

PRIVATE AND CONFIDENTIAL

To: Warren E. Buffett, CEO and Chairman, and the Board of Directors of Berkshire Hathaway, Inc. (BRK") DATED: AUGUST 22, 2025
C/O by email to: Marc D. Hamburg, CFO and Secretary

From: Sam Sharon, Managing Director M & A Research and Acquisitions

THIS REPORT IS PRIVATE AND CONFIDENTIAL FOR THE EYES ONLY OF THE ABOVE LISTED OFFICERS AND DIRECTORS.

WE ARE VERY HOPEFUL THAT MR. BUFFETT AND THE BOARD TAKE HEED OF OUR RECOMMENDATION CONFIDENTIALLY, AND TAKE FULL CREDIT FOR IT., AND, LET MR. BUFFETT HAVE A VERY FITTING ENDING TO HIS LONG CEO POSITION AND TO BRING TO A VERY PROFITABLE CONCLUSION FOR ALL STOCKHOLDERS, INCLUDING OF COURSE, BY EXTENSION, THE CREATION OF SIGNIFICANT VALUE FOR HIS OWN HOLDINGS AS WELL, PERHAPS PROPELLING HIM TO THE POSITION AS THE RICHEST MAN IN THE WORLD!? A TITLE HE WOULD CERTAINLY DESERVE.

THAT WOULD BE A MOST FITTING TRIBUTE TO A GREAT LIFE.
IN OUR OPINION, ALL STOCKHOLDERS WILL CHEER THIS FINAL ACTION TO FINALLY UNLEASH THE HIDDEN VALUE OF BRK AS AN ACTON BY MR. BUFFETT AND THE BOARD, AS PART OF HIS ANNOUNCED DEPARTURE AS CEO.



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CONFIDENTIAL RECOMMENDATION FOR A Comprehensive Legal and Strategic Justification for a Transformative CASH DIVIDEND DISTRIBUTION and SPINOFF to stockholders of most of the subsidiaries of Berkshire Hathaway, Inc. as separate trading entities, WHILE KEEPING THE PARENT COMPANY ("BRK") WITH OWNERSHIP OF ALL THE INSURANCE RELATED ENTITIES AND THE STOCK PORTFOLIO, AND CONTINUE AS BASICALLY A WELL-CAPITALIZED INSURANCE HOLDING COMPANY TO CREATE SIGNIFICANT VALUE FOR STOCKHOLDERS, AND THEN ENDEAVOR TO CONSIDER ADD-ON ACQUISITIONS MOVING FORWARD.

Reasons for Declaring a Dividend, and Spin-off to stockholders of most subsidiaries to unlock the true value of Berkshire Hathaway, Inc., for the benefit of its stockholders.

BERKSHIRE MAY/COULD OTHERWISE BECOME SUBJECT TO THE ACCUMULATED EARNINGS TAX FOR FAILING TO PAY DIVIDENDS AFTER ACCUMULATING EXCESS RETAINED EARNINGS.

Introduction:

Re-evaluating Capital Allocation in an Evolving Landscape for Berkshire Hathaway, Inc. AND ITS STOCKHOLDERS.

Mr. Buffett is a legend and we hope not to continue that designation.

THIS PROPOSAL WILL CAP HIS LEGENDARY STATUS.

Now would be a great time to really create the unlocked value for long waiting stockholders, and himself as well.

WHAT A FITTING TRIBUTE TO A LIFE THAT HAS BUILT SUCH A GREAT CONGLOMERATE: THE LAST CONGLOMERATE!!!

This proposal is not to challenge the foundational principles that have guided Berkshire Hathaway, Inc., over the last approximate 60 years, BY SOLELY relying on the stock price appreciation, which in our opinion does not adequately reflect the value of the Company; but rather to propose a strategic evolution in its capital distribution to stockholders, WHICH THEY SURELY DESERVE, and what is normally expected by stockholders, when excess cash is accumulated.

For example, FORD, that ICONIC manufacturer, has vowed to continue paying a dividend that is far exceeding its earnings so that its stockholders can benefit on its reliability as a dividend payer.

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While this proposal focuses on delivering enhanced long-deserved shareholder dividends, and shows the culmination of build-up of an aging conglomerate model, and also an opportunity to share the wealth with stockholders, as expected of great enterprises like BRK.

This proposal is also the result of numerous conversations with stockholders and especially institutional holders, who have expressed disappointment at the “conglomerate discount” lack of future direction and the “same, old, same old”, statement that nothing would change under the direction of Mr. Abel. That was a disappointing statement, and likely cause of the recent significant drop in the stock price.

The contents of this report, nor the AWARD, have been shared with any institutional or private holders.

THE COMPANY VALUE IS NOT, IN OUR OPINION, REFLECTED AT ALL IN ITS PRESENT STOCK PRICE, THEREFORE THE PRESENT BUSINESS MODEL IS NOT ADEQUATE TO TRULY REFLECT THE BUILT-UP TRUE VALUE OF THE COMPANY, DUE TO ITS SO CALLED “CONGLOMERATE DISCOUNT”.

ADDITIONALLY, THE RECENT GYRATIONS AND LOSSES ON THE STOCK PORTFOLIO AND THE SEEMINGLY ERRATIC MARKET GUESSING-BUYING AND SELLING STOCK POSITIONS, SUCH AS SELLING APPLE AFTER A LONG HOLDING, BEFORE ITS RECENT RUN-UP; SELLING OR BUYING OF CERTAIN PORTFOLIO STOCK INVESTMENTS SOLELY AT WHAT ALWAYS APPEARS TO BE THE WHIM OF MR. BUFFETT, PROVIDES NO COMFORT FOR THE CONTINUED RELIABILITY OR PROFITABILITY OF THE BRK INVESTMENT STRATEGY OF “BUY AND HOLD FOREVER”, AS ESPOUSED BY MR. BUFFETT, WHICH THEN WAS EXPECTED TO BE CARRIED ON BY MR. ABEL. BRK SHOULD BE MANAGING THE GROWTH AND ADDING ADD-ON ACQUISITIONS TO ITS PORTFOLIO OF GREAT SUBSIDIARIES.

We see absolutely a lack of considering add-on possibilities for every single subsidiary...the auto dealerships could easily add the giant publicly traded dealerships; insurance could have added many more; residential services could have acquired the other franchise networks; the railroad could have looked for mergers with others such as CSX; and so on and so on...

There are many possible obvious targets for you to consider and we can identify them...but it seems there was little if any activity on the add-on acquisitions mode for BRK for years. Berkshire's history is a testament to the power of retained earnings, and a profound commitment to long-term value creation, but that model has stalled due to the statements of Mr. Buffett that he cannot find substantial additional companies to acquire at reasonable multiples. That is CLEARLY a MISLEADING AND UNTRUE statement, in our opinion.

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There are plenty of very large and well-known public companies with low PE ratios, (much lower than BRK who is trading at a miserly 16 PE ratio) but it seems nobody on the Board or Mr. Buffett has considered any of them for possible acquisition.

We gave you three examples in a prior correspondence...two with revenues exceeding \$150 BILLION, and just identified another, a great long-established name, well-known publicly traded business with TTM revenues of \$22.7 billion, EBITDA of \$1.7 billion, and a market value of only \$3 BILLION!!!!that is less than 2x PE!!

Does that finally qualify to be considered a great potential for acquisition review by Mr. Buffett...surely a missed opportunity.

It seems that the entire decision process is driven by the statement and opinions of Mr. Buffett, without question by the BRK Board of Directors, who should be instead overseeing and constantly discussing how to increase the value of the subsidiaries.

That discussion does not seem to be occurring.

We value the Oracle of Omaha status of Mr. Buffett and this proposal is meant to keep that status for him...and embellish the Board's oversight position as well-they can take the full credit for their "enlightenment" by embracing the contents of this proposal.

The current holdings in Occidental Petroleum, and Kraft Heinz which BRK already took a substantial write-down, appear to show substantial losses. Others are likely to follow.

RECENT NEWS ARTICLE:

Berkshire, which now owns about 28% of the company, was sitting on an unrealized loss of \$2.2 billion in its common stock holdings before its most recent purchases, according to calculations based on data compiled by Bloomberg.

Recent article content.

Occidental is the fifth-worst performing member of the S&P 500 Energy Index this year as investors fret about its debt levels ahead of an anticipated period of low oil prices. Still, Buffett's investment is a show of confidence in Chief Executive Officer Vicki Hollub, who took on debt to help fund the \$10.8 billion purchase of private Permian Basin producer CrownRockLP.

Is the above purchase just an example of market guessing?

However, the sheer scale of Berkshire's current financial resources, coupled with the inherent difficulties in deploying such vast sums into high-return "elephant-sized" acquisitions (most of which have not, in my opinion, been even considered or evaluated by Mr. Buffett), necessitates a re-evaluation of how best to optimize shareholder value.

Berkshire's current \$300+ billion cash reserves, while an extraordinary sign of financial stability, have also contributed to a persistent "conglomerate discount," thus negating and diminishing the true value of BRK.

Strategic deployment of even a portion of this capital, could unlock substantial shareholder value and reposition Berkshire as the benchmark for investment returns and be a fitting end to Mr. Buffett's CEO reign.

The present status quo and the prediction of continuing the same under the proposed CEO, Greg Abel, is not, in our opinion a future plan to create value for stockholders.

Also at the reported \$21 million compensation, stockholders should hear more solid plans from Mr. Abel, or replace him as the heir apparent to the same ole same ole no dividend policy, and no add-on acquisitions. Mr. Abel a 20-year veteran of BRK, was to be the oversight of the railroad, yet totally missed any opportunities for growth there by proposing complementary merger targets, such as CSX, as well as for other subsidiaries.

The recent loss of approximately \$100 billion in market value since the declaration at the Annual Meeting that stockholders can expect more of the same under Mr. Abels CEO role, is in our opinion, the market's answer to the continued lack of value creation for stockholders.

The so called" Buffett Premium" has vanished, in our opinion.

Also, BRK has totally missed the railroad merger proposal that should have had BRK participate even now, on a stock or cash and stock deal perhaps to have a better proposal for stockholders of the proposed merged entity?

Certainly on a stock for stock deal the stockholders would surely prefer to get BRK stock with its potential to increase in value rather than cash or stock of a merged business.

WHY HAS BRK NOT MADE SIGNIFICANT ADD-ON ACQUISITIONS UNDER MR ABEL'S OVERSIGHT? TO EACH OF THE OPERATING SUBSIDIARIES USING ITS VAST CASH AND PORTFOLIO HOLDINGS?

What do the Board members discuss at the Board meetings?

It was widely publicized how he treated Bill Gates to a meal at McDonalds and used coupons! In Bill and Melinda Gates' [2017 annual letter](#), which they addressed to longtime friend Buffett. Bill Gates tells the story of a particularly economical lunch Buffett took him out for years ago. "Remember the laugh we had when we traveled together to Hong Kong and decided to get lunch at McDonald's? You offered to pay, dug into your pocket, and pulled out ... coupons!" writes Bill.

Warren Buffett keeps his breakfast under \$3.17 apparently.

A recent article intimating that Mr. Buffett's son, and long-time Board member, Howie, become the replacement Chairman is absolutely the wrong person to oversee a TRILLION-dollar value company!

"Howie" as he is referred to, is the true product of nepotism, rather than corporate accomplishments, sitting quietly on the Board for 30 years, with no documented meaningful contribution to increasing stockholder value.

Additionally, credible governance demands that key financial and strategic decisions are not concentrated in the hands of a single aging and increasingly disconnected CEO, who holds the title of Chair and CEO, along with a get-along Board, without robust oversight. As mandated by good corporate governance mandates.

As documented in the attached report of expected Board responsibilities, the involvement of family members such as Howie and the Chairman's daughter in roles of influence, without qualification standards, raises legitimate shareholder concerns about nepotism and accountability.

Addressing this directly, through merit-based board appointments and independent review of executive decision-making, would demonstrate both courage and integrity.

In a recent interview, this is what Howie said:

"When the time comes, I'm ready to do it. But that's how I am," he said. "I've gone through most of my life doing things that I wasn't sure exactly how to do."

Warren Buffett is upfront about why he wants Howie in the job. *"He is getting it because he's my son," he told me. "I'm very, very, very lucky in the fact that I trust all three of my children," he added during a later conversation.*

As a child, Howie Buffett listened to Warren Buffett's side of telephone conversations, asking questions about things he didn't understand. As an adult, he turned to his father for advice. And as a director on Berkshire's board for more than 30 years, he's had a front-row seat as his father built Berkshire into one of the largest companies in the U.S.

"I feel I'm prepared for it because he prepared me," Howie Buffett said. "That's a lot of years of influence and a lot of years of teaching."

The Charman should by all corporate governance standards, be carefully chosen by the Board, and have vast corporate management experience to continue oversight of such an important business. That is clearly NOT Howie, no matter how strained is the explanation of his management experience.

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In our opinion, none of the current Board Members qualify for that future role at present.

The Oldest director, Ronald Olson resigned earlier this year reaching the age of 80, which by company policy excludes anyone over that age to continue as a director, but EXCLUDES MR. BUFFETT at age 94, because he is the largest stockholder.

Furthermore, a new CEO, a skilled aggressive outsider with a strong resume, needs to be recruited for that position to inject some new ideas of how to build value for stockholders, as the head of those remaining insurance entities and that vast stock portfolio, which would comprise BRK after this proposal.

The policy of buying businesses and holding forever, as promulgated by Mr. Buffett, is not a solid and worthwhile business strategy going forward, if stockholder values are to be maximized. Buying well and then nurturing the businesses to an eventual profitable sale or spin-off to stockholders is a solid plan to build stockholder value.

In our opinion, the Company needs to finally declare a substantial dividend; say at least **\$100** a share, using the cash available as well as the tax-free spinoff to stockholders of all of its subsidiaries as independent trading stand-alone entities, while still retaining the insurance entities and the stock portfolio remaining as the ongoing BRK as a stand-alone company is a solid business plan.

EVERY STOCKHOLDER WOULD END UP WITH SHARES IN OVER 60 SEPARATE TRADING BUSINESSES, OR 180, IF Marmon was also split up!!!!

WOW! WOULD THAT CREATE MORE VALUE THAN THE PRESENT GLOOMY CONGLOMERATE DISCOUNT?

Spinning off as dividend to the existing stockholders of the shares in the iconic companies that BRK holds, will result in our opinion, in a substantial gain for the stockholders, who would then hold shares in all those approximately 60 companies Or 180 (hard to keep track due to the minimal reporting), in addition to the continuation of BRK, as an insurance holding company with a strong stock portfolio as well.

REFER TO THE BROCHURE WE PREPARED AT NO COST TO BRK, WHICH MR. BUFFETT REFUSED TO EVEN CONSIDER AS A USEFUL INFORMATION TOOL FOR THE STOCKHOLDERS AND INTERESTED PARTIES TO DESCRIBE AND HIGHLIGHT THE WONDER THAT HE HAS BUILT.

Would a nice comprehensive colorful brochure be helpful to know what BRK owns?

INSTEAD, WE RECEIVED A VERY RUDE REPLY FROM MR. HABURG ON MR. BUFFETT'S BEHALF, FOR REASONS WE DO NOT COMPREHEND.

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It should not be the business of the Company to have Mr. Buffett, at age 94, be what appears to have always been, a stock picker/stock trader, and reports as also being the CHIEF risk officer, as a means of guessing market timing and picking stocks to buy, rather than acquiring, managing and then spinning off to stockholders, or selling off the acquired companies, in order to create ongoing stockholder wealth through regular dividend distributions.

To date, the failure of the Company directors to either distribute excess cash surpluses, which are not used to make acquisitions or reinvested in the existing businesses, needed to be declared as substantial dividends, instead of being at the mercy of Mr. Buffett's outdated opinion of waiting for the "right-priced acquisition" to come along.

BRK could be subject to the accumulated earning tax of 20% for failing to pay a dividend when the funds are not deployed. Just for fun, we could be a whistleblower to the IRS and collect an award for reporting that potential tax non-payment.

We awarded Mr. Buffett the 2025 Cheapskate Award for having no dividends for 60 years!
SEE ATTACHED.

BY THE WAY, THAT 2025 CHEAPSKATE AWARD IS STILL VERY PRIVATE and has not been disclosed.

THERE ARE A SIGNIFICANT AMOUNT OF RIGHT-PRICED COMPANIES SELLING AT VERY LOW PE MULTIPLES, THAT HAVE NOT BEEN CONSIDERED FOR ACQUISITION DUE TO EITHER THE BOARD'S TONE-DEAF LACK OF RESEARCH IDENTIFYING SUCH BARGAIN OPPORTUNITIES.

WE HAVE A LONG LIST OF POSSIBLE TARGETS TO CONSIDER FOR BRK'S REVIEW...WOULD YOU LIKE TO REVIEW THAT LIST?

Since the annual meeting, the BRK stock value has decreased due to the weak, NOW OUTMODED business model, espoused by Mr. Buffett.

BRK IS TRULY THE LAST CONGLOMERATE. IT IS TIME TO KEEP IT THAT WAY.

In our opinion, Berkshire's true wealth is being strangled by the continuation of the "CONGLOMERATE" outdated model which brings little overall value to the stock in its present structure AND IS WIDELY CONSIDERED THE "CONGLOMERATE DISCOUNT".

For example, GEICO, the insurance giant, if it was a standalone publicly traded company, would by itself command, in our opinion, a likely **\$65-\$100 billion** market value, when compared to its peers, and should be spun off to stockholders to achieve its full potential value.

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What would the other approximate 60 subsidiaries or 180, be valued at as separate publicly traded companies for instance?

ONE SUBSIDIARY ALONE, MARMON HOLDINGS, INC., OWNS 120 SUBSIDIARIES ACROSS 11 INDUSTRIES, SUCH AS HEALTHCARE, MANUFACTURING, WATER AND TRANSPORTATION.

Marmon is a perfect example of being strangled of its true value in that insidious “conglomerate discount”.

IN OUR OPINION, the present value is strangled by the “conglomerate discount” designation.

Imagine the typical stockholder of BRK now, having in the future, a stockholding in the remaining BRK and some 180 POSSIBLE additional trading entities, as a result of OUR PROPOSAL.

See THE BERKSHIRE ENTITIES IN THE BROCHURE WE PREPARED, describing the various entities that are impossible to easily recognize by a stockholder, due to flimsy and non-descriptive boring and bland 10K Reports and the existing website.

Furthermore, Mr. Buffett’s claim that HE cannot find reasonably priced companies to use Berkshire’s vast cash reserves, is not a truthful comment, as we can and will supply him a list of worldwide substantial companies that trade at low PE multiples (4-10), can be purchased for \$5-\$100 billion, and some have revenues of upwards of \$150 billion; they would Certainly qualify to “move the needle” at BRK.

As of today BRK is trading at PE of only 16!!!! VERY FRUSTRATING TO BE AT SUCH A LOW MULTIPLE!

Every one of these potential target companies have revenues in ranges of \$60-\$150 BILLION, and apparently were clearly never considered for acquisition consideration utilizing the cash hoard that is not being used for any legitimate purpose of accumulating the cash at this time.

WOULD YOU LIKE THE LIST NOW????

HOW ABOUT A DEAL WITH CSX FOR THAT RAILROAD AS IT IS BEING PURSUED BY AN ACTIVIST INVESTOR... GREG ARE YOU THERE LISTENING?

Those facts greatly contradict the statements of Mr. Buffett that potential acquisitions would probably not be able to likely “move the needle” due to Berkshire’s revenues size.

The Board’s deferral solely to Mr. Buffett’s acquisition non-action, has caused Berkshire to totally miss the railroad merger or acquisition opportunity that is now going to be the Union

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Pacific/Norfolk Southern merger, which could have been a stock for stock and cash proposal from Berkshire and its railroad, BNSF, greatly expanding that business.

CSX has been asked by Ancora Holdings to try getting acquired by **BNSF!!!** And it is trading at a record high due to its proxy fight potential.

Furthermore, it would hardly make a dent in the cash hoard, and would have been a great add-on for the BNSF railroad that Mr. Abel is supposed to be responsible for oversight. It probably would make even more sense as a stock for stock tender offer, not even using any cash!

The statement, by Mr. Buffett, of having a shortage of acquisition targets, in our opinion, is an excuse to do nothing, and the failure to question it by the Board members, in our opinion, only demonstrates that neither he or the Board has no idea or tried to research the many potential qualified target companies to use the cash surplus for their acquisition, thus making his statement patently false.

Why is Mr. Buffett, seemingly, the only person at this Company who is allowed apparently to make these acquisition target decisions? Why is he the Chief Risk officer" as well???

Is that not the responsibility of the Board to constantly review ways to increase stockholder value instead of just waiting for the stock price and some excuse by Mr. Buffett, and waiting for HIS sole decision?

What do those monthly Board minutes reflect...business as usual, no new ideas? Same old, same old...meeting adjourned?

Berkshire as a company, appears to be significantly undervalued due to its CONGLOMERATE status, and needs, in our opinion, to be freed from the stranglehold of the mish-mash of the various entities not being able to determine their individual stand-alone values for stockholders. Where are the findings and opinions of the Board members at their scheduled Board meetings, offering constant means of increasing the stockholder value from the well-timed acquisitions and divestiture profits or spin-offs to stockholders?

Has the Board ever suggested additional acquisitions, divestitures or other means of internal profits to be generated for stockholders and distributed to them?

Or, can we assume is there only the reliance on an aging and unquestioned CEO's opinions of doing nothing material to enhance value and continuing the outdated "buy and hold forever" business model for this fine Company?

Our core proposal centers on the declaration of a substantial cash dividend utilizing Berkshire's existing cash on hand and the spin off to stockholders as proposed.

This is not a proposal born of short-termism, but a meticulously considered strategy rooted in the robust and flexible provisions of the Delaware General Corporation Law (DGCL), under which Berkshire Hathaway is incorporated.

We will here meticulously demonstrate that such a dividend is not only legally permissible but also represents a fiscally prudent and strategically advantageous move for a company of Berkshire's unique stature in the current economic climate.

The Statutory Mandate: DGCL Section 170 and the Permissible Sources of Dividends

Under Delaware law, the duty of loyalty extends beyond avoiding self-dealing, it requires active protection of shareholder interests. Inaction on capital allocation, particularly when significant excess reserves are involved, risks being interpreted as bad faith. Embedding a clear and actionable policy now ensures the Board is seen as both proactive and aligned with its fiduciary duties, and avoids the possibility of the tax imposed on businesses that have not declared dividends when they are not used the excess funds for the purposes claimed by the CEO.

The foundational legal authority for a Delaware corporation to declare and pay dividends rests squarely on Section 170 of the Delaware General Corporation Law. This statute, as amended over time, provides a clear and expansive framework, offering directors significant latitude in determining dividend policy, subject only to specific restrictions. Section 170 states:

"The directors of every corporation created under this chapter, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either (1) out of its net assets in excess of its capital as computed in accordance with the provisions of sections 154 and 242-244 of this title, or (2) in case there shall be no such excess, out of its net profits for the fiscal year then current and/or the preceding fiscal year."

This single statutory provision outlines two distinct, yet equally valid, sources for dividend payments, providing a dual pathway for the Board to authorize the proposed distribution.

The "Surplus" Test (Net Assets in Excess of Capital)

The first and typically most straightforward source for dividends is a corporation's "surplus." This term is precisely defined in Section 154 of the DGCL, which states that surplus is "the excess, if any, at any given time, of the net assets of the corporation over the amount...determined to be capital." Furthermore, "Net assets" is defined as "the amount by which total assets exceed total liabilities."

This definition effectively translates to a balance sheet test. As the Delaware Court of Chancery articulated in *SV Inv. Partners, LLC v. ThoughtWorks, Inc.*, 7 A.3d 973, 982 (Del. Ch. 2010), the surplus requirement "prohibits distributions to stockholders that would render the company

balance-sheet insolvent, but instead of using insolvency as the cut-off, the line is drawn at the amount of the corporation's capital." The fundamental principle here is capital preservation: ensuring that distributions do not encroach upon the corporation's necessary capital.

Berkshire Hathaway, with its formidable financial strength, undoubtedly possesses an immense surplus, and would never become Balance Sheet insolvent.

As reported, Berkshire Hathaway had **\$696.218 billion in retained earnings** for the quarter ending in December 2024.

Retained earnings are a key component of a company's equity, and a large retained earnings balance directly contributes to a substantial surplus. When we consider the overall equity base of Berkshire Hathaway, its surplus is clearly prodigious.

Beyond the sheer volume of retained earnings, the DGCL's interpretation of asset valuation for surplus calculations is highly beneficial to our proposal. Delaware case law has firmly established that the value of a corporation's assets for surplus determination should be measured at their actual current value, even if this differs from their "book value" on formal balance sheets.

The landmark case of *Klang v. Smith's Food & Drug Centers, Inc.*, 1997 WL 257463 (Del. Ch. May 13, 1997), affirmed by 702 A.2d 150 (Del. 1997), is pivotal in this regard. In *Klang*, the Delaware Court of Chancery rejected the notion that asset valuations for surplus purposes could not include elements reflecting a going-concern value.

The court emphasized that directors are "not restricted in the way they value assets or liabilities as long as they fulfill their 'duty to evaluate the assets on the basis of acceptable data and by standards which they are entitled to believe reasonably reflect present values.'"

This means that the Board is empowered to look beyond mere GAAP (Generally Accepted Accounting Principles) book values and consider the fair market value of Berkshire's vast array of assets, including its publicly traded stock holdings, and its wholly-owned businesses.

Consider Berkshire's extensive portfolio of publicly traded equities. While these are reported at market value under the new accounting mandates on the balance sheet for GAAP purposes, the inherent strength and consistent profitability/cash flow of Berkshire's operating subsidiaries (like GEICO, BNSF Railway, and others, etc.) often likely significantly exceed their book values.

The "revaluation" in the context of a surplus calculation, performed in good faith, could significantly augment the assessed surplus.

Delaware law specifically highlights that "directors do not need a formal appraisal to determine surplus. Rather... directors based their revaluation on acceptable data and whether they were

entitled to believe that Houlihan's valuation of [the corporation's] asset values reasonably reflected [the corporation's] asset values both before and after the repurchase."

This flexibility in valuation methods empowers the Board to present a comprehensive and accurate picture of Berkshire's immense financial capacity to fund the proposed dividends.

Marketable Securities: Berkshire's vast portfolio of public company stockholdings should be valued at their current market prices, not historical cost, which is consistent with how they are already mandated to be reported for financial statements.

These can remain in the BRK entity, along with the insurance related businesses.

Wholly-Owned Businesses:

The fair market value of Berkshire's operating subsidiaries (e.g., GEICO, BNSF, McLane, Precision Castparts, etc.) likely is undervalued being part of the conglomerate at present. Spinning them off to stockholders and creating publicly traded entities of each, would unlock the value as perceived by the market without affecting any business operations.

The Business Judgment Rule: Protecting Board Decisions on Dividends

The decision by a Board of Directors to declare a dividend is typically afforded significant judicial deference under the business judgment rule. This rule is a cornerstone of corporate governance in Delaware, reflecting the courts' reluctance to second-guess the good-faith decisions of directors.

As the text states, if a dividend decision "was undertaken in good faith and in a fully informed manner, the decision will not be second-guessed by the courts unless it is irrational."

That high bar for judicial intervention means that a well-documented and thoughtfully considered dividend declaration and spin-off to stockholders of the majority of the subsidiaries by the Berkshire Board, would be highly insulated from legal challenge.

Furthermore, why would an investor challenge an action that will likely increase the value of the stockholdings of each stockholder, including the biggest value which will accrue to Mr. Buffett.?

THE BIGGEST BENEFICIARY OF THE INCREASE IN VALUE WOULD BE MR. BUFFETT HIMSELF, BEING THE LARGEST STOCKHOLDER!!!

WHAT A LEGACY WOULD BE LEFT FOR STOCKHOLDERS AND HIS OWN FAMILY AS LIKELY TO BECOME THE WORLD'S RICHEST PERSON!

STOCKHOLDERS HAVE WAITED DECADES FOR A DIVIDEND; IT IS TIME TO DECLARE ONE.

In fact, Mr. Buffett often describes and emphasizes the dividends that Berkshire receives from its stock holdings! Yet, it does not follow by the example of other large companies, who declare dividends to share the wealth of their successful operations with their stockholders.

Protection from Personal Liability: DGCL Section 174 provides that directors who rely in good faith on the corporation's records, officers, or experts are generally protected from personal liability for unlawful dividend payments. This protection was affirmed in *in re Chemours Deriv. Litig.*, where the court held that "utilization of and good faith reliance on experts 'fully protects' directors from personal liability arising from their surplus calculation."

Validation of Financial Data:

The CFO certification or financial advisor opinion provides independent validation of the value of the corporation's assets and liabilities, its ability to pay debts as they come due, and whether it expects to have an unreasonably small amount of capital for its businesses.

Demonstration of Due Care:

The act of seeking and relying upon such opinions demonstrates the Board's commitment to due diligence and making a fully informed decision, thereby strengthening the applicability of the business judgment rule.

Therefore, as long as the Berkshire Board acts with diligence and good faith, its decision to declare a dividend will enjoy the full protection of the business judgment rule under Delaware law.

By pairing this dividend initiative with a public commitment to merit-based strong board appointments, transparent succession planning, and strict adherence to NYSE independence rules, Berkshire would send a powerful signal to the market that it is putting the welfare of stockholders first.

Countering the "No Dividends" Philosophy: A Legal and Strategic Perspective

Mr. Buffett's long-standing announced philosophy has been to reinvest company earnings.

HOWEVER, HIS STATEMENT CONTRADICTS WHAT MR. BUFFETT HAS ACTUALLY DONE, CONSIDERING THE NON-INVESTMENT OF THE SIGNIFICANT CASH ON HAND, rather than distribute the cash as dividends, believing that Berkshire can achieve superior compounding of capital internally. BUT IT HAS NOT.

BERKSHIRE ALONE REPORTEDLY HOLDS 5% OF ALL US TREASURY SHORT TERM NOTES THAT PAY A PALTRY 4.1%!

That decision, in OUR opinion, represents a significant dereliction of managing the excess funds of Berkshire.

Receiving puny interest on the cash available, is not the same as investing it to earn a return from operating successful acquired businesses, and does not, in OUR opinion, constitute a strong fiduciary responsibility to stockholders to create added value.

FAILURE TO DECLARE AND PAY DIVIDENDS WITHOUT HAVING LEGITIMATE REASON TO KEEP CASH RESERVES, WILL AND CAN SUBJECT THE COMPANY TO AN IRS IMPOSED TAX OF 20%!

Shareholder Expectations vs. Board Discretion

It is true that shareholders who have invested in Berkshire Hathaway have done so with knowledge of its long-standing policy of reinvestment (which has not materialized in the last few years), due to Mr. Buffett's excuse of not being able to find attractive investment opportunities; Over the payment of dividends due to excessive cash accumulation and no place to employ it.

His celebrity status was often the reason for investors to hold the stock through its ups and downs and to attend that annual meeting in masse.

Our proposal is distinct: it is meant to be a Board-initiated strategic decision to return capital. The discretion lies with the Board to determine the optimal capital allocation strategy for the corporation and its shareholders.

While Mr. Buffett's philosophy can be considered successful simply on the stock price appreciation over the decades, , the Board is not legally bound to maintain it indefinitely if new circumstances suggest a different approach could unlock greater value, such as being finally necessary and prudent, as proposed herein.

The ultimate duty of the Board is to act in the best interests of the corporation and its shareholders. To date, in our opinion, the Board has not fully met this responsibility.

In fact, it was disappointing to hear that Mr. Buffet assured stockholders that HIS "anointing" of Greg Abel, instead of the Board's vetting for that very important position, to replace him as CEO at the end of the year, was to be able to continue the present "no dividend" policies of the Company, and apparently the "buy and hold forever" stock and acquisition investments.

THAT WAS A DISAPPOINTMENT REFLECTED IN THE DECLINE IN VALUE OF THE STOCK SINCE THE ANNUAL MEETING.

In our opinion, that announcement of no changes to the policy of stockholder starvation of dividends and distributions was a significant negative reaction to corporate policy which is not stockholder friendly.

While the need for reinvestment has been a great excuse, however it has not been true as a reason to not declare dividends since nothing recently has been reinvested, or significant business acquisitions announced.

The Delaware law permits other avenues for value creation, including direct distributions. The sheer magnitude of Berkshire's retained earnings, the faux challenge of finding new, similarly scaled investment opportunities, and the potential for a "conglomerate discount" on its underlying assets, all argue for a re-evaluation of the optimal mix of cash retention (hoarding cash for no apparent good reason) and failure to distribute same as dividends.

The "Retained Earnings Test" in a Modern Context

Mr. Buffett's "retained earnings test"—that every dollar retained should create at least one dollar of market value—is a sound principle.

This has not occurred with Berkshire, which seems to trade at a value of its stock and cash position with little added value attributed to the vast trapped value of the subsidiaries.

However, for a company of Berkshire's size, opportunities to deploy retained earnings and excess cash that consistently meet this high bar become increasingly scarce according to Mr. Buffett.

However, that is not true, as there are MANY low PE ratio companies to acquire that have clearly not been considered by Mr. Buffett or the Board, which I am prepared to provide, since nobody on the Board or Mr. Buffett apparently considered, or compiled for acquisition consideration.

WE HAVE THAT LIST TO SHARE, IF REQUESTED.

The substantial dividend, therefore, can be viewed not as a failure of the retained earnings test, but as a recognition that, at a certain point, shareholders can achieve a better return on their capital by deploying it themselves, or by investing in the newly planned divestitures of the proposed spun-off operating companies.

By returning cash, the Board is implicitly acknowledging that the return on capital for new internal investments may no longer consistently exceed the opportunities available to individual shareholders or the market's assessment of the underlying value of the constituent businesses. This is an evolution in its application of capital in an environment where capital deployment opportunities of sufficient scale and return are increasingly limited within the confines of a single conglomerate, and must be amended immediately.

This combined approach not only returns capital to shareholders but also confronts head-on the structural governance weaknesses that have persisted for years at Berkshire. By tackling these issues now, while offering a constructive, shareholder-

aligned solution, the Board can both avoid reputational damage and unlock substantial and long deserved sharing with shareholders by unlocking of the significant “conglomerate discount” now infecting this Company.

CONCLUSION:

A Legally Sound and Strategically Compelling CASH DIVIDEND PAYOUT APPROXIMATING \$100 a share and the spin-off of the subsidiaries as described in this presentation, is in our opinion, a sound corporate undertaking.

In summary, the declaration of a substantial dividend by Berkshire Hathaway, utilizing its considerable cash on hand and current/prior fiscal year's net profits, is unequivocally supported by the Delaware General Corporation Law, particularly Section 170.

Berkshire possesses an enormous "surplus" based on the current fair value of its assets, and its recent "net profits" are more than ample to cover such a distribution, and should be made. The Board of Directors, acting in good faith, in a fully informed manner, can confidently exercise its discretion under the robust protection of the business judgment rule.

This proposed dividend and the spin-off is not merely legally defensible; it is a strategically compelling move. It acknowledges the changing dynamics of capital deployment for a company of Berkshire's magnitude, provides a direct return of capital to shareholders, and sets the stage for a broader restructuring that we believe will unlock further intrinsic value.

It is a decision that respects Berkshire's and Mr. Buffett's legacy of value creation while adapting to the realities of its current scale and market opportunities and eliminates the “last conglomerate's CONGLOMERATE DISCOUNT.

This step will demonstrate the Board's commitment to continuously optimizing shareholder returns in an evolving financial landscape.

Berkshire Hathaway's distribution of stock in each individual business, and a cash dividend, represents a great unlocking of value for every stockholder and dismantling the Berkshire Hathaway “conglomerate discount” structure.

This strategy, would be unlocking the "conglomerate discount" value, and could potentially create in our opinion, one of the most valuable companies in the world, based on the valuation of the separate entities then becoming each publicly trading.

Currently Berkshire's market valuation approximating \$1 trillion, presents a small premium to the value of simply its cash and trading stock positions, while placing little value on its approximate 180 known direct and indirect subsidiaries.

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Conclusion

The proposition described herein needs to be definitely considered as soon as possible by the Board.

THAT DECISION WILL SURELY DEMONSTRATE THE TRUE VALUE OF THE COMPANY AFTER ALL THESE YEARS OF BUILDING IT.

THIS ACTION WOULD BE A FITTING AND APPROPRIATE TRIBUTE TO MR. BUFFET'S LIFE AND CEO AS WELL.

PLEASE CONSIDER THIS ACTION AT THE EARLIEST POSSIBLE TIME, AND CERTAINLY AT YOUR NEXT BOARD MEETING...THE STOCKHOLDERS ARE WAITING.