STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 11, 2015)

RICHMOND MOTOR SALES, INC.,	:	
	:	
v.	:	**C.A. No. PC 13-3954**
	:	
NATIONWIDE MUTUAL INSURANCE COMPANY	:	
	:	
RICHMOND MOTOR SALES, INC.,	:	
	:	
v.	:	**C.A. No. PC 14-3632**
	:	
ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY	:	
	:	
RICHMOND MOTOR SALES, INC.,	:	
	:	
v.	:	**C.A. No. PC 14-3636**
	:	
ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY	:	
	:	

DECISION

MATOS, J. Before the Court are cross-motions for summary judgment, pursuant to Super. R. Civ. P. 56, in three cases. The cases have not been consolidated but are marked by a common plaintiff in all three cases, Richmond Motor Sales Inc., (Richmond), a common defendant in two cases[1], and, more pertinently, a common issue—a request for a declaratory judgment that a rental car company, in these cases Richmond, may initiate and pursue a private cause of action against

[1] The defendants Nationwide Mutual Insurance Company and Esurance Property and Casualty Insurance Company may alternately be referred to individually as "Nationwide" and "Esurance" or jointly as the "insurance companies."

the insurer of a party who has rented an automobile from the rental car company for damage to the automobile while in the custody of the insured, pursuant to G.L. 1956 § 27-7-6.[2] The Court will review the pertinent facts and travel relative to each case and then address the issues common to all three cases and one remaining issue specific to the matter referred to infra as the Mendez case.

I

Facts & Travel

A

The Mendez Case (PC-2013-3954)

On March 7, 2011, Herman Mendez (Mr. Mendez) rented a 2009 Chevrolet Impala from Richmond. (Am. Compl. ¶ 4.) On March 20, 2011, the rental car caught fire while it was parked at Mr. Mendez's home in Providence. Id. at ¶ 7. According to a Providence Fire Department Fire Investigation Report, the cause of the fire was a "mechanical malfunction." Id. at Ex. C. At the time the vehicle was damaged, Mr. Mendez was insured by Nationwide.[3] Id. at ¶ 5.

Subsequently, Richmond filed a claim with Nationwide seeking compensation for the damage to the vehicle. Id. at ¶ 8. After its investigation of Richmond's claim, Nationwide determined the cause and origin of the fire was an electrical problem with the vehicle. (Def.'s Mem. in Supp. of its Mot. for Summ. J., Ex. B.) Since Mr. Mendez's policy with Nationwide

[2] While the cases have not been consolidated, the parties have cross-referenced their pleadings in each of the cases and Richmond filed one common pleading, its Supplemental Memorandum of Law in Support of Plaintiff's Cross-Motions for Summary Judgment, in all three cases. All three were argued jointly on the Motion Calendar.

[3] Although Richmond admitted in an interrogatory that it "has an insurance policy with GMI which extends to its entire fleet of rental vehicles, includ[ing] the subject rental vehicle[,]" Richmond nonetheless pursued a claim against Nationwide. (Def.'s Mem. in Supp. of its Mot. for Summ. J., Ex. D.)

covered property damage for which Mr. Mendez became legally responsible because of an auto accident, Nationwide denied Richmond's claim. Id. at Ex. C (emphasis added). Sometime after Richmond submitted its claim to Nationwide, Richmond and Mr. Mendez executed an "Assignment and Release" wherein Mr. Mendez assigned his "entire right, title and interest in" the claim, and Richmond "fully and completely" released Mr. Mendez from liability.[4] Id. at Ex. A.

On October 1, 2013, Richmond filed its Amended Complaint asserting three counts against Nationwide: (1) declaratory judgment as to an alleged violation of § 27-7-6, entitled "Rental vehicle coverage"; (2) bad faith/breach of implied good faith; and (3) damages. On December 3, 2013, after Nationwide moved to dismiss Count II (bad faith), Richmond voluntarily dismissed the count pursuant to Super. R. Civ. P. 41(a). Id. at Ex. E. Thus, Richmond's requests for declaratory judgment and damages remain.

B

The O'Brien Case (PC-2014-3632)

In January of 2014, Nicole O'Brien (Ms. O'Brien) rented a 2008 Pontiac Grand Prix from Richmond. (Compl. ¶ 4.) Richmond agreed to rent Ms. O'Brien the car upon establishing that she had an active automobile insurance policy, which was issued by Esurance. Id. at ¶¶ 5, 6. On February 7, 2014, the car was damaged as a result of hitting a snow bank while in the custody and control of Ms. O'Brien. Id. at ¶ 7. Subsequently, Richmond filed a claim with Esurance for damages recoverable pursuant to Ms. O'Brien's policy. Id. at ¶ 8. Esurance's adjuster, George Origlia, calculated the total cost for repairs to be $3216.70. Id. at ¶ 10; Compl. Ex. C, Estimate. The repairs were completed in March of 2014, and the car was returned to Richmond's fleet of

[4] It is unclear when the Assignment and Release was executed since it is undated.

rental vehicles. (Compl. ¶ 11.) Richmond was unable to rent the car for twenty-eight days total. Id. at ¶ 12.

Richmond alleges that, despite numerous attempts, it has not obtained payment from Esurance for both the damages to the car and Richmond's temporary loss of use of the car. Id. at ¶ 13. As a result, in July of 2014, Richmond filed its Complaint containing three counts: (1) declaratory judgment as to an alleged violation of § 27-7-6; (2) bad faith/breach of implied good faith; and (3) damages.

Esurance originally moved to dismiss Richmond's claims pursuant to Super. R. Civ. P. 12(b)(6). On February 20, 2015, a justice of this Court granted Esurance's motion as to Count II (bad faith) and Count III (damages), but denied Esurance's motion as to Count I (violation of § 27-7-6). The remaining issue is the request for declaratory judgment.

C

The Fay Case (PC-2014-3636)

In January of 2014, Jessica Fay (Ms. Fay) rented a 2010 Honda Accord from Richmond. (Compl. ¶ 4.) Richmond agreed to rent Ms. Fay the car upon establishing that she had an active automobile insurance policy, which was issued by Esurance. Id. at ¶¶ 5, 6. At the time, Richmond also documented the physical condition of the car. Id. at ¶ 7; Compl. Ex. A, Photographs. On January 26, 2014, the car was damaged as a result of a front end collision while it was in the custody and control of Ms. Fay. (Compl. ¶ 8.)

Subsequently, Richmond filed a claim with Esurance for damages recoverable pursuant to Ms. Fay's policy. Id. at ¶ 9. Esurance's adjuster, Deborah Moore, calculated the total cost for repairs to be $9107.42. Id. at ¶ 11; Compl. Ex. C, Estimate. The repairs were completed in

March of 2014, and the car was returned to Richmond's fleet of rental vehicles. (Compl. ¶ 12.) Richmond was unable to rent the car for thirty-five days total. Id. at ¶ 13.

Richmond likewise alleges here that, despite numerous attempts, it has not obtained payment from Esurance pursuant to the claim for both the damages to the car and Richmond's temporary loss of use of the car. Id. at ¶ 14. Richmond brought the underlying action in July of 2014 seeking (1) a declaratory judgment as to an alleged violation of § 27-7-6; (2) bad faith/breach of implied good faith; and (3) damages.

As in the O'Brien case, Esurance originally moved to dismiss Richmond's claim pursuant to Super. R. Civ. P. 12(b)(6). On February 20, 2015, the motion justice, as in O'Brien, granted Esurance's motion as to Richmond's bad faith claim and damages claim, but denied Esurance's motion as to the alleged violation of § 27-7-6. Again, the remaining issue is the request for declaratory judgment.

II

Standard of Review

When deciding a motion for summary judgment, the trial justice must keep in mind that it "'is a drastic remedy and should be cautiously applied.'" Steinberg v. State, 427 A.2d 338, 339–40 (R.I. 1981) (quoting Ardente v. Horan, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976)). "Thus, '[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.'" Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Educ., 93 A.3d 949, 951 (R.I. 2014). However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. Steinberg, 427 A.2d at 340.

The party who opposes the motion for summary judgment "carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996); see also McAdam v. Grzelczyk, 911 A.2d 255, 259 (R.I. 2006). However, although the present posture of the cases are styled as cross-motions for summary judgment, the pertinent facts are not in dispute, as the essence of the dispute is a request for declaratory determination of the applicability of § 27-7-6 to matters of this nature. [5]

III

Analysis

A. Declaratory Relief

Richmond contends that it has the right to initiate a direct action against the insurance companies upon "maxims of equity" and the plain language of § 27-7-6. It is important to note that Richmond has not filed any action against the insureds—Mr. Mendez, Ms. O'Brien and Ms. Fay, respectively. Instead, Richmond contends that it is able to pursue a private cause of action against an insurer directly for damage to the rented vehicle caused by the insured. Richmond seeks a declaratory judgment to establish its right to prosecute an action in law directly against the insurance companies as a damaged party pursuant to the Uniform Declaratory Judgments Act (UDJA), G.L. 1956 § 9-30-1, which gives this Court the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed."

[5] Were the matters to proceed upon a direct action by Richmond against the insurance companies, there would arguably be fact issues in dispute regarding the cause of the damage to the vehicles, particularly in Mendez, but those issues are not pertinent to this analysis.

The purpose of the UDJA is remedial—"to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered." Sec. 9-30-12. While the Superior Court has broad discretion in granting relief under the UDJA, "[i]ts discretion concerning whether to entertain the action itself . . . is more limited." Tucker Estates Charlestown, LLC v. Town of Charlestown, 964 A.2d 1138, 1140 (R.I. 2009). Given the UDJA's broad scope and the clear dispute between the parties regarding the scope of § 27-7-6, declaratory judgment is appropriate in this matter.

B. Statutory Relief Pursuant to § 27-7-6

The primary legal issue here is the extent of an insurer's obligations under § 27-7-6, which reads as follows:

> "For liability assumed under a written contract, coverage shall be provided under the property damage liability section of an insured's private passenger automobile insurance policy. Property damage coverage shall extend to a rented motor vehicle, under ten thousand (10,000) lbs, without regard to negligence for a period not to exceed sixty (60) consecutive days."

In the present cases, the policies obtained by the insureds provide coverage for rented vehicles in full compliance with the statute.[6]

[6] The relevant sections of the Nationwide policy in the Mendez case reads as follows:

> "A. We do not provide Liability Coverage for any 'insured':
> . . .
> "3. For 'property damage' to property:
> "a. Rented or leased to;
> "b. Used by; or
> "c. In the care of;
> "that 'insured'.
>
> "This exclusion (A.3) does not apply to 'property damage' to:
> . . .

Accordingly, both Nationwide and Esurance contend that they cannot, as a matter of law, violate the statute if the policy complies with the statute's requirements for coverage. Indeed, this would be a different case if the policies specifically excluded coverage for all rented vehicles since it is well settled that "insurance carriers must conform to constitutionally valid conditions

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> "b. Any of the following type vehicles, with a Gross Vehicle Weight Rating of less than 10,000 lbs., not owned by or furnished or available for the regular use of you or any 'family member' if liability for such damage is assumed under a written contract which does not exceed 60 days:
>
> "(1) Private passenger autos;
> "(2) Trailers;
> "(3)Pickups or vans. . . ." (Nationwide's Mem. Ex. C, at 3.) (Emphasis added.)

The policies issued by Esurance in the O'Brien and Fay case are identical. The relevant sections of the policy read as follows:

> "Exclusion For Part I: Liability Coverage
>
> "1. 'We' have no duty to defendant and do not provide Liability Coverage for any "Insured":
> . . .
> "D. For 'property damage' to property:
> "(1) Rented to;
> "(2) Used by; or
> "(3) In the care of;
> "that 'insured'.
>
> "This Exclusion 1.D. does not apply to 'property damage' to:
> . . .
>
> "(2) An 'auto' that is rented, under a written rental agreement, by 'you' or a 'family member' for sixty (60) consecutive days or less from an entity in the 'business' of renting motor vehicles, and without regard to negligence." (Esurance's Mem. Ex. B, at 5, O'Brien case.) (Esurance's Mem. Ex. A, at 5 Fay case). (Emphasis added.)

imposed by the legislature." Allstate Ins. Co. v. Fusco, 101 R.I. 350, 356, 223 A.2d 447, 450 (1966).

Richmond counters that an insurer's obligations pursuant to § 27-7-6 do not end with having a policy, the written terms of which comply with the statutory mandate. Instead, Richmond contends that the insurance companies' denials of their claims were not simply a possible breach of the policy, but a per se statutory violation.

Our Supreme Court has expressed that if a statutory right has no basis in common law and the statute "does not plainly provide for a private cause of action [for damages], such a right cannot be inferred." Tarzia v. State, 44 A.3d 1245, 1258 (R.I. 2012) (interpreting a sealing statute and concluding that "a violation of this non-common-law statutory right cannot yield [] a cause of action based in common-law negligence" thereby restricting plaintiff to the remedy—a fine—expressed in the statute). When a statute is devoid of a remedy, the Court has declined to create a new cause of action by judicial rule because it has long held "that the creation of new causes of action is a legislative function." Accent Store Design, Inc., 674 A.2d at 1226 (declining to create a tort judicially which would subject a governmental entity to liability if the entity failed to ensure that a contractor had obtained a bond, when a bonding statute did not provide a remedy if the mandated bond was not obtained). The Supreme Court has also remarked that "[t]o inject a judicial remedy . . . into a statute that plainly does not contain a remedy, particularly when there is no evidence to suggest that the Legislature had intended to create a cause of action, 'would be interpretation by amendment.'" Bandoni v. State, 715 A.2d 580, 585 (R.I. 1998) (relying on principles of judicial restraint when refusing to create a cause of action for violating the Victim's Bill of Right statute where a duty to apprise crime victims of their rights did not exist at common law and where the Legislature did not provide for civil liability).

Instead, the Court indicated that the Legislature had the capacity to create a remedy if it chose to do so, but that "it is not the function of this Court to act as a super legislative body and rewrite or amend statutes already enacted by the General Assembly." Id.

Here, § 27-7-6 contains no language creating a private cause of action for third parties against an insurer. Section 27-7-6 provides "[f]or liability assumed under a written contract, coverage shall be provided under the property damage liability section of an insured's private passenger automobile insurance policy." (Emphasis added.) Thus, the statute confers a benefit on the named insured and does not create vested rights for third-parties to the insurance policy. See Mut. Dev. Corp. v. Ward Fisher & Co., LLP, 47 A.3d 319, 328 (R.I. 2012) ("It is a well-established principle of statutory interpretation that 'when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'") (quoting Planned Env'ts Mgmt. Corp. v. Robert, 966 A.2d 117, 121 (R.I. 2009)). [7]

In addition, § 27-7-6 cannot be read to create a private cause of action since the General Assembly has addressed the circumstances when such a right is available at § 27-7-2. [8] See

[7] Richmond submitted a transcript of the House of Representatives' approval of the statute to further support its argument that § 27-7-6 creates a private cause of action for rental car companies. The Court notes that "there is no recorded legislative history in Rhode Island from which to ascertain legislative intent . . ." Laird v. Chrysler Corp., 460 A.2d 425, 428 (R.I. 1983). Moreover, "[t]o the extent that this Court examines the circumstances surrounding the enactment of a statute, it engages in this exercise only when the statute is ambiguous." Such v. State, 950 A.2d 1150, 1158 (R.I. 2008). This Court finds that the statute's plain terms do not support Richmond's argument. Regardless, a review of the House of Representatives' transcript further supports the Court's conclusion that § 27-7-6 is a consumer protection statute; it does not make any reference to creating a direct right of action for an automobile rental company.

[8] Section 27-7-2 reads, in pertinent part, as follows:

> "An injured party, or, in the event of that party's death, the party entitled to sue for that death, in his or her suit against the insured, shall not join the insurer as a defendant. If the officer serving any

McKenna v. Williams, 874 A.2d 217, 242-43 (R.I. 2005) ("When [the Court is] called upon to construe the provisions of coexisting statutes, [the Court] attempt[s] to follow the rule of construction that provides that provisions 'relating to the same or similar subject matter should be construed such that they will harmonize with each other and be consistent with their general objective scope.'") (quoting Blanchette v. Stone, 591 A.2d 785, 786 (R.I. 1991)). Section 27-7-2, entitled "Remedies of injured party against insurer," makes clear that the injured party, barring extenuating circumstances, shall not sue the insurer directly; rather, proper procedure is to sue the insured and then proceed on a separate action against the insurer. Sec. 27-7-2 (stating that an "injured party, or, in the event of that party's death, the party entitled to sue [therefore], in his or her suit against the insured, shall not join the insurer as a defendant.") (emphasis added). The statute only permits an injured party to join an insurer directly when the injured party is unable to effectuate service; the insured has died before suit; or the injured party has obtained a judgment against the insured in a separate action which remains unsatisfied. See id.

It is undisputed that none of the above-listed exceptions—that would allow Richmond to file suit directly against the insurance companies pursuant to § 27-7-2— are present in this case.

> process against the insured shall return that process 'non est inventus', or where before suit has been brought and probate proceedings have not been initiated the insured has died, or where a suit is pending against an insured in his or her own name and the insured died prior to judgment, or where a nonresident had been involved in an automobile accident in Rhode Island as an operator or owner and died before suit has been brought, the injured party, and, in the event of that party's death, the party entitled to sue for that death, may proceed directly against the insurer. The injured party, or, in the event of that party's death, the party entitled to sue for that death, after having obtained judgment against the insured alone, may proceed on that judgment in a separate action against the insurer; provided, the payment in whole or in part of the liability by either the insured or the insurer shall, to the extent of the payment, be a bar to recovery against the other of the amount paid."

Since "the Legislature is presumed to know the state of existing law when it enacts or amends a statute[,]" Shelter Harbor Fire Dist. v. Vacca, 835 A.2d 446, 449 (R.I. 2003) (internal quotation marks omitted), § 27-7-6 cannot be read to confer substantive rights on rental vehicle companies when the General Assembly already provided an avenue, in specifically enumerated circumstances, for direct rights of action in § 27-7-2. [9] Accordingly, the Court finds that Richmond may not pursue a direct action against the insurance companies.

C. Equity

With respect to Richmond's equity argument, it is undisputed that no contract existed between the parties, and that Richmond is not an insured of either of the insurance companies. Instead, Richmond has separately obtained insurance coverage for its fleet of automobiles. See Nationwide's Mem. in Supp. of its Mot. for Summ. J., Ex. D. However, in support of its contention that it can advance an action in equity, despite a lack of contractual privity with either Nationwide or Esurance, Richmond relies on the Rhode Island Supreme Court's decision in Hunt v. Century Indemnification Co., 58 R.I. 336, 192 A. 799 (1937).

In Hunt, the plaintiff was injured in a car accident with an insured of the defendant. Id. at 800. The plaintiff originally filed suit against the insured, ultimately obtaining a verdict in his favor. Id. After his judgment against the insured remained unsatisfied, the plaintiff filed suit directly against the insurer. Id. The defendant insurer, however, disclaimed liability since the insured "did not have complete ownership of the automobile as stated in the policy." Id. (emphasis in original).

[9] Richmond also relies on this Court's decision in Sikorskyj v. Amica Mut. Ins. Co., 2015 WL 726138 (R.I. Super. Feb. 13, 2015), to argue that such direct actions are appropriate. Such reliance is misplaced. Sikorskyj addressed the issue of whether a party could seek a claim for diminution of value of an automobile as part of an insurance claim. It did not address the issue presented here, which is whether a direct action may be brought under § 27-7-6.

Importantly, in Hunt, unlike the present case, the injured plaintiff had already filed suit and obtained a judgment against the insured. As the Hunt Court made clear, "we have no suit brought directly to enforce the liability, but a suit in equity merely in aid of a pending action at law, which action at law is admittedly the proper remedy under the terms of the policy." Id. at 802. While the Hunt Court held that the plaintiff could bring a claim in equity against the insured, the rationale of the Court's decision rested on the plaintiff's status as a judgment creditor—i.e., that he had already filed suit and obtained a judgment against the insured. See id. at 802 ("'While our statute provides for recovery in an action at law, nevertheless the right to recover directly from an insurance company on a policy issued to a judgment debtor rests on the equitable principle of subrogation.'") (quoting Farrell v. Emp'rs Liab. Assurance Corp., 54 R.I. 18, 168 A. 911, 912 (1933)) (emphasis added). In contrast, Richmond seeks to bring a direct cause of action to determine liability, that is to "seek the final termination of the matter," which under Hunt, is not allowed. Id. Richmond's reliance on Hunt is misplaced and this Court will not find in equity what has not been granted statutorily.

D. The Remaining Issue in Mendez

The statutory and equity analysis supra fully resolve the issues in O'Brien and Fay. In Mendez, Richmond also claims that it is entitled to pursue a direct suit against Nationwide by virtue of Mr. Mendez's assignment to Richmond. Specifically, after Richmond submitted its claim to Nationwide, Richmond and Mr. Mendez executed an "Assignment and Release" wherein Mr. Mendez assigned his "entire right, title and interest in" the claim, and Richmond "fully and completely" released Mr. Mendez from liability. Nationwide's Mem. in Supp. of its Mot. for Summ. J., Ex. A.

Mr. Mendez's assignment to Plaintiff does not alter the analysis in this case. In executing the assignment, Mr. Mendez could only assign his own rights under the policy. It is well-settled that "an insurer's obligations toward its insured are two-fold: a duty to defend and a duty to indemnify." See Travelers Cas. & Sur. Co. v. Providence Washington Ins. Co., 685 F.3d 22, 25 (1st Cir. 2012). However, neither of these duties is implicated here because Richmond has released Mr. Mendez for all liability and there is no evidence that Mr. Mendez has any remaining claims against Nationwide. See Petrarca v. Fid. & Cas. Ins. Co., 884 A.2d 406, 411 n.4 (R.I. 2005) (stating that "an insurer's liability derives from its insured's"). Thus, Richmond cannot maintain its action against Nationwide. See id. at 410 (stating that "an insurer 'is liable for sums that its insured is legally obligated to pay; however, [the insurer] cannot be held liable. . . [if the insured] is under no obligation to pay.'" (quoting Finck v. Aetna Cas. & Sur. Co., 432 A.2d 680, 682 (R.I. 1981))).

IV

Conclusion

For the foregoing reasons, this Court grants Nationwide and Esurance's motions for summary judgment and denies Richmond's cross-motions for summary judgment. The Court declares that § 27-7-6 does not grant a rental car company, such as Richmond, a private right of action against the insurer of a party who has rented an automobile from the rental car company. In addition, the Court declares that such private right of action does not arise in equity.

In regard to the Mendez case only, the Court finds that Richmond may not pursue a direct action against Nationwide by way of the assignment of rights exchanged between Mr. Mendez and Richmond. Hence, Richmond may not pursue a claim for damages.

Counsel for the prevailing parties in each case is requested to prepare appropriate orders for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Richmond Motor Sales, Inc. v. Nationwide Mutual Insurance Company** **Richmond Motor Sales, Inc. v. Esurance Property and Casualty Insurance Company** **Richmond Motor Sales, Inc. v. Esurance Property and Casualty Insurance Company**
CASE NO:	**PC13-3954; PC14-3632; PC14-3636**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 11, 2015**
JUSTICE/MAGISTRATE:	**Matos, J.**
ATTORNEYS:	
For Plaintiff:	**John O. Mancini, Esq.** **Nicholas J. Goodier, Esq.**
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