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## PRO BANKRUPTCY

# A Berkshire Insurance Bet Went Bad. It Wants a Bankruptcy Court to Limit the Damage.

‘Collect now, pay later’ insurance model at Berkshire’s National Indemnity didn’t account for rise in talc-related lawsuits

By [Akiko Matsuda](#) [Follow](#)

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Berkshire Hathaway bought talc supplier Whittaker Clark & Daniels for a nominal \$1 in 2007. PHOTO: MICHAEL NAGLE/BLOOMBERG NEWS

Warren Buffett’s Berkshire Hathaway did well for itself over the years by taking responsibility for other companies’ asbestos-related liabilities, betting that it could grow assets faster than it would have to pay out injury claims.

The conglomerate, however, didn’t foresee a recent explosion in lawsuits alleging asbestos exposure through cosmetic talc products. Berkshire is turning to bankruptcy court to try to cap its financial exposure from its 2007 acquisition of a defunct supplier of cosmetic talc, one of Berkshire’s [many asbestos-related deals](#) over the past few decades.

After buying that talc supplier, Whittaker Clark & Daniels, for a nominal \$1, Berkshire now faces a nearly half-billion dollar bill—and potentially more—to resolve asbestos claims tied to the acquisition.

Whittaker is now in chapter 11 to seek a resolution of its asbestos-related claims and cap the liabilities of its past and present owners, including Berkshire. A legal battle unfolding in New Jersey will determine whether Berkshire can free itself from its bad bet—and could shed light on how a new resurgence of asbestos lawsuits could affect other institutions that have gotten into the business of managing [America's longest-running mass tort](#).

“They’re not bankrupting it because the company all of a sudden couldn’t pay its bills,” said Michael Shepard, a lawyer representing asbestos-injury claimants. “They’re bankrupting it because all of a sudden it doesn’t look like a good investment anymore.”

A Berkshire representative and lawyers representing the company in bankruptcy court didn’t respond to requests for comment.

### **‘Collect now, pay later’**

Berkshire’s asbestos business largely runs through its insurance subsidiary National Indemnity, which Buffett purchased in 1967 and used in subsequent decades to take on lingering asbestos claims from other insurers. Buffett got money from premiums to invest up front, in return for shouldering obligations that could take a long time to fully resolve.

Berkshire was attracted to the property-casualty insurance business because of its “collect now, pay later” model, he has previously said. Between collecting premiums and paying claims, Berkshire can invest the money, which Buffett calls “float,” for its benefit.

His model was a good fit when asbestos litigation grew into a mass tort in the 1980s because asbestos-related illnesses typically don’t manifest until decades after exposure, meaning that claims come due long after insurance premiums have been collected.

National Indemnity’s float grew from \$18.5 million in 1967 to roughly \$59 billion by the end of 2007 as some of the world’s biggest insurers turned to Berkshire for help shedding asbestos liabilities. Equitas, an affiliate of Lloyd’s of London, paid a single



Warren Buffett, chairman of Berkshire Hathaway.

PHOTO: VINCENT TULLO FOR WSJ

inception, according to Berkshire.

“In an insurance business, you’re trying to manage your liabilities and you’re also trying to manage your assets, and Berkshire has been really good at both,” said Lawrence Cunningham, who is the editor of *“The Essays of Warren Buffett”* and the director of the John L. Weinberg Center for Corporate Governance at the University of Delaware.

National Indemnity’s deals included its purchase of Whittaker, which supplied pigments and minerals, including talc, for both cosmetic and industrial products. By then, Whittaker was a shell with no operating assets. National Indemnity bought its equity and assumed its asbestos liabilities from its previous owner, German railroad operator Deutsche Bahn, for a nominal \$1.

Under the agreement, National Indemnity took over Whittaker and its affiliates’ insurance policies, worth roughly \$129 million in cash, and their liabilities stemming from its distribution and production of talc that allegedly contained asbestos, court papers show.

## Deep pocket

premium of \$7.1 billion in 2006 to hand over its asbestos liabilities to National Indemnity.

“Float is wonderful—if it doesn’t come at a high price,” Buffett wrote in his 2005 letter to shareholders. “The cost of float is determined by underwriting results, meaning how losses and expenses paid compare with premiums received.”

The amount of current float held by National Indemnity alone isn’t publicly disclosed. But as of December 2024, the total float for Berkshire’s insurance subsidiaries stood at \$171 billion. The business line has generated \$32 billion of after-tax profits since its

The investment thesis was simple: through prudent investments, Berkshire could grow those assets to an amount that exceeded what it would need to pay out on tort claims. After the takeover, company executives tried not to broadcast Whittaker's connection to Berkshire "for obvious reasons (various litigations)," said Raj Mehta, president of Whittaker, in a 2008 email sent to the then-general counsel of Brenntag North America, which had purchased Whittaker's operating assets in 2004.

"I try not to let people know of Berkshire's involvement and would appreciate if you could do the same," Mehta said in the email, which was cited in a bankruptcy trial in March. In addition to his role with Whittaker, Mehta has held positions with several other Berkshire entities, including National Indemnity.

When asked about the email in court in March, Mehta testified that "when there is a deep pocket involved, the settlements tend to rise not based on merits, but based on the fact that there is a deep pocket."

Between 2011 and 2021, Whittaker paid \$9.9 million in talc-related lawsuits that were brought to verdict, according to court papers. By 2021, talc litigation was gaining steam, highlighted by a [\\$2.1 billion verdict against Johnson & Johnson](#) over its talc-based baby powder products.

Later that year, J&J left the tort system by [moving its talc liabilities to bankruptcy court for resolution](#), making Whittaker and other remaining asbestos defendants more of a target for plaintiffs' lawyers.

In 2023, a South Carolina jury rendered a \$29 million verdict against Whittaker in a lawsuit brought by a woman who alleged that she developed mesothelioma at age 35 after using various asbestos-contaminated talc products. Berkshire installed two outside directors at Whittaker, who filed it for chapter 11 in the U.S. Bankruptcy Court in Trenton, N.J.



Johnson & Johnson left the tort system in 2021 by moving its talc liabilities to bankruptcy court for resolution. PHOTO: LUCAS JACKSON/REUTERS

While Berkshire pioneered the insurance model of taking legacy liabilities off other companies' books, some private-equity firms have expanded on it in recent years and created a competitive market, said Stephen Hoke of Hoke LLC, a lawyer who specializes in legacy liability and corporate reorganization work. A rise in claim values could affect those investors' bottom lines, Hoke said.

Berkshire has proposed paying \$535 million along with Whittaker's previous owners to resolve asbestos claims stemming from products linked to Whittaker. In court papers, Berkshire said that Whittaker opted for bankruptcy to provide a fairer and more efficient way of addressing over 1,600 pending talc lawsuits.

### **'It was a bad bet'**

Berkshire never mentioned Whittaker by name in its financial statements. But in its 2024 annual statement, National Indemnity recorded a pretax charge of \$490 million toward the \$535 million bankruptcy settlement in exchange for legal releases for affiliated parties. The difference, \$45 million, has been paid to Berkshire by Deutsche Bahn's U.S. unit.

Lawyers representing personal-injury claimants have challenged the proposal, asserting that it grossly undervalued their claims. Their experts estimated the value of claims at as much as \$5.3 billion, while Berkshire's experts said the value would be less than \$520 million.

The proposed deal was negotiated between Whittaker's two independent directors and the contributing parties. Lawyers for claimants argue those [independent](#)

[directors are conflicted](#) because of their business relationship with Kirkland & Ellis, the law firm steering Whittaker through chapter 11. Kirkland also counts Berkshire as a client outside the bankruptcy case, court papers show. The firm didn't respond to a request for comment.

“They made a bad business decision. It was a bad bet,” said Cullen Drescher Speckhart, a lawyer representing talc claimants, in a March hearing. She said that imposing an inadequate settlement on claimants “would be a really unfair use of the bankruptcy code.”

The judge overseeing the case has ordered both sides to continue negotiating.

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