

# BERKSHIRE HATHAWAY INC.

## NEWS RELEASE

FOR IMMEDIATE RELEASE

October 31, 2013

Omaha, NE – The following was issued by Berkshire Hathaway Inc. (BRK.A; BRK.B) today:

Over a century ago, Mark Twain observed “Never pick a fight with people who buy ink by the barrel.” We are about to ignore Twain’s sage advice.

Mark Greenblatt of Scripps News recently published articles and online video stories about alleged inappropriate delays and denials of asbestos claims by Berkshire Hathaway subsidiaries that manage legacy liabilities of other insurers and reinsurers. **There are many material inaccuracies and misleading statements in Mr. Greenblatt’s pieces:**

1. Mr. Greenblatt begins his main article with a sensational account of the case of asbestos plaintiff Nancy Lopez, stating that Ms. Lopez “didn’t realize her suit would eventually pit her against the empire built by acclaimed investor Warren Buffett.” Reinforcing the impression that Ms. Lopez’s case was handled by a Berkshire Hathaway subsidiary, Mr. Greenblatt cites Ms. Lopez’s attorney for the proposition that Berkshire subsidiaries could exert “a dangerous amount of influence over payouts to victims like his client.”

Contrary to the statements and insinuations above:

- (a) The defense of the case brought by Ms. Lopez was led and managed by the corporate defendant sued by Ms. Lopez, along with a number of its insurers. At the time the case was brought, a Berkshire subsidiary represented an insurer with only a 14% share of the liability, and the Berkshire subsidiary was not directing the management of the case.
  - (b) About one month prior to the unfortunate death of Ms. Lopez, the Berkshire subsidiary assumed from another one of the insurers an additional share of the responsibility for the claim.
  - (c) Even after the Berkshire subsidiary assumed additional liability from that insurer, at no time did the Berkshire subsidiary control the defense of the claim, as the corporate defendant continued to lead the defense.
  - (d) We do not know if Mr. Greenblatt ever attempted to discuss Ms. Lopez’s case with the defendant to confirm Ms. Lopez’s attorney’s accusations, but we did. We have confirmed that the defendant (i) agrees with what we have said above, and (ii) believes that Mr. Greenblatt’s piece mischaracterizes the chain of events.
2. Mr. Greenblatt writes in his article that “...in courtrooms across the country, there are allegations that Berkshire has little interest in compromise. In Kansas City, Charles Lute and two fellow building engineers sued the owner of the BMA Tower for injuries... Court documents say the building’s owner, Liberty Life Insurance Co., wanted to settle and blamed [Berkshire] when a mediated deal fell through. [Berkshire’s] offer was so low, court documents say, Liberty paid the three men at the higher level, without knowing if it would be reimbursed by its insurer.” In the video clip published by Mr. Greenblatt along with his article, he reports that Berkshire offered only \$26,000 per claimant.

The complete facts are wholly inconsistent with Mr. Greenblatt’s insinuations that we unreasonably resist compromise:

- (a) Based on a variety of factors, we concluded that the reasonable value for the claims was between \$67,000 and \$110,000. Berkshire's share of Liberty Life's liability was on average 27.1% for each claim, meaning that the reasonable value of each claim to us was between \$17,018 and \$34,870. We offered an average of \$26,000 per claim.
  - (b) Mr. Greenblatt fails to understand or ignores the fact that our offer was for our 27.1% share of the liability, not 100%.
  - (c) Without our consent, the cases were settled on behalf of Liberty Life at the value of the claimants' demand: \$500,000 each, for a full settlement of the three claims at \$1,500,000, about 4½ times the high end of the settlement value range we believed was reasonable. We were then sued for our share of that settlement. While settlement of that dispute is subject to a confidentiality agreement, we would be pleased to disclose the terms of that settlement if permitted to do so, as it would validate our handling of the matter. We have communicated that offer to Mr. Greenblatt but he has not reported this fact in any of his reports. We do not know if Mr. Greenblatt attempted to request that Liberty Life agree to lift the confidentiality restrictions on the settlement agreement, but if he failed to do so it would further demonstrate a bias and lack of professionalism in his reporting.
  - (d) Further validating our handling of this claim is the fact that an almost identical asbestos claim arising from the same building in the same jurisdiction with the same alleged injury and the same plaintiff's attorney was tried to a verdict (rather than settled before trial like the previous claimants). The jury returned a verdict for plaintiff of \$150,000. We provided this information to Mr. Greenblatt, who responded that he had not been aware of this virtually identical claim, but he did not report this fact.
3. In his article Mr. Greenblatt reported that Ford Motor Company was suing us based on alleged wrongdoings, and in a subsequent update to the article Mr. Greenblatt reported that Berkshire settled with Ford for \$2 million more than Ford had sought in the litigation, reported as being \$20 million. Mr. Greenblatt quoted Ford's counsel in the litigation, Scott Oostdyk, as saying it was a "good day" when one recovers more than what was sought.

While our counsel actually provided a response to Mr. Greenblatt when he sought comment on the settlement, much of the factual information in that response was avoided in Mr. Greenblatt's update on the Ford settlement:

- (a) Contrary to Mr. Greenblatt's reporting and the claims of Mr. Oostdyk, Ford sought no specific amount of damages in its complaint. Instead, it sued for unspecified punitive damages, attorneys' fees and triple damages under a Virginia business conspiracy statute.
- (b) Other documents in the case reveal that Ford actually sought over \$125 million in damages, based on the Virginia statute that allows tripling of damages.
- (c) Prior to settlement, we succeeded in obtaining rulings from the Court that precluded any recovery by Ford for trebling, punitive damages or attorneys' fees. Additionally, with respect to this case, Mr. Oostdyk was disqualified as Ford's trial counsel based on a violation of Virginia Rule of Professional Conduct 3.7(a). We provided Mr. Greenblatt with this information but it was not reported by him.
- (d) After all extraneous claims were eliminated, the case with Ford concerned only Ford's claims for reimbursement under insurance policies that are the subject of ongoing arbitration between Ford and our reinsured, HDI Gerling, which Ford insisted be held confidentially. And while the terms of the settlement are confidential, contrary to the implications of Mr. Greenblatt's reporting, we would be pleased to publicly disclose the settlement document itself. We do not know if Mr. Greenblatt ever attempted to get Ford to agree to publicize the terms of the settlement, but when we attempted to do so, Ford expressly refused to allow the publication of the settlement, despite Ford's counsel's suggestion in Mr. Greenblatt's report that Ford wished to publicize certain aspects of the settlement.

4. In his article, Mr. Greenblatt references two other matters, Estee Lauder and Celanese, both of which involve disputed legal bills. The Estee Lauder case has not yet been tried. As to Celanese, Mr. Greenblatt stated simply that a Court had found that a Berkshire subsidiary had committed a knowing and willful act that was unfair or deceptive and “awarded double damages against us, a ruling we did not appeal.” The Celanese case involved the following circumstances:
  - (a) In 1998 and 2001, Celanese entered into two agreements with an insurer: one involved the ongoing handling of asbestos claims made against Celanese, the other involved the ongoing handling of chemical claims made against Celanese.
  - (b) In the mid-2000’s, for the insurer on whose behalf a Berkshire subsidiary was then acting, the Berkshire subsidiary began to question the requests for payment being submitted by Celanese under those agreements and sought an audit to determine whether the requests were consistent with the agreements. When a comprehensive audit was denied, payments were withheld under the agreements until the information was provided and the issues were resolved.
  - (c) Celanese sued the insurer on whose behalf the Berkshire subsidiary was acting, seeking over \$65 million, claiming the withholding of the payments was unreasonable. In 2009, a jury found that our conduct in connection with the asbestos agreement did not constitute an unfair act, but ruled that our conduct in connection with the chemical claims agreement did. Bad faith damages of \$362,171 were awarded to Celanese. Under the applicable law concerning bad faith claims, Celanese was also entitled to its attorney fees, for a total bad faith recovery of \$797,378, or approximately 1.5% of the amount claimed.
  
5. In both his article and video, Mr. Greenblatt cites the deposition testimony of Robert Burns, who Mr. Greenblatt identifies as a former claims executive who “took his orders from [Berkshire]” and had given testimony in the Estee Lauder litigation referenced above. Mr. Greenblatt also reports that Mr. Burns gave testimony in the Celanese case referenced above. Not included in Mr. Greenblatt’s report are the following facts:
  - (a) Mr. Burns was never an employee of Berkshire or any of its subsidiaries. He did work as a claims executive for another company that was working with us on certain claims; he left the employment of that company over seven years ago.
  - (b) Just prior to leaving that company, Mr. Burns was questioned in connection with what appeared to be fraudulent billings that an outside vendor had submitted to us. We addressed the matter with the vendor, who agreed to repay most of the fraudulently submitted amounts. We did not pursue any legal action against Mr. Burns, who had approved the payment of the fraudulent billings. Mr. Burns subsequently separated from his employer.
  - (c) Since his departure, Mr. Burns has given testimony in several matters concerning his allegation that we would not pay claims above pre-established annual “targets.” In reality, the “targets” that Mr. Burns suggests were the maximum amount that we would pay were often far exceeded by the actual payments made by us both during and after the time that Mr. Burns was involved in our business.
  - (d) In two arbitration proceedings in which Mr. Burns gave such testimony, he claimed that he was denied authority to settle a claim for the amount demanded by the claimant of \$18 million. In the same proceeding, the claimant submitted a signed statement confirming that no such demand was ever made, completely refuting the sworn testimony of Mr. Burns. The arbitration panels in both proceedings ruled in our favor.

Following the publication of these stories, on October 9, 2013, we emailed Mr. Greenblatt to explain some of the inaccuracies described above. That email is attached (Attachment 1). We did not receive any follow-up questions from Mr. Greenblatt following his receipt of the email, nor have we become aware of any updates to his stories since that time, to address our concerns or otherwise. On

October 15, 2013, Scripps News confirmed in an email (Attachment 2) that: “Scripps finds no reason to correct any of the facts reported in our broadcast, print or digital stories.”

We remain committed to and proud of Berkshire’s run-off operation, which has been actively engaged in its work for over fifteen years. Since we started in this business, our payments for claims and claims expenses total over \$20 billion and now exceed \$2.4 billion annually. We take extremely seriously the important duties we assume in this area; duties that are owed to policyholders, to insurers and reinsurers on whose behalf we manage claims, to regulators who oversee our industry, and indeed to our own shareholders, who expect us to operate well above any minimum standards of practice for our business. We have worked hard to earn the respect of these constituencies, and have been recognized for our efforts, with several commendations and awards from our peers and industry trade groups, citing both our executives and our claims paying abilities.

Nonetheless, our work in the run-off and legacy liability area involves thousands of contested claims and complex litigations. The full details and circumstances of these matters are not easily (or appropriately) reduced to sound bites for an eye-catching-headlined article about our company. By selective use of facts and sources, however, it is not difficult to create such a piece. In several instances, Mr. Greenblatt has selectively referenced a single ruling or argument from a complex and protracted litigation in such a way that Mr. Greenblatt’s narrative is highly misleading (often by quoting a lawyer for a claimant against one of our insureds or reinsureds). We acknowledge that Mr. Greenblatt has on several occasions asked to interview Berkshire Hathaway executives on camera. While we have responded to various emails from Mr. Greenblatt that included questions about our business practices, we have declined to provide the interviews he sought. Given the selective use of material by Mr. Greenblatt, we remain comfortable with our decision.

We do take seriously Mr. Twain’s advice not to “pick fights with people who buy ink by the barrel.” Although it is not our practice or preference to comment about matters in litigations where we defend our insureds or reinsureds, we will, where and when we deem appropriate, act to correct misinformation that may be inappropriately used against our subsidiaries, our insureds and reinsureds and our people in such matters, especially where the circumstances suggest the misinformation has been published for this purpose.

#### **About Berkshire**

Berkshire Hathaway and its subsidiaries engage in diverse business activities including property and casualty insurance and reinsurance, utilities and energy, freight rail transportation, finance, manufacturing, retailing and services. Common stock of the company is listed on the New York Stock Exchange, trading symbols BRK.A and BRK.B.

#### **Cautionary Statement**

Certain statements contained in this press release are “forward looking” statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are not guaranties of future performance and actual results may differ materially from those forecasted.

— END —

Contact  
Marc D. Hamburg  
402-346-1400

October 9, 2013 email to Mark Greenblatt:

Mark:

I am responding to your inquiry to Ajit Jain on the Law360 article earlier yesterday, and in follow-up to our conversation this morning. As we discussed this morning, I know you have been eager for interviews of my colleagues on all sorts of topics, and as you know we do not customarily engage in interviews, and given that much of the topics about which you seek comment are active, complicated litigations and other contested matters, we continue to be satisfied that our customary practice is sensible here. We have already provided you with information in response to some of your emails. I write this email to address what we believe to be substantially inaccurate aspects of your recent story, and to respond to some points you raised during our conversation this morning.

- (1) You presented your story, I am sure you would agree, in a manner that suggests that an asbestos plaintiff named Nancy Lopez, represented by an attorney named Louis Accurso, was wrongfully denied and delayed a settlement at the hands of a Berkshire subsidiary until after her death (to be fair, you say that Ms. Lopez was pitted against “an empire” built by our Chairman, Warren Buffett). The accurate facts tell a very different story. The defense of the case brought by Ms. Lopez was being managed by the actual defendant in the case, which was doing so along with its insurers, who each participated at agreed shares, according to their relative policy obligations to do so. Up until about a month prior to the unfortunate death of Ms. Lopez, our subsidiary Resolute was the claims agent for only one insurer of that group, with a share of approximately 14%. About one month before Ms. Lopez’s death, Resolute became responsible for also acting as agent for another insurer (which to that date had been acting on its own behalf with no involvement by Resolute). Ultimately, the Resolute managed insurers had less than 50% of the responsibility for the claim, and Resolute never had sole management control over the matter. Your article makes no reference to the other insurers who controlled a majority of the insurance funds, or the fact that the defendant was involved for its own account in the defense. Instead, your statement that Ms. Lopez was “pitted against a Berkshire empire” gives the impression that Resolute was calling the shots, which was never the case.
- (2) You also report in your story that: “In Kansas City, Charles Lute and two fellow building engineers sued the owner of the BMA Tower for injuries, after years of working around an asbestos-filled fire retardant ... Court documents say the building’s owner, Liberty Life Insurance Co., wanted to settle and blamed Resolute when a mediated deal fell through. Resolute’s offer was so low, court documents say, Liberty paid the three men at the higher level, without knowing if it would be reimbursed by its insurer.” In the video clip you published, you report that a Resolute managed insurer offered only \$26,000 per claimant in settlement. While that is true, it is misleading. Here again, we were acting on behalf of only one of the insurers contributing to the settlement. The average amount payable to each plaintiff in the settlement that we authorized was in excess of \$95,000, based upon our assessment of the value of the claims. Liberty Life eventually settled the claims for \$500,000 each, over Resolute’s objection. Earlier this year, the same attorney Accurso who represented Ms. Lopez and the plaintiffs in this case tried another case in the same jurisdiction involving a man with the same basic injury and same exposure taking place at the same BMA tower building. Prior to and during trial, Mr. Accurso on behalf of plaintiff demanded \$1 million to settle, and indicated that it was not negotiable. The case went through trial, and the Missouri jury returned a verdict of \$150,000. Here again, the complete facts tell a very different story, even if it is inconsistent with the emphasis of the story you wish to tell. During our phone call this morning, you expressed frustration that, in a lawsuit filed by Liberty Life against Resolute and the insurer it managed to recover its share of the \$500,000-per-claimant settlement referenced above, the record was sealed and the settlement confidential. Those conditions were sought and agreed by both plaintiff and defendants, but

we would not object to providing you with details about those proceedings if Liberty Life agreed to permit us to do so. In any case, the more complete facts confirm that Resolute was not unreasonable in its original valuations of the claims, i.e., we had valued similar claims at \$95,000; the demand was a non-negotiable \$1 million; the jury verdict was \$150,000.

- (3) Yesterday, you wrote to my colleague, Ajit Jain, and to our Virginia counsel in the Ford matter seeking comment about the settlement of Ford's case against NICO in the federal court in Virginia, a subject about which you published follow-up reporting yesterday. In that reporting, you suggested that NICO paid substantially more than the damages sought in order to avoid a public trial of Ford's claims, and quoting Ford's counsel's characterizations of the settlement. Our Virginia counsel responded to you yesterday afternoon by email. The text of that email was as follows:

Thank you for the opportunity to comment.

We commend you to the actual rulings and pleadings in the case. You will see there that Ford made no specific claim for any sum in its complaint other than punitive and treble damages and attorneys' fees. You also will see that the Court's rulings through settlement precluded any recovery by Ford for any such damages. You also will see that prior to the commencement of the suit Ford already was engaged in an arbitration—which is still pending—against National Indemnity Company's reinsured, a company called HDI-Gerling. That arbitration is still pending, and will result in a final adjudication of any remaining claims by Ford against HDI-Gerling.

We would note in closing that that the settlement was agreed to be confidential. So we do not believe any further comment about the case by either party to be appropriate. Ford apparently disagrees. But to remove any confusion about the terms of the settlement agreement, we would be amenable to waiving the confidentiality if Ford agreed to do so.

You responded to our counsel last evening, thanking him for his response in stating that you would incorporate it in your update. Your update last evening not only failed to incorporate our counsel's response, it incorrectly stated that no comment had been offered by NICO or its counsel. This morning you apologized to me for the oversight, but encouraged me to view the video update you published, which you implied did incorporate our counsel's comment. In the video I viewed at your suggestion, the only point you "incorporated" was to note that NICO's counsel indicated that Ford had not sought \$20 million. The truth is that the complaint filed by Ford did not actually seek recovery of insurance claims for "rollover deaths." In fact, the complaint failed to state a monetary amount of damages. Other documents indicate, however, that Ford was seeking in excess of \$126 million in damages for attorneys' fees, violations of business conspiracy statutes, and punitive damages. Rulings in the case not only rejected Ford's claims for attorneys' fees, conspiracy and punitive damages, but resulted in the disqualification of Ford's counsel, Scott Oostdyk (who you have quoted in your various reports), based on violations of the rules of professional conduct. The settlement agreement that resulted in dismissal of the litigation actually involved claims at issue in a pending arbitration. Unfortunately, because Ford insisted upon strict confidentiality over those arbitration proceedings, we are unable to say too much about the issues involved in that proceeding.

We reiterate here the offer made by our counsel yesterday but as yet unreported by you: we will agree to disclose the settlement document, as well as all of the information and documents involved in the arbitration proceedings pending between Ford and our reinsured, and ask only that Ford permit us to do so. If Ford does not, we will live by the confidentiality commitments we made to them.

While the foregoing circumstances have not led us to reconsider our position on giving interviews, they do suggest that we should, as we deem appropriate, attempt to correct inaccurate material that is reported. We are confident you appreciate the importance of our doing so.

Kind regards,

Brian G. Snover

Vice President and General Counsel

Berkshire Hathaway Reinsurance Division

**ATTACHMENT 2**

Dear Mr. Snover,

I am the Bureau Chief for Scripps News in Washington DC and our correspondent Mark Greenblatt shared your email with me about our recent investigation, "Risky Business."

We very much appreciate your feedback on our stories and want to assure you that Scripps takes any allegations of "inaccurate" reporting quite seriously.

After reviewing the three areas of concern you raised, Scripps finds no reason to correct any of the facts reported in our broadcast, print or digital stories. We believe the facts are accurate and are supported by court documents and witness observations. Absent additional information to the contrary, we stand by the reporting.

Our offer to interview Mr. Buffett, Mr. Jain, and/or Mr. Ryan on these matters remains open. As we have said to Mr. Jain by phone and email, we are willing to travel to make this interview as convenient as possible. We very much hope you will reconsider your position on this request.

In the meantime, we appreciate the channel of communication you re-opened with us.

Sincerely Yours,

Ellen Weiss

Vice President & Bureau Chief

Scripps Howard News Service