

**OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION**

MARYLAND INSURANCE ADMINISTRATION <i>EX REL F.J.</i> ¹ ,	*	REVIEW OF A RECOMMENDED
Complainant,	*	DECISION ISSUED BY
v.	*	EDWARD J. KELLEY
ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY	*	AN ADMINISTRATIVE LAW JUDGE
Licensee.	*	OF THE MARYLAND OFFICE OF
	*	ADMINISTRATIVE HEARINGS
	*	OAH No.: MIA-CC-33-23-04814
	*	MIA No.: MIA-2022-12-014
* * * * *		

FINAL ORDER

Pursuant to Md. Code Ann., Ins. § 2-210(d)² and Code of Maryland Regulations (COMAR) 31.02.01.10-2D, the undersigned Associate Commissioner for the Maryland Insurance Administration (“MIA”) hereby issues this summary affirmance of the Proposed Decision below.

On August 17, 2022, the MIA received a complaint from F.J. (hereinafter “Complainant”) alleging that Allstate Property and Casualty Insurance Company (hereinafter “Licensee”) violated Maryland insurance laws when it provided coverage to repair his wind damaged roof instead of providing coverage for a total roof replacement (“Complaint”). The MIA investigated the Complaint, and on December 8, 2022, it issued a determination letter concluding that the Licensee did not violate Maryland’s insurance laws in handling the claim under F.J.’s policy; this letter specifically referenced Sections 4-113(b)(5) and Sections 27-303(1), (2), and (6). Specifically, the

¹ The MIA uses initials to protect the identity of the Parties.
² Unless otherwise noted, all statutory references are to the Insurance Article of the Annotated Code of Maryland.

MIA concluded that the Licensee's actions were not arbitrary, capricious, lacking in good faith or otherwise in violation of the Maryland Insurance Article. The Complainant requested a hearing, which was granted on December 19, 2022. This matter was then transmitted to the Office of Administrative Hearings ("OAH") to conduct a contested case hearing and issue a Proposed Decision pursuant to COMAR 31.02.01.04-1A. In its referral to the OAH, the MIA noted that specific attention at the hearing would be directed to the Annotated Code of Maryland, Insurance Article, Sections 4-113 and 27-303.

On May 24, 2023, a hearing was held before Administrative Law Judge ("ALJ") Edward J. Kelley. On June 16, 2023, ALJ Kelley issued a Proposed Decision setting forth factual and legal findings with respect to Section 4-113(b)(5) and Section 27-303(1), 27-303(2) and (6). On the same date, OAH mailed the Proposed Decision to the Parties in this case. Attached to the Proposed Decision was the notice regarding the Right to File Exceptions, which advised the Parties that, pursuant to COMAR 31.02.01.10-1, they had the right to file written exceptions with the Undersigned within twenty (20) days from receipt of the Proposed Decision. Neither Party filed exceptions in this case.

I have carefully evaluated the documentary record in this case and the Proposed Decision by ALJ Kelley. Based on this review, I am persuaded that ALJ Kelley's Conclusions of Law that Licensee did not violate Section 4-113(b)(5) and Section 27-303(1), (2) and (6) are correct, and, pursuant to COMAR 31.02.01.10-2D, hereby affirm this finding.

THEREFORE, it is hereby

ORDERED that, as a matter of law, it be found that Licensee did not violate Sections 4-113(b)(5), 27-303(1), (2), or (6);

ORDERED that the determination issued by the MIA be hereby **AFFIRMED** based on the Findings of Fact and Discussion provided by ALJ Kelley;

ORDERED that the Proposed Decision of ALJ Kelley be adopted as the Commissioner's Final Order and it is further; and

ORDERED that the records and publications of the Maryland Insurance Administration reflect this decision.

It is so **ORDERED** this 19th day of October 2023.

KATHLEEN A. BIRRANE
Commissioner

signature on original

Erica J. Bailey
Chief Hearing Officer / Associate Commissioner
Office of Hearings

MARYLAND INSURANCE
ADMINISTRATION

EX REL.

F.J.,

COMPLAINANT

v.

ALLSTATE PROPERTY AND

CASUALTY INSURANCE

COMPANY,

LICENSEE

* BEFORE EDWARD J. KELLEY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

*

*

* OAH No.: MIA-CC-33-23-04814

* MIA No.: 2022-12-014

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On August 17, 2022, the Maryland Insurance Administration (MIA) received a complaint from the Complainant alleging unfair claim settlement practices by Allstate Property and Casualty Insurance Company (Licensee). Specifically, the Complainant alleged that the Licensee violated Maryland insurance laws when it provided coverage to repair his wind-damaged roof instead of providing coverage for a total roof replacement.

After an investigation, the MIA found that the Licensee did not violate section 27-303 or 4-113 of the Insurance Article and notified the Complainant of its finding by a letter dated

December 8, 2022. On December 16, 2022, the Complainant requested a hearing. On February 7, 2023, the MIA transmitted the matter to the Office of Administrative Hearings (OAH) to conduct a contested case hearing. In its transmittal, the MIA delegated to the OAH authority to issue a proposed decision and instructed that specific attention be paid to sections 27-303 or 4-113 of the Insurance Article.¹

The OAH initially scheduled an in-person hearing at the OAH in Hunt Valley, Maryland on April 20, 2023. At the parties' joint request, the hearing was rescheduled to May 24, 2023, and converted to a remote hearing on the Webex videoconferencing platform.

On May 24, 2023, I held the hearing on Webex as scheduled. Md. Code Ann., Ins. §§ 2-210, 2-213 (2017 & Supp. 2022); COMAR 31.15.07; COMAR 28.02.01.20B(1). Eric Kirk, Esquire, represented the Complainant. Melissa McNair, Esquire, represented the Licensee.

The contested case provisions of the Administrative Procedure Act, the MIA's hearing regulations, and the OAH's Rules of Procedure govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 31.02.01; COMAR 28.02.01.

ISSUE

Did the Licensee engage in any unfair claim settlement practice under the Insurance Article?

SUMMARY OF THE EVIDENCE

Exhibits

I incorporated the entire MIA file, consisting of seven exhibits, into the record as follows:

1. Complaint, August 17, 2022
2. Letter from the MIA to the Licensee, November 3, 2022
3. Email from the Licensee to the MIA, with attachments, November 10, 2022

¹ The Insurance Commissioner may delegate to the OAH the authority to issue: (a) proposed or final findings of fact; (b) proposed or final conclusions of law; (c) proposed or final findings of fact and conclusions of law; or (d) a proposed or final order. Code of Maryland Regulations (COMAR) 31.02.01.04-1A.

4. Email exchange between the Licensee and the MIA, with attachments, December 5-6, 2022
5. Letter from the MIA to the Complainant, December 8, 2022
6. The Complainant's request for a hearing, December 16, 2022
7. Letter from the MIA to the Complainant and the Licensee, December 19, 2022

I admitted the following exhibit offered jointly by the Complainant and the Licensee:

Joint Ex. 1: The Complainant's Homeowner's Insurance Policy

I admitted the following exhibits offered by the Complainant:

Comp. Ex. 1: High Point Roofing, LLC (High Point) Report, June 24, 2022

Comp. Ex. 2: Durst & Taylor Structural Engineering, LLC (Durst & Taylor) Report, August 30, 2022

Comp. Ex. 3: Letter from Joe Smith, GAF Materials Corp. (GAF), March 30, 2017

Comp. Ex. 4: Intel Laboratories, Inc. (Intel) Test Request Form, July 26, 2022

Comp. Ex. 5: Claim denial letter, August 10, 2022

I admitted the following exhibits offered by the Licensee:²

Lic. Ex. 2: Crawford & Company (Crawford) Roof Assessment – Hail and Wind Damage, July 15, 2022

Lic. Ex. 3: Claim Estimate, July 18, 2022

Lic. Ex. 4: Letter from HAAG Engineering Company (HAAG) to the Licensee, with attached report, October 7, 2022

Lic. Ex. 5: Claim denial letter, August 10, 2022

² The exhibit pre-marked as Licensee's Exhibit 1, the Complainant's homeowner's insurance policy, was admitted as Joint Exhibit 1.

Testimony

The Complainant testified and presented the following witnesses:

- Douglas Barton, Project Manager, High Point, who was accepted as an expert in roofing installation and maintenance; and
- Nevin Taylor, Durst & Taylor, who was accepted as an expert in structural engineering.

The Licensee presented the following witnesses:

- Douglas Vereen, Claims Service Leader; and
- Peter Malmquist, Trident Engineering Associates, Inc. (Trident), who was accepted as an expert in structural engineering.

FINDINGS OF FACT

1. At all times relevant to this matter, the Complainant insured his residence (Property) through a homeowner's policy (Policy) with the Licensee.
2. The Complainant has lived at the Property for approximately eleven years.
3. The roof of the Property was installed in 2002 when the Property was constructed.
4. The original roof shingles were manufactured by GAF and are the Timberline brand with English measurements.
5. On June 24, 2022, the Complainant filed a claim with the Licensee stating he incurred wind/hail damage to the roof on June 17, 2022.
6. High Point inspected the Property at the Complainant's request and submitted a \$11,827.28 roof replacement estimate to the Licensee on June 24, 2022.
7. After the Complainant reported the claim, the Licensee arranged for Hancock Claims Consultants (Hancock) to inspect the Property.
8. The Complainant refused to let Hancock inspect the Property.

9. After the Complainant refused to allow Hancock to inspect the Property, the Licensee hired Crawford, an independent adjuster, to inspect the Property.

10. Crawford inspected the Property on July 12, 2022. Crawford determined that there was repairable wind damage to thirty-eight roof shingles.

11. Based on Crawford's inspection, the Licensee offered the Complainant \$4,100.70 to settle the roof damage claim. The Licensee's coverage estimate provided for the use of seventy-six roof shingles to repair the thirty-eight damaged roof shingles.

12. The Licensee has a supplemental claim process to review a claim for additional coverage under the Policy if during a covered roof repair, it is determined that additional coverage may be warranted. In order to take advantage of the supplemental claims process, a contractor must begin the roof repair.

13. The Licensee explained the supplemental claims process to the Complainant at the time of the settlement offer and at other times thereafter.

14. On July 19, 2022, the Complainant refused the Licensee's settlement offer and communicated to the Licensee that he expected coverage for a total roof replacement.

15. On July 20, 2022, the Licensee offered to send a HAAG wind/hail engineer to inspect the Property.

16. On or about July 26, 2022, High Point extracted one roof shingle from the Complainant's roof and sent it to Itel, a company that analyzes roof shingles for matching purposes. Itel identified GAF Timberline brand roof shingles as a match.

17. As of 2010, GAF converted Timberline brand roof shingles from English measurements to metric measurements at all plants.

18. The Licensee offers coverage to match roofing materials used to repair roof damage to an existing roof, but the Complainant did not purchase this coverage.

19. On August 8-9, 2022, the Licensee, through HAAG, retained Trident, a structural engineering company, to inspect the Property.

20. On August 10, 2022, the Complainant refused to let Trident inspect the Property.

21. On August 10, 2022, the Licensee denied coverage for a total roof replacement based on the information evaluated as of that date.

22. On August 17, 2022, the Complainant filed his Complaint with the MIA.

23. On August 22, 2022, the Complainant agreed to let Trident inspect the Property.

24. On August 29, 2022, Durst & Taylor, a structural engineering company, inspected the property at High Point's request with the Complainant and Mr. Barton present. High Point paid for the Durst & Taylor inspection.

25. In a report dated August 30, 2022, Durst & Taylor concluded that given the condition of the roof and the absence of matching roof shingles, the roof should be replaced rather than repaired.

26. The Durst & Taylor report was submitted to the Licensee, and the Licensee reviewed it.

27. On September 23, 2022, Peter Malmquist, a structural engineer employed by Trident, inspected the Property with the Complainant and Mr. Barton present.

28. The Complainant told Mr. Malmquist that the wind damage occurred on May 10, 2022, and not June 17, 2022.

29. In a report dated October 7, 2022, Trident, based on Mr. Malmquist's inspection, concluded there was no wind or hail damage to the roof of the Property. Trident determined that there was blistering to some of the roof shingles that was not weather related. Trident also reported that biological growth had caused granule loss on some shingles. Trident's report noted

specifically that the roof shingles on all slopes were physically pliable enough to withstand repairs.

30. Mr. Malmquist reviewed the weather data from May 10, 2022, and included it in his report even though he did not need to review weather data to evaluate the condition of the roof.

31. The Licensee sent Trident's inspection report to the Complainant on October 10, 2022.

32. The Licensee evaluated all information submitted and did not change its claim determination.

33. The Complainant has not had his roof repaired or replaced.

DISCUSSION

APPLICABLE LAW

When the MIA referred this case to the OAH, it directed the Administrative Law Judge conducting the hearing to pay specific attention to sections 4-113 and 27-303 of the Insurance Article. Section 4-113(b)(5) provides that the Insurance Commissioner may suspend, refuse to renew, or revoke an insurer's certificate of authority if the insurer "refuses or delays payment of amounts due claimants without just cause." Ins. § 4-113(b)(5) (Supp. 2022).³ Section 27-303 lists ten unfair claim settlement practices. The MIA decision letter referenced Subsections 1, 2, and 6 of Section 27-303. Section 27-303(1) prohibits an insurer from misrepresenting pertinent facts or policy provisions that relate to the claim or coverage at issue. Section 27-303(2) prohibits an insurer from refusing to pay a claim for an "arbitrary or capricious reason." Section 27-303(6) prohibits an insurer from failing to promptly provide, when requested, a reasonable explanation of the basis for a denial of a claim.

³ Unless otherwise noted, all references hereinafter to the Insurance Article are to the 2017 Replacement Volume of the Maryland Annotated Code.

The Insurance Commissioner may impose a penalty not exceeding \$2,500.00 for each violation of section 27-303 and may require an insurer to 1) make restitution, subject to the limits of any applicable insurance policy, to each claimant who has suffered actual economic damage because of the violation or 2) provide a claimant a payment that has been determined to be denied in violation of the unfair claim settlement practices section of the Insurance Article. *Id.* § 27-305(a)(1), (c)(1), (2) (Supp. 2022).

Neither the statute nor any regulation promulgated by the MIA defines the “arbitrary or capricious” standard. In *Berkshire Life Insurance Co. v. Maryland Insurance Administration*, the Appellate Court of Maryland⁴ quoted from, and adopted, the Insurance Commissioner’s interpretation of the “arbitrary and capricious” standard in an earlier MIA case:

“[A] claimant must prove that the insurer acted based on ‘arbitrary and capricious reasons.’ The word ‘arbitrary’ means a denial subject to individual judgment or discretion, and made without adequate determination of principle. The word ‘capricious’ is used to describe a refusal to pay a claim based on an unpredictable whim. Thus, under [Insurance Article section] 27-303, an insurer may properly deny a claim if the insurer has an otherwise lawful principle or standard which it applies across the board to all claimants and pursuant to which the insurer has acted reasonably or rationally based on ‘all available information.’”

142 Md. App. 628, 671 (2002) (citations omitted). As used in section 27-303 of the Insurance Article, “arbitrary or capricious” essentially means without reason or just cause.

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. State Gov’t § 10-217; COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). In this case, the Complainant, as the party asserting the

⁴ Effective December 14, 2022, the Maryland Court of Special Appeals was renamed the Appellate Court of Maryland.

affirmative on the issue of an unfair claim settlement practice, has the burden of proving by the preponderance of the evidence that the Licensee acted arbitrarily or capriciously in denying the claim. COMAR 28.02.01.21K(1), (2)(a).

POSITIONS OF THE PARTIES

The Complainant does not challenge the Licensee's estimate of the cost of repairing the roof, nor does he identify any unjustified delay in the handling of his claim. The Complainant does not claim that the Licensee misrepresented pertinent facts or policy provisions that relate to the claim or coverage. Instead, relying on the expert testimony of Mr. Barton and Mr. Taylor, the Complainant contends that given the current condition of his roof and the absence of any matching roof shingles, his roof cannot be repaired to industry standards, and thus, the wind-damaged roof must be totally replaced instead of repaired. The Complainant notes that Trident's determination that there was no wind damage to the roof is contrary to the Licensee's conclusion that wind damage occurred, and therefore, it is arbitrary and capricious for the Licensee to rely on Trident's inspection and report to deny his claim for a total roof replacement.

The Licensee acknowledged that the Complainant's roof incurred wind damage that was covered by the Policy. The Licensee contends that the Policy only requires repair of physical damage and does not require an exact match of existing materials because the Complainant did not purchase coverage for matching materials. The Licensee relies on the opinions of its professional inspectors that the Complainant's roof is repairable and does not need to be replaced. The Licensee emphasizes that the Complainant may utilize the supplemental claim process if during the roof repair, it is determined that additional coverage under the Policy may be warranted.

As discussed below, I find that the Complainant has failed to prove that the Licensee engaged in any unfair claim settlement practice under the Insurance Article.

ANALYSIS

There is no allegation in this case that the Licensee misrepresented any facts or policy provisions relating to the claim or coverage at issue, and the undisputed evidence demonstrates that the Licensee timely considered and acted on the Complainant's claim. After the wind damage claim was filed, the Licensee immediately arranged to have the Property inspected by Hancock, but the Complainant refused this inspection. (MIA Ex. 4 (Claim Log)). The Licensee then promptly arranged to have the Property inspected by Crawford, which the Complainant allowed. (*Id.*). Crawford determined there was repairable wind damage to the Complainant's roof, and the Licensee timely offered payment of the claim, which the Complainant refused. (*Id.*). The Licensee offered to send out another engineer, Trident, which the Complainant initially refused, but then allowed. (*Id.*). The Licensee evaluated all reports submitted by its inspectors and the Complainant's inspectors, and it explained the reasons for denying the Complainant a roof replacement. (*Id.*).

There clearly was no delay in evaluating the claim, offering payment, or providing a basis for the decision. There was no proof that the Licensee misrepresented pertinent facts or policy provisions that relate to the claim or coverage. There is no dispute that the Policy does not cover the matching of materials used to replace damaged roofing material to the undamaged portion of the roof. (Joint Ex. 1). Therefore, I find that the Complainant has not shown that the Licensee violated Section 27-303(1) or Section 27-303(6) of the Insurance Article.

The Complainant maintains that the Licensee's determination that the damaged roof could be repaired is arbitrary and unreasonable. He relies on the testimony of Mr. Barton, an expert in roofing installation and maintenance, and Mr. Taylor, an expert in structural engineering, who both testified that the roof should be replaced and not repaired. Mr. Barton opined that the roof should be replaced because there are no existing roof shingles that directly

match the shingles of the Complainant's roof. Mr. Barton stated that current GAF Timberland brand shingles, which are now only manufactured in metric dimensions, are a different size than the GAF Timberline brand shingles on the Complainant's roof, which are measured in English dimensions. Mr. Barton testified that High Point would not repair a roof with different sized shingles because that would not meet company standards and could void any warranty. Mr. Taylor testified that the roof should be replaced due to the absence of matching shingles as well as the overall condition of the twenty-year-old roof. He testified that attempting to repair the roof would damage the roof.

The Licensee's roof inspectors reached different conclusions than the Complainant's experts. Crawford's initial report concluded there was repairable wind damage to the roof. (Lic. Ex. 2). Mr. Malmquist, an expert in structural engineering, who conducted well over 1,000 roof inspections, concluded there was no wind damage to the Complainant's roof and that, in any event, the existing wear and tear damage to the roof was repairable. The Licensee relied on these professional conclusions in determining that the Complainant's roof did not need to be replaced.

The Complainant challenges the Licensee's reliance on Mr. Malmquist's opinion because his report includes weather data from May 10, 2022, when the actual date of loss was June 17, 2022. However, Mr. Malmquist only included weather data from May 10, 2022, because that is the date the Complainant told him the wind damage occurred. Moreover, Mr. Malmquist credibly testified that he does not need weather data to complete a roof inspection report. Mr. Malmquist's credentials and experience are considerable. His roof inspection was thorough, and both his report and his testimony set forth a reasonable and credible basis for concluding that the existing damage to the Complainant's roof is repairable. The Licensee's reliance on Mr. Malmquist's expert professional opinion is neither arbitrary nor capricious.

Significantly, the Licensee has not foreclosed a total roof replacement in this case. Mr. Vereen testified regarding the Licensee's supplemental claims process by which the Complainant may obtain additional coverage under the Policy if during the covered roof repair, it is determined that additional coverage is warranted. The Licensee repeatedly informed the Complainant of the supplemental claims process. Nevertheless, the Complainant, who from the outset has demanded nothing less than a total roof replacement, has refused to initiate the roof repair. I find the Complainant's position in this regard to be unreasonable.

There is no dispute that the Licensee considered all information presented to it during the claims process. Based on High Point's and Crawford's separate inspections, at most, thirty-eight roof shingles were wind-damaged on June 17, 2022. Crawford reported that the shingles were repairable.⁵ Trident, through Mr. Malmquist's report, subsequently confirmed that any damage to the roof was repairable. The Licensee's settlement offer provided for the use of seventy-six roof shingles to replace the thirty-eight damaged roof shingles. This was fair and reasonable because it recognized that some existing shingles might be damaged during the repair. If during the repair, circumstances arise indicating that additional coverage is warranted under the Policy, the Complainant can pursue the Licensee's supplemental claims process for additional coverage, which is also fair and reasonable.

Based on the evidence presented, the Licensee's claim determination was not arbitrary or capricious. It was based on two separate professional inspection reports that stated the roof could be repaired. The determination was based on a thorough assessment of all available information, consistent with the terms of the Policy, and timely communicated to the Complainant. I therefore conclude that the Complainant has failed to prove that the Licensee engaged in an unfair settlement practice in violation of either section 4-113 or 27-303 of the Insurance Article.

⁵ Crawford acknowledged in its report that "given the condition of the shingles, repair may not be possible." (Lic. Ex. 2).

CONCLUSION OF LAW

I conclude as a matter of law that the Complainant did not show that the Licensee engaged in an unfair claim settlement practice by refusing to pay a claim for an arbitrary or capricious reason. Md. Code Ann., Ins. § 27-303 (2017); Md. Code Ann., Ins. § 4-113(b) (Supp. 2022).

PROPOSED ORDER

Based upon the above Findings of Fact, Discussion, and Conclusion of Law, I **PROPOSE** that it be found that the Licensee did not violate sections 27-303 or 4-113 of the Insurance Article and that the December 8, 2022, decision of the Maryland Insurance Administration be **AFFIRMED**.

I further **PROPOSE** that the records and publications of the Maryland Insurance Administration reflect this decision.

June 16, 2023
Date Decision Issued

signature on original

Edward J. Kelley
Administrative Law Judge

EJK/ds
#205362

RIGHT TO FILE EXCEPTIONS

Upon receipt of this proposed decision, affected parties have twenty (20) days to file exceptions with the Insurance Commissioner. COMAR 31.02.01.10-1B(1). If a party wishes to receive a transcript of the hearing before filing exceptions, the party has ten (10) days from receipt of the decision to either: 1) file a written request for a transcript with the Insurance Commissioner, or 2) request a transcript of the hearing from a private stenographer and file a copy of their written request to a private stenographer with the Insurance Commissioner. COMAR 31.02.01.10-1B(2). If a transcript is requested, the transcript must be filed with the Commissioner within sixty (60) days of the request, and then a party has thirty (30) days after the filing of the transcript to file exceptions. COMAR 31.02.01.10-1D. Written exceptions and requests for transcripts should be addressed to: Hearing and Appeals Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202. The Office of Administrative Hearings is not a party to any review process.

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