



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
FIRST BERKSHIRE HATHAWAY LIFE INSURANCE COMPANY

CONDITION:

DECEMBER 31, 2010

DATE OF REPORT:

APRIL 3, 2012

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

FIRST BERKSHIRE HATHAWAY LIFE INSURANCE COMPANY

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EXAMINER:

ANTHONY CHIAREL

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

May 11, 2012

Honorable Benjamin M. Lawsky  
Superintendent of Financial Services  
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 30692, dated March 17, 2010 and annexed hereto, an examination has been made into the condition and affairs of First Berkshire Hathaway Life Insurance Company, hereinafter referred to as “the Company,” at its home office located at Marine Air Terminal, LaGuardia Airport, Flushing, New York 11371.

Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

On October 3, 2011, the Insurance Department merged with the Banking Department to create the New York State Department of Financial Services.

The report indicating the results of this examination is respectfully submitted.

## 1. EXECUTIVE SUMMARY

The material violations contained in this report are summarized below.

- The Company violated Section 1505(c) of the New York Insurance Law by failing to obtain the Superintendent's prior approval for the \$1,000,000 surplus contribution. (See item 3B of this report)
- The Company violated Section 1313(d) of New York Insurance Law by stating in the Corporate Guarantee form letter and on their website that the Company's policies are guaranteed wholly or partly by BHLN. (See item 6A of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2006. This examination covers the period from January 1, 2007 through December 31, 2010. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2010 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2010 to determine whether the Company's 2010 filed annual statement fairly presents its financial condition. The examiner reviewed the Company's income and disbursements necessary to accomplish such verification and utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

- Company history
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Officers' and employees' welfare and pension plans
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Mortality and loss experience
- Reinsurance
- Accounts and records
- Financial statements

The examiner reviewed the corrective actions taken by the Company with respect to the violations, recommendations and comments contained in the prior report on examination. The results of the examiner's review are contained in item 7 of this report.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations or rules, or which require explanation or description.

### 3. DESCRIPTION OF COMPANY

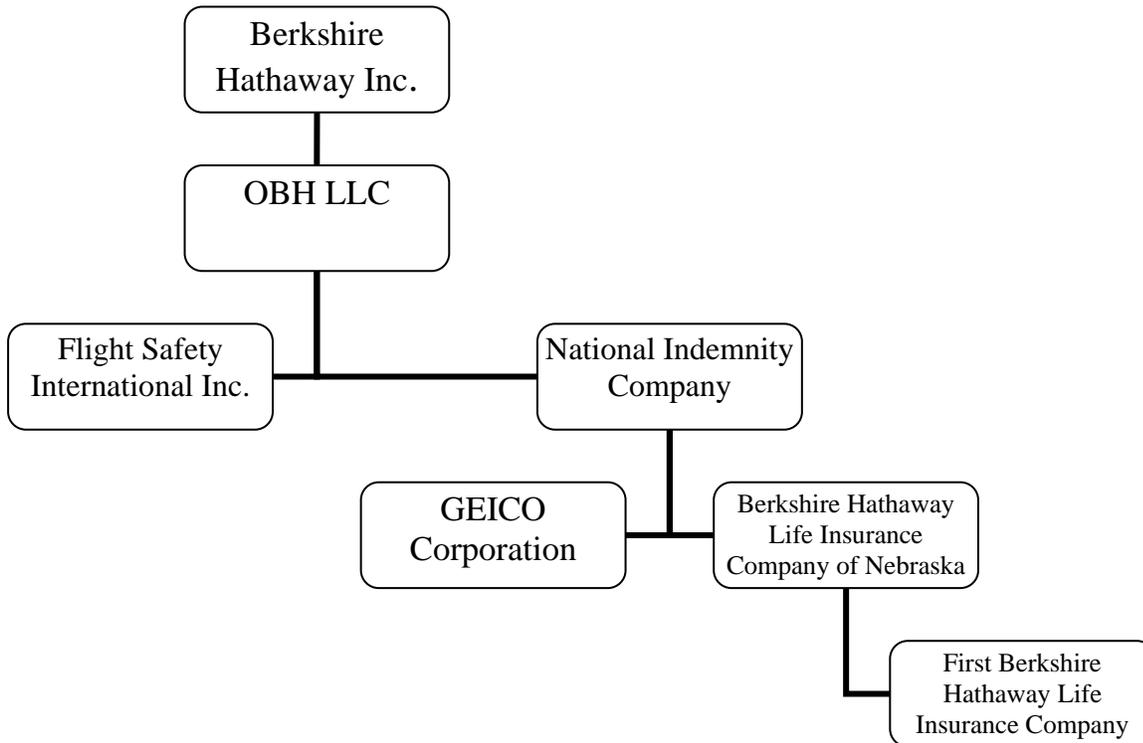
#### A. History

The Company was incorporated as a stock life insurance company on September 22, 1998, pursuant to the provisions of Section 1201 of the New York Insurance Law. The Company was licensed on March 21, 2003 and commenced business on that same day. Initial resources of \$8,000,000 consisted of \$6,000,000 of paid in and contributed surplus and \$2,000,000 of common capital stock which was provided through the sale of 2,000 shares of common stock with a par value of \$1,000 per share. In November 2008, the Company's parent Berkshire Hathaway Life Insurance Company of Nebraska ("BHLN"), increased the Company's paid in and contributed surplus by \$1,000,000 (See item 3B in this report). As of December 31, 2010, the Company's capital and paid in and contributed surplus were \$2,000,000 and \$7,000,000 respectively.

#### B. Holding Company

The Company is a wholly owned subsidiary of Berkshire Hathaway Life Insurance Company of Nebraska ("BHLN"). BHLN was organized and licensed as a life insurer in the State of Nebraska in 1993 and is an accredited reinsurer in New York. BHLN is a wholly owned subsidiary of National Indemnity Company ("NICO"). NICO is a wholly owned subsidiary of OBH LLC, a Delaware limited liability company. The ultimate parent of the Company is Berkshire Hathaway Inc., a Delaware corporation. Flight Safety International Inc. is a non-insurance affiliate of the Company, located in LaGuardia Airport, New York, that provides certain property, equipment and facilities to the Company for use in its day-to-day operations under a Department approved service agreement, effective December 1, 2006.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2010 follows:



The Company had 3 service agreements in effect during the examination period:

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Rent Sub-Lease 0036093	11/28/2006	Flight Safety International Inc.	The Company	Office space	2007 \$ (561.86) 2008 \$ (345.77) 2009 \$ (345.77) 2010 \$ (561.86)
Rent 0025287A	12/06/2002	GEICO Corporation	The Company	Office Space	2007 \$ (5000.00)
Intercompany Services 0025287A	12/01/2002	NICO	The Company	Administrative and facilities services	2007 \$ (63,954.54) 2008 \$ (56,400.77) 2009 \$ (41,905.05) 2010 \$ (75,833.58)

\* Amount of income or (Expense) incurred by the Company.

The Company participates in a federal income tax allocation agreement with its parent and affiliates.

Section 1505(c) of the New York Insurance Law states:

“The superintendent’s prior approval shall be required for the following transactions between a domestic controlled insurer and any person in its holding company system: sales, purchases, exchanges, loans or extensions of credit, or investments, involving five percent or more of the insurer’s admitted assets at last year-end.”

In November 2008, the parent, BHLN, made an investment in the Company through a cash contribution in the amount of \$1,000,000. The Company did not file with the superintendent for prior approval of this transaction which involved approximately 9.4% of the Company’s admitted assets at last year-end, December 31, 2007.

The Company violated Section 1505(c) of the New York Insurance Law by failing to obtain the Superintendent’s prior approval for the \$1,000,000 surplus contribution.

The examiner recommends that the Company obtain prior approval from the superintendent before entering into any transaction with a member of its holding company system, which exceeds 5% of its admitted assets at last year-end, as required by Section 1505(c) of New York Insurance Law.

### C. Management

The Company’s by-laws provide that the board of directors shall be comprised of not less than seven and not more than 13 directors. Directors are elected for a period of one year at the annual meeting of the shareholders held in May of each year. As of December 31, 2010, the board of directors consisted of nine members. Meetings of the board are held quarterly.

The nine board members and their principal business affiliation, as of December 31, 2010, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
John D. Arendt Norwalk, CT	Vice President First Berkshire Hathaway Life Insurance Company	1999
Norman H. Denenberg* Omaha, NE	Attorney Self Employed	2002
Erika B. Duffy Fairfield, CT	Legal Counsel National Liability & Fire Insurance Company	2009
Lori J. Friedman Staten Island, NY	Legal Counsel National Liability & Fire Insurance Company	1998
Arvind Krishnamurthy Cambridge, MA	Assistant Vice President First Berkshire Hathaway Life Insurance Company	1998
Forrest N. Krutter Stamford, CT	Vice President and Secretary First Berkshire Hathaway Life Insurance Company	1998
Robert M. LeBlanc* Newton, CT	Managing Director Onex Investment Corporation	1998
Kevin G. Snover* West Babylon, NY	Attorney Self Employed	1998
Sandra J. Wilson* Avon, CT	Comptroller A&A Surplus Inc.	2007

\* Not affiliated with the Company or any other company in the holding company system

On May 12, 2011, Lori J. Friedman was not reelected to the Board of Directors at the annual shareholders meeting, and as of the date of this report, has not been replaced.

The examiner's review of the minutes of the meetings of the board of directors and its committees indicated that meetings were well attended and that each director attended a majority of meetings.

The following is a listing of the principal officers of the Company as of December 31, 2010:

<u>Name</u>	<u>Title</u>
Donald F. Wurster*	President
Forrest N. Krutter	Vice President and Secretary
John D. Arendt	Vice President and Assistant Secretary
Dale D. Geistkemper	Treasure and Controller
Ajit Jain	Executive Vice President - Reinsurance
Brian G. Snover	Vice President - Reinsurance

\* Designated consumer services officer per Section 216.4(c) of Department Regulation No. 64

D. Territory and Plan of Operation

The Company is authorized to write life insurance and annuities as defined in paragraphs 1 and 2 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business in 3 states, namely New York, Nebraska, and Missouri. The Company markets structured settlement annuities and individual immediate annuities. During the examination period all annuity considerations were received from New York.

As of December 31, 2010, the Company had only one structured settlement and five immediate annuities in force. The Company intends to continue bringing in contracts through its holding company group as well as from direct marketing over the internet. The Company has no agency operations.

#### 4. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Company's financial growth during the period under review:

	December 31, <u>2006</u>	December 31, <u>2010</u>	<u>Increase</u>
Admitted assets	<u>\$10,081,697</u>	<u>\$13,006,293</u>	<u>\$2,924,596</u>
Liabilities	<u>\$ 817,066</u>	<u>\$ 1,672,707</u>	<u>\$ 855,641</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	6,000,000	7,000,000	1,000,000
Unassigned funds (surplus)	<u>1,264,631</u>	<u>2,333,586</u>	<u>1,068,955</u>
Total capital and surplus	<u>\$ 9,264,631</u>	<u>\$11,333,586</u>	<u>\$2,068,955</u>
Total liabilities, capital and surplus	<u>\$10,081,697</u>	<u>\$13,006,293</u>	<u>\$2,924,596</u>

The Company's admitted assets increased \$2,924,596 from 2006 to 2010 primarily due to a \$1,000,000 capital contribution to the Company from its parent BHLN on November 7, 2008, and the Company's net income of approximately \$1,300,000 during the examination period.

The Company's liabilities increased \$855,641 during the exam period primarily due to the net increase in reserves of approximately \$280,000 for additional premium received in the amount of \$543,606, an actuarial reserve increase of \$250,000 made in 2010; and a deferred tax liability recognized in 2010 for a contributed bond received from BHLN in 2002 as initial contributed capital in the amount of \$201,000.

The Company's unassigned funds (surplus) increased \$1,068,995 during the exam period primarily due to the increase in the Company's net income of approximately \$1,300,000, the majority from investments. There was a direct charge to surplus of approximately \$300,000 when the deferred tax liability noted above regarding the contributed bond received in 2002 was recognized in 2010.

The Company's invested assets as of December 31, 2010, were comprised of bonds (95.7%), and cash and short-term investments (4.3%).

The Company's entire bond portfolio, as of December 31, 2010, was comprised of investment grade obligations.

The following is the net gain from operations by line of business after federal income taxes but before realized capital gains reported for each of the years under examination in the Company's filed annual statements:

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Individual annuities	\$223,614	\$280,191	\$289,494	\$191,233
Group annuities	<u>102,838</u>	<u>83,251</u>	<u>78,683</u>	<u>34,860</u>
Total	<u>\$326,452</u>	<u>\$363,442</u>	<u>\$368,177</u>	<u>\$326,452</u>

The reason for the increase in the net gain from individual annuities during the examination period is the increase in individual annuities written during 2007 and 2008. The decrease in the net gain from individual annuities from 2009 to 2010 is due to the death of a life contingent annuity contract holder in 2010, which decreased individual annuity reserves.

The reason for the decrease in the net gain from group annuities during the examination period is that no new group annuities were issued during the exam period and the existing group annuity made payouts during the examination time period.

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2010, as contained in the Company's 2010 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2010 filed annual statement.

### A. Independent Accountants

The firm of Deloitte & Touche LLP was retained by the Company to audit the Company's combined statutory basis statements of financial position of the Company as of December 31<sup>st</sup> of each year in the examination period, and the related statutory-basis statements of operations, capital and surplus, and cash flows for the year then ended.

Deloitte & Touche LLP concluded that the statutory financial statements presented fairly, in all material respects, the financial position of the Company at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

### B. Net Admitted Assets

Bonds	\$12,389,739
Cash, cash equivalents and short term investments	553,267
Investment income due and accrued	<u>63,287</u>
Total admitted assets	<u>\$13,006,293</u>

### C. Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$ 1,117,319
Interest maintenance reserve	6,853
General expenses due or accrued	12,475
Taxes, licenses and fees due or accrued, excluding federal income taxes	800
Current federal and foreign income taxes	270,482
Net deferred tax liability	201,013
Asset valuation reserve	35,551
Payable to parent, subsidiaries and affiliates	28,214
Total liabilities	\$ 1,672,707
Common capital stock	\$ 2,000,000
Gross paid in and contributed surplus	7,000,000
Unassigned funds (surplus)	<u>2,333,586</u>
Surplus	<u>\$ 9,333,586</u>
Total capital and surplus	<u>\$11,333,586</u>
Total liabilities, capital and surplus	<u>\$13,006,293</u>

D. Condensed Summary of Operations

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Premiums and considerations	\$213,414	\$330,192	\$0	\$0
Investment income	<u>613,684</u>	<u>643,980</u>	<u>675,842</u>	<u>727,022</u>
Total income	<u>\$827,098</u>	<u>\$974,172</u>	<u>\$675,842</u>	<u>\$727,022</u>
Benefit payments	\$ 52,512	\$ 63,012	\$ 94,512	\$ 92,812
Increase in reserves	184,241	292,558	(22,503)	70,556
General expenses and taxes	<u>87,470</u>	<u>58,268</u>	<u>39,609</u>	<u>67,080</u>
Total deductions	<u>\$324,223</u>	<u>\$413,838</u>	<u>\$111,618</u>	<u>\$230,448</u>
Net gain (loss)	\$502,875	\$560,334	\$564,224	\$496,574
Federal and foreign income taxes incurred	<u>176,423</u>	<u>196,892</u>	<u>196,047</u>	<u>270,482</u>
Net gain (loss) from operations before net realized capital gains	<u>\$326,452</u>	<u>\$363,442</u>	<u>\$368,177</u>	<u>\$226,092</u>
Net income	<u>\$326,452</u>	<u>\$363,442</u>	<u>\$368,177</u>	<u>\$226,092</u>

E. Capital and Surplus Account

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Capital and surplus, December 31, prior year	\$ <u>9,264,631</u>	\$ <u>9,587,326</u>	\$ <u>10,947,252</u>	\$ <u>11,312,074</u>
Net income	\$ 326,452	\$ 363,442	\$ 368,177	\$ 226,092
Change in net deferred income tax	412	792	(1,408)	(205,307)
Change in non-admitted assets and related items	(412)	(792)	1,408	4,294
Change in asset valuation reserve	(3,757)	(3,516)	(3,355)	(3,567)
Surplus adjustments:				
Paid in	<u>0</u>	<u>1,000,000</u>	<u>0</u>	<u>0</u>
Net change in capital and surplus for the year	\$ <u>322,695</u>	\$ <u>1,359,926</u>	\$ <u>364,822</u>	\$ <u>21,512</u>
Capital and surplus, December 31, current year	\$ <u>9,587,326</u>	\$ <u>10,947,252</u>	\$ <u>11,312,074</u>	\$ <u>11,333,586</u>

During the second quarter of 2010, the Company discovered that it had failed to record a deferred tax liability attributable to the difference between the statutory basis and tax basis of a collateralized mortgage obligation received in 2002 as a capital contribution from its sole shareholder and direct parent, BHLN. The correction of this oversight resulted in the \$(205,307) amount reported above as “Change in net deferred income tax,” being netted against the \$4,294 amount reported above as “Change in non-admitted assets and related items.” This net amount of \$201,013 was reported as “Net deferred tax liability” on the liability page of the Company’s 2010 annual statement.

## 6. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

### A. Advertising and Sales Activities

The examiner reviewed the Company's website, and the literature which was disseminated to the Company's prospective annuitants, which was the only form of advertising conducted during the period under examination.

Section 1313(d) of New York Insurance Law states in part:

"No insurer doing business in this state nor any subsidiary thereof, or holding company or controlled person as defined in section one thousand five hundred one of this chapter nor any agent of any of the foregoing, shall in any advertisement or other public announcement make any statement or communication ...to the effect that the insurer's policies are guaranteed wholly or partly by any other person, insurer or institution."

The examiner reviewed both annuity contracts issued during the examination period as well as two annuity contracts issued in the first quarter of 2011. In all four annuity contracts reviewed, the Company furnished the annuitant with a Corporate Guarantee form letter, on BHLN's letterhead, which stated:

"Berkshire Hathaway Life Insurance Company of Nebraska (BHLN) has determined that it is in the best interest of BHLN to encourage parties to purchase annuity contracts from our wholly owned subsidiary, First Berkshire Hathaway Life Insurance Company (FBHL).

NOW, THEREFORE, BHLN hereby guarantees the payment obligations of FBHL, when and as the same may become due, pursuant to the terms of your Single Premium Immediate Annuity Contract with FBHL

BHLN agrees that if FBHL fails to make any payment under said Single Premium Immediate Annuity Contract, BHLN shall make such payment in accordance

with the terms and conditions of said Single Premium Immediate Annuity Contract promptly after receipt of written notice of FBHL's default."

A review of the Company's website ([www.brkdirect.com](http://www.brkdirect.com)) also revealed a statement that annuities issued by the Company are guaranteed by BHLN as follows:

*"...Berkshire Hathaway Life Insurance Company of Nebraska, your annuity provider, is rated AA+ (Very Strong) by Standard & Poor's and A++ (Superior) by A.M. Best. Annuities in the State of New York will be issued by First Berkshire Hathaway Life Insurance Company, which is not yet rated, and will be guaranteed by Berkshire Hathaway Life Insurance Company of Nebraska."*

The Company violated Section 1313(d) of New York Insurance Law by stating in the Corporate Guarantee form letter and on their website that the Company's policies are guaranteed wholly or partly by BHLN.

The examiner recommends that the Company remove the BHLN Corporate Guarantee form letter from its annuity contract package it distributes to its annuitants in New York. The examiner also recommends that the Company remove any language from its website advertisements/public announcements that states implicitly or explicitly that the Company's annuity contracts are guaranteed by BHLN or any other entity.

#### B. Underwriting and Policy Forms

The examiner reviewed all the new underwriting files, both issued and declined, and the applicable policy forms.

Based upon the sample reviewed, no significant findings were noted.

#### C. Treatment of Policyholders

The examiner reviewed a sample of the Company's annuity claim payments. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

Based upon the sample reviewed, no significant findings were noted.

## 7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 1505(a) of the New York Insurance Law by failing to reimburse an affiliate a reasonable amount for services provided under a service agreement.</p> <p>The lease agreement between the Company and GEICO Corporation terminated on February 1, 2007.</p>
B	<p>The Company violated Section 1505(d)(3) of the New York Insurance Law when it failed to comply with the terms of its approved service agreement with NICO by reimbursing BHLN for services provided by NICO.</p> <p>A review of the Company's accounting records indicates that it is in compliance with the approved service agreement in that it has reimbursed NICO for the services provided to it via the service agreement.</p>
C	<p>The examiner recommends that NICO bill the Company directly for any services they are providing rather than process expenses through other affiliates.</p> <p>A review of the Company's accounting records indicates that payments for inter-company expenses are being made directly to NICO.</p>
D	<p>Comment that the Company's independent committee members plan to conduct regularly-scheduled meetings, coinciding with the regular board of director meetings, in the future.</p> <p>A review of the Audit Committee (independent committee) meetings indicated that its members did conduct their meetings after each of the quarterly board of directors' meetings during the exam period.</p>
E	<p>Comment that the Company's will strive for greater attendance of their independent directors at the board of director meetings.</p> <p>It was noted in a review of the board of directors' minutes that each of the independent directors attended the majority of the board of directors' meetings during the examination period.</p>

F The examiner recommends that the Company terminate, in a timely manner, any directors whom do not regularly attend the board of director meetings or board of director committee meetings.

During the examination period meetings of the board of directors were well attended.

## 8. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 1505(c) of the New York Insurance Law by failing to obtain the Superintendent's prior approval for the \$1,000,000 surplus contribution.	6
B	The examiner recommends that the Company obtain prior approval from the superintendent before entering into any transaction with a member of its holding company system, which exceeds 5% of its admitted assets at last year-end, as required by Section 1505(c) of New York Insurance Law.	6
C	The Company violated Section 1313(d) of New York Insurance Law by stating in the Corporate Guarantee form letter and on their website that the Company's policies are guaranteed wholly or partly by BHLN.	15
D	The examiner recommends that the Company remove the BHLN Corporate Guarantee form letter from its annuity contract package it distributes to its annuitants in New York.	15
E	The examiner recommends that the Company remove any language from its website advertisements/public announcements that states implicitly or explicitly that the Company's annuity contracts are guaranteed by BHLN or any other entity.	15

Respectfully submitted,

\_\_\_\_\_/s/  
Anthony Chiarel  
Senior Insurance Examiner

STATE OF NEW YORK     )  
                                  )SS:  
COUNTY OF NEW YORK )

Anthony Chiarel, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

\_\_\_\_\_/s/  
Anthony Chiarel

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

APPOINTMENT NO. 30692

STATE OF NEW YORK  
**INSURANCE DEPARTMENT**

I, JAMES J. WRYNN, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**ANTHONY CHIAREL**

as a proper person to examine into the affairs of the

**FIRST BERKSHIRE HATHAWAY LIFE INSURANCE COMPANY**

and to make a report to me in writing of the condition of the said

**COMPANY**

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by name  
and affixed the official Seal of the Department  
at the City of New York

this 17<sup>th</sup> day of March, 2011

JAMES J. WRYNN  
Superintendent of Insurance

James J. Wrynn  
Superintendent

