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## Clark v. Cantrell: A Winfall for Negligent Plaintiffs or Preserving the Goals of Punitive Damages?

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## **CLARK V. CANTRELL: A WINDFALL FOR NEGLIGENT PLAINTIFFS OR PRESERVING THE GOALS OF PUNITIVE DAMAGES?**

### I. INTRODUCTION

Since the eighteenth century when punitive damages were first accepted in South Carolina,<sup>1</sup> their place in South Carolina law has been well established.<sup>2</sup> Following their introduction, the exact role of punitive damages in South Carolina civil litigation has been the subject of discussion and debate.<sup>3</sup>

One particularly important part of the debate stemmed from the South Carolina Supreme Court's adoption of comparative negligence in *Nelson v. Concrete Supply Co.*<sup>4</sup> Under the comparative fault scheme, when a plaintiff is found to be negligent, recovery is reduced according to the plaintiff's degree of fault.<sup>5</sup> However, it was not clear until recently whether a plaintiff's "recovery" encompassed all damages, both compensatory and punitive, or if only compensatory damages were included. In the recent case of *Clark v. Cantrell*<sup>6</sup> the South Carolina Supreme Court answered this question, holding that only compensatory damages would be reduced according to the plaintiff's negligence; any punitive damage award would remain intact.<sup>7</sup>

This Note discusses *Clark* and the court's reasons for not disturbing the punitive damage award despite a finding of negligence on the part of the plaintiff. Part II of this Note provides background information on the adoption of comparative negligence and the underlying goals of punitive damages. Part III examines the national trend regarding the issue of whether punitive damages are reduced in a comparative negligence system. Finally, Part IV analyzes the decision in *Clark* and examines the problems and issues that the decision raises. This Note concludes that while the issues involved are complex and the problems are numerous, the solution provided by the *Clark* court effectively reconciles the purpose of punitive damages with the goals of the comparative fault system.

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1. *Genay v. Norris*, 1 S.C.L. (1 Bay) 6, 7 (1784) (requiring defendant who committed a "very wanton outrage" against plaintiff to pay "exemplary damages").

2. *Rogers v. Florence Printing Co.*, 233 S.C. 567, 574, 106 S.E.2d 258, 261 (1958) ("But we need dwell no longer upon the rationale, or upon the merits or demerits, of the doctrine [of punitive damages]. Acquiescence in it for almost two centuries justifies the conclusion that it is now agreeable to, and part of, the public policy of the state.").

3. *See generally id.* at 572-73, 106 S.E.2d at 261 (discussing the debate over punitive damages and providing a concise history of the doctrine in South Carolina).

4. 303 S.C. 243, 399 S.E.2d 783 (1991).

5. *Id.* at 245, 399 S.E.2d at 784.

6. 339 S.C. 369, 529 S.E.2d 528 (2000).

7. *See id.* at 381, 529 S.E.2d at 535.

## II. BACKGROUND

A. *Elimination of Contributory Negligence and the Adoption of Comparative Fault*1. *Nelson v. Concrete Supply Co.*

In 1991 the South Carolina Supreme Court changed the course of tort law in South Carolina with its decision in *Nelson v. Concrete Supply Co.*,<sup>8</sup> deciding that the doctrine of comparative negligence would apply in any action arising on or after July 1, 1991.<sup>9</sup> This landmark decision overruled the long-upheld doctrine of contributory negligence and placed South Carolina in step with the majority of jurisdictions where comparative negligence had already been adopted.<sup>10</sup> South Carolina's system of comparative fault, after *Nelson*, allows a plaintiff to "recover damages if his or her negligence is not greater than that of the defendant."<sup>11</sup>

A comparative fault system that allows a plaintiff to recover damages as long as her degree of fault is 50% or less is a mixed or modified system. In this system, when the negligence of the plaintiff is equal to the negligence of the defendant, the plaintiff is still able to recover.<sup>12</sup> A second mixed form of comparative fault allows the plaintiff to recover only if the negligence of the plaintiff is less than that of the defendant. In other words, if the plaintiff's degree of fault is equal to the defendant's degree of fault, she is not allowed to recover.<sup>13</sup> Finally, comparative fault systems come in a pure form, wherein plaintiffs may recover even if their negligence is greater than the defendant's negligence.<sup>14</sup>

The *Nelson* court found comparative negligence to be a "more equitable doctrine" than contributory negligence, which barred any recovery for a plaintiff who contributed to an accident even slightly.<sup>15</sup> In *Nelson* South Carolina adopted the mixed system that allows recovery when the plaintiff's negligence is not greater than the defendant's negligence.<sup>16</sup> The effect of the mixed comparative fault scheme is to allow recovery for plaintiffs such as John Clark and Maggie Anderson in the *Clark* case, whose degree of fault was less than that of the defendant but who still

8. 303 S.C. 243, 399 S.E.2d 783 (1991).

9. *Id.* at 245, 399 S.E.2d at 784.

10. *Id.* at 244, 399 S.E.2d at 784; *see also* F. Patrick Hubbard & Robert L. Felix, *Comparative Negligence in South Carolina: Implementing Nelson v. Concrete Supply Co.*, 43 S.C.L. REV. 273, 278 (1992) (discussing *Nelson* and the implementation of comparative negligence in South Carolina and other states).

11. *Nelson*, 303 S.C. at 245, 399 S.E.2d at 784.

12. *See* Hubbard and Felix, *supra* note 10, at 277; F. PATRICK HUBBARD & ROBERT L. FELIX, *THE SOUTH CAROLINA LAW OF TORTS* 174 (2d ed. 1997).

13. *See* Hubbard & Felix, *supra* note 10, at 277-78.

14. *Id.* at 278.

15. *Nelson*, 303 S.C. at 244, 399 S.E.2d at 784.

16. *Id.*

contributed to their own accident.<sup>17</sup> Before *Nelson* these negligent plaintiffs would have recovered nothing from the defendant.

## 2. *Unresolved Problems After Nelson*

Under the mixed comparative fault scheme, a negligent plaintiff will not receive a full recovery. *Nelson* mandates a reduction in the amount of the plaintiff's recovery according to the degree of fault.<sup>18</sup> The mandatory reduction under *Nelson* led to the problem facing the court in *Clark*—whether the word “recovery” includes all damages, compensatory and punitive, or just compensatory damages.<sup>19</sup> Many courts have faced this question and have decided that “recovery” includes only compensatory damages and that “the plaintiff's comparative negligence will not be permitted to diminish the [punitive] award.”<sup>20</sup> The rationale behind these cases, as well as behind *Clark*, is that while compensatory damages make the plaintiff whole again, and thus constitute recovery, punitive damages are awarded purely to punish the defendant.<sup>21</sup> Thus, when courts decide not to reduce punitive damage awards, their main considerations are the purpose behind punitive damages and the nature of the defendant's behavior.<sup>22</sup>

### B. *The Purposes of Punitive Damages*

In order to understand the court's holding in *Clark* and the reasoning behind similar holdings in other jurisdictions, the purpose of punitive damages and how they are awarded in negligence actions should be considered. The primary purpose of punitive damages in negligence actions is to punish the defendant.<sup>23</sup> This punitive purpose differs significantly from the goal of compensatory or actual damages,

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17. *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000).

18. *Nelson*, 303 S.C. at 245, 399 S.E.2d at 784 (“The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his or her negligence.”).

19. *Clark*, 339 S.C. at 377-78, 529 S.E.2d at 532-33.

20. *Tampa Elec. Co. v. Stone & Webster Eng. Corp.*, 367 F. Supp. 27, 38 (M.D. Fla. 1973). See generally Francis M. Dougherty, Annotation, *Effect of Plaintiff's Comparative Negligence in Reducing Punitive Damages Recoverable*, 27 A.L.R. 4th 318, 319-21 (1984) (providing an explanation of the cases holding that actual damages, but not punitive damages, are reduced in comparative negligence).

21. *Clark*, 339 S.C. at 378, 529 S.E.2d at 533 (“The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future.”); see also Dougherty, *supra* note 20, at 319-21 (providing an overview of the reasoning in cases holding that punitive damages are not to be reduced).

22. See, e.g., *Robbins v. McCarthy*, 581 N.E.2d 929, 932 (Ind. Ct. App. 1991) (explaining that when awarding punitive damages the focus is on the defendant and her behavior). The *Robbins* court stated “in making that decision all thoughts of benefitting the injured party should be laid aside and the sole issues are whether or not the defendant's conduct was so obdurate that he should be punished for the benefit of the general public.” *Id.* (citing *Orkin Extermination Co. v. Traina*, 486 N.E.2d 1019, 1022 (Ind. 1986)); see also Dougherty, *supra* note 20, at 319-21 (discussing the reasoning of similar holdings from other jurisdictions).

23. See generally 22 AM. JUR. 2D *Damages* § 3 (1988) (discussing the general purposes of punitive damages and actual damages).

which are used to make the plaintiff whole again after a loss.<sup>24</sup> It is well settled that “actual damages are recoverable at law from a wrongdoer as compensation for the actual loss or injuries sustained by reason of a tortfeasor’s wrongdoing.”<sup>25</sup>

In South Carolina, punitive damages serve several purposes, including punishment of the wrongdoer.<sup>26</sup> South Carolina case law indicates that the rationales for punitive damages can be separated into three distinct but related categories as follows: (1) punishment of the defendant and deterrence for both the wrongdoer and society as a whole,<sup>27</sup> (2) “vindication of private rights,”<sup>28</sup> and (3) additional compensation for the plaintiff for the aggravated circumstances involved.<sup>29</sup>

### 1. *Punishment and Deterrence*

Probably the most familiar and perhaps most important aspects of punitive damages are punishment and deterrence. Punishment is cited most often in South Carolina cases as the primary goal behind punitive damage awards.<sup>30</sup> In *Gamble v. Stevenson* the jury awarded the plaintiff \$87,500 in punitive damages as a result of an accident caused by the plaintiff’s failure to stop at an intersection where the stop sign had been removed by the defendant during road work.<sup>31</sup> In supporting the award of punitive damages the South Carolina Supreme Court explained that punitive damages are used as “punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future.”<sup>32</sup> Likewise, in *Campus Sweater and Sportswear Co. v. M.B. Kahn Construction Co.* the South Carolina District Court set forth the purposes of punitive damages and, in so doing,

24. *Id.* (“[C]ompensatory damages are awarded to compensate an injured party for his injury, while punitive damages are awarded to punish a wrongdoer.” (footnotes omitted)).

25. *Id.* § 24.

26. *Gamble v. Stevenson*, 305 S.C. 104, 110, 406 S.E.2d 350, 354 (1991). In *Gamble*, the court explained that “[i]n South Carolina, ‘punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future.’” *Id.* (quoting *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964)). In addition, punitive damages “serve ‘as a vindication of private rights when it is proved that such have been wantonly, willfully or maliciously violated.’” *Id.* (quoting *Harris v. Burnside*, 261 S.C. 190, 196, 199 S.E.2d 65, 68 (1973)).

27. *See id.*

28. *Harris*, 261 S.C. at 196, 199 S.E.2d at 68; *see also* *Gilbert v. Duke Power Co.*, 255 S.C. 495, 500, 179 S.E.2d 720, 723 (1971) (explaining that punitive damages also serve to vindicate the private rights of the injured plaintiff).

29. *See, e.g.*, *Campus Sweater and Sportswear Co. v. M.B. Kahn Constr. Co.*, 515 F. Supp. 64, 105 (D.S.C. 1979) (explaining that punitive damages serve a compensatory function); *Rogers v. Florence Printing Co.*, 233 S.C. 567, 573, 106 S.E.2d 258, 261 (1958) (quoting *Watts v. South Bound R.R. Co.*, 60 S.C. 67, 73, 38 S.E. 240, 242 (1901) and discussing the presence of a compensatory aspect of punitive damages).

30. Several cases cite punishment as one of the most important goals behind punitive damages. *See Gamble*, 305 S.C. at 110, 406 S.E.2d at 354; *Campus Sweater*, 515 F. Supp. at 105 (quoting *Johnson v. Atlantic Coast Line R.R. Co.*, 142 S.C. 125, 138, 140 S.E. 443, 447 (1927)).

31. *Gamble*, 305 S.C. at 106, 406 S.E.2d at 351.

32. *Id.* at 110, 406 S.E.2d at 354 (quoting *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964)).

stressed that “[o]ne of the chief purposes in awarding damages of this class is to punish the wrongdoer, not only to prevent by him a recurrence of the wrongful act, but to deter others from conduct of the same or similar kind.”<sup>33</sup> Although punishment and deterrence are two of the principal concerns behind an award of punitive damages, they are by no means the only ones.

## 2. Vindication

Punitive damages are also awarded “as vindication of [a] private right,”<sup>34</sup> meaning that punitive damages serve as a sort of court-sanctioned revenge for the plaintiff for the violation of her rights at the hands of the defendant.<sup>35</sup> In *Campus Sweater*, the South Carolina District Court explained:

It must be noted that deterrence and warnings to others are not the only purposes which punitive damages serve in South Carolina. The cases speak in terms of vindicating a private right. In other words, punitive damages serve as a type of private revenge which is carried out in the courts rather than through duels or in back alleys.<sup>36</sup>

Thus, vindication is another reason punitive damages are awarded to the plaintiff even when the plaintiff has already been made whole through compensatory damages.<sup>37</sup>

## 3. Compensation

Several South Carolina cases have referred to the compensatory aspect of punitive damages.<sup>38</sup> However, the existence of a compensatory purpose does not mean that punitive damages are used to compensate for the plaintiff’s loss. Punitive damages are compensatory in a different sense: they provide additional recovery for the plaintiff so the award adequately reflects the nature of the harm inflicted by the defendant.<sup>39</sup> The subtle difference between the compensatory purpose of punitive damages and the punishment purpose is the focus of compensation on the

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33. *Campus Sweater*, 515 F. Supp. at 105 (quoting *Johnson*, 142 S.C. at 138, 140 S.E. at 447).

34. *Hicks v. Herring*, 246 S.C. 429, 437, 144 S.E.2d 151, 155 (1965) (citing *Davenport v. Woodside Cotton Mills Co.*, 225 S.C. 52, 80 S.E.2d 740 (1954)).

35. *Campus Sweater*, 515 F. Supp. at 105.

36. *Id.* (citing *Watts v. South Bound R.R. Co.*, 60 S.C. 67, 38 S.E. 240 (1901)).

37. *Watts*, 60 S.C. at 73, 38 S.E. at 242 (“Exemplary or punitive damages go to the plaintiff, not as a fine or penalty for a public wrong, but in vindication of a private right which has been willfully invaded.”).

38. See *Campus Sweater*, 515 F. Supp. at 105; *Hicks*, 246 S.C. at 437, 144 S.E.2d at 155; *Rogers v. Florence Printing Co.*, 233 S.C. 567, 573, 106 S.E.2d 258, 261 (1958); *Watts*, 60 S.C. at 73, 38 S.E. at 242.

39. *Watts*, 60 S.C. at 73, 38 S.E. at 242 (stating punitive damages “in a measure compensate or satisfy for the wilfulness with which the private right was invaded.”). *Id.*

plaintiff and her injury, not just on the defendant's conduct. The compensatory nature of punitive damages also reflects the view that punitive damages are needed to compensate the plaintiff for additional costs which may not be included in the compensatory award.<sup>40</sup> Accordingly, with an award of compensatory and punitive damages, the jury fully compensates the plaintiff for any costs incurred as a result of the defendant's conduct, and punishes the defendant while attempting to deter similar conduct in the future.

### C. *The Standard for an Award of Punitive Damages*

The special functions served by punitive damages show that only certain kinds of behavior can support an award of punitive damages.<sup>41</sup> Mere negligence or gross negligence is not sufficient to support an award of punitive damages; a defendant's behavior must reflect a reckless disregard for the plaintiff's rights.<sup>42</sup> When deciding whether particular behavior meets the standard for an award of punitive damages, the question is inevitably a matter of degree. The South Carolina Supreme Court, in *Hicks v. McCandlish*,<sup>43</sup> explained the degrees of negligence in the following way:

The cases make the distinction . . . that negligence may be so gross as to amount to recklessness, and when it does, it ceases to be mere negligence and assumes very much the nature of wilfulness. So much so that it has been more than once held in this state that a charge of reckless misconduct will justify the jury, if the same be proved, in awarding punitive damages.<sup>44</sup>

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40. *Campus Sweater*, 515 F. Supp. at 105 (“Punitive damages also serve to compensate the victim for his attorneys’ fees, which are normally taken out of his compensatory damage verdict, and for other expenses for which the jury does not award compensatories.”).

41. *See id.* at 104; *see also* *Gamble v. Stevenson*, 305 S.C. 104, 110, 406 S.E.2d 350, 354 (1991) (explaining that punitive damages may be warranted when the plaintiff's rights have been “wanton, willfully or maliciously violated” (quoting *Harris v. Burnside*, 261 S.C. 190, 196, 199 S.E.2d 65, 68 (1973))); *Gilbert v. Duke Power Co.*, 255 S.C. 495, 500, 179 S.E.2d 720, 723 (1971) (reiterating the general rule that a plaintiff is entitled to punitive damages if “he proves the wanton, willful or malicious violation of his rights” (citing *Davenport v. Woodside Cotton Mills Co.*, 225 S.C. 52, 80 S.E.2d 740 (1954))); *Campus Sweater*, 515 F. Supp. at 104 (“South Carolina, as do most other jurisdictions, requires misconduct above and beyond mere negligence or gross negligence to entitle a plaintiff to punitive damages.”).

42. *See Harris v. Burnside*, 261 S.C. 190, 196, 199 S.E.2d 65, 68 (1973); *Davenport v. Woodside Cotton Mills Co.*, 225 S.C. 52, 60, 80 S.E.2d 740, 744 (1954); *Beaudrot v. Southern Ry. Co.*, 69 S.C. 160, 165, 48 S.E. 106, 107 (1904); *see also* HUBBARD & FELIX, *supra* note 12, at 583 (explaining the definitions of recklessness under South Carolina case law). Professors Hubbard and Felix note that in South Carolina “[t]he cases take two views concerning the definition of ‘recklessness.’ Some cases indicate that it requires some conscious awareness of negligence of other wrongdoing, and some indicate that the test is more objective and that recklessness exists if a reasonable person would regard the conduct as reckless.” HUBBARD & FELIX, *supra* note 12, at 583.

43. 221 S.C. 410, 70 S.E.2d 629 (1952).

44. *Id.* at 415, 70 S.E.2d at 631 (citing *Proctor v. Southern Ry. Co.*, 61 S.C. 170, 189, 39 S.E. 351, 358-59 (1901)).

The distinction is best illustrated through an example, such as the behavior of the plaintiff and the defendant in *Clark*. Anderson, one of the plaintiffs, was deemed negligent when she turned left in front of the defendant's car.<sup>45</sup> Anderson's behavior was merely negligent because, while perhaps she was not as careful as she should have been, this kind of behavior is fairly common and is not deserving of punishment.<sup>46</sup> The defendant's behavior, on the other hand, was reckless and deserving of punitive damages because she was speeding and driving in a dangerous manner.<sup>47</sup> The defendant's behavior exhibited a reckless disregard for the rights of other drivers on the road, and her behavior created a real risk for others; thus, her behavior deserved punishment. The distinction between ordinarily negligent behavior and reckless behavior, as well as the purposes of punitive damages, discussed in this Note, are important in light of the supreme court's reasoning in *Clark* and the holdings in similar cases from other jurisdictions.

### III. APPROACHES IN OTHER JURISDICTIONS

The court's reasoning in *Clark* comports with that of the majority of jurisdictions around the country.<sup>48</sup> These courts have also looked at the purposes of punitive damages in their respective states and have decided that the best way to preserve the utility of punitive damage awards in negligence actions is to leave the award intact, despite a finding of negligence on the part of the plaintiff.<sup>49</sup> The reasoning adopted by these courts is analogous to the reasoning in *Clark* in part because the reasons for punitive damages and the standard for imposing them are substantially the same across the country.<sup>50</sup>

For example, in the Iowa case of *Godbersen v. Miller*,<sup>51</sup> plaintiff Dale Godbersen was awarded three thousand dollars in compensatory damages and twelve thousand dollars in punitive damages despite being found fifty percent at fault in the incident.<sup>52</sup> The action arose out of a bar fight that spilled out into the street.<sup>53</sup> The defendant, Donnie Miller, eventually got into his vehicle and drove

45. *Clark v. Cantrell*, 339 S.C. 369, 376, 529 S.E.2d 528, 532 (2000).

46. *Id.* at 381, 529 S.E.2d at 534.

47. *Id.* at 376, 381, 529 S.E.2d at 532, 534.

48. See *Amoco Pipeline Co. v. Montgomery*, 487 F. Supp. 1268, 1272-73 (W.D. Okla. 1980); *Tampa Elec. Co. v. Stone & Webster Eng'g Corp.*, 367 F. Supp. 27, 38 (M.D. Fla. 1973); *Davis v. Lira*, 817 P.2d 539, 542 (Colo. Ct. App. 1991), *rev'd on other grounds*, 832 P.2d 240 (Colo. 1992); *Godbersen v. Miller*, 439 N.W.2d 206, 209 (Iowa 1989); *Bowman v. Doherty*, 686 P.2d 112, 122-23 (Kan. 1984); *Wolf v. Goodyear Tire & Rubber Co.*, 808 S.W.2d 868, 875 (Mo. Ct. App. 1991); *Shahrokhfar v. State Farm Mut. Auto. Ins. Co.*, 634 P.2d 653, 658-59 (Mont. 1981); *Blazovic v. Andrich*, 590 A.2d 222, 231-32 (N.J. 1991); *Comeau v. Lucas*, 455 N.Y.S.2d 871, 873 (N.Y. App. Div. 1982); *Summit Fasteners, Inc. v. Harleysville Nat'l Bank & Trust Co.*, 599 A.2d 203, 206 (Pa. Super. Ct. 1991); *Hondo's Truck Stop Cafe, Inc. v. Clemmons*, 716 S.W.2d 725, 726 (Tex. App. 1986); *Tucker v. Marcus*, 418 N.W.2d 818, 828-29 (Wis. 1988).

49. See *supra* note 48.

50. See *supra* note 48.

51. 439 N.W.2d 206 (Iowa 1989).

52. *Id.* at 208.

53. *Id.* at 207.



toward Godbersen.<sup>54</sup> During the incident Godbersen was trapped between Miller's car and another car, sustaining minor injuries.<sup>55</sup> When the police were called to the scene, Miller's blood-alcohol level was 0.165.<sup>56</sup> Affirming the trial court's refusal to reduce the punitive damage award, the Iowa Supreme Court discussed the distinction between actual damages and punitive damages in the comparative fault system.<sup>57</sup> According to the court, a reduction in compensatory damages "represents a way of making the plaintiff 'pay' for his or her proportional responsibility" and "prevents a plaintiff from being compensated for fault that he or she should fairly bear."<sup>58</sup> Punitive damages, on the other hand, are imposed on the defendant as a penalty "for conduct that is grossly negligent, wanton, willful or reckless."<sup>59</sup> The Iowa Supreme Court also shared the *Clark* court's concern that reducing the punitive award would punish the plaintiff for conduct that did not meet the standard for punitive damages.<sup>60</sup>

Likewise, in *Bowman v. Doherty*,<sup>61</sup> the Kansas Supreme Court affirmed the trial court's decision not to reduce a punitive damage award.<sup>62</sup> In this action for legal malpractice, the plaintiff was attributed thirty percent of the fault, the defendant fifty percent, and a third party twenty percent of the fault.<sup>63</sup> Judgment was entered for the plaintiff in the amount of one-hundred dollars in actual damages and nine-hundred dollars in punitive damages.<sup>64</sup> The Kansas Supreme Court held that the punitive damage award should not be reduced, stating that "[p]unitive damages are allowed in Kansas, not because of any special merit of the injured party's case, but are imposed to punish the wrongdoer for malicious, vindictive or willful and wanton invasion of the injured party's rights."<sup>65</sup> Again, great consideration was given to the primary purpose of punitive damages—to punish and deter like behavior—and to the different functions of compensatory and punitive damages.<sup>66</sup>

In *Robbins v. McCarthy*<sup>67</sup> the Indiana Court of Appeals also discussed the policy reasons for an award of punitive damages.<sup>68</sup> The court concluded that "[p]unitive damages are not compensatory in nature but designed to punish the wrongdoer and dissuade him and others similarly situated from such conduct in the

54. *Id.*

55. *Id.*

56. *Id.*

57. *Godbersen*, 439 N.W.2d at 208-09.

58. *Id.* at 208.

59. *Id.* (citing *Campbell v. Van Roekel*, 347 N.W.2d 406, 410-11 (Iowa 1984)). The *Godbersen* court also noted "[p]unishment, not compensation, is the goal. . . . The object is deterrence, not proportional recovery." *Id.* (citation omitted).

60. *Id.* ("It would penalize [the plaintiff] for conduct over which he had no control while letting [the defendant's] outrageous conduct go unpunished.")

61. 686 P.2d 112 (Kan. 1984).

62. *Id.* at 122.

63. *Id.* at 117.

64. *Id.*

65. *Id.* at 121.

66. *Id.* at 122.

67. 581 N.E.2d 929 (Ind. Ct. App. 1991).

68. *Id.* at 932.

future.”<sup>69</sup> Thus, the Indiana court shared the *Clark* court’s fear that any reduction in a punitive damage award would weaken the punishment and deterrent effects of the award. The *Robbins* case also reflects the view that the jury should look only at the defendant’s behavior when awarding punitive damages.<sup>70</sup> The court explains:

When the question of whether punitive damages should be given is considered, it must be done with the realization that the plaintiff has already been awarded all that he is entitled to receive as a matter of law. What, if anything, he may be given in addition is a windfall, and in making that decision all thoughts of benefitting the injured party should be laid aside and the sole issues are whether or not the defendant’s conduct was so obdurate that he should be punished for the benefit of the general public.<sup>71</sup>

A federal district court in Oklahoma also discussed punitive damages as a means of benefitting and protecting society as a whole in *Amoco Pipeline Co. v. Montgomery*.<sup>72</sup> Punitive damages are “punishment imposed for the benefit of society, as a restraint upon the transgressor and as a warning and example to deter him and others from committing similar offenses in the future.”<sup>73</sup> The plaintiff’s degree of fault should not even be a factor in an award of punitive damages because the defendant is being punished for the good of society, not just for the harm done to the plaintiff.

Similarly, in the New Jersey case of *Blazovic v. Andrich*,<sup>74</sup> the court held that because punitive damages are designed to punish the defendant, a punitive award must not be reduced according to the plaintiff’s degree of fault, while compensatory damages should reflect the plaintiff’s negligence.<sup>75</sup> This system, according to the New Jersey Court, “accomplish[es] the goal of equitably dividing liability for a plaintiff’s compensatory damages, while keeping intact the policy of punishing wanton or intentional acts.”<sup>76</sup>

Finally, a Wisconsin case, *Tucker v. Marcus*,<sup>77</sup> also addresses the punishment and deterrent effects of punitive damages and highlights the distinct considerations involved in such an award.<sup>78</sup> In Wisconsin, “[p]unitive damages are properly denominated ‘smart money’ and are designed to hurt in order to punish and to deter.”<sup>79</sup> The *Tucker* court explained that “[p]unishment and deterrence are purposes

69. *Id.* (citing *Orkin Exterminating Co. v. Traina*, 486 N.E.2d 1019, 1022 (Ind. 1986)).

70. *Id.*

71. *Id.* (quoting *Orkin Exterminating Co.*, 486 N.E.2d at 1022).

72. 487 F. Supp. 1268, 1272 (W.D. Okla. 1980).

73. *Id.* (citing *Main v. Levine*, 118 P.2d 252, 255 (Okla. 1941)).

74. 590 A.2d 222 (N.J. 1991).

75. *Id.* at 232.

76. *Id.* (citation omitted).

77. 418 N.W.2d 818 (Wis. 1988).

78. *Id.* at 822.

79. *Fahrenberg v. Tengel*, 291 N.W.2d 516, 527 (Wis. 1980) (quoting *Cieslewicz v. Mut. Serv.*

*Cas. Ins. Co.*, 267 N.W.2d 595, 601 (Wis. 1978)).

fundamentally distinct from ‘the basic goal of the law of negligence, the equitable distribution of the loss in relation to the respective contribution of the faults causing it.’”<sup>80</sup>

The differing treatment of compensatory and punitive damages is clearly due, in part, to their distinct purposes. The reasoning involved in the cases discussed above is very similar to the South Carolina Supreme Court’s reasoning in *Clark v. Cantrell*. These decisions all share a focus on the importance of the goals and purposes of punitive damages as well as a desire to further those goals.

#### IV. *CLARK V. CANTRELL*

*Clark v. Cantrell*<sup>81</sup> arose out of an automobile accident in which the vehicle of the defendant, Cantrell, collided with the vehicle owned by the plaintiff, Clark, and driven by Maggie Lee Anderson.<sup>82</sup> The accident occurred when Cantrell’s speeding vehicle hit Anderson as she was turning left across two lanes of traffic.<sup>83</sup> The impact forced David James from the plaintiff’s car, causing his death.<sup>84</sup> The jury apportioned sixteen percent of the fault to Anderson and eighty-four percent of the blame to Cantrell.<sup>85</sup> The jury awarded Clark \$3,000 actual damages and \$750 punitive damages, and Anderson received \$75,000 in actual damages and \$25,000 in punitive damages.<sup>86</sup> The compensatory award was reduced according to Anderson’s degree of fault, but the trial judge refused to reduce the punitive award.<sup>87</sup> The South Carolina Court of Appeals affirmed the trial judge’s decision not to reduce the punitive damage award in proportion to the plaintiff’s fault.<sup>88</sup>

##### A. *Goals of Punitive Damages and the Reasons Behind the Decision*

The South Carolina Supreme Court in its affirmation of *Clark* was heavily influenced by its perception of the purposes of punitive damages and the standard of behavior necessary for such an award. The supreme court acknowledged the three most important goals behind an award of punitive damages as follows: (1) punishment of reckless, dangerous behavior; (2) deterrence of this kind of conduct by the defendant or society as a whole; and (3) compensation for the reckless manner with which the defendant violated the plaintiff’s rights.<sup>89</sup>

After a careful analysis of the multiple goals of punitive damage awards, the supreme court cited four reasons for its affirmation of the court of appeals’ decision

80. *Tucker*, 418 N.W.2d at 822 (quoting *Bielski v. Schulze*, 114 N.W.2d 105, 113 (Wis. 1962)).

81. 339 S.C. 369, 529 S.E.2d 528 (2000).

82. *Id.* at 376, 529 S.E.2d at 532.

83. *Id.* at 376-77, 529 S.E.2d at 532.

84. *Id.* at 376, 529 S.E.2d at 532.

85. *Id.* at 377, 529 S.E.2d at 532.

86. *Id.*

87. *Clark*, 339 S.C. at 377, 529 S.E.2d at 532.

88. *Id.* at 375, 529 S.E.2d at 531.

89. *Id.* at 379, 529 S.E.2d at 533.

not to reduce punitive damages.<sup>90</sup> These reasons are directly related to the purpose of punitive damages. First, the court reasoned that reducing the punitive damage award would lessen the award's impact on the defendant and thus would "reduce the punishment and deterrent effect of the award."<sup>91</sup> The court believed any reduction would undermine the utility of a punitive damage award and would interfere with the punishment and deterrence goals behind the award.<sup>92</sup> Second, the court found that reducing the amount of punitive damages would be tantamount to punishing the plaintiff for conduct that was merely negligent.<sup>93</sup> The comparative fault system does not punish ordinarily negligent behavior through an award of punitive damages; only willful or wanton conduct warrants this kind of award.<sup>94</sup> Third, the court found it inappropriate to compare the plaintiff's ordinary negligent behavior with the defendant's willful conduct for the purpose of reducing the plaintiff's punitive damage award.<sup>95</sup> Finally, the court also concluded it was inappropriate to consider the plaintiff's behavior at all when considering an award of punitive damages.<sup>96</sup> The sole focus instead should be on the defendant's conduct.<sup>97</sup> In other words, the comparison of the plaintiff's and defendant's behavior ends when the jury decides that punitive damages are appropriate; attention then shifts to the defendant.

## B. *A Closer Look: The Reasons Not to Reduce*

### 1. *Punishment and Deterrence*

The first argument made by the court in *Clark* emphasizes the punishment and deterrence aspects of punitive damages. The court argues that a reduction in the punitive damage award would correspondingly "reduce the punishment and deterrent effect of the award."<sup>98</sup> This seems to be the most common justification for the refusal to reduce punitive damages and is universally cited by courts addressing

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90. *Id.* at 379-81, 529 S.E.2d at 534.

91. *Id.* at 379-80, 529 S.E.2d at 534.

92. *Id.*

93. *Clark*, 339 S.C. at 380, 529 S.E.2d at 534.

94. *Id.*

95. *Id.* at 381, 529 S.E.2d at 534.

96. *Id.*

97. *Id.*

98. *Id.* at 379-80, 529 S.E.2d at 534.

this issue.<sup>99</sup> Deterrence is an important aspect as punitive damages deter reckless behavior by making it costly for people to conduct themselves in such a manner.<sup>100</sup>

It is important to remember, however, that deterrence is an important aspect of the tort system *as a whole*. Making the plaintiff whole through an award of compensatory damages is also a way to deter negligent behavior by the defendant. The negligent defendant is forced to pay for the plaintiff's loss, not only to compensate the plaintiff and to place the financial burden on the person at fault, but also to deter careless behavior in the future. Thus, in most instances, ordinarily negligent behavior is deterred as well. So although negligent behavior is not to be *punished* through an award of punitive damages, deterrence of this behavior does contribute to a more cautious and prudent society. If a negligent defendant were able to avoid compensating the plaintiff, negligent behavior would be encouraged, assuming that the defendant would only consider his net gain or loss resulting from the act. Accordingly, allowing a negligent plaintiff to receive a full punitive award may compromise the deterrence of the plaintiff's ordinarily negligent behavior.<sup>101</sup> Consider the problems this could pose under a pure comparative fault system. In a pure comparative fault system, the plaintiff can recover damages regardless of her degree of fault.<sup>102</sup> Thus, a plaintiff could be more negligent than the defendant and still recover. If punitive damages are not reduced, the negligent plaintiff could also receive a full punitive award in addition to compensatory damages, despite having been more negligent than the defendant.<sup>103</sup>

In addition, punitive damages are not awarded solely as a means of punishment. If punishment were the only reason, then punitive damages would not necessarily be awarded to the plaintiff, who has already been made whole through compensatory damages. Unless some other objective exists for a punitive award, there is no reason to give the award to the plaintiff. The award could instead be

99. See, e.g., *Amoco Pipeline Co. v. Montgomery*, 487 F. Supp. 1268, 1273 (W.D. Okla. 1980) ("Punitive damages are intended to punish the wrongdoer . . ."); *Robbins v. McCarthy*, 581 N.E.2d 929, 932 (Ind. Ct. App. 1991) ("Punitive damages are not compensatory in nature but designed to punish the wrongdoer." (citing *Orkin Extermination Co. v. Traina*, 486 N.E.2d 1019, 1022 (Ind. 1986))); *Godbersen v. Miller*, 439 N.W.2d 206, 208 (Iowa 1989) ("[P]unitive damages are designed to exact a penalty from the defendant for conduct that is grossly negligent, wanton, willful, or reckless." (citation omitted)); *Bowman v. Doherty*, 686 P.2d 112, 122 (Kan. 1984) ("An award of punitive damages is to punish the wrongdoer, not to compensate for the wrong."); *Blazovic v. Andrich*, 590 A.2d 222, 232 (N.J. 1991) ("[P]unitive damages are designed to punish the wrongdoer."); *Fahrenberg v. Tengel*, 291 N.W.2d 516, 527 (Wis. 1980) ("Punitive damages are properly denominated 'smart money' and are designed to hurt in order to punish and deter." (quoting *Cieslewicz v. Mut. Serv. Cas. Ins. Co.*, 267 N.W.2d 595, 601 (Wis. 1978))).

100. See *Fahrenberg*, 291 N.W.2d at 527 (Wis. 1980) ("Punitive damages are properly denominated 'smart money' and are designed to hurt in order to punish and to deter." (quoting *Cieslewicz*, 267 N.W.2d at 601 (Wis. 1978))).

101. See generally Victor E. Schwartz, *Comparative Fault and Punitive Damages—Balancing the Equities: They Must Intersect*, 23 MEMPHIS ST. U. L. REV. 125, 131-32 (1992) (explaining that both parties "have engaged in conduct that should be discouraged by our society").

102. See *Hubbard & Felix*, *supra* note 10, at 278.

103. See *Schwartz*, *supra* note 101, at 131-32.

given to a fund or a suitable charity.<sup>104</sup> The defendant would still have to pay, and thus the deterrent function of punitive damages would be realized; however, the plaintiff would get no more than what is needed to compensate for the loss.<sup>105</sup> This seems unfair to the plaintiff, precisely because punitive damages do serve other purposes. Punitive damages are also awarded to “vindicate a private right” and to compensate for both the reckless manner in which the plaintiff’s rights were invaded and for certain costs that are not included in the compensatory award.<sup>106</sup> The plaintiff deserves to get the money because the defendant has violated the plaintiff’s rights in a manner that warrants punishment. Punitive damages are a way of both recognizing the way in which the plaintiff has been harmed and accounting for the more severe harm that may result from such reckless behavior. This idea is reflected in South Carolina cases such as *Watts v. South Bound Railroad Company*,<sup>107</sup> where the South Carolina Supreme Court explained that punitive damages in a measure compensate or satisfy for the wilfulness with which the private right was invaded. . . .<sup>108</sup> These purposes, while perhaps not discussed as often as the punishment aspect, are nevertheless integral to an award of punitive damages.

Despite compelling counter viewpoints, deterrence is still a strong argument against reduction of punitive damages. Deterrence of reckless and willful behavior is a top priority in tort law.<sup>109</sup> If this sort of behavior goes unpunished, defendants may deem risky behavior cost effective because of a relatively minor damage award to the plaintiff. Reckless behavior of this sort cannot be encouraged and must be deterred even if a negligent plaintiff is awarded a large sum in punitive damages. By punishing the defendant with punitive damages, regardless of the negligence on the part of the plaintiff, deterrence is achieved where it is needed the most.

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104. See IND. CODE ANN. § 34-51-3-6 (Michie 1998). Indiana’s statute provides for payment of a punitive damage award to the clerk of court, who then pays 25% to the party awarded the damages and 75% to the state treasurer who deposits the funds into the violent crime victims compensation fund. *Id.*

105. As in the Indiana statute above, a defendant still has to pay the award, but the plaintiff only receives twenty-five percent of the award, little more than what is needed to fully compensate for the loss. *Id.*

106. See *Gamble v. Stevenson*, 305 S.C. 104, 110, 406 S.E.2d 350, 354 (1991); see also *Campus Sweater & Sportswear Co. v. M.B. Kahn Constr. Co.*, 515 F. Supp. 64, 105 (D.S.C. 1979); *Harris v. Burnside*, 261 S.C. 190, 196, 199 S.E.2d 65, 68 (1973); *Davenport v. Woodside Cotton Mills Co.*, 225 S.C. 52, 60, 80 S.E.2d 740, 744 (1954).

107. 60 S.C. 67, 38 S.E. 240 (1901).

108. *Id.* at 73, 38 S.E. at 242.

109. See generally *Campus Sweater*, 515 F. Supp. at 105 (quoting *Johnson v. Atlantic Coastline R.R. Co.*, 142 S.C. 125, 138, 140 S.E. 443, 447 (1927)) (“One of the chief purposes in awarding damages of this class is to punish the wrongdoer, not only to prevent by him a recurrence of the wrongful act, but to deter others from conduct of the same or similar kind.”); *Gamble*, 305 S.C. at 110, 406 S.E.2d at 354 (noting the deterrent function of punitive damages in South Carolina).

## 2. *Reduction as Punishment for the Plaintiff*

The second reason the South Carolina Supreme Court cites for not reducing punitive damages is the belief that “any reduction in the defendant’s punishment inflicts a corresponding amount of punishment on the plaintiff.”<sup>110</sup> On the other hand, a refusal to reduce an award of punitive damages might also be seen as punishing the defendant beyond his degree of fault. One might say the reduction of a punitive award is not punishment for the plaintiff, but rather a means to punish the defendant in proportion to his fault. Otherwise, the negligent plaintiff receives a windfall and the reckless defendant must pay the entire punitive award. This viewpoint is problematic because such reduction still allows simple negligence to offset more serious, reckless behavior, regardless of whether reduction of punitive damages is considered to be punishment to the plaintiff. The negligent plaintiff did contribute to the accident, so it is appropriate to allocate the cost of the accident to both parties according to their degree of fault. Thus, the compensatory damages are reduced in proportion to the plaintiff’s degree of fault.

However, punitive damages are different. A punitive damage award does not have to bear a certain relation to the cost of the accident.<sup>111</sup> It is more important for a punitive award to bear a relation to the degree of behavior being punished.<sup>112</sup> There is a “need to individualize punitive damage verdicts. One must look to behavior, not to results, to determine the need to admonish[ . . . ]”<sup>113</sup> Since the punitive award focuses on the defendant’s behavior, the plaintiff’s mere negligence should not be used to offset the defendant’s reckless behavior. In *Clark* the plaintiff contributed to the accident, but did not contribute to the defendant’s punishable behavior.<sup>114</sup> The court in *Godbersen* explained that a reduction of the punitive damage award “would penalize [the plaintiff] for conduct over which he had no control while letting [the defendant’s] outrageous conduct go unpunished.”<sup>115</sup> The plaintiff’s contribution to the accident should not be used to reduce punishment imposed on the defendant when the plaintiff shared no responsibility for the defendant’s behavior.

110. *Clark v. Cantrell*, 339 S.C. 369, 380, 529 S.E.2d 528, 534 (2000).

111. *See Campus Sweater*, 515 F. Supp. at 106 (“The admonitory function of punitive damages does not lend itself to formulation. For one thing, a survey of South Carolina cases indicates that there has never been an agreement on ratios. There is no definite mathematical rule as to the proportion which punitive damages should bear to actual damages.” (citing *Eaddy v. Greensboro-Fayetteville Bus Lines*, 191 S.C. 538, 5 S.E.2d 281, 283 (1939)); *Hicks v. Herring*, 246 S.C. 429, 436, 144 S.E.2d 151, 154 (1965) (“No formula for the measurement of punitive damages . . . is possible, and the amount to be awarded is peculiarly within the judgment and discretion of the jury. . . .”)).

112. *See generally Campus Sweater*, 515 F. Supp. at 106 (explaining that behavior is more important than that actual damages in determining a punitive award).

113. *Id.*

114. *Clark*, 339 S.C. at 380, 529 S.E.2d at 534.

115. *Godbersen v. Miller*, 439 N.W.2d 206, 208 (Iowa 1989).

### 3. *Inappropriate Comparison*

The third reason for the court's decision not to reduce punitive damages also involves the distinction between the plaintiff's behavior, mere negligence, and the defendant's willful, wanton, and reckless conduct.<sup>116</sup> The court stated that it would be "inappropriate to reduce the punitive damages by comparing the plaintiff's negligence with the defendant's reckless or willful conduct."<sup>117</sup> In other words, when considering punitive damages, mere negligence and reckless conduct should not be compared as they are when considering compensatory damages.

One might ask why the comparison must stop at punitive damages when the purpose of comparative fault is to compare the conduct of the plaintiff and defendant.<sup>118</sup> At first glance, this seems to be a valid question. Comparative fault was created so behaviors could be compared, thus creating a flexible system where the results are not quite as severe as a contributory negligence system.<sup>119</sup> With the comparative fault system, courts "no longer have to render decisions in which all the chips fall on one side or the other. They can compare and contrast."<sup>120</sup> However, comparing negligence to recklessness for the purpose of reducing punitive damages neglects the basic fact that the type of behavior necessary for an award of punitive damages is fundamentally different from ordinary negligence. Certainly negligence and more egregious conduct are compared for an award of compensatory damages, but this is because plaintiffs should share the responsibility for losses that they helped to create. Although punitive damages are awarded to plaintiffs to help compensate them fully for their loss, punitive damages are awarded on the basis of the defendant's punishable behavior, not according to the magnitude of the plaintiff's loss.<sup>121</sup> In assessing the punitive damages, the plaintiff presumably has not contributed to the defendant's behavior, so the mere negligence of the plaintiff should not serve to reduce the defendant's punishment. Again, compensatory damages focus on the accident, while punitive damages focus on the defendant's behavior.<sup>122</sup>

In addition, it is important to return to the primary purpose of punitive damages, which is to punish and deter reckless conduct. The defendant's reckless conduct is deemed punishable, in part, because it does not merely affect the plaintiff in a given lawsuit. The reckless behavior can potentially harm anyone in society; therefore,

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116. *Clark*, 339 S.C. at 381, 529 S.E.2d at 534.

117. *Id.*

118. Schwartz, *supra* note 101, at 129-30.

119. See *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 244, 399 S.E.2d 783, 784 (1991) ("Having determined comparative negligence is the more equitable doctrine, we now join the vast majority of our sister jurisdictions and adopt it as the law of South Carolina.")

120. Schwartz, *supra* note 101, at 129.

121. See *Bowman v. Doherty*, 686 P.2d 112, 121 (Kan. 1984); see also *Hubbard & Felix*, *supra* note 10, at 314.

122. *Hubbard & Felix*, *supra* note 10, at 314.



society has a significant interest in deterring this behavior.<sup>123</sup> The defendant is punished for her potential harm to society as well as for the reckless way in which she harmed the plaintiff.<sup>124</sup> This broader interest is why punishment and deterrence are of such profound importance when considering an award of punitive damages.

#### 4. *Focus on the Defendant*

Finally, the *Clark* court reasoned that punitive damages should not be reduced because “the focus is on only the defendant.”<sup>125</sup> As previously discussed, it is difficult to look solely at the defendant when awarding punitive damages because the award eventually goes to the plaintiff.<sup>126</sup> Indeed, the award does go to the plaintiff because punitive damages serve other functions. Despite the inevitable presence of the plaintiff in an award of punitive damages, the main focus should be on the defendant’s behavior. The defendant’s reckless behavior is more costly than the plaintiff’s negligence and is therefore punishable. Even if the plaintiff’s behavior is considered, the result should be the same. The plaintiff’s negligence does not render the defendant’s conduct any less deserving of punishment; thus, such negligence should also not serve to reduce the punitive damage award.

#### IV. CONCLUSION

While the South Carolina Supreme Court’s decision in *Clark v. Cantrell* may at first blush appear to result in a windfall to negligent plaintiffs, it is really the best way to preserve and uphold the goals of punitive damages, particularly those of punishment and deterrence. Deterrence applies to ordinary negligence as well, but society’s interest is best served through a more vehement attempt to deter willful misbehavior. Deterrence of dangerous behavior is of such great importance that the court sacrifices partial deterrence of ordinary negligence. The reduction of compensatory damages in accordance with the plaintiff’s fault must be enforced to deter simple negligence. Thus, negligent plaintiffs must still shoulder some of the responsibility for their loss, though the punitive damages remain unaffected.

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123. See generally *Gamble v. Stevenson*, 305 S.C. 104, 110, 406 S.E.2d 350, 354 (1991) (“[P]unitive damages are allowed in the interest of society . . .”) (quoting *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964)).

124. See *id.*

125. *Clark v. Cantrell*, 339 S.C. 369, 381, 529 S.E.2d 528, 534 (2000).

126. See generally *Campus Sweater & Sportswear Co. v. M.B. Kahn Constr. Co.*, 515 F. Supp. 64, 105 (D.S.C. 1979) (discussing the reasons an award is given to the plaintiff).

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