

January/February 2006

BARBE AT

Genesee County Bar Association



The Michael Joliat Home
Former Home of Gov. Josiah W. Begole

Bankruptcy Abuse and Prevention
Valuing Professional Practices
Law Office Management

Website, Membership and a Wedding

by Ramona Sain, Executive Director



Ramona Sain

Thanks for the e-mails and telephone calls complimenting the bar on our new webpage. Nearly every day I receive information from our members who have completed their online profile. One of the most helpful items on the website is the inclusion of practice areas where the public can search for members who specialize in a specific area of law. The Membership and Marketing Committee worked many long hours to bring this benefit to our members. If you have not completed or updated your member profile, you are missing an easy opportunity for free advertising.

Also, after completing an exhaustive membership drive, the Membership and Marketing Committee is hard at work developing a new modern logo and establishing relationships with businesses to provide ongoing benefits. Current discounts include:

- Gordon Anthony Florist (10 percent off telephone orders, 20 percent off store visits)
- Wingate Inn, Genesee County (15 percent off standard rate)
- Membership to Security Federal Credit Union
- University of Michigan-Flint Recreation Center
- Health care and other professional resources through Professional Human Capital.

Discussions with local businesses for additional discounts include office supply companies, restaurants and printing companies. If you have suggestions on other possibilities, or represent a business which could provide member discounts, please give committee chairperson Jerry Winegarden or myself a call.

Finally, congratulations to our own Tatilia "Tina" Foster on her re-

cent wedding to Dion Burroughs. I recently searched through a reference book of quotations to find an appropriate and romantic saying for the newlyweds. There were ninety-one quotes on marriage and love, not suitable for my purposes. Apparently, it is time for a new book on quotations, but in the mean time, heartfelt wishes to Dion and Tina for a long, happy, and prosperous marriage.



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Bar Beat Editor
Francine Cullari
cullarilaw@sbcglobal.net

Genesee County Bar Association
315 E. Court St. Flint, Michigan
48502-1611 (810) 232-6012
For editorial information, call (810) 695-7400.

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- ❖ **Publications**—"Private Mediation," *Bar Beat*, July 1995; "Facilitative Mediation," April 1996 and "Michigan Mediation Update," June 2004, *Michigan Lawyers Weekly*

The "Dog Days of Winter"

by H. William Reising, President

Alas, the holidays are behind us. I can only hope that other members of the Association were able to have the enjoyment and family interaction that your President enjoyed over the holiday season. I am truly blessed.

From the Association's standpoint, the annual Holiday Dinner was, once again, a resounding success. For that particular day at least, the people who benefited from that dinner were able to enjoy a holiday treat that would not have otherwise been available to them. For the members of the Association who were involved with the dinner, it was, as always, an uplifting experience. Once again, I thank Brian Barkey for his tireless work in association with the annual Holiday Dinner.

January is the prelude to the "dog days of winter". Although the month of February is the shortest month of the year, it invariably seems like the longest. Fortunately, there is something for the members of the Association

in February that will brighten your outlook.

On February 23, 2006, the Bar Association will be sponsoring an after-work, free reception at our own Flint Institute of Arts located in the Cultural Center. The FIA is a jewel. I am certain it will be a wonderful event that all will enjoy. I encourage as many members as possible of the Association to attend. It is an excellent time to meet other members of the Association, and to network. I look forward to seeing you there.

For any members of the Association who have made a New Year's resolution to improve both their legal skills and their level of civility, it is not too late to submit an application to the Centennial Inn of Court. The Inn continues to meet on the third Tuesday of each month, beginning at 5:30 p.m., at Kruse & Muer in Grand Blanc. If any member has a question concerning the Inn, feel free to contact Kathleen



H. William Reising

Buckley-O'Neill, Linda Pohly or me for further information.

For those of you who have made a New Year's resolution to improve your physical health, keep in mind that the second annual Motion Day Run/Walk will take place in April. It's not too early to consider putting together a plan to allow you to participate in that event. Of course, for those who are so inclined, you can also join the Crim Training Program. Our own Brian Barkey continues to be very involved with that program, and can supply you with any information you might need to allow you to make that "right" decision.

On a more somber note, 2006 will likely be a difficult year for the community given the Delphi situation. As a consequence, our profession may be called upon to get involved in providing even more pro bono services to the community. I can only encourage all of you to give that consideration. If the need arises, please volunteer. If you cannot volunteer, please contribute to the State Bar Foundation Access to Justice Fund.

I am looking forward to seeing as many of you as possible on February 23rd. I bid you adieu.

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Congratulations

Albion College granted its 2005 Distinguished Alumni Award to Hon. Duncan Beagle, class of 1970. The award recognizes alumni for genuine leadership and dedicated service to others. To read about Judge Beagle's achievements, see "Citizen Lawyer: Hon. Duncan Beagle," *Michigan Bar Journal*, Jan. 2005, p. 52.

Flint's Underground Railroad

by Alejandro Sanchez¹

The Underground Railroad has served as an integral part of our nation's history, existing for almost eighty years, ending around 1863 with the passage of the Emancipation Proclamation. The railroad served as a secret society of both white Americans and free slave African Americans that secured a safe route for newly escaped southern slaves to reach freedom. Although a cornerstone of this nation's history, the railroad is relatively unknown, as its story has remained largely untold in the century and a half since the railroad's dissolution. Our very own community of Flint and its surrounds, and more generally, Michigan, functioned as an integral piece of the metaphorical railroad.

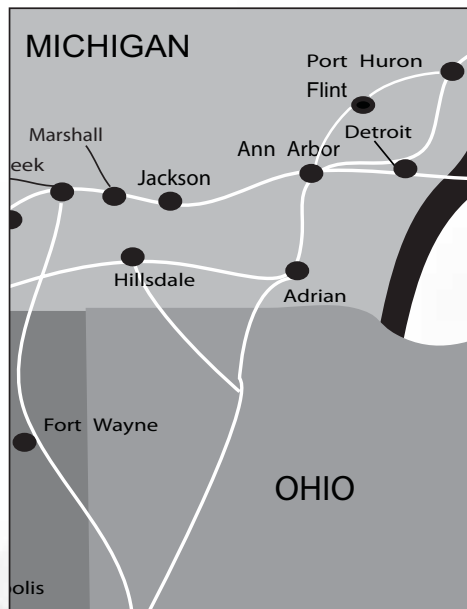
The Underground Railroad functioned as a highly sophisticated and procedurally stratified organization. From Free Soil Party members - freed African Americans and sympathetic white Americans - who provided food, clothing and shelter, to female anti-slavery societies that fronted as sewing circles to raise money and provide clothing, the railroad existed clandestinely throughout the United States. The organizations aligned themselves to direct recently escaped slaves northward, away from all reaches of the dreaded slave hunters.

One of the main "terminals" for escape routes into Canada was Detroit since the Detroit River was narrowest between Detroit and Amerherstburg, Canada. New routes were constantly sought because slave hunters were keen on ambushing common Underground Railroad passageways. What is now Interstate 75 was once known as Alternate Route 6, a leg of the Underground Railroad. A former Native American installation, the Old Saginaw Trail, was used to redirect slaves from Detroit to Port Huron via Flint. Grand Traverse was used by escaped slaves to ford the Flint River at its lowest depth, which subsequently became the Kearsley Street crossing of Grand Traverse. Many African Americans chose to remain in the Flint area, or use the route through the northernmost points of Michigan. Those who

stayed behind would almost inevitably become members of the railroad, helping the next group of slaves find safe passage.

The Underground Railroad was able to flourish in Flint and its surrounding area through the efforts of many locals. One was Josiah Begole, who purportedly used his home on the southwest corner of Beach and Court Streets, as a railroad "station". Although there is no formal documentation of the station, oral history has repeatedly mentioned the site. Begole later became governor of Michigan. The home is now located on Westwood Parkway, and owned by Michael Joliat. The Beecher family of Flint, relatives of the author of Uncle Tom's Cabin, were noted abolitionists in their own right. Beecher Road and the Beecher school district were named for the family. Of all of the traffic through states that border Canada, Michigan saw more than three-fourths of the passengers, somewhere in the amount of twenty and thirty thousand slaves. It is estimated that nearly five thousand came through the leg of the journey that passed through Flint, through areas that we pass everyday, if not live in.

There is limited knowledge of precisely what comprised the Underground Railroad, since many of the records of travelers, helpers and locations were destroyed by those who kept them, to protect those involved. With what knowledge we do have, however, we know Flint was an important part of the railroad that bought so many their justly deserved freedom at last.



Routes of the Underground Railroad

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¹Adapted from Williams, Kathryn, *The Stop: The Underground Railroad in Flint, Michigan* (Flint, Michigan: The Museum of Afrikan American History-Flint, 1999, and telephone interview with Ms. Williams.

Alejandro Sanchez is a law student at MSUCL.

Map courtesy of The Mitten a publication of Michigan History magazine Spring 2001

Bankruptcy Abuse and Prevention, Consumer Protection Act of 2005: Part I

by Barbara Foley

On April 20, 2005, President Bush signed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)¹, revising major sections of the Bankruptcy Code². The wholesale changes of BAPCPA are worth noting for the general practitioner. The legislation changes, among other things, attorney-client relationships³, priority payments on child support, alimony, and other divorce and personal family obligations⁴; the method for determining who is eligible for filing chapter 7⁵; and rights of creditors⁶. This and later articles for Bar Beat will review the pertinent sections and discuss the practical applications of the changes affecting bankruptcy and non-bankruptcy practitioners.

Is You Is Or Is You Ain't My Debt Relief Agency?

Once only a catchy title for bankruptcy law firms, a "debt relief agency" (DRA) is now codified⁸. A DRA is defined at 11 USC 101 (12A) as "any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110..." The section excludes employees of the DRA, non-profit organizations, creditors assisting a person to restructure a debt, depository institutions and authors/sellers of copyrighted works.

Bankruptcy assistance⁹ is any goods or services sold or otherwise

provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation or filing or attendance at a creditors meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.

An assisted person (AP)¹⁰ is "any person whose debts consists primarily of consumer debts and the value of whose non-exempt property is less than \$150,000."

To summarize, an entity providing bankruptcy assistance to an assisted person becomes a DRA, regardless of the specialty the attorney claims to be practicing and of how tangential the

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bankruptcy advice. A DRA has duties¹¹ which can be seen as the Boy Scout rules: that is, do what you promised to do, don't advise the debtor to do anything the debtor shouldn't do (particularly incur more debt in contemplation of filing bankruptcy), and comply with the requirements of the DRA provisions. Penalties if the DRA fails to comply with certain sections include liability to the assisted person for fees charged for the bankruptcy assistance and reasonable fees and costs¹².

A DRA has notice, contract and advertising duties, including:

1. Providing the required written notice explaining bankruptcy;
2. Providing a notice, within three days of first meeting, advising all debtor information. It must be complete, accurate and truthful, all assets and liabilities must be reported, all current month income must be stated and further explain that an audit by the Trustee is possible after the case is closed. The code outlines the specific written notice to clients required of the DRA.
3. Executing a written contract with the AP within five days after providing bankruptcy assistance services;
4. Providing a copy of the contract to the AP; and
5. Clearly and conspicuously disclosing the DRA's status as a DRA in any advertisement including specific prescribed language¹³.

To determine if code requirements apply to any practicing attorney, the attorney needs to evaluate the nature of the advice the attorney gives. Certainly any attorney representing individuals attempting to resolve consumer debt problems must follow the DRA rules. To the extent that the attorney's staff is acting at the direction of that attorney, the staff of the attorney is not independently subject to the rules for DRAs. Actions by the staff outside of the direction of the attorney¹⁴, however, may be classified as bankruptcy advice to the debtor, triggering the DRA requirements for the

employee. Therefore, the suggested course of action for bankruptcy practitioners is to carefully script the allowable areas of discussion between the attorney staff and the clients to avoid possible claims of independent advice.

Consideration also must be given to the status of non-bankruptcy practitioners who provide advice to clients in bankruptcy matters. For example, in a divorce context where the sensible solution to the parties' multiple legal problems may include bankruptcy, does providing that option to the client thrust upon the attorney the mantle of a DRA¹⁵? A strict reading of BAPCPA would indicate this general practitioner does become a DRA. The practical solution to this matter would be a referral of the client to a competent bankruptcy practitioner while refraining from any suggestion of bankruptcy.

In summary, the legislatively created entity DRA requires certain additional responsibilities for the bankruptcy attorney. However, the non-bankruptcy practitioner may also have the same responsibilities if client contact is seen as providing information, advice, or counsel in a case or proceeding in bankruptcy.

Barbara Foley is the GCBA Bankruptcy Committee chairperson.

Footnotes

¹ Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 Public Law 109-8 (hereinafter BAPCPA)

² 11 USC 101 et. Seq. (hereinafter The Code)

³ 11 USC 526, 527, 528 and 11 USC 101(12A)

⁴ 11 USC 101 (14A) and 11 USC 507

⁵ 11 USC 707(b)

⁶ 11 USC 362 regarding imposition of the automatic stay and landlord and tenants rights.

⁷ With apologies to Billy Austin and Louis Jordan as recorded by Louis Jordan, 1944 "Is You is or is You Ain't my Baby?"

⁸ 11 USC 101 (4A)

⁹ The term attorney is still defined at 11 USC 101(4) as "attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law."

¹⁰ 11 USC 101(3)

¹¹ 11 USC 526, 527 and 528.

¹² Section 521 is a catalog of debtor responsibilities. The consequence for the negligent or willful failure of completion by the DRA is now a basis for liability against the DRA by the AP.

¹³ The language as required by 11 USC 528 is "We are a debt relief agency. We help people file for bankruptcy relief under the bankruptcy code."

¹⁴ If outside the directions from an attorney, perhaps a statement such as: "Chapter 7 is a complete discharge bankruptcy while chapter 13 is a repayment bankruptcy. It looks like you might need a chapter 13."

¹⁵ But see: Order Re: Attorneys at Law and Debt Relief Agencies (posted October 17, 2005, Bankruptcy) APPEALED (on 10-27-2005, see Misc Case 05-MP-00400 (Lamar W. Davis, Jr., Chief United States Bankruptcy Judge) for a discussion of the possibility that attorneys are not DRA's. website address <http://www.gasb.uscourts.gov>

In Memoriam

GCBA members who have passed away recently:

Jonathon Holt
Ivor Jones

Edwin Rabin

Future issues of *Bar Beat* will feature deceased members.

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Valuing Professional Practices Differs from Valuing other Businesses

by Norman K. Baczkiewicz, CPA, CVA, DABFA



Norman K. Baczkiewicz

Professional practices are primarily service businesses and do not usually offer a tangible product. Thus, their primary assets revolve around people. This also means that their most valuable assets are intangible in nature. In addition, unlike other service businesses, professional practices provide specialized services that require the owners to have specialized training and licenses. The following are some of the issues that make valuing a professional practice a unique engagement:

Professional Licenses

Most professional practitioners have one or more licenses to practice granted by some licensing authority. Professional practices usually can be sold only to similarly licensed practitioners,

and when a practitioner sells out or brings in a new associate, no professional license is being transferred. Therefore, no value for the professional license is reflected in the transaction. However, in divorce courts the value of an individual professional license may be an issue.

Reliance on the Professional

More than most other types of businesses, the value of a professional practice depends on the skills, reputation, and efforts of the individual practitioner. Therefore, a portion of the total value is due to the personal reputation or skill of the owner and may not be easily transferable to a buyer. This is known as professional goodwill and unless it can be transferred, profes-

sional goodwill has no value to a buyer. Practice goodwill, on the other hand, results from the practice's successful operation and organization and is a component of the professional practice's valuation estimates.

Nature of Services Performed

The nature of the professional services performed is an important consideration in valuing professional practices. This is particularly the case in the medical area, where certain specialties are more unique than others. When the success of the practice depends on the talents of a specific individual,



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the practice is more difficult to sell. A specialized practice tends to rely on referrals from other professionals who base their referrals on the reputation of the specialist. Therefore, another professional cannot merely take over the specialist's practice and expect the referrals to continue uninterrupted.

Nature of the Client Base

More than in other kinds of businesses, the nature of the client base tends to differentiate the value of one professional practice from another. Thus, an analysis of the client sources and the practice's retention experience is an integral step in the valuation process.

Typical Accounting Policies

Most professional practices keep their books on a cash basis. Thus, for comparison purposes, since most industry databases are on the accrual method, this will require adjustments to be posted to the practice's accounting information to convert it to the accrual basis for valuation purposes. In addition, it is typical to find transactions such as leases and compensation recorded on a non-arm's length basis. These may also require normalized adjustments for accurate projection and comparison purposes.

Limited Pool of Buyers

Because most professional practices require some kind of specialized training or license, the number of potential buyers is limited to those individuals who have similar training and licensing. This serves to limit the number of potential buyers and also means that there may be a ceiling on the amount that may be paid for a practice.

Intangibles Determens Value

The values of professional practices generally are much more dependent on goodwill and other intangible assets than most non-service businesses. These elements of value might disappear altogether under the premise of liquidation or going out of business. Therefore, the methods used to

value professional practices are those appropriate to a going concern premise of value (continuing operation) as opposed to a liquidation premise of value.

The Valuator's Experience

Finally, because of the uniqueness of professional practices, the valuator selected to provide valuation services should have experience in valuing professional practices.

When it is time to do a business valuation for your client's company, consider a Certified Public Accountant who holds a Certified Valuation Analyst (CVA) or Accredited in Business Valuation (ABV) designation.

A CVA is certified by the National Association of Certified Valuation Analysts (NACVA). Through training and rigorous testing, CVAs demonstrate that they are qualified to provide capable and professionally executed valuation services.

The ABV credential is conferred by the American Institute of Certified Public Accountants (AICPA) upon CPAs who have demonstrated the skill, education and experience that are critical to practicing business valuation successfully.

Norman K. Baczkiwicz, CPA, CVA, DABFA is a Principal at Yeo & Yeo's Lansing office. He heads the firm's Litigation Support team and specializes in taxation, financial planning, not-for-profit accounting and litigation support services. He is past president of the Michigan State Chapter of the National Association of Certified Valuation Analysts (NACVA) and a member of the Institute of Business Appraisers, Inc. He holds a Certificate of Valuation Analyst (CVA) by the National Association of Valuation Analysts and holds Diplomate Status (DABFA) by the American Board of Forensic Accounting. Yeo & Yeo serves as the GCBA and GCBF accounting firm.

Notice Regarding Schedule Conflicts

Attorneys are advised to let judges know at the earliest opportunity when a trial scheduling conflict becomes evident. Pursuant to MCR 2.501(D), the courts and counsel shall strive to resolve conflicts. In the event that the matter cannot be resolved with the individual courts, the judges shall consult directly to resolve the conflict.

Archie L. Hayman
Chief Judge, Genesee County
Circuit Court

Clever Lawyer· Almost

A defendant was on trial for murder. There was strong evidence indicating guilt, but there was no corpse. In the defense's closing statement, the lawyer, knowing that his client would probably be convicted, resorted to a trick. "Ladies and gentlemen of the jury, I have a surprise for you all," the lawyer said as he looked at his watch.

"Within one minute, the person presumed dead in this case will walk into this courtroom." He looked toward the courtroom door. The jurors, somewhat stunned, all looked on eagerly. A minute passed. Nothing happened. Finally the lawyer said, "Actually, I made up the previous statement. But you all looked on with anticipation. I therefore put to you that you have a reasonable doubt in this case as to whether anyone was killed, and I insist that you return a verdict of not guilty."

The jury, clearly confused, retired to deliberate.

A few minutes later, the jury returned and pronounced a verdict of guilty. "But how?" inquired the lawyer. "You must have had some doubt; I saw all of you stare at the door."

The jury foreman replied, "Oh, we did look, but your client didn't."

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Riverbend West - Grand Blanc



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Williamsburg Farms - Grand Blanc



Williamsburg Farms feature this wonderful 3 bedroom home. Simply Beautiful! Warm and inviting! Extreme pride of ownership shows in this home with the long list of upgrades and updates. Floor covering, lighting, C/A, deck are just a few on the long list. Lower level is completely finished with office, rec room and full bath. Call Kathy for a private showing. Don't miss this one! \$179,900.

Cook Harbor - Grand Blanc



Sensational location for this beautiful home, minutes from 75 and Genesys. 4+ Large bedrooms and 3 1/2 baths. Firelit family room plus formal dining and living room. Wonderful large gourmet kitchen enhanced with hardwood flooring, island, pantry, desk and large door wall leading to deck area. Finished lower level adds additional living area with a full bath and private bedroom. \$269,900

Law Office Management: Staff to Enhance Your Practice

by Lythia Lucia, PLS

Does your law office hire secretaries and assistants with no experience? Doing so will make sense if you have an experienced certified legal support professional to train the new employee. But if not, the Genesee Association of Legal Support Professionals (GALSP) would like to give you reasons for having at least one professional in your office.

GALSP is an affiliate of the National Association of Legal Support Professionals (NALS). The national association was founded in 1929 to encourage the pursuit of professional excellence.

NALS offers many benefits, including the opportunity for certification and study programs for every skill level. Besides friendships to treasure for a lifetime, members have access to mentors and other professionals to model their careers, such as V. Kay Rushton, CER, PLS, of the Genesee County Probate Court (retired), and Ruth DeMaria, PLS, (retired) lifelong assistant to respected attorney Edwin Jake-way.

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6. An individual who can train new employees, allowing your office to accept student interns and co-op students
7. An individual who may nominate you for Boss of the Year

You may feel you cannot afford a certified professional legal secretary. You hire inexperienced staff and have to train them yourself. Think about losing billable hours while you train. Think about using your talents for something other than learning and practicing law. Think about experiencing stress as a lawyer and how your inexperienced staff bears the burden of that stress when they make frequent errors. Think about being embarrassed when letters and documents have errors that you missed in your haste.



Seated: Lythia Lucia, PLS, President, l-r: Lorraine Nemecek CLA, PLS, Treasurer, Libby Manor, Recording Secretary, Barbie Stangler, Vice President, Chris Eaton, PLS, Governor, Jill Fisher, NALS Representative

The NALS Code of Ethics and Professional Responsibility requires that members:

- Encourage respect for the law and the administration of justice
- Observe rules governing privileged communications and confidential information
- Promote and exemplify high standards of loyalty, cooperation, and courtesy
- Perform all duties of the profession with integrity and competence
- Pursue a high order of professional attainment

The old adage is true: You get what you pay for. Support professionals who are dedicated to a high attainment of skills and to your professional image are worth the salary they command. Your telephone rings while you are away from the office and very busy in court. A courteous and knowledgeable voice answers the phone and assures your present and potential clients that your law office is under control and running smoothly. He/she handles questions about you and your services with polish and poise. Most people will hang up the phone if they get a machine or an unknowledgeable person while looking for help with a legal issue.

Why should you pay the yearly membership fee for your secretary to join NALS? Membership to a professional excellence organization is the true mark of a dedicated professional. The first person to benefit from a NALS membership is the employer of the member. Membership with GALSP shows that your legal support staff is a cut above the rest and creates a remarkable air of professionalism in the office atmosphere.

Lythia Lucia, PLS, is in the middle of her second year as president of GALSP. She is employed by UAW-GM Legal Services in the Northbank Center, Flint.

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Genesee County Bar Association
315 East Court Street
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