Supreme Court No. 1013957
Court of Appeals No. 54997-2-II
Clark Co. Superior Court Cause No. 16-2-00320-0

WASHINGTON STATE SUPREME COURT

JERYMAINE BEASLEY,

Plaintiff-Respondent,

vs.

GEICO GENERAL INSURANCE COMPANY,

Defendant-Petitioner.

ANSWER TO PETITION FOR REVIEW

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IDENTITY OF RESPONDENT

This Answer to the Petition for Review is filed on behalf of Respondent Jerymaine Beasley.

COURT OF APPEALS DECISION

Division II held that "actual damages" recoverable and subject to trebling under the Insurance Fair Conduct Act, RCW 48.30.015(1) & (2), include noneconomic damages, based on the legislative intent to protect insureds that underlies the Act. *Beasley v. GEICO Gen. Ins. Co.*, — Wn. App. 2d —, 517 P.3d 500, 509 & 515-16 (Div. II, Sept. 20, 2022). This is consistent with the nature, purpose, and principal benefit of insurance to provide insureds with "security and peace of mind through protection against calamity" rather than economic benefit or "profit." *National Surety Corp. v. Immunex Corp.*, 176 Wn.2d 872, 878, 297 P.2d 688 (2013). In reaching its decision, Division II scrupulously followed this Court's decision in *Segura v. Cabrera*, 184 Wn.2d 587, 595, 362 P.3d 1278 (2015), holding that statutory language referring to "actual damages" includes

noneconomic damages when the statute in question provides redress for a personal injury or "guard[s] against harm to the person." (Brackets added.) There is no conflict with this Court's decisions, let alone one that would justify review. *See* RAP 13.4(b)(1).

This Court previously denied Plaintiff's request for direct review of this issue based on GEICO's argument that this case presents a straightforward matter of statutory interpretation rather than a fundamental or urgent issue of broad public import. GEICO Ans. to Stmt. of Grounds for Direct Rev. at 1-2. For similar reasons, the Court should deny GEICO's Petition for Review. *See* RAP 13.4(b)(4).

Division II also held, in an unpublished portion of its opinion, that GEICO improperly withheld uninsured motorist benefits that were undisputed and admittedly owed to Beasley. This holding involves application of settled law to the facts of this case and does not satisfy any of the criteria for review by this Court. *See* RAP 13.4(b)(1)-(4).

RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Do "actual damages" recoverable and subject to trebling under IFCA, RCW 48.30.015(1) & (2), include noneconomic damages?

2. Does an insurer's failure to pay undisputed UIM benefits admittedly owed to its insured constitute an unreasonable denial of a claim for payment of benefits within the meaning of IFCA, RCW 48.30.015(1)?

GEICO has abandoned its request to dismiss Beasley's appeal as well as issues raised in its cross appeal that Beasley failed to state a claim under IFCA and the superior court erred in trebling Beasley's economic damages under IFCA. *Compare* Pet. for Rev. at 1-3 *with* GEICO Br. at 2-3 & 36 (describing issues presented for review); *see also Beasley*, 517 P.3d at 509 (rejecting request to dismiss appeal); slip op. at 31 (describing issues raised on cross appeal). These issues are no longer before the Court. RAP 13.4(c)(5) (requiring a statement of issues presented for review); RAP 13.7(b) (providing review is limited to issues raised in petition for review and answer unless the Court orders otherwise).

RESTATEMENT OF THE CASE

A. The superior court precluded Beasley from recovering noneconomic damages under IFCA and Division II reversed.

After being injured in a motor vehicle collision caused by an underinsured motorist, Beasley filed suit against GEICO for failure to pay benefits to which he was entitled under his underinsured motorist (UIM) coverage, including claims for violation of IFCA and the tort of insurance bad faith. CP 1-8. However, the superior court precluded Beasley from recovering noneconomic damages under IFCA. RP 24:11-15 & 150:6-16.

The jury returned a verdict in favor of Beasley on both the IFCA and bad faith claims. The jury determined that he suffered $84,000 in economic damages as a result of GEICO's violation of IFCA. CP 179. The jury also determined that Beasley suffered $400,000 in noneconomic damages as a result of GEICO's bad faith. CP 180 & 271-72.

Post-trial, the superior court trebled Beasley's economic damages under IFCA because the court was "shocked" by

GEICO's conduct. CP 269-70. However, the court did not consider trebling Beasley's noneconomic damages because, in the court's view, they were not recoverable under IFCA. CP 267-68 & 271-73.

Beasley appealed the superior court's denial of noneconomic damages under IFCA. Division II reversed, following the analysis set forth by this Court in *Segura,* because "allowing noneconomic damages comports with the purpose of protecting insureds against unfair conduct by insurers." *Beasley*, 517 P.3d at 516.

B. After GEICO failed to pay undisputed UIM benefits admittedly owed to Beasley, the superior court granted Beasley's motion for directed verdict, and Division II affirmed in the unpublished portion of its opinion.

Under GEICO's policy and the UIM statute, Beasley was entitled to UIM benefits in an amount equal to damages he was entitled to recover from the underinsured driver who caused his injuries, less the amount of the underinsured driver's liability policy limits. CP 28; RCW 48.22.030. In the event of a

"disagreement" or "dispute" between GEICO and its insured, specifically including "the proper amount of such damages," the GEICO policy contemplates either arbitration or a civil lawsuit. CP 29. The policy limits the scope of arbitration or a lawsuit "to issues in actual dispute." CP 29.

Beasley submitted a claim to GEICO for UIM benefits for the damages he was entitled to recover from the underinsured motorist. CP 246. The claim specifically included past and future noneconomic damages for the nature and extent of Beasley's injuries, his mental and physical pain and suffering, and his loss of enjoyment of life, disability, disfigurement, frustration, and inconvenience. CP 247 (citing WPI 30.04, 30.06 & RCW 4.56.250(1)(b)). UIM policy limits were $100,000. CP 10.

GEICO responded to Beasley's claim by offering UIM benefits in the amount of $10,000. GEICO Br. at 4. Beasley asked GEICO to tender the amount offered, but GEICO declined. *Id.*

Beasley subsequently filed suit, alleging that GEICO's offer reflected its valuation of Beasley's claim as follows:

> 2.22 Defendant Geico General Insurance Company failed and refused to pay Plaintiff the $100,000 UIM policy limits to resolve his UIM claim. Instead, Defendant Geico General Insurance Company responded in October 2015, by offering to pay Plaintiff only $10,000.00 in "new" UIM money benefits to settle his UIM claim.
>
> 2.23 The offer identified in Paragraph 2.22, was based on Defendant Geico General Insurance Company's evaluation of a claim value of total damages caused by [the underinsured motorist] of $45,000, plus a full credit and offset to Defendant Geico General Insurance Company of $25,000 for [the underinsured motorist's] liability insurance policy limits, plus a full credit and offset for $10,000 for PIP benefits Defendant Geico General Insurance Company previously paid.

CP 4-5. GEICO admitted these allegations. CP 287 (¶¶ 16-17).

GEICO's admissions were confirmed by former GEICO claims adjuster Lawrence Bork during his trial testimony. RP 670:24-672:19. Mr. Bork testified that the $10,000 offer was the undisputed amount of benefits owed to Beasley under the policy:

> Q. [By counsel for Beasley:] In or around 2015, around October 2015, while you were on the claim, did you

make a settlement offer of $10,000 in new UIM money to Mr. Beasley?

A. [By Mr. Bork:] I believe that sounds about right. I don't remember the specific date.

Q. And those would be undisputed UIM benefits, would they not?

A. That was the offer that was made, ***yes***.

Q. Now, those would be undisputed UIM benefits that the claim[ant] is entitled to, correct?

A. It was the – it was the offer made as settlement that – that we believe was fair and reasonable as a settlement offer.

Q. And you didn't dispute that those benefits were owed, correct?

A. ***No***.

Q. Did you write Mr. Beasley a check for that $10,000 in 2015?

A. No.

….

Q. In 2016, did you send a check to Mr. Beasley or his lawyer for Mr. Beasley's $10,000?

A. No.

Q. In 2017, did you send that check.

A. No.

Q. In 2018, did you send that check?

A. No.

Q. Up until March 2019, when you left the company, did you write that check?

A. No.

RP 620:19-621:10 & 621:19-622:3 (brackets, emphasis & ellipsis added). There is no contrary evidence in the record.

GEICO claims supervisor Mike Murphy also testified at trial that "an insurer should pay undisputed UIM benefits as soon as possible," RP 545:7-9; and that "there are times when undisputed portions of claims are paid prior to the final evaluation and/or settlement." RP 609:7-11. He further explained that a settlement offer represents undisputed UIM benefits, and that failure to tender the amount of the offer violates applicable insurance standards:

Q. [By counsel for Beasley:] So a settlement offer is what an undisputed benefit is in the UIM context under your definition?

A. [By Mr. Murphy:] In my understanding, ***yeah***.

Q. So if an offer is made in a UIM case, and you told us earlier that undisputed benefits should be paid as

soon as possible, then whatever that amount of the offer is, it should be paid as soon as possible, right?

A. ***Yes***.

Q. And not paying that would be a violation of insurance standards, wouldn't it?

A. ***Yes***.

RP 616:18-617:3 (brackets & emphasis added). Again, there is no contrary evidence in the record.

Based on the foregoing testimony, Beasley moved for a partial directed verdict that GEICO's failure to pay the amount of undisputed UIM benefits constituted an unreasonable failure to pay a claim for payment of benefits under IFCA. RP 32:11-35:12. The motion did not come as a surprise to the judge, who thought that Mssrs. Bork and Murphy had essentially admitted violating IFCA during their testimony. RP 39:6-11. In response to the motion, GEICO tried to re-characterize its valuation as an offer of compromise, rather than an acknowledgment of the undisputed benefits due, based on the letter transmitting the offer. The superior court granted Beasley's motion because the

language of the letter did not contradict the admissions of GEICO's adjuster and claims supervisor, one of whom (Mr. Bork) wrote the letter. RP 54:3-9.

In light of its ruling on Beasley's motion, the superior court instructed the jury:

> The Plaintiff claims that Defendant violated the Washington Insurance Fair Conduct Act. To prove this claim, Plaintiff has the burden of proving each of the following propositions:
>
> (1) That Defendant unreasonably denied a claim for coverage or unreasonably denied payment of benefits;
>
> (2) That Plaintiff was injured or damaged; and
>
> (3) That Defendant's act or practice was a proximate cause of Plaintiffs injury or damage.
>
> ***The Court has determined that Defendant unreasonably denied the payment of benefits by failing to pay the undisputed $10,000 offer of UIM benefits made on October 23, 2015***.
>
> If you find from your consideration of all of the evidence that each of these propositions has been proved, your verdict on this claim should be for Plaintiff. On the other hand, if any of these propositions has not been proved, your verdict on this claim should be for Defendant.

CP 164 (emphasis added).

GEICO conditionally cross appealed the superior court's decision granting a directed verdict and giving the highlighted paragraph of the jury instruction quoted above. GEICO Br. at 35-36. However, Division II affirmed the superior court because "[t]he evidence presented at trial, even in the light most favorable to GEICO, supports the trial court's conclusion" and "GEICO presented no contrary evidence." Slip op. at 33-34 (brackets added).

ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Division II's interpretation of "actual damages" under IFCA as including noneconomic compensatory damages is required by this Court's precedent.

GEICO claims that review is warranted because Division II's interpretation of IFCA conflicts with no fewer than six decisions of this Court, none of which involve the interpretation of IFCA. In actuality, there are no conflicts. Division II's interpretation of IFCA was required under the analysis set forth by this Court in *Segura*, and the remaining decisions cited by

GEICO have already been harmonized or distinguished in *Segura*.

1. Division II's interpretation of IFCA is required by this Court's decision in *Segura*.

GEICO claims that Division II's decision is "inconsistent with *Segura*" for reasons that are not clearly stated. Pet. for Rev. at 13. In *Segura*, this Court held the meaning of statutory language authorizing recovery of "actual damages" hinges upon the nature of the interest the statute in question is designed to protect. 184 Wn.2d at 594-96. Where the statute is intended to provide "redress for a personal injury" or "guard against harm to the person," recoverable actual damages include noneconomic damages. *Id.* (discussing *Rasor v. Retail Credit Co.*, 87 Wn.2d 516, 554 P.2d 1041 (1976), and *Martini v. Boeing Co*., 137 Wn.2d 357, 971 P.2d 45 (1999)). Where the statute is merely intended to provide for the recovery of "financial losses," recoverable actual damages do not include noneconomic damages. *Id.* at 596 (brackets added).

Segura recognized that noneconomic damages are recoverable as "actual damages" under the federal Fair Credit Reporting Act (FCRA) at issue in *Rasor*, and the Washington Law Against Discrimination (WLAD) at issue in *Martini*, because these statutes remedy personal harm. *Segura*, 184 Wn.2d at 594-95. The FCRA "protect[s] an individual from inaccurate or arbitrary information about himself in a consumer report that is being used as a factor in determining the individual's eligibility for credit, insurance or employment." *Id.* at 594 (quoting *Rasor*). The WLAD protects the "rights and proper privileges" of persons to be free from discrimination. *Id.* (quoting RCW 49.60.010).

For the same reasons that noneconomic damages are recoverable as "actual damages" under the FCRA and WLAD, they are also recoverable under IFCA. The purpose of IFCA is "protecting insureds." *Perez-Crisantos v. State Farm Fire & Cas. Co.*, 187 Wn.2d 669, 679, 389 P.3d 476 (2017). "Insurance contracts are unique in nature and purpose." *National Surety*, 176 Wn.2d at 878 (quotation omitted). "An insured does not enter an

insurance contract seeking profit, but instead seeks security and peace of mind through protection against calamity." *Id.* "The bargained-for peace of mind comes from the assurance that the insured will receive prompt payment of money in times of need." *Id.* This is precisely why IFCA authorizes recovery of actual damages resulting from unreasonable denial of a claim for coverage or payment of benefits by an insurer. RCW 48.30.015(1). If actual damages under IFCA were interpreted to *exclude* noneconomic damages, then the remedy provided by the statute would not redress the very personal injury the statute is intended to redress. Division II's decision interpreting actual damages to *include* noneconomic damages is therefore required under *Segura*, and there is no conflict.

2. Division II's interpretation of IFCA follows *Segura's* synthesis of *Rasor* and *Martini*.

GEICO claims that Division II's interpretation of IFCA conflicts with this Court's decisions in *Rasor* and *Martini*. Pet. for Rev. at 10-13. GEICO does not acknowledge *Segura's*

synthesis of *Rasor* and *Martini*, on which Division II relied. *Beasley*, 517 P.3d at 516. Instead, GEICO claims that Division II's conflicts with *Rasor* and *Martini* based upon non sequitur reasoning that actual damages recoverable under IFCA cannot include noneconomic as well as economic damages because such actual damages are potentially subject to trebling. Pet. for Rev. at 11 ("Because actual damages adopted in *Martini* and *Rasor* excluded punitive damages and IFCA is punitive, actual damages under IFCA cannot include non-economic damages").

Aside from the fact that GEICO's reasoning appears nowhere in *Rasor* or *Martini*—nor in *Segura*, which harmonized *Rasor* and *Martini*—GEICO's reasoning is flawed because actual damages recoverable under IFCA are distinct from treble damages. Actual damages are awarded by the jury, whereas treble damages are awarded by the court. *Beasley*, 517 P.3d at 518. The jury's award of actual damages does not automatically entitle the insured to recover treble damages. *Id.* And, although the amount of treble damages is obviously based on actual

damages and capped by a multiple of actual damages, the court has discretion in fixing the amount within this cap. *Id.* (noting RCW 48.30.015(2) states that the superior court "*may* ... increase the total award of damages to an amount not to exceed three times the actual damages"; emphasis in original).

Moreover, the availability of treble damages under IFCA does not render the statute "punitive." The Consumer Protection Act (CPA), Ch. 19.86 RCW, is deemed to be a remedial statute, notwithstanding its treble damages remedy. *Johnston v. Beneficial Mgmt. Corp. of Am.*, 85 Wn.2d 637, 641, 538 P.2d 510 (1975); *Rufin v. City of Seattle*, 199 Wn. App. 348, 363, 398 P.3d 1237 (2017), *rev. denied*, 189 Wn.2d 1034 (2018); *Ewing v. Glogowski*, 198 Wn. App. 515, 525, 394 P.3d 418 (2017); *Cedar Grove Composting, Inc. v. City of Marysville*, 188 Wn. App. 695, 732, 354 P.3d 249 (2015).

Like the CPA, IFCA is a remedial statute, notwithstanding the availability of treble damages. A remedial statute is one that relates to practice, procedures, and remedies. *Faciszewski v.*

Brown, 187 Wn.2d 308, 320, 386 P.3d 711, 718 (2016). IFCA is a remedial statute because it "makes no insurer conduct illegal that was lawful the day before the statute took effect." Isaac Ruiz, *The IFCA Handbook* § 14 at 34 (2019). It imposes a procedural requirement to provide 20 days' pre-suit notice with an opportunity for the insurer "to resolve the basis for the action." RCW 48.30.015(8)(b). It also creates a remedy to recover actual damages, which may or may not be trebled by the court. RCW 48.30.015(1) & (2). As Division II noted, the pre-suit notice requirement and the discretionary nature of punitive damages undercut GEICO's characterization of IFCA as a punitive statute. *Beasley*, 517 P.3d at 515. In any event, "the punitive aspects of the legislation also serve as a deterrent purpose that may provide insureds with additional protection" and thereby serve a remedial purpose. *Id.*

3. *White River* is distinguishable from this case for the same reason it was distinguished by the Court in *Segura*.

GEICO claims that Division II's interpretation of IFCA conflicts with this Court's decision in *White River Estates v. Hiltbruner*, 134 Wn.2d 761, 953 P.2d 796 (1998). Pet. For Rev. at 14-15 & 18-19. In *White River,* the Court held "when a statute is *silent* about the damages available for its violation, emotional distress damages are available only if the statutory violation requires conduct amounting to an intentional tort, as opposed to mere negligence." *Segura*, 184 Wn.2d at 602 n.6 (discussing *White River*; emphasis in original). However, *White River* is distinguishable from this case for the same reason the Court distinguished the case in *Segura*: the intentional-versus-negligent test for the recovery of noneconomic damages does not apply to statutes that explicitly provide for the recovery of actual damages. *Id.* at 602 n.6 (stating *White River's* "intentional-versus-negligent test does not apply to the RLTA [i.e., Residential Landlord Tenant Act], which explicitly describes the

damages recoverable for a landlord's violation"); *id.* at 591 (noting the RLTA, RCW 59.18.085(2), authorizes recovery of "actual damages"). Because IFCA explicitly provides for the recovery of actual damages, this case is distinguishable from *White River* for the same reason that *Segura* was distinguishable. Division II was required to follow *Segura* in making the same distinction, which means there is no conflict.

4. Division II's decision does not otherwise conflict with *Birchler, Hill,* or *White River*.

GEICO claims that Division II's interpretation of IFCA conflicts with *Birchler v. Castello Land Co.*, 133 Wn.2d 106, 942 P.2d 968 (1997), *Hill v. Garda CL Nw., Inc.*, 191 Wn.2d 553, 424 P.3d 207 (2018), and *White River*, *supra*, characterizing these decisions as holding that "punitive damages are only permitted for intentional, willful conduct." Pet. for Rev. at 15-19. Regardless of whether GEICO's characterization of these decisions is correct, it is irrelevant because, as GEICO concedes, IFCA authorizes an award of treble damages for "merely

unreasonable behavior." *Id.* at 18. "Any first party claimant to a policy of insurance who is *unreasonably* denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained[.]" RCW 48.30.015(1) (emphasis & brackets added). "The superior court may, after finding that an insurer has acted *unreasonably* in denying a claim for coverage or payment of benefits … increase the total award of damages to an amount not to exceed three times the actual damages." RCW 48.30.015(2) (emphasis & ellipsis added). The availability of treble damages for less-than-intentional conduct has never been raised as an issue in this case, nor was it addressed by Division II.

In any event, none of the decisions cited by GEICO supports its characterization. *Birchler* noted that damages including emotional distress could be recovered and trebled for intentional trespass under the timber trespass statute, RCW 64.12.030. *Birchler*, 133 Wn.2d at 117 n.5. However,

nothing in *Birchler* precludes imposition of punitive damages for unintentional conduct in all circumstances.

Hill noted that an employee could recover double the amount of withheld wages under RCW 49.52.050 & .070 based on mere carelessness or error. 191 Wn.2d at 561. In this way, *Hill* actually supports imposition of punitive damages for unintentional conduct.

Finally, *White River* did not address punitive damages, although the opinion cited *Birchler*. 134 Wn.2d at 767. There is no conflict with these decisions.

B. Because Division II followed this Court's precedent as well as the language, purpose and remedial nature of IFCA, there is no need for this Court to revisit Division II's decision under the guise of an issue of substantial public interest.

GEICO argues that review is warranted on grounds that the interpretation of IFCA involves an issue of substantial public interest that should be determined by this Court under RAP 13.4(b)(4). Pet. for Rev. at 9-10. While IFCA undoubtedly serves an important public interest, there is no need for this Court

to revisit Division II's interpretation of the Act because Division II carefully followed this Court's precedent. An issue of first impression does not, ipso facto, warrant review by this Court.

In addition, Division II's interpretation of IFCA accurately reflects the language, purpose, and remedial nature of the statute. "[N]othing in IFCA specifies the type of damages envisioned by the legislature or suggests any limitation on damages." *Beasley*, 517 P.3d at 516 (brackets added). "[T]he legislative history discloses that IFCA was intended to provide additional protections and avenues for relief for insureds." *Id.* (brackets added). The language and legislative purpose indicate that "the legislature intended 'actual damages' under IFCA to be interpreted broadly and to include noneconomic damages." *Id.* "[A]llowing noneconomic damages comports with the purpose of protecting insureds against unfair conduct by insurers." *Id.*

C. Division II's affirmance of the partial directed verdict against GEICO in the unpublished portion of its opinion does not conflict with *Schmidt*.

GEICO claims that Division II's affirmance of the partial directed verdict conflicts with this Court's per curiam decision in *Schmidt v. Coogan*, 162 Wn.2d 488, 173 P.3d 273 (2007). Pet. For Rev. at 20-24. *Schmidt* stands for the uncontroversial proposition that the evidence must be viewed in the light most favorable to the nonmoving party on a motion for directed verdict. 162 Wn.2d at 491-92. Division II correctly applied this settled precedent to the facts of this case. In answer to the complaint, and in testimony from its own adjuster and supervisor, GEICO admitted that $10,000 UIM benefits were not disputed and that failure to tender undisputed UIM benefits violates applicable insurance standards. RP 620:19-621:10, 621:19-622:3 & 616:18-617:3. "Geico presented no contrary

evidence," as Division II noted. *Beasley*, 517 P.3d at 519. There is no basis for further review of this issue.[1]

REQUEST FOR ATTORNEY FEES AND COSTS

IFCA authorizes the Court to "award reasonable attorneys' fees and actual and statutory litigation costs" to an insured who prevails. RCW 48.30.015(3). The superior court and Division II awarded fees and costs pursuant to this provision. Slip op. at 35-36. This Court should also award fees and costs incurred in responding to GEICO's petition for review. RAP 18.1(a).

CONCLUSION

Beasley asks the Court to deny GEICO's Petition for Review and to order GEICO to pay Beasley's attorney fees and costs.

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[1] Before this Court, GEICO denies that "the amount was undisputed," Pet. for Rev. at 21, but before Division II, GEICO admitted that it "did not dispute that those benefits were owed," GEICO Br. at 6.

RAP 18.17 CERTIFICATE

This document contains 4,064 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 21st day of November, 2022.

_____

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CERTIFICATE OF SERVICE

The undersigned, hereby declares under penalty of perjury of the laws of the State of Washington, that:

On the date set forth below, I electronically filed the foregoing with the Washington State Appellate Court's Secure Portal system, which will send notification and a copy of this document to all counsel of record:

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Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,395-7
Appellate Court Case Title:	Jerymaine Beasley v. Geico General Insurance Company
Superior Court Case Number:	16-2-00320-0

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