



The  
**CONSTRUCTION**  
EXECUTIVES  REPORT

[www.ibeeonline.com](http://www.ibeeonline.com)

A publication of the International Builders Exchange Executives, Inc.

Spring 2011

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The Construction Executives' Report is published by the International Builders Exchange Executives as a service to members.

Our website is: [www.ibeeonline.com](http://www.ibeeonline.com)  
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Suggestions or submissions can be sent to :  
[info@ibeeonline.com](mailto:info@ibeeonline.com) / 860-243-3977



The Hilton Marco Island Beach Resort welcomed delegates from the IBEE to its annual Mid-Year Meeting February 23-26, 2011, providing an ideal venue for a host of informative educational sessions and networking fun in the sun.

Wednesday morning kicked off with a board meeting right through to lunch, followed by an afternoon of leisure activities, including golf, tennis, sand and surf. IBEE delegates and spouses then reconvened for the official open-

ing reception from 6-8 p.m. that evening.

Delegates got to work bright and early on Thursday, with a full plate of learning and networking on the agenda.

Deborah Catalano of Florida-based Akerman Senterfitt opened the morning session with an insightful presentation on social media, aptly titled "To Creep or Not to Creep." Catalano discussed employer rights and obliga-

*Continued on page 2*



Left to Right: Verna Regler, Del Walker, Ron Hambley, Kevin Koehler, Gregg Mazurek, and Frances Wagner

## IBEE Mid-Year Meeting Wrap Up

*Continued from page 1*

tions as it pertains to employees' use of social media at home and at the workplace. Her session explored the topic with a focus on assisting IBEE delegates with their HR administration regarding social media and the potential ramifications therein.

Catalano also led the second morning session with an overview of Employment Laws. The session highlighted the typical problem areas with regard to interviewing, hiring, discipline and termination, while also looking at ways Building Exchanges/Construction Associations can minimize liability for employment actions. For an in-depth look at the consequences of misclassifying employees as independent contractors, see the article on Page 6.

Following a buffet lunch, delegates got back to business at 1 p.m. with the third session of the day, presented by Mark A. Caropreso of Morgan Stanley Smith Barney, LLC. Caropreso focused on ways BX/CA's can best invest their surplus revenues. See article for full details on Page 10.

The final session of the day focused on defining Board responsibilities, titled "Where is the Line." This topic was a common theme through the year and had been the subject of numerous e-mail exchanges among executives. The "open mic" brainstorming session, with executives sharing their own experiences and methods on the topic, discussed different ways to structure your board and what responsibilities your board members should harbor.

The Mid-Year Meeting concluded on Friday with a look at the present and future of planrooms, which continue to be the lifeblood of BX/CAs despite constant evolution and increasing competition.

John DeVries, President and General Manager of the Ottawa Construction Association, presented an introduction on the recently-released national Link2Build online planroom in Canada – essentially "one-stop-shopping" that consolidates construction bidding opportunities from local association planrooms across the country into an all-encompassing aggregator.



*Deborah Catalano*



*Mark A. Caropreso*



*John DeVries*



*Earl R. Hall of the Syracuse Builders Exchange speaks to delegates.*



*IBEE President Ron Hambley celebrates his 50th birthday.*

Meanwhile, Barb Boroskae, Construction Information Services Manager at Winnipeg Construction Association, concluded the morning session with a look at the future of online bidding, titled "The Next (Bid) Thing." Boroskae reviewed the mechanics behind the online bid submission interface, while also focusing on the opportunities, risks and potential revenue models behind the service.

The meeting concluded in the afternoon with a final wrap of the three days, with discussions on the IBEE's plans moving forward, affinity program offerings and reports, and a look ahead at June's annual convention in Washington, DC.





# President's Message

Ron Hambley, Winnipeg Construction Association

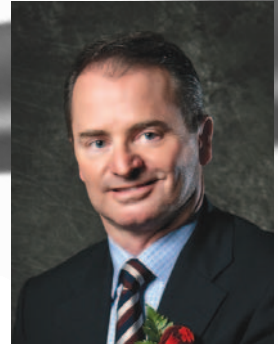
Greetings IBEE Members! It's finally spring and the weather is warming up. And in the City of Winnipeg that usually means the potential for a massive flood as a wall of water rolls northward (yes northward) from the Dakotas into the still frozen Canadian rivers and lakes – not a great scenario I can assure you. Despite the flood, Western Canada has continued to enjoy a very brisk construction marketplace which has kept our members busy, our staff hopping, and our planroom full.

Speaking of warmer weather, attendees of the IBEE Mid-Year Meeting enjoyed a spectacular week of 83 degree days in Marco Island, Florida. In addition to the weather, the Hilton Marco was a beautiful venue and the food and service was exceptional. Everyone I talked to really enjoyed themselves.

From my perspective, this was a great opportunity to spend some time with our Board of Directors and fellow IBEE members and to discuss the many issues we deal with on a day-to-day basis. There were a number of very informative sessions and we have tried to summarize some of those in this CER, with the complete presentations available on the new IBEE website. The most positive discussion and result from our Board meeting was the decision to retain S&S Management Services as the management services company for IBEE. The past six months or so have been somewhat of a Cirque du Soleil act for those of us directors trying to keep up the various IBEE functions and it is a welcome relief to finally get some staff in place.

Our options for staffing the Association were fairly obvious: Hire a staff person or an association management firm. In March of 2009, we were of the opinion that a full-time dedicated staff person was the ticket, however, the person we selected was not the right fit for us. So today, with fewer association resources at our disposal, the management company is the best route. We had a very lively discussion on this subject at the Board meeting and while a full-time staff person is still something we see in the future, we know we have made the right choice for the immediate needs of IBEE members. S&S will bring some dedicated staff together to assist us in our programming efforts and provide a much needed sense of continuity. Please join me in welcoming Mitch, Michael and Jacquilyn from S&S!

With that decision behind us, we are moving on to plan the IBEE Convention & Annual Meeting in Washington and to "Capitolize on Opportunity." In this issue of CER, we present some of our ideas for this event. We look forward to seeing you in Washington in June.



# IBEE Launches NEW WEBSITE

For the latest IBEE news and information, visit us online

[www.ibeeonline.com](http://www.ibeeonline.com)





# CAPITOLIZE ON OPPORTUNITY

WASHINGTON, DC

**Accommodations:** Omni Shoreham Hotel, Washington, DC

**Hotel Rate:** \$235 per night (plus tax)

**Deadline:** Rate block reservations must be made by June 7, 2011

**Phone:** (202) 234-0700 **Fax:** (202) 265-7972

**Reservations:**

Reservation Line: 1-800-545-8700, Promo Code: 12400610592

Via web:

<http://www.omnihotels.com/FindAHotel/WashingtonDCShoreham/MeetingFacilities/IBEEAnnualConference6.aspx>

The Omni Shoreham Hotel in Washington, DC has played host to presidents, world leaders and inaugural balls, making it one of many historic Washington landmarks. Nestled on 11 acres in picturesque Rock Creek Park in northwest Washington, DC, the four-diamond luxury hotel offers a resort atmosphere and a personal taste of politics, culture, art and music at its best.

# IBEE Convention & Annual Meeting 2011

## June 21 – 26, 2011

Omni Shoreham Hotel

2500 Calvert Street NW, Washington, DC

### Wednesday, June 22, 2011

8:30 a.m. – 10:30 a.m.	Board of Directors Meeting
12:00 noon	Golf Outing or DC Sightseeing
6:00 p.m. – 8:00 p.m.	Welcome Reception

### Thursday, June 23, 2011

8:00 a.m. – 9:00 a.m.	Breakfast & Welcome Remarks
9:00 a.m. – 10:00 a.m.	Generational Changes in the Workforce Speaker: Misti Burnmeister
10:00 a.m. – 10:30 a.m.	Break
10:30 a.m. – 11:30 a.m.	LEED Certification - Where It's Going Speaker: Allison Fee
11:30 a.m. – 1:00 p.m.	Lunch
1:00 p.m. – 2:00 p.m.	Integrating BIM Into Your Plan Room Speaker: Mark Terzigni
2:00 p.m. – 2:15 p.m.	Break
2:15 p.m. – 3:15 p.m.	Avectra Association Mgt./Plan Room Software Speaker: Ben Muscolino

### Friday, June 24, 2011

8:00 a.m. – 9:45 a.m.	Breakfast & Annual Business Meeting
9:45 a.m. – 10:15 a.m.	Momentum Affinity Program Speaker: Jack Pyros
10:15 a.m. – 10:30 a.m.	Break
10:30 a.m. – 11:30 a.m.	Marketing Your Affinity Programs Speaker: Mark Levin, CAE
11:30 a.m. – 1:00 p.m.	Lunch
1:00 p.m. – 2:00 p.m.	Association Membership Trends Speaker: Mark Levin, CAE
2:00 p.m. – 2:15 p.m.	Break
2:15 p.m. – 3:15 p.m.	Plan Room Management & Design – Panel
6:00 p.m. – 9:00 p.m.	<b>Awards/Dinner &amp; Banquet</b> Awards and Special Presentations will occur throughout the evening

### Saturday, June 25, 2011

8:30 a.m. – 9:30 a.m.	Breakfast
9:30 a.m. – 10:30 a.m.	Willis – Insurance Group Captive Panelist: Stephen Kirsche, Sr., CPCU & Charlie Woodman
10:30 a.m. – 5:00 p.m.	<i>Take this opportunity to explore D.C.!</i>





# IBEE Convention & Annual Meeting Registration

**Omni Shoreham Hotel,  
Washington, DC  
June 21 – 26, 2011**

\$450 per IBEE Member  
\$250 per Spouse/Guest

**Submit this registration form and payment to:**

Michael Thompson  
S & S Management Services Inc.  
One Regency Drive, P.O. Box 30  
Bloomfield, CT 06002-0030  
Email: mthompson@ssmgt.com  
Phone: (860) 243-3977 Fax: (860) 286-0787

**Registration Cancellation Deadline:  
June 13, 2011**

Please register the following person(s) for the 2011 IBEE Convention & Annual Meeting:

Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ Postal Code/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Spouse/Guest/Additional Member Name(s):  
\_\_\_\_\_  
\_\_\_\_\_

Total enclosed: \$ \_\_\_\_\_

## Member Sponsorship

In order to keep registration fees as low as possible, it was decided at the Boston Convention (1995) to solicit the Membership for funds to help subsidize the cost of Conventions. Below are sponsorship opportunities for the upcoming convention in Washington, D.C. Your contribution will be greatly appreciated.

**Sponsorship includes the following:**

- Name/logo on all event signage, including Membership Reception, Entertainment, Business Meetings, Break-Out Sessions, etc.
- Name/Logo displayed on distributed meeting materials, including brochures, booklets, invitations, etc.
- Recognition in the *Construction Executive Report*

We wish to sponsor the 2011 Annual Convention of the International Builders Exchange Executives in Washington, D.C. as indicated below:

Platinum Sponsor \$ 1,000     Gold Sponsor \$ 500     Silver Sponsor \$ 250     Bronze Sponsor \$ 100

AMOUNT \$ \_\_\_\_\_ US

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ Province/State: \_\_\_\_\_ Postal Code/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Signature: \_\_\_\_\_

Please remit payment to:  
International Builders Exchange Executives  
One Regency Drive, P.O. Box 30 Bloomfield, CT 06002

*Thank you!*





# The Consequences of Misclassifying Employees as Independent Contractors

Files from Deborah Catalano, Akerman Senterfitt

Only “employees” are entitled to the minimum wage and overtime protections contained in the Fair Labor Standards Act.

The FLSA does not cover independent contractors; however, what exactly classifies someone as an independent contractor is defined within the act, and penalties can be severe for those employers who wrongly classify employees as independents.

A recent example of worker misclassification can be found in *Cromwell v. Driftwood Electrical Contractor, Inc.*, which involved an overtime lawsuit brought by two professional cable splicers in the aftermath of Hurricane Katrina. (2009 U.S. App. Lexis 22389 (5th Cir. Oct. 12, 2009)).

In reviewing the plaintiff’s classification, the court considered several factors: (1) the degree of control exercised by the alleged employer; (2) the extent of the relative investments of the worker and the alleged employer; (3) the degree to which the worker’s opportunities for profit or loss was determined by the alleged employer; (4) the skill and initiative required in performing the job; and (5) the permanency of the relationship. The facts show that the highly skilled workers worked 13 days with the 14th day off. Each provided his own truck, tools and received little supervision. The employer provided workers compensation and liability insurance to the workers. **The court found that the plaintiffs were employees because they were economically dependent on the employer and not in business for themselves.**

In *Johnson v. the Unified Government of Wyandotte County, Kansas City, Kansas*, 371 F.3d 723 (10<sup>th</sup> Cir. 2004), several police officers volunteered to work additional hours as security guards in Wyandotte Public Housing. They sued the county, city and state governments as joint employers for FLSA violations of overtime pay. The jury found that the officers were

independent contractors because: (1) the Housing Authority exercised very little control over how the security officers



guarded the housing projects; (2) the officers elected which shifts and for how long they would work, if at all; and (3) the jobs did not require additional skills. The appeals court upheld the jury’s verdict after assessing the following factors: (1) the degree of control exerted by the alleged employer over the worker; (2) the worker’s opportunity for profit or loss; (3) the worker’s investment in the business; (4) the performance of the working relationship; and (5) the degree of skill required to perform the work.

“An additional commonly considered factor is the extent to which the work is an integral part of the alleged employer’s business.”

In *Baker v. Flint Engineering & Construction Co.*, 137 F.3d 1436 (10<sup>th</sup> Cir. 1998), rig welders, although highly skilled, were found to be employees because they exercised insufficient control over their work conditions. In the natural gas pipeline construction industry, rig welders are moved from site to site to perform skilled welding on pipes, sheet metal and other portions of the gas industry facilities. The rig welders in the litigation had been closely supervised by the defendant company. They were required to arrive at certain times, take breaks and leave at times specified by the employer. They had no actual control over any profit or loss. “In short, the rig welders have no control over the essential determinants of profits in the business, and no direct share in the success of the business.”

Moreover, although the welders were not told how to weld a piece of metal, “they were told by Flint foremen when and where to weld.” **The Court deemed the rig welders to be employees because they had very little actual autonomy over their work.**

## Discrimination Actions Brought by Independent Contractors

Several federal and state anti-discrimination laws provide protections to “employees,” but do not cover independent contractors. Misclassified workers can institute a charge of discrim-

ination against the employer or file suit to enforce the substantive protections of these laws. For example, in *Demers v. Adams Homes*, 321 Fed. Appx. 847 (11th Cir. Mar. 20, 2009), at issue was whether the plaintiff, a sales person for Adams Homes, was an employee or an independent contractor. After Demers became pregnant, she requested pregnancy leave, which her employer did not guarantee. Two months before her due date, she again inquired about pregnancy leave. She was then terminated. She sued the developer (with whom she had an independent contractor agreement) under the Family and Medical Leave Act (“FMLA”) and Title VII of the Civil Rights Act of 1964.

The company cited the independent contractor agreement as the basis for its defense and filed a motion for summary judgment, seeking to have the court rule that it had no liability because Demers was not an employee. **The court then determined that the plaintiff was, in fact, an employee based on several facts demonstrating that the employer had significant control over the plaintiff:** (1) the employer had guidelines concerning exactly what the plaintiff could wear; (2) the plaintiff was required to staff the office a minimum of five days a week, including Saturday and Sunday; (3) the plaintiff was limited to two weeks vacation which could not be taken consecutively and she had to provide ample notice of her vacation; (4) the plaintiff could only sell the homes of the defendant, meaning that she did not have any entrepreneurial opportunities; (5) she had to attend weekly sales meetings and had to submit weekly reports on her sales; and (6) she had to submit any substitute staffing for approval. Not only did the employer exert control over the plaintiff, the court also noted that the employer perceived the plaintiff as an “employee.” The employer had provided the plaintiff with supplies and promotional materials, paying for salespeople’s pages, sales office phones, contracts, promotional brochures, and business cards. The plaintiff had received memos addressed to “all employees.”

She was allowed to purchase a home at an “employee discount,” a discount that was unavailable to other contractors. At trial, Demers convinced a jury that she had been an employee and that her termination was due to her pregnancy. The jury awarded her over \$250,000 in damages, fees, and costs. The developer appealed, but the award was affirmed on appeal. **The lesson to be learned from *Demers* is that an employer cannot label a worker as an independent contractor yet treat the worker as an employee. If the employer blurs the lines, a court will likely treat a worker as an employee entitled to statutory protections.**

## What Is An Employer To Do?

While there is no precise litmus test by which an employer can be certain that it will have no employment liability for a properly designated independent contractor, employers should consider the following:

### Do

- Do enter into a written agreement with the independent contractor clarifying the relationship and specify that the contractor has no authority to bind the company. Be prepared to enforce the terms of this agreement, including termination if a contractor’s services are unacceptable;
- Do require the independent contractor to submit bills/invoices for services rendered;
- Do permit the independent contractor to hire employees or subcontractors to perform services;
- Do permit non-exclusive arrangements and state that the independent contractor is free to provide his/her services to other companies;
- Do specify in the independent contractor agreement that the worker is not eligible for company-sponsored benefits;
- Do pay independent contractors on a project basis rather than an hourly basis;
- Do permit the independent contractor to determine the schedule, location, hours, and manner in which the services are performed;
- Do issue IRS Form 1099s to all independent contractors and require contractors to complete IRS Form W-9s
- Do create a cross-functional team comprised of individuals from human resources, legal, and payroll to ensure that there are no loopholes.

### Don’t

- Don’t hire independent contractors to perform the same or similar functions as employees perform;
- Don’t define the independent contractor’s working hours, schedule, or location for performing duties;
- Don’t give the independent contractor materials like company stationary or business cards to identify him/herself;
- Don’t offer job training - merely instructions on the desired end-result;
- Don’t provide added benefits such as company-sponsored benefits, invitations to meetings and events or any other perk that employees of the company receive;
- Don’t allow participation in employee functions that would make the classification become more of a gray area;
- Don’t pay travel expenses or reimburse costs incurred by the independent contractor’s business;
- Don’t pay for equipment that the independent contractor needs to do his/her job or give workspace at the company unless absolutely necessary to deliver the services provided;
- Don’t give performance reviews, action plans, or disciplinary guidance that evaluate the level of work the independent contractor is providing;
- Don’t allow the independent contractor to use company employees as assistants;
- Don’t require the independent contractor to be supervised by a company employee.

*\*Files from Akerman Senterfitt.*



# How should you manage your surpluses?

Construction associations may actually be mismanaging their surpluses by not investing in markets with the most potential for high returns.

That was the message Mark Caropreso, Vice-President of Wealth Management with Morgan Stanley Smith Barney LLC, conveyed to a group of about 30 construction association managers at the IBEE's Mid-Year Meeting February 23-26, 2012 at the Hilton Marco Island Beach Resort and Spa.

Construction associations on the whole have had a pretty good run over the last decade or so, and as a result have been able to put away a good chunk of savings in the process. Caropreso believes that this windfall could be better invested in equities, stocks and bonds, rather than GICs and mutual funds, for much greater growth potential. Nearly a third of the managers said they had employed this strategy, which surprised the majority of the group who said their board of directors often shy away from investing surpluses in volatile markets.

Ron Hambley, current President of the IBEE, said his local board with the Winnipeg Construction Association takes a conservative approach through low risk options that aren't susceptible to market fluctuation. He said WCA's directors take the stance that the surplus doesn't belong to them but rather their membership base, and shouldn't ever be put at risk of losing value. But Hambley said that may not be in the best interests of the association long-term after all.

Caropreso argues that associations are already exposed to market risk through the real estate they own, and no investment is truly without its own risks, so managers ultimately have a responsibility to get the best profit margins possible for their association through effective investment strategies.

Caropreso's presentation discussed a multi-maturity investment strategy that diversifies holdings in a bond portfolio. It calls for the construction of a bond ladder, positioned in "rungs" over a selected time horizon, that provide investors with structure, stability and a predictable cash flow while at the same time reducing overall exposure to environmental risks. Securities in the portfolio can be sold at any time prior to maturity at market rates, though bear in mind the price may be more or less than the original purchase price of the security depending on the conditions at that time.

Essentially, by taking the total amount of investment and dividing it equally over a certain number of years, you will arrive at the number of "rungs" in your investment ladder. For example, if an investor has \$50,000 to invest over a five-year horizon, a laddered portfolio with maturities scheduled in five increments amounts to \$10,000 invested annually.





# IBEE Brings S&S Management Services On Board

International Builders Exchange Executives, Inc. (IBEE) is pleased to welcome S&S Management Services, commissioned to provide management services to the association. Based in Bloomfield, Connecticut, S&S Management Services specializes in association management, public relations, and government relations for business and professional associations.

Represented by Mitchell Sorensen, Executive Vice President, Michael Thompson, Account Executive, and Jacquilyn Davis, Senior Administrative Assistant, S&S will work with the association to run the day-to-day operations, including events and programs.

As part of their new role, S&S will administer and attend officer meetings of the Board of Directors, as well as coordinate meeting follow-up and assist IBEE members with tasks, ideas and projects that results from Board meeting discussions. Other S&S responsibilities will include administering and promoting the Annual Meeting as well as the IBEE Mid-Year Meeting, managing financial matters under the direction of the Treasurer, developing and distributing a quarterly newsletter, managing the *new* IBEE website, and handling all membership inquiries, retention and growth.

## Meet the S&S Management Team, working on behalf of IBEE

### C. Mitchell Sorensen, CAE – Executive Vice President

Mr. Sorensen, Executive Vice President, manages the construction and trade association division of S & S Management Services, Inc. He was previously associated with the Association Management Center of Hartford and has 27 years of association management experience.

In addition to serving as Executive Director of several associations, Mr. Sorensen has developed a particular expertise in the conduct of labour relations on behalf of management. He completed his undergraduate education at Gettysburg College



before obtaining his master's degree in public administration from the University of Hartford. Mr. Sorensen is a member of the American Society of Association Executives and is currently the President of the Connecticut Society of Association Executives (CSAE). A Council Member and Treasurer of the Northeastern States Council of Sheet Metal Contractors, Mr. Sorensen has also served as the Chairman for the Chapter Executives Institute for the Sheet Metal and Air Conditioning Contractors National Association. He sits as a public member of the Workers Compensation Rating and Appeals Board.

In January 2003, Mr. Sorensen earned the Certified Association Executive (CAE) designation from the American Society of Association Executives (ASAE).

### Michael F. Thompson – Account Executive

Mr. Thompson has been an account executive at S&S Management Services since 2004, serving as Executive Director of various trade associations and professional societies. Mr. Thompson graduated from Johnson and Wales University in Charleston, South Carolina, where he earned a bachelor's degree in hospitality sales and meeting management. His experience includes meeting and convention planning, labour relations and negotiations, budget & finance, and membership recruitment and retention. He is also an active member of the Connecticut Society of Association Executives serving on its Professional Development Committee.



### Jacquilyn A. Davis - Senior Administrative Assistant

Ms. Davis has been an employee of S & S Management Services, Inc. since September 2007, specializing in member services, event planning, and publication design. She has her associates degree from the New England Institute of Art and is currently pursuing her bachelor's degree in web design and interactive media.



# The IBEE's Mission, Vision and Strategic Goals

## IBEE MISSION

The International Builders Exchange Executives (IBEE) serves as a catalyst for the exchange of ideas and experiences to advance and enhance the role and effectiveness of construction association and plan room executives and their organizations. The IBEE also aims to assist the construction industry in obtaining information, services, and support at the local level.

## VISION

The IBEE is a representative organization of Construction Association Executives and their organizations, dedicated to the pursuit of excellence in Construction Association and Plan Room services through cooperation and participatory action.

## IBEE STRATEGIC GOALS

- Increase awareness and enhance the image of Builders Exchanges and their services among owners and design firms;
- Provide a forum for managing executives to share information, enhance management skills, develop professional standards and explore new methods;
- Provide tangible services, resources and support that will improve Exchange operations and member service at the local level;
- Identify common problems and seek solutions that benefit IBEE members and the construction industry they serve.



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