

# South Carolina's 2025 Tort and Liquor Liability Reform Bill & 2025 Case Law Updates of Note

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ACC – South Carolina Winter Meeting



# Presenters



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# Roadmap

- South Carolina's 2025 Tort and Liquor Liability Reform Bill (H.3430)
  - History
  - Changes and Exceptions
  - Hypotheticals
- S.C. Case Law Updates from 2025 (and some 2026)
  - Things you may have missed



# South Carolina's 2025 Tort and Liquor Liability Reform Bill (H.3430): Virtue Tempered by Cloudiness

## History

- Who?
- What?
- When?
- Where?
- Why?

## Final Product

- How?

## Examples of Ambiguity

# H. 3430 History

# 2005 Tort Reform Act



- South Carolina passed the Tort Reform Act in 2005
  - Protected insurance companies from frivolous proceedings
  - Provided clarity and limits on appropriate venue
  - Cap on non-economic damages in medical malpractice cases
  - Modified joint and several liability
    - A defendant can only be held jointly and severally liable if he is fifty percent or more at fault

# Post 2005 Applicable Case Law

- *Machin v. Carus Corp.*, 799 S.E.2d 468, 419 S.C. 527 (2017)
  - Non-party cannot be placed on the verdict form (case involved a workplace injury).
- *Smith v. Tiffany*, 419 S.C. 548, 799 S.E.2d 479 (2017)
  - Tortfeasor can point to a non-party as the cause of injury, the court or jury cannot apportion fault to them.
  - The “empty chair” defense is permitted, but to have any real effect, the jury would have to determine the non-party was the sole proximate cause of injuries.

# State of Joint Tortfeasor Liability in January 2025

- Modified joint and several liability applied if multiple tortfeasors were on the verdict form
- But if tortfeasors not on the verdict form (immunity from suit, not included as a party, or settled out), the jury was not permitted to apportion fault to those entities
- Tortfeasor (even 1% at fault) responsible for entire verdict

# 2017 Liquor Liability Bill

- In 2017, South Carolina enacted a bill (S.166) which required establishments that sell alcohol to carry at least \$1 million in liquor liability insurance
- Following this bill, insurance rates for restaurants, bars, and other establishments serving alcohol increased significantly
- Increased insurance rates caused some restaurants to shut down
- Some insurers left South Carolina in response to this legislation
- The 2017 bill gave those injured in alcohol related accidents easier access to compensation

# Why Tort and Liquor Liability Reform?

- H. 3430 passed because lawmakers believed the pre-2025 system:
  - Punished defendants beyond their actual fault
  - Produced erratic, high-dollar verdicts
  - Was collapsing the liquor liability insurance market
  - Threatened small businesses more than it deterred bad conduct



# More On the Why

- Through the first year of the 126th General Assembly, significant media coverage and public attention on this topic

POLITICS & GOVERNMENT

## Bill aiming to fix SC's soaring insurance rates clears state senate after bitter fight

By Ted Clifford  
Updated March 28, 2025 11:03 AM | Gift Article

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Following several weeks of debate and late passed what some senators called among of their careers, a bill with potential impl

Because the bill could impact bars and r lawyers and others, it was a lightning r body's 46 members are attorneys with defense lawyers.

Senators were targeted in social med long debates on the Senate floor.

"This is World War One trench war himself an attorney, during debate

## Hundreds gather inside SC Stateho support or oppose lawsuit reform. it do?

BY NICK REYNOLDS NREYNOLDS@POSTANDCOURIER.COM  
MAR 5, 2025

COLUMBIA — Hundreds of people, including Gov. Henry McMaster, packed the Statehouse lobby in a conspicuous show of support for a sweeping lawsuit reform package that carries dramatic implications for South Carolina's legal and business communities.

McMaster has rarely personally waded into legislative battles during his eight-year tenure, but on March 5 he made an unusual show to throw his full weight behind the legislation — a top priority of Republicans this session to reform the state's civil

## SC Senate passes lawsuit reform package. Opinions mixed on its future and what it does.

BY NICK REYNOLDS NREYNOLDS@POSTANDCOURIER.COM  
MAR 27, 2025



South Carolina Senate Majority Leader Shane Massey, R-Edgefield (center), listens during a 2024 policy debate in Columbia. Massey, along with Sen. Michael Johnson, shepherded a massive lawsuit reform bill through the Senate on March 26 after a full month of debate and negotiations.

JEFFREY COLLINS/AP



# Who, What, and When?

- Introduced by Representative Brandon Newton on January 14, 2025 – District 45 (Lancaster/Kershaw)
- H. 3430 originally about appointment of state auditor
- No mention of tort or liquor liability at all
- Referred to the House Committee on the Judiciary



# Parallel Contributors S. 244 and H. 3534

- Tort reform topic of interest and language originated from two other bills, H. 3534 and S. 244
- On the same day H. 3430 was introduced, H. 3534 was introduced
- Two days after H. 3430 was introduced, S. 244 was introduced
- Both H. 3534 and S. 244 were referred to the appropriate Judiciary Committee

## H. 3534 a Parallel Bill

- H. 3534 was introduced by Speaker Murrell Smith – District 67 (Sumter)
- Focused solely on tort reform
- Proposed comparing fault of all persons or entities in suit, regardless of whether the person or entity could be named as a party to the suit



## S. 244 - A Parallel Bill

- S. 244 introduced by Senator A. Shane Massey – District 25 (Edgefield/McCormick/Saluda)
- Had both tort reform and liquor liability reform
- As initially introduced, would have significantly changed tort system in South Carolina
- This bill introduced the verdict form changes seen in H. 3430's final form along with much of the liquor liability reform language



# Amalgam in Committee

- Despite H. 3430's original topic – state auditor appointment – it morphed completely as it moved from committee to committee
- Through amendments, it became an amalgam of S. 244, H. 3543, and other bills, then dropped its original content
- By its final version on May 8, 2025, the bill only addressed general tort liability and numerous liquor law changes

# H. 3430 Final Product



# How? Final Product

- General Tort reform regarding distribution of recoverable fault and identifiable parties
- Liquor Liability:

<b>Liquor Liability Reform</b>	Narrowing potentially liable parties
<b>Liquor Liability Mitigation</b>	Reducing insurance requirements

# General Tort Reform

- Under the previous statute, restaurants, bars, or other places serving alcohol to an intoxicated driver could be responsible for an entire judgment even if they were found only 1% at fault, despite an otherwise modified joint and several system generally
- New legislation protects restaurateurs by limiting exposure when a third party causes most of the fault to the alleged victim
- Now, a defendant can add an additional tortfeasor to the verdict form for the purposes of allocation fault except in the following cases: **(1) immune parties, (2) cases of strict liability, (3) asbestos cases, (4) cases of vicarious liability, (5) cases of gross negligence**

# Liquor Liability Reform

- Changes to Joint and Several Liability for specific claims:
  - Allows a defendant business to seek joint and several liability if found grossly negligent involving the use, sale, or possession of alcohol – § 15-38-15
  - Allows a defendant business to seek joint and several liability from a driver charged with driving under the influence – § 61-2-147
    - Defendant business can only recover up to 50% from the driver charged with driving under the influence

# Liquor Liability Reform

Efforts to reduce Liquor Liability Insurance for businesses selling alcohol

Adds a “knowing” requirement to the tort of selling alcohol to an intoxicated person – S.C. Code Ann. § 61-6-2220.

Adds a statute creating alcohol server training requirements – §§ 61-3-100-140

Adds additional penalties for businesses who fail to comply with liquor license permit requirements – § 61-4-580

# Liquor Liability Mitigation

- Defendant can mitigate how much insurance coverage the law requires it to carry - § 61-2-145
- Specific actions reduce the coverage amount by the following amounts:

<b>Stop serving alcohol by midnight</b>	<b>\$250,000</b>
<b>Have all employees complete alcohol server training</b>	<b>\$100,000</b>
<b>Derive less than forty percent of total sales from alcohol</b>	<b>\$100,000</b>
<b>Use a digital ID system between midnight and 4:00 a.m.</b>	<b>\$100,000</b>
<b>Be a nonprofit engaged in a single charity event</b>	<b>\$500,000</b>

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# H. 3430 Case Studies

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# Case Studies

- Under § 15-38-15, a factfinder can apportion fault to a nondefendant tortfeasor if the following are met:
  - Defendant discloses the tortfeasor within 180 days
  - Defendant proves tortfeasor's negligence
- If the nondefendant tortfeasor settles beforehand, the tortfeasor is automatically included on the verdict form
- Fault cannot be allocated to a nondefendant tortfeasor in the following actions: **civil immunity, gross negligence, imputed liability, strict liability, and asbestos**

# Examples of Ambiguity

- Multiple causes of action:
  - Defendant sued in both strict liability and negligence
  - Potential tortfeasor only liable in negligence
  - Can the defendant bring in the potential tortfeasor?
- Settling tortfeasors – when and how are they excluded from being added to the case?
- Imputed liability – what counts for imputed liability?

# Questions About H. 3430?

# S.C. Common Law Developments in 2025

## Charles: Malpractice Expert Qualifications

- *Charles Blanchard Construction Corp., Inc. v. 480 King Street, LLC*, --- S.E.2d ----, 2026 WL 158105 (S.C. Supreme Court, January 21, 2026)
  - 480 King Street, LLC (“Owner”) sued Glick/Boehm & Associates, Inc. (“Architect”) for negligence, breach of contract, and breach of warranty related to design and construction administration of a stair tower project
  - Owner submitted an expert affidavit from a professional engineer to meet the affidavit requirement of the *South Carolina Frivolous Civil Proceedings Sanctions Act* after filing but before final disposition

# S.C. Common Law Developments in 2025

## Charles: Malpractice Expert Qualifications

- Expert Qualification Standard
  - An expert need *not* hold the same professional license as the defendant; qualification may be shown through specialized knowledge, training, or experience explained in the affidavit
- Application to Claims
  - The engineer's affidavit was sufficient for negligent construction administration claims because he had relevant experience and would opine on that standard of care
  - The affidavit was insufficient for negligent architectural design or warranty claims because the expert explicitly declined to opine on architectural standards
  - Breach of contract and breach of warranty claims grounded in professional negligence are subject to the same affidavit requirements; contract claims survived only as to construction administration

# S.C. Common Law Developments in 2025

## James: Economic Loss Rule

- *James E. Carroll, Jr., v. Isle of Palms Pest Control, Inc., SPM Management Company, Inc. and Terminix Service, Inc., No. 28291* (S.C. July 23, 2025)
  - Homeowner James Carroll contracted with Isle of Palms Pest Control and SPM for termite protection. Without informing Carroll, the pest control companies abandoned the bait system and instead applied a liquid termiticide — allegedly negligently. Carroll renewed the bait station contract annually, unaware of the change. More than a decade later, extensive termite damage was discovered.
  - Carroll sued for negligence and breach of contract. The trial court granted summary judgment on negligence, applying the economic loss rule, and the Court of Appeals affirmed. The Supreme Court of South Carolina granted certiorari and reviewed the economic loss rule's application.

# S.C. Common Law Developments in 2025

## James: Economic Loss Rule

- The Supreme Court reversed the lower courts, holding that **the economic loss rule applies *only* in the product liability context** where damage is to the product itself
- Because this case involved services and a residential home, not a defective product, the economic loss rule did not bar Carroll's negligence claim
- The court held that the pest control companies' conduct — secretly switching treatment methods — was not contemplated by the contract and thereby created a duty of due care outside the contract
- That duty supported a tort negligence claim for alleged negligent application of liquid termiticide

# S.C. Common Law Developments in 2025

## Welch: Receiverships and Lingering Obligations

- *Welch v. Advance Auto Parts, Inc.* 445 S.C. 640 916 S.E.2d 320 2025 WL 1450573, (Supreme Court of South Carolina May 21, 2025)
  - Donna B. Welch, as Personal Representative of the Estate of Melvin G. Welch (decedent), sued numerous defendants, including Advance Auto Parts, Inc. and Atlas Turner, Inc., for wrongful death and related asbestos-exposure claims
  - Decedent died of mesothelioma, allegedly from exposure to asbestos products shipped into South Carolina
  - Atlas Turner, a Canadian asbestos supplier, sought dismissal for lack of personal jurisdiction; the trial court denied the motion. The trial court ordered Atlas Turner to engage in discovery, including a Rule 30(b)(6) corporate deposition—an order Atlas Turner refused to obey

# S.C. Common Law Developments in 2025

## Welch: Receiverships and Lingering Obligations

- 1) Producer was obligated to comply with rule governing deposition upon oral examination and designate representative as its deponent, despite claim that it had no witness available because none of its employees had knowledge of its activities;
- 2) Québec Business Concerns Records Act (QBCRA) did not relieve producer of its obligations to comply with discovery under South Carolina law;
- 3) Striking of producer's pleading as sanction for its refusal to comply with discovery was measured act of trial court's discretion;
- 4) Appointment of receiver over producer's insurance assets prior to judgment was warranted by its willful litigation misconduct;
- 5) Trial court had jurisdiction to appoint receiver over producer's insurance assets, regardless of whether those assets were located outside South Carolina; and
- 6) Equity required limitation of definition of “insurance assets” subject to receivership to those insurance policies that had potential to cover husband's injuries.

# S.C. Common Law Developments in 2025

## Spring Valley: Rule Against Perpetuities

- *Spring Valley Interests, LLC v. Best for Last, LLC* --- S.E.2d ---- 2026 WL 45017 (Supreme Court of South Carolina. January 07, 2026)
  - In a 2017 commercial real estate financing, Best for Last, LLC granted a freely assignable, perpetual option to purchase a 74.425% co-tenancy interest in property as part of a loan deal. White Interests (original lender) later assigned the option to Spring Valley Interests, LLC. Spring Valley exercised the option during Best's refinance process, sparking a dispute when Best objected and negotiations collapsed.
  - Circuit Court granted partial summary judgment holding the option was void under the common-law Rule Against Perpetuities (CLRAP) because it was a perpetual option arising from a nondonative transfer. South Carolina Court of Appeals affirmed that ruling, agreeing the SC Uniform Statutory Rule Against Perpetuities (SCUSRAP) did not apply to such interests and CLRAP controlled.

# S.C. Common Law Developments in 2025

## Spring Valley: Rule Against Perpetuities

- SCUSRAP's express supersession of CLRAP means even interests excluded from statutory vesting aren't automatically void under common law; absent statute or common law rule, the perpetuities constraint does not apply to nonvested interests arising from commercial (nondonative) transfers
- The Supreme Court reversed the Court of Appeals and held the SC Uniform Statutory Rule Against Perpetuities (SCUSRAP) completely abolishes the common-law Rule Against Perpetuities (CLRAP) in South Carolina
- Because the Option is a nonvested property interest from a nondonative transfer, it is not void under SCUSRAP or CLRAP and therefore, the option may be enforceable

# S.C. Common Law Developments in 2025

## Ormand: Personal Jurisdiction

- *Ormand-Ward by & through CDM Corporation v. Litt*, Appellate Case No. 2023-000239, 2025 WL 3466553 (S.C. Ct. App. Dec. 3, 2025)
  - Former homeowner filed suit against nonresident title insurer, title services company, purported fraudster, and related individuals and entities, alleging that she had been the victim of a scam in which purported fraudster deceived her into selling her home, and asserting claims for negligence, quiet title, intentional infliction of emotional distress, violation of the South Carolina Unfair Trade Practices Act, slander of title, and civil conspiracy
  - The Circuit Court, Horry County, J., 2025 WL 3466553, granted insurer's motion to dismiss for lack of personal jurisdiction. Homeowner appealed.

# S.C. Common Law Developments in 2025

## Ormand: Personal Jurisdiction

- Relied on the reasoning from recent Supreme Court case *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 143 S. Ct. 2028, 216 L. Ed. 2d 815 (2023). Reached an opposite conclusion solely due to lack of explicit statutory language.
  - Holdings: The Court of Appeals held that:
    - 1) Statutory provision requiring insurers to appoint Director of Insurance to be their attorney for service of process did not confer general jurisdiction over insurer, and
    - 2) Homeowner failed to meet her pretrial burden of establishing that long-arm statute conferred specific personal jurisdiction over insurer.
  - Affirmed

# S.C. Common Law Developments in 2025

## Oakwoods: SCUTPA Guidance

- *Oakwood Prods., Inc. v. SWK Techs., Inc.*, 774 F. Supp. 3d 734 (D.S.C. 2025)
  - Fine organics manufacturer, as software licensee, filed suits against software implementation consulting company and software licensor for alleged violation of South Carolina Unfair Trade Practices Act (SCUTPA), rescission of contract, fraud, negligent misrepresentation, fraud in inducement, fraudulent nondisclosure, breach of warranty, negligence/gross negligence, and unjust enrichment, by allegedly failing to properly configure and implement enterprise resource planning software to meet manufacturer's business needs
  - Consulting company moved for partial summary judgment, licensor moved for summary judgment, and actions were consolidated

# S.C. Common Law Developments in 2025

## Oakwoods: SCUTPA Guidance

- Holdings: The District Court, David C. Norton, J., held that:
  - 1) Summary judgment was precluded on SCUTPA claim against company;
  - 2) Liability was contractually limited on any damages awarded against company;
  - 3) Company impermissibly filed successive summary judgment motion on fraudulent nondisclosure claim;
  - 4) SCUTPA direct liability claim was not actionable against licensor;
  - 5) Summary judgment was precluded on SCUTPA vicarious liability claim against licensor;
  - 6) Negligence claim was not actionable against licensor;
  - 7) Rescission claim was not actionable against licensor;
  - 8) Unjust enrichment claim was not actionable against licensor; and
  - 9) Liability was contractually limited on any damages awarded against licensor.

# S.C. Common Law Developments in 2025

## Parker: Interpreting Covenants Not to Sue

- *Parker v. Transp. Leasing/Cont., Inc.*, 804 F. Supp. 3d 643 (D.S.C. 2025)
  - Personal representative of motorist's estate brought action against employer of alleged tortfeasor driver for vicarious liability related to fatal automobile crash caused by driver's negligence. Both sides moved for judgment as a matter of law (JMOL).
  - Holdings: The District Court, Joseph Dawson, III, J., held that:
    - 1) Covenant was intended by parties to be a “covenant not to execute,” and
    - 2) Covenant did not operate as a release.

# S.C. Common Law Developments in 2025

## Constan: Work Product in Discovery

- *Constan Gervais St. Car Wash, Inc. v. Auto-Owners Ins. Co.*, 350 F.R.D. 264 (D.S.C. 2025)
  - Insured car wash company brought state court action against its insurer for breach of contract and bad faith refusal to pay insurance benefits
  - Insurer asserted counterclaim, seeking declaratory judgment that it properly denied company's claim for coverage. Action was removed on basis of diversity jurisdiction.
  - Insured filed motion to compel insurer to produce certain documents and discovery responses, including pre-litigation claims notes and internal communications, and requested an award of fees and costs

# S.C. Common Law Developments in 2025

## Constan: Work Product in Discovery

- Holdings: The District Court, Mary Geiger Lewis, J., held that:
  - 1) Pre-litigation claims notes identified on insurer's current privilege log as work product, and documents referenced therein which were generated after insurer received letter, were not entitled to work-product privilege;
  - 2) Insurer would not be compelled to produce all documents in its possession, custody or control responsive to insured's discovery requests "in their entirety without regard to privilege";
  - 3) Insurer would be compelled to produce one year, rather than five years, of prior similar claims to insured; and
  - 4) Insured was entitled to recover partial award of fees and costs associated with its motion to compel discovery.

# S.C. Common Law Developments in 2025

## Retreat: Indemnity and Collateral Estoppel

- *Retreat at Charleston Nat'l Country Club Home Owners Ass'n, Inc. v. Winston Carlyle Charleston Nat'l, LLC*, 445 S.C. 566, 915 S.E.2d 736 (Ct. App. 2025), cert. granted (Dec. 16, 2025)
  - Construction company that provided framing, windows, doors, and related components for townhome development brought contractual indemnity claims against its subcontractors after homeowners association sued company for construction defects
  - The Circuit Court, Charleston County, Jennifer B. McCoy, J., granted subcontractors' motions for summary judgment, finding the indemnity provisions in the subcontracts were unclear, violated state law and public policy, and were unconscionable and unenforceable. Construction company appealed.

# S.C. Common Law Developments in 2025

## Retreat: Indemnity and Collateral Estoppel

- Holdings: The Court of Appeals, McDonald, J., held that:
  - 1) Construction company could not enforce unclear and equivocal indemnity clauses that sought to indemnify against company's sole negligence;
  - 2) Indemnity clauses in company's contracts with subcontractors violated both public policy and statute governing “hold harmless” clauses in construction contracts;
  - 3) Company was collaterally estopped from enforcing indemnity clauses that were identical to provisions found in other court judgments to be unenforceable;
  - 4) Indemnity provisions were not severable; and
  - 5) Warranty, contractual indemnity, and duty to defend provisions of company's contracts with subcontractors were unconscionable and unenforceable as a matter of law.

# S.C. Common Law Developments in 2025

## Shannon: Punitives and Setoff

- *Shannon P. Green and Darrell Russell, v. Edward C. McGee and David Hudgins*, Appellate Case No. 2023-001735 (S.C. Aug. 13, 2025)
  - Green was injured in a road-rage collision when McGee’s vehicle struck her car after an altercation involving both McGee and Hudgins. Before suit, Green settled with McGee’s liability insurer for \$100,000 in exchange for a covenant not to execute judgment.
  - A jury found McGee 60 % at fault and Hudgins 40 % at fault, and that both acted recklessly, willfully, and wantonly. Jury awarded: \$88,546.78 actual damages plus \$35,000 punitive damages against each defendant.
  - Trial court applied setoff of the \$100,000 settlement against total verdict (including punitive), then allocated remainder pro-rata by fault. Court of Appeals altered setoff allocation, resulting in net judgment of \$58,546.78 against Hudgins and \$0 against McGee.

# S.C. Common Law Developments in 2025

## Shannon: Punitives and Setoff

- Supreme Court granted certiorari to review application of the Uniform Contribution Among Tortfeasors Act
- Court held that because both defendants were found to have acted recklessly, willfully, and wantonly, joint and several liability applies to actual damages, rendering the fault percentages irrelevant for contribution purposes
- The \$100,000 covenant payment may be set off only against actual damages, not punitive damages, because punitive damages do not compensate the “same injury” as actual damages
  - Net judgment against McGee: \$23,546.78 (actual damages after setoff)
  - Net judgment against Hudgins: \$35,000 (punitive damages)
- The underinsured motorist (UIM) carrier’s obligations are governed separately — entitling the carrier to credit for the \$100,000 under the statutory framework and applicable case law

# S.C. Common Law Developments in 2025

## Palmetto Point: More Setoff

- *Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. v. Tri-County Roofing, Inc.*, Appellate Case No. 2023-001422 (S.C. Apr. 30, 2025)
  - Condominium owners sued multiple defendants, including general contractor CBC and subcontractor Tri-County Roofing (TCR), for negligence, gross negligence, and breach of warranty over construction defects at the Palmetto Pointe project
  - Before trial, Palmetto received \$6.8M in settlements from various defendants, including \$1M from CBC's insurer in exchange for a covenant-not-to-execute and \$1.975M from four other settling subcontractors
  - At trial, a jury returned a \$6.5M actual damages verdict and \$500,000 punitive damages each against CBC and TCR; other defendants were apportioned minimal liability
  - TCR sought setoff credits for the pretrial payments under S.C. Code § 15-38-50

# S.C. Common Law Developments in 2025

## Palmetto Point: More Setoff

- The Supreme Court held that under S.C. Code § 15-38-50, a non-settling defendant's right to setoff applies where settlement funds were paid for the same injury as the claim tried to verdict; when settlements involve multiple claims, reasonable allocation by the trial court is required and reviewed for abuse of discretion
- The Court affirmed that TCR was not entitled to set off the full amounts of the pretrial settlements paid by Novus, Atlantic, H&A, and Cohen's beyond the partial amounts conceded — because these settlements involved multiple distinct alleged defects not all attributable to TCR's work, and the trial court reasonably allocated proceeds to categories of damage not tried to the jury

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# Questions?

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# Thank You!

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