

## Berkshire unit loses dispute with trading company

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### Judy Greenwald

A Berkshire Hathaway unit must indemnify a trading company for the injury a contractor’s employee sustained while working at the firm, says a federal appeals court Friday, in affirming a lower court ruling.

Youyong Lin was injured in August 2014 when he was working on a paint job and the ladder he was on was struck by a forklift driven by an employee of Brooklyn, New York-based WW Trading or an affiliated company, according to court papers *in United States Liability Insurance Co. v. WW Trading Co., Inc. et al.*

Mr. Lin sued for \$1.3 million in damages as a result of his fall.

U.S. Liability, a Berkshire Hathaway unit, filed suit against WW Trading in U.S. District Court in Brooklyn, seeking rulings the insurance policy was rescinded, that it had no obligation to defend or indemnify WW Trading and that policy exclusions applied.

The district court ruled against the insurer and was upheld by a unanimous three-judge appeals court panel of the 2nd U.S. Circuit Court of Appeals in New York.

The district court “properly granted summary judgment to the WW Trading Appellees on USLI’s rescission claim because USLI unreasonably delayed its request for rescission,” said the ruling.

“USLI clearly had constructive knowledge of WW Trading’s potential misrepresentations – that WW Trading did not use forklifts and did not engage in operations involving the warehousing of goods of others – no later than November 7, 2014, the day on which it sent WW Trading a nonrenewal notice accusing WW Trading of violating the exact provisions of the insurance application that form the basis for USLI’s rescission claim.

“Yet it did not notify the WW Trading Appellees about the rescission claim until April 12, 2017,” said the ruling. This two-and-a-half-year delay “was unreasonable as a matter of law.”

The panel also held that employee and construction operations exclusions in its policy did not apply, and affirmed the district court’s granting of attorneys fees to WW trading.

WW Trading attorney Tom M. Fini, a partner with Catafago Fini LLP in New York, said, “There’s a very troubling trend in America where insurers sneak these vague exclusions into their policies” and then after collecting premiums “try to avoid coverage.” Policyholders that pay their premiums expect coverage, he said.

The “2nd Circuit adopted our position” on this issue, he said. “It was a well-deserved victory and we’re happy the 2nd Circuit did the right thing.”

Berkshire Hathaway’s attorney did not respond to a request for comment.

