procedures are followed. If not and there is a catastrophic event then not only is their reputational damage but regulatory action against the company and also management. Laws around the world differ and so it is extremely important for a multinational to ensure its risk management procedures are up to date in the various jurisdictions in which it operates.



Darcy Ammerman

Ammerman: The contemporary realities of climate change and rising concern for the environment are driving a transformative shift in aspects of the insurance industry, including insurer underwriting, business models, pricing, and investment decisions.

Climate change and environmental concern requires a comprehensive and integrated risk management practice, involving sharpening quantitative risk modelling around perils impacted by climate change and measuring the potential for liability claims. Insurers are working to identify and assess the risks caused by climate change and fully embed those risks into the development of their products to adequately meet the evolving risk management needs of consumers. This will allow for accuracy and confidence in risk-based pricing, as well as sustainability of terms and coverage limits of expected costs.

As climate-related losses are a key solvency risk, OSFI recommends that insurers transition investment portfolios towards industries that are climate resilient and positioned for low carbon transitions, and to spread out regional exposure.

Ultimately, climate change and environmental concerns present an opportunity for insurers to develop and offer incentives through innovative products such as offering lower insurance premiums for those businesses and homeowners that have taken steps to reduce vulnerability and increase preparedness for climate-related events.

Q8. How can new technology be effectively used to better assess and mitigate risks?



Clive O'Connell

O'Connell: There are considerable opportunities to obtain and analyse data made possible by technology. More data is available and its quality improves constantly. This allows both insureds and insurers to pin-point risk more accurately and for insurance to be bought and priced according to needs.

Q9. What challenges does the industry face due to increasing capital requirements?



Paul Wordley

Wordley: (i) Consolidation of insurers and brokers in circumstances where fewer are able to attain the capital requirements. (ii) Better insurers enhancing their brand by proper handling of claims, for example those insurers who looked favourably on COVID-19 BI claims.



Clive O'Connell

O'Connell: The insurance industry will be competing for capital in an uncertain world. Capital will be expensive.



Carolyn Snow

Snow: There is a concern about decreasing capacity in the markets. Mergers have taken a few big players and some of the major carriers continue to reduce their offerings. Lack of capacity, arbitrary UW decisions and lack of recognition of long term partners are creating a lot of stress for insureds.

Q10. Can you talk us through the risk directly relating to M&A activity?



Clive O'Connell

O'Connell: An economic downturn is likely to both increase M&A activity and give rise to greater risks. In buoyant economic times, problems with M&A transactions are the difference between a good deal and a very good deal. In straightened economic times, those same issues can make an otherwise good deal bad. The consequences are that there is more scope for dispute following M&A activity, particularly with regard to misstated warranties and representations. This in turn leads to a need for good warranty insurance as well as sound D&O cover.



Carolyn Snow

Snow: M&A activity is continuing for most companies and the major risk is the lack of really good due diligence. Having all of the right areas involved, uncovering any issues, addressing them up front and have really clear communication between seller and buyer. More companies are looking at reps & warranties (R&W) policies than in prior years. The R&W underwriting is a really good tool is verifying a thorough due diligence process.

Q11. What are the likely causes of an upturn in disputes in insurance and reinsurance and how can businesses protect themselves?



Paul Wordley

Wordley: From an insurer/reinsurer perspective, the key is certainty and clarity surrounding their policy wordings. In difficult environments wordings are tested. We have a few matters on at the moment where wordings which insurer multimillion dollar risks are simply shocking. Large premiums are being paid for poor wordings.

From a policyholder perspective, it is critical to ensure you comply with conditions and warranties in your policies. If you don't then insurers will use them to deny liabilities for claims. The Insurance Act 2015 helps policyholders in this regard and insurers/reinsurers have to be careful in how they respond to coverage issues in light of the fact that section 13A of the Insurance Act 2015 (brought in by the Enterprise Act) brings in the prospect of extra contractual causes of action against insurers and reinsurers.



Clive O'Connell

O'Connell: Increases in reinsurance disputes have, historically, occurred when the market hardens. Problems are created in soft markets when underwriting and broking discipline is relaxed and become manifest when the market hardens. One aspect of reduced discipline is often seen in wordings with terms and conditions amended in order to obtain advantage in negotiation and insufficient attention paid to the precise wordings that are used. An important step to take, at a time when disputes are more likely, is to conduct a review of wordings, where possible, both inwards and outwards, to ensure that there is no ambiguity and to gain confidence that the wordings reflect the understanding of what has been underwritten. It is still possible to iron out flaws in wordings before claims arise that may put them to the test.

Q12. What key trends do you expect to see over the coming year and in an ideal world what would you like to see implemented or changed?



Darcy Ammerman

Ammerman: The implementation of IFRS 17 will continue to be a major area of focus for many insurers. To ensure that insurers stay on track, OSFI has reinstated the requirement for semi-annual progress reporting with respect to IFRS 17 implementation as of 30 September 2020.

Climate change and natural catastrophes, together with the adoption of new technologies to assist in the prediction and quantification of risks will also continue to be top priorities for insurers in the coming year.

Finally, OSFI will continue to consider cyber resilience and data management practices and will continue to explore how, and to what extent, OSFI will be involved in regulating the associated risks. As OSFI notes in its recent discussion paper, the COVID-19 pandemic has highlighted the need for resilient technology infrastructures and will provide important lessons for industry and regulators alike. It will be interesting to see how developments from OSFI in this area will work together with privacy legislation and guidance from the Privacy Commissioner of Canada.



Clive O'Connell

O'Connell: 2021 will be a year of consolidation after the shock impacts of the pandemic and Brexit. As the year develops, there will be greater understanding of how these two significant disruptors will impact economies generally and the insurance market more specifically. The disruption will give the opportunity or the requirement for companies to look at how they operate and embrace significant change.



Carolyn Snow

Snow: We will continue to see a difficult market and on-going concerns about UWs lack of experience in dealing with hard markets and a lot of opportunistic pricing. If these trends continue, we are going to see insureds look more closely at increased pricing and stricter coverage and ask why they are buying insurance. Expect an increase in captive formation and insureds who already have captives increasing their retentions.



Jaava Myllyniemi

Myllyniemi: Extraordinary times like these offer many opportunities to the insurance industry. Never before has cyber insurance been so easy to market, as remote working has become typical in many professions and threats are more obvious than before. The insurance sector has also been extremely slow to move towards apps and software compared to its peer group of industries, but now the market is exposed to new tools to do business. In the private sector, a shift in consumer trends has seen life insurance premiums go up instead of travel insurance, which is declining.

The trend from owning to using will have a significant impact from the pandemic. Although the word "rent" has been very usual in the news when business around the world have suffered from pandemics, rent will become more typical for private use and for businesses. This should shake the insurance industry from typical CCC-clause in property insurance towards a more open infrastructure of defining cover and putting less importance on the owner instead of usage at the time of insurance claim.

For private persons, car insurance is a good example of this, as generations Y and Z are moving towards alternative modes of transport, and many of us do not need cars so often during working hours anymore. Cars and motor insurances everywhere where possible are now put on hold, temporarily cancelled or parked in garage. Insurance cover including regulatory charges has not yet followed nor eased this trend that will move next to boats. Very seldom we see legislation or products, which are based on use of car rather than car or owner itself. Modern technology and big data should give us a brave base to alter insurance cover according to our habits.

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