

Mold Damage Claim Tips

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INSURANCE CLAIM TIPS FOR MOLD DAMAGE

Traditionally, mold damage has been covered where it results from a covered peril, such as a broken pipe, a storm, or fire suppression efforts, but not where it occurs gradually over time due to wear and tear. However, public awareness and scientific knowledge of the health hazards of mold have increased dramatically. Techniques for cleaning up mold have become more sophisticated and expensive. As a result, insurers are panicking, refusing to cover mold claims under existing policies and rewriting their policy forms to exclude all coverage for mold, regardless of origin. This in turn is creating a national crisis. UP believes that a combination of governmental regulation, proper underwriting and competitive forces in the private insurance marketplace will remedy the situation.

Meanwhile, here's what to do if you think your property may have a mold condition:

1. TAKE MOLD CONTAMINATION SERIOUSLY.

Mold can cause serious illness and property damage. Insurance claim representatives, adjusters and industry consultants are fond of dismissively telling policyholders that mold has been around as long as people have been living in houses. Whenever you hear that, cite Leviticus 14:33-48 to them—chapter and verse—and tell them that for just as long, "mold remediation professionals" have been tearing out mold contaminated walls, and demolishing entire mold contaminated houses:

The Lord said to Moses and Aaron: "When you come into the land of Canaan, which I give you for a possession, and I put a leprous disease ["mold" or "fungus"] in a house in the land of your possession, then he who owns the house shall come and tell the priest ["certified industrial hygienist"], 'There seems to me to be some sort of disease in my house.' Then the priest shall command that they empty the house before the priest goes to examine the disease, lest all that is in the house be declared unclean; and afterward the priest shall go in to see the house. And he shall examine the disease ["visual inspection"]; and if the disease is in the walls of the house with greenish or reddish spots, and if it appears to be deeper than the surface, then the priest shall go out of the house to the door of the house, and shut up the house seven days ["containment/testing"]. And the priest shall come again on the seventh day, and look; and if the disease has spread in the walls of the house, then the priest shall command that they take out the stones in which is the disease and throw them into an unclean place outside the city ["licensed land fill"]; and he shall cause the inside of the house to be scraped round about, and the plaster that they scrape off they shall pour into an unclean place outside the city; then they shall take other stones and put them in the place of those stones, and he shall take other plaster and plaster the house ["remediation/operations & maintenance plan"]. If the disease breaks out again in the house, after he has taken out the stones and scraped the house and plastered it, then the priest shall go and look; and if the disease has

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spread in the house, it is a malignant leprosy ["too far gone"] in the house; it is unclean. And he shall break down the house, its stones and timber and all the plaster of the house; and he shall carry them forth out of the city to an unclean place ["demolition"]. Moreover he who enters the house while it is shut up shall be unclean until the evening; and he who lies down in the house shall wash his clothes; and he who eats in the house shall wash his clothes ["decontamination"]. But if the priest comes and makes an examination, and the disease has not spread in the house after the house was plastered, then the priest shall pronounce the house clean, for the disease is healed ["clearance testing"]."

Leviticus 14:33-48 (Revised Standard Version)

With the introduction of mass-produced building products, tract home construction techniques, and the national energy conservation drive in the wake of the 1973 oil embargo, residential and commercial buildings have become more susceptible to developing mold contamination in any moist breeding ground. Mold contamination can destroy building products, finishes, furnishings, and belongings, and cause mild to serious health consequences to those exposed.

The more things change, the more they stay the same: Leviticus' priests have passed the mighty rod and staff to highly trained Certified Industrial Hygienists (CIH), Registered Microbiologists (RM), Certified Bio-safety Professionals (CSP) and Registered Environmental Health Specialists (REHS). So, don't be intimidated if your insurance company makes light of your concerns.

2. LEARN ABOUT MOLD CONTAMINATION, HEALTH EFFECTS AND REMEDIATION FROM A RELIABLE SOURCE.

Mold horror stories—and mold jokes—are everywhere. Run the term "mold" through your favorite online search engine, and you'll come up with hundreds of hits (and misses). Always be aware of the *bias* in any source of mold advice you turn to: remediation contractor's commercial web sites want to sell you their products and services; insurance industry web sites want to downplay the seriousness of the health effects, and exaggerate the financial consequences to their bottom line; plaintiff lawyer's web sites want to sign you up; insurance defense lawyer's want to impress insurance industry clients.

Unfortunately, even the "disinterested" interests of mold experts are usually aligned with the commercial interests that generate their income. How else could an "objective" scientist have a "conflict of interest"? In other words, some experts usually only work for insurers, and some experts usually only work for property owners. Even academic institutions, public health organizations and government agencies often have their own political or professional agendas coloring the work they do and recommendations they make.

3. REVIEW YOUR POLICY CAREFULLY. UNDERSTAND YOUR COVERAGES.

If you don't have a complete copy of your policy, get one from your insurance agent. Review the "declarations page," which tells you the coverage you have, the policy limits for each coverage, and the effective dates of the policy. Review the fine print of the policy form itself to identify what's insured, what's excluded, and what you have to do to prove your claim. Review any "endorsements" added on to the policy form to see if they change, eliminate or add coverages to your policy.

Homeowner and business property policies typically have separate coverages for dwelling, contents (personal property), business personal property (inventory and fixtures), additional living expenses (if you have to move out during repairs), loss of business income (if you are a business and can't earn income during repairs), building code upgrade coverage (if you have to spend more money to meet current building codes), "scheduled" personal property items (artwork, jewelry, valuables), electronic data, and "extra expense" (to relocate or to reconstruct

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lost records or data). If your policy doesn't seem to reflect the coverage you thought you had, contact your agent. You may need to contact your state's department of insurance, a public adjuster (licensed professionals that specialize in helping policyholders prepare and submit insurance claims) or a policyholder attorney.

Although most states require insurance companies to write their policies in plain, ordinary English, the typical insurance policy reads like Sanskrit - unintelligible to the average person. Don't be intimidated. There are no dumb questions when it comes to understanding an insurance policy.

Mold Contamination Insurance Coverage 101: The Basics

Mold is fungus. There are all kinds. It's everywhere—indoors and out. At trace background levels, mold is not usually a problem for most people. There are exceptions. Mold needs a moist breeding ground to grow and reproduce. Mold can grow almost anywhere there is water intrusion, high humidity or dampness. Most often mold is confined to areas near the source of water. As mold grows, it may break down or otherwise compromises the integrity of its host material. The first 48 hours after water damage can be critical in preventing or containing mold growth.

Mold reproduces by generating spores—microscopic reproductive bodies similar to seeds. Spores and microscopic fragments of mold growth are a natural component of both outdoor and indoor air. However, when mold germinates and grows, it can produce large amounts of spores. Elevated levels of mold spores in indoor living or working environments can cause adverse health effects, particularly respiratory problems. When moldy material becomes damaged or disturbed, spores can be released into the air. *Even if you kill the mold with bleach, but don't remove the mold, when it dries, you may actually make the problem worse by disturbing the dry mold and releasing spores in the air.* Exposure can occur if people inhale the spores, directly handle moldy materials, or accidentally ingest them. Some species of mold are considered benign.

Some species of mold are considered hazardous. And there is everything in between. Mold sometimes produces chemicals called mycotoxins. Mycotoxins can cause moderate to severe illness in people who are sensitive to them or if they are exposed to large amounts in the air.

Most mold insurance claims typically arise in one of two circumstances: (1) mold comes to the property owner's attention along with the discovery of ongoing moisture buildup, water leakage or water intrusion that has gone on for some time below the property owner's radar; or (2) after a sudden, accidental flood or leak from a plumbing system or appliance, there is a delay in or failure to adequately dry out water damaged building products, fixtures, furnishings, finishes or belongings.

If you are making a claim to your own insurer for damage to your property, you are making a "first party" property claim. If you are asking your insurer to investigate or defend a claim against you—for example, your tenants are suing you for mold contamination—you are making a "third-party" liability claim to your insurer. Here are some helpful pointers for each type of claim.

Property Damage Coverage

Homeowner, commercial property owner and renter property policies differ in kind and in scope from insurer to insurer. Whether mold contamination is covered under your policy will depend on the specific policy language and the cause or causes of the mold contamination. Read your policy carefully. Some property policies are "specified peril" policies, which may cover mold contamination if *you can prove* that it was caused by one of the listed "perils" or causes. Some property policies are "all risk" policies, which may cover mold contamination, unless the *insurer can prove* that the cause(s) or the mold contamination itself is excluded in the policy.

Most property policies have a long laundry list of exclusions for damage caused by mold, dry or wet rot, corrosion, pollution, wear and tear, deterioration, faulty workmanship and materials, construction defect, and the like. To make matters more complicated, some policies have limited "exceptions" to the exclusions—kind of like a double negative—that may provide some very limited coverage for mold contamination. In several states, like California and Texas—in response to insurers threatening to boycott coverage for water damage, as well as mold contamination coverage—insurance regulators are developing rules to permit insurers to provide minimum mold contamination coverage, e.g., \$5,000 property limits, unless the policyholder buys more expensive coverage separately. Check your policy after it has been renewed to see if mold coverage limitations have been inserted.

When, however, mold contamination develops as a *secondary* or "ensuing" problem from water damage that *is* covered, your insurance company may cover the additional cost to remediate the mold contamination. More often than not, the real fight with your insurance company is over identifying the most important *cause or causes* of the mold contamination—are they covered or excluded? The jury is still out in most states as to whether mold is a "pollutant" within the meaning of most pollution exclusions.

As a general rule, most insurers attempt to exclude coverage for mold contamination associated with long-term leakage, moisture or water intrusion from a construction defect, wear and tear, deferred maintenance or poor repairs. Most insurers will acknowledge coverage for mold contamination associated with accidental discharge of a closed plumbing system—as long as you take reasonable steps to protect and repair the property after you discover the damage. *Accordingly, never speculate or guess about the cause(s) of the mold contamination or suggest to or agree with your insurance company that the mold must have been around for a long time or that there must be some hidden leak somewhere.* Wait until all the investigation is completed before you acknowledge or agree as to the cause(s) of the loss with your insurance company.

Once you determine that you have a covered loss, be sure to go down the list of *all the coverages* in your declarations page, including additional living expense (if you have to move out during repairs), and make sure that you explore *all the benefits* you are entitled to.

Third-Party Liability Coverage

In most liability policies, your insurer agrees to defend you if you're sued, and to reimburse ("indemnify") you if get hit with a judgment. Somewhere in between, there is a duty to settle claims against you. The duty to defend you is *much broader* than the duty to indemnify you: typically the insurer must defend you if the person suing you alleges facts that merely *potentially* seek damages within the coverage of your policy. You only have to show that the claim *might* be covered, the insurer has to show conclusively that the claim *cannot* under any circumstances be covered. Accordingly, *immediately* tender the defense of any lawsuit against you to your insurer

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by sending a copy of the complaint and summons and asking for a defense. Don't wait. Tender early and often. You may *not* be able to recover attorney fees you have to pay *before* you tender your defense to your insurer. If your insurance company refuses to defend you, consult a policyholder attorney to analyze your policy and the claims against you.

4. CALL YOUR INSURANCE AGENT AND REPORT A SUSPECTED CLAIM IMMEDIATELY. PUT EVERYTHING IN WRITING.

Call your insurance agent immediately to report a suspected claim. Follow the phone call with a fax, an email *and* a letter. In a catastrophic flood or pipe burst claim, getting a remediation team in within the first 48 hours to begin drying out property can be crucial to preventing or containing mold growth. If you get the run-around from your agent, insurance company, independent adjuster, or restoration company, follow up with a fax, an email *and* a letter confirming their delay in responding. Be firm, but *always* be courteous. Insurance representatives and adjuster's do have their own crosses to bear. If you can elicit the adjuster's sympathy, empathy or kindness—or at least avoid ticking them off—your claim is likely to be handled more expeditiously.

Take detailed notes of every conversation, including the name, company, phone number, address, and job title of every insurance adjuster, representative, consultant and contractor you deal with. Confirm all agreements in writing. Insist that appointments and deadlines be honored. Keep a log or binder of all notes and letters. Ask for and keep business cards from everyone involved in your claim.

5. PROTECT ALL PROPERTY FROM ANY FURTHER DAMAGE, BUT DO NOT MAKE PERMANENT REPAIRS, AND DO NOT DISPOSE OF ANY DAMAGED PROPERTY UNTIL AFTER IT HAS BEEN INSPECTED.

Turn off any water flow to broken appliances or pipes. Take any necessary emergency measures to protect the building and personal property from any further damage. Do not throw anything away until you have the permission of the insurance company, and you have documented its condition. In mold claims you may need to hang on to mold contaminated items until they can be sampled by a lab for mold content. If in doubt, wrap the items in plastic or seal them in a plastic bag and store them.

If there is roof damage to your building, you may need to hire a contractor to cover it with a plastic tarp or tent the building to protect against bad weather. If the insurer delays in authorizing these measures, or in getting back to you, confirm the insurer's delay in a fax, email *and* a letter, and take whatever *reasonable measures* you can afford to protect the property. If your loss is covered, the insurance company should also cover the cost of any reasonable emergency measures you had to take to protect your property. It is not unusual for an aggressive insurer to deny coverage for damage resulting *after* the initial claim on the grounds that you failed to protect the property from further damage.

6. PHOTOGRAPH, VIDEOTAPE AND INVENTORY ALL DAMAGED PROPERTY. DOCUMENT YOUR LOSS AS THOROUGHLY AS YOU CAN, AND DON'T EXAGGERATE, GUESS OR SPECULATE ABOUT THE LOSS OR THE VALUE OF ANY PARTICULAR PIECE OF PROPERTY.

Photograph, videotape and inventory all damaged property. Make sure you record the date of the photos and videotape. It is important to document the source and extent of water intrusion, and visible mold contamination. Seal and save contaminated items. In a dispute with your insurer

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over whether any particular building component, finish, furnishing or belonging is contaminated, the item may need to be tested by a remediation consultant—the insurer's and perhaps your own. Don't throw these items away until any such issues are resolved in writing.

In most states a *material misrepresentation, concealment or omission*—even an unintentional one—made in connection with the claim—for example, claiming that an item was destroyed that really wasn't, or *substantially overstating* the value of a damaged item—may give your insurer a valid excuse to *reject* the claim and even *rescind* the policy. It is not an uncommon tactic for adjusters and claim representatives who are predisposed to reject or lowball a claim, to ferret out even minor discrepancies between your first recorded statement and subsequent recorded statements, and argue that these discrepancies constitute material misrepresentations sufficient to reject your claim. Don't give them the opportunity. **Don't exaggerate, speculate or guess about the loss or value of any particular piece of property.** Make it clear to your insurer when your recollection may not be accurate, and when you are *estimating* value, and on what you are basing your estimate. It's fine to insert "To Be Determined" for the value of items you're not sure about. If you don't have receipts to show what an item cost, get catalogs, statements from retail clerks, bank statements, credit card statements or statements from family members or friends. If all else fails, obtain a formal appraisal. Save this as a last resort, because your insurer will usually refuse to reimburse you for the costs of hiring your on appraiser and consultants.

7. UNDERSTAND YOUR RIGHTS. LEARN YOUR STATE'S LAWS THAT REGULATE HOW INSURANCE CLAIMS ARE SUPPOSED TO BE HANDLED.

Every state has statutes and regulations that set *minimum standards* for handling insurance claims. You usually can find these laws through your state department of insurance or insurance regulator website. Website links to <http://info.insure.com/states/>, which in turn links you to all 50 state insurance regulatory agencies, where you can typically find a link to insurance laws in your state. You can also call your state's department of insurance or insurance regulator for information.

8. YOU MUST COOPERATE WITHIN REASON WITH YOUR INSURANCE COMPANY'S INVESTIGATION AND HANDLING OF YOUR CLAIM, BUT DO NOT GIVE A RECORDED STATEMENT, A SWORN STATEMENT OR A SWORN "PROOF OF LOSS" FORM UNTIL YOU ARE SURE YOU UNDERSTAND YOUR RIGHTS, YOUR INSURANCE COVERAGE AND THE FULL EXTENT OF YOUR CLAIM.

You have a contractual obligation under your insurance policy to cooperate with your insurer in its investigation and handling of your claim. You do not have an obligation to allow yourself to be abused. In most states you and your insurance company have a *reciprocal* obligation to act in good faith and deal fairly with each other to investigate and process your claim. This means that each of you should avoid taking any *unreasonable* position or doing or saying anything that would *unreasonably* frustrate each other's rights under the policy. The insurer should *never* make an unreasonable request to you. You should *never* refuse a reasonable request from your insurer for information related to your claim.

Your insurer may require you to give one or more recorded statements. Use your own tape recorder to tape your statement and the insurer's questions. More often than not, insurers and their attorneys delay or refuse to give you a copy of your recorded statement. Do not give a recorded statement until you are sure that you understand your rights, your insurance coverage, and the full extent of your claim.

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You may also be required to appear for an "Examination Under Oath"("EUO"). Your insurer may hire an attorney to take your EUO. You may have an attorney present to represent you, but your insurer will not pay for your attorney. Do not appear for an EUO until you are sure you understand your rights, your insurance coverage and the full extent of your claim.

Your insurer may ask you to make available various documents related to your claim, including banking statements, investment reports, receipts and other personal financial documents. You are *not* required to produce your tax returns, but you are required to produce any other documentation *reasonably related* to your insurer's investigation of your claim. Your insurer can require you to produce these kinds of documents as long as they *are* reasonably related to its investigation. Do not provide these documents to your insurer until you are sure you understand your rights, your insurance coverage and the full extent of your claim.

Most policies require that you submit a "sworn proof of loss" form to your insurer within a certain amount of time after being provided the form. In most states you are contractually obligated to submit the sworn proof of loss within the time limit, or at least to substantially comply with the requirement, unless you get an agreement from your insurer for more time or an agreement to dispense with the sworn proof of loss. Do not submit the sworn proof of loss to your insurer until you are sure you understand your rights, your insurance coverages, and the full extent of your claim. It is not unusual for an aggressive insurer to use mistakes in the sworn proof of loss to reduce or reject coverage for a claim.

Aggressive insurers may keep asking you for more and more information, anticipating that at some point, you will draw a line in the sand. If, however, you refuse to comply with *reasonable requests* for a recorded statement, an EUO, a sworn proof of loss, or documents *reasonably related* to your insurer's investigation, you may be giving your insurer a valid excuse to deny your claim, based *solely* your purported breach of the duty to cooperate. If you believe that any requests are unreasonable, ask your insurer to explain the reason for the requests in writing. Err on the side of caution. If in doubt, consult with a policyholder attorney, a public adjuster or your state department of insurance, before you say "no way" to a request that may—in retrospect—turn out to have been a reasonable one.

9. NEVER SIGN A RELEASE, WAIVER, INDEMNITY OR "HOLD HARMLESS" AGREEMENT WITHOUT PROPER LEGAL ADVICE.

You should never have to sign a release to settle an undisputed claim. If your insurer, adjuster, consultant or contractor asks you to sign a release, waiver, indemnity or hold harmless agreement, ask them to explain why in writing. These kinds of agreements can be used to deprive you of rights and benefits forever. These kinds of agreements can obligate you to pay thousands of dollars for issues that come up down the road that you never anticipated. Consult a policyholder attorney as to your rights before signing any such agreement.

10. GET A SECOND OPINION. DON'T ACCEPT A LOWBALL OFFER

Be wary of "lowball" estimates from insurance friendly contractors. Get a second and even a third written estimate to repair and replace damaged property from reputable, independent professionals that you would hire to do the actual work. You are entitled to have your damaged property replaced with "like kind and quality." Insist on it. When you can't match the remaining undamaged tile, wallpaper, carpeting, or other portions of undamaged property, you are entitled to have the entire "line of sight" replaced to match. Insist on it.

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Make sure that you understand how your insurance policy pays out on covered claims. Some losses are paid on "actual cash value," which in many states can mean either the "fair market value" *or* the cost to replace the property, less depreciation for age, wear and tear. Some losses are paid out on a replacement cost value. Your policy may permit your insurer to pay you actual cash value, and withhold the additional cost to replace property until you actually go out and replace it. In recent years, some insurers have attempted to also withhold an amount for contractor "profit and overhead." Don't let them. Policyholder attorneys and some insurance regulators have successfully prevented insurers from withholding these amounts.

If you have a disagreement with your insurer over the *amount* of your claim, you may be required by your insurer to submit the dispute to "appraisal." Appraisal is a form of *binding arbitration* to settle disagreements over the amount of your claim. It typically does *not* decide disagreements about what is covered, what is not covered, what caused the loss or poor claims handling problems, unless you and your insurer agree to submit those additional disputes to the appraisal. While appraisal was initially designed to be an inexpensive, informal resolution of insurance disputes, insurers have turned it into one of the most expensive, over-lawyered, dragged out sideshows in insurance claim resolution. If you cannot resolve a dispute with your insurer over the amount of your claim, or your insurer demands appraisal, you should consult with a policyholder attorney.

11. THOROUGHLY INVESTIGATE THE QUALIFICATIONS, LICENSE, AND REFERENCES OF YOUR INSURANCE COMPANY'S "APPROVED" CONTRACTOR BEFORE AGREEING TO HIRE THEM TO DO THE REPAIRS

You do not have to use consultants or contractors recommended or "approved" by your insurer to perform repairs. "Approved" contractors are typically contractors who have agreed to discount their labor and costs, and follow insurer guidelines, in exchange for a volume of business from the insurance company. If your insurer promises to "guarantee" the approved contractor's work, the "guarantee" is generally limited to replacing any defective materials or correcting faulty workmanship. Your insurer is *not* insuring against any contractor delays, negligence or liability. Accordingly, do not use the "approved" contractor unless it is a contractor that you would independently hire to do the work after a thorough screening.

Be sure to check that each contractor's license is valid, and for any complaints against the license. Be sure that the contractor is bonded and insured. You can usually find some of this information online at your state's contractor licensing agency website.

12. GET PROFESSIONAL HELP IF YOU NEED IT.

If you reach an impasse with your insurer, be sure to document the dispute fully in writing. Explain why your position is reasonable, and your insurance company's position is not reasonable. If your dispute does not necessarily require legal advice, you may be able to resolve the dispute by calling your state's department of insurance or insurance regulator, or by hiring a public adjuster. If your dispute requires legal advice, contact a lawyer who is experienced and specialized in representing policyholders.

If you need a qualified consultant for testing or advice about mold remediation, be sure to contact a qualified certified industrial hygienist (CIH) with experience in microbial contamination and testing. You can find a qualified firm in your area by searching through the American Industrial Hygiene Association's website at <http://www.aiha.org/ConsultantsConsumers/html/consultantshome.htm>. There are a lot of

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consultants out there who have jumped on the "mold bandwagon" without adequate training or experience.

13. MAKE SURE YOU KNOW ALL THE DEADLINES THAT MAY CUT OFF YOUR RIGHT TO FILE A LAWSUIT.

All states have statutes of limitation that will cut off your right to bring a lawsuit against your insurance company if you don't file a lawsuit in time. The statutes of limitation differ from state to state. Most property insurance policies have a *shorter contractual limitation period* that will cut off your right to bring a lawsuit against your insurance company if you don't file a lawsuit in time. These periods are typically one year or two years after a loss occurs or after you first discover a loss. Sometimes the "clock" stops running during the time your claim is pending, and starts again once your insurer denies your claim. In most states your insurance company is required to tell you *in writing* that your claim is denied, and that the limitations clock is running. Make sure you understand *all* possible deadlines. Consult with a policyholder attorney sooner, rather than later. You will make it harder for a policyholder attorney to give you the representation you deserve, if you show up on her doorstep the day before the clock stops ticking.

14. REPORT ALL UNFAIR CLAIM HANDLING TO YOUR STATE DEPARTMENT OF INSURANCE OR INSURANCE REGULATOR.

Most state insurance regulators track policyholder complaints about their insurers and compile the results. The results may be available through your state insurance regulator's web site. In some states you can file a formal complaint online. Insurance regulators also regularly compile "market conduct" reports on unfair claim practices. If you don't file a complaint, you can't make a difference.

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