

## BROWN

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“Brown & Brown has been able to maintain a monopoly by intimidating other companies to not compete,” said James Gassenheimer, the attorney representing Foundation Risk Partners.

Foundation Risk Partners is “not going to be intimidated out of this (Volusia County) market,” said Gassenheimer, a litigation partner at the Miami office of Berger Singerman LLP. Brown & Brown is the nation's sixth-largest independent insurance brokerage with more than 240 offices in 40 states and annual revenues that totaled \$1.88 billion in 2017 and are expected to top \$2 billion in 2018.

Gassenheimer also said Brown & Brown violated its separation agreements with Tinsley and other former Brown & Brown executives who went on to form Foundation Risk Partners.

The separation agreements, which he said supersede any past employment agreements those former executives had with Brown & Brown, included a pledge by both parties to not sue one another.

Phone calls to Brown & Brown executives seeking comment for this story were not returned. But an attorney representing the insurance giant offered a brief statement.

“Tinsley and the other defendants (at Foundation Risk Partners) are now attempting to enforce the same (separation) contract that they say is unenforceable in the original lawsuit,” said Lawrence Ingram, an attorney for Brown & Brown who is a partner with Freeborn & Peters LLP in Tampa.

### '10 good years of fight'

The latest volley in the legal battle between the two Daytona Beach-based insurance agencies comes on the heels of Foundation Risk Partners' motion in November to dismiss Brown & Brown's original lawsuit.

The new lawsuit builds on Foundation Risk Partners' previously filed motion by offering more details regarding Brown & Brown's alleged “anticompetitive behavior.”

The suit describes an “all-hands meeting in Daytona” called by Brown & Brown Chairman J. Hyatt Brown after learning that Foundation Risk Partners' founders in June 2017 had acquired Ormond Beach insurance agency Mitchell Noel. Hyatt Brown, according to the new lawsuit, told Brown & Brown employees that he “enjoyed conflict, had 10 good years of fight left in him, and a \$5 billion balance sheet to back it up with a clear goal of eliminating the competition.” Hyatt Brown is 81 years old.

The lawsuit cited as an example of Brown & Brown's anti-competitive behavior an incident in which Austin Brownlee, executive vice president and sales leader at Brown & Brown, threatened an insurance managing general agent.

The vendor was told the insurance giant would no longer use its services unless it canceled a scheduled appointment to meet with Foundation Risk Partners subsidiary Halifax Insurance Partners, according to the suit.

The appointment was canceled, prompting Brownlee to later brag about it to coworkers at Brown & Brown, according to the suit.

Brown & Brown CEO J. Powell Brown is also accused in the suit of pushing out longtime Chief Financial Officer Cory Walker in favor of current CFO Andy Watts.

Watts as CFO proceeded to “ruthlessly gut (Brown & Brown's) stock incentive plans and personnel practices and poorly executed new compensation and policy changes,” according to the Foundation Risk Partners suit.

“In fact, a number of employees were denied bonuses and stock incentives based on their age after Watts arrived. Employee turnover infected the company like it never had before,” according to the suit.

Since J. Powell Brown's resumption of his CEO duties following a “sudden and extended” medical leave in 2012, 52 senior leaders and eight of Brown & Brown's most recent retail rookies-of-the- year have left the company, according to the suit.

Foundation Risk Partners' founders are among the executives who have left Brown & Brown in recent years.

They include Tinsley, former retail division chief financial officer for Brown & Brown, the retail division's former president Charlie Lydecker, who is now CEO of Foundation Risk Partners, and Alan Florez, former Daytona profit center leader for Brown & Brown.

Florez is now CEO of the former Mitchell Noel Insurance, a subsidiary of Foundation Risk Partners that has been renamed Halifax Insurance Partners.

Walker, who left Brown & Brown four years ago, came out of retirement to become CFO for Foundation Risk Partners.

The lawsuit by Foundation Risk Partners accuses Brown & Brown of making “unfounded claims” against it, as well as violating its separation agreement with Tinsley in which both parties pledged to not sue one another.

### **Who is betraying whom?**

Opening with the statement “This is a case about betrayal,” Brown & Brown's original lawsuit in September accused the founders of Foundation Risk Partners of secretly conspiring while still employed at the insurance giant to form a competing company.

The secret plot described in the original lawsuit could easily have come out of a movie or television series.

The alleged conspirators were described in the original lawsuit of holding “clandestine meetings” and using untraceable prepaid “burner” cellphones.

Lydecker was also accused of convincing a Brown & Brown employee to secretly record Hyatt Brown.

The alleged clandestine meetings, according to the original lawsuit, dated back to August or September 2015, nearly a year before the departures of Lydecker, Tinsley and the other executives from Brown & Brown.

Foundation Risk Partners was incorporated in January 2017.

While Brown & Brown's lawsuit characterizes Lydecker as leader of the alleged secret plot, Tinsley is the only individual named as a defendant.

The other defendants are Foundation Risk Partners Corp., and two of its subsidiaries, Foundation Risk Partners of Florida LLC and Halifax Insurance Partners LLC.

Foundation Risk Partners' motion to dismiss Brown & Brown's lawsuit countered the insurance giant's accusations by stating, “This is indeed a case of betrayal — a betrayal of executive loyalty, and a betrayal of the company's core values.”

The real “betrayal,” according to Foundation Risk Partners' motion to dismiss, began in 2009 when Hyatt Brown promoted his son, J. Powell, “to succeed him as CEO.”

The younger Brown, now 50, was promoted over the company's then-vice chairman Jim Henderson “to whom Hyatt had promised the (CEO) position,” according to the motion to dismiss. The younger Brown was chief operating officer at the time.

The promotion of J. Powell “in one fell swoop, shattered the trust of a workforce who was led to believe in the meritocracy Hyatt had preached,” Foundation Risk Partners' motion stated.

Henderson and fellow longtime Brown & Brown executive Tom Riley left the company to form an insurance agency of their own called AssuredPartners in March 2011.

They were joined by several other former Brown & Brown employees.

Brown & Brown sued Lake Mary-based AssuredPartners, accusing its founders of violating employment contracts by recruiting Brown & Brown employees and their clients.

In 2017, AssuredPartners, while not admitting any wrongdoing, agreed to settle the lawsuit.

The \$20 million settlement set a new insurance industry record.

Henderson told The News-Journal in 2017 that the money paid was worth it because it allowed both companies to focus on business.

AssuredPartners has since grown to more than 200 offices in 30 states as well as London, England, and more than \$940 million in annual revenues.

#### **Startup off to fast start**

Foundation Risk Partners has also enjoyed rapid growth.

Its annual revenues now stand at more than \$170 million, according to Lydecker.

The fledgling company has 40 offices in eight states and employs nearly 900 workers, including 50 at its offices at Cornerstone Office Park off LPGA Boulevard.

Its Daytona Beach offices serves as the headquarters for both Foundation Risk Partners, Halifax Insurance Partners and Reames Employee Benefits Solutions. Reames is another longtime Daytona Beach company that Foundation Risk Partners recently acquired.

“My client (Foundation Risk Partners) didn't build their business by stealing trade secrets (from Brown & Brown),” said Gassenheimer. “They built it by buying and amalgamating a group of smaller insurance agencies.”

Foundation Risk Partners on Jan. 1, completed another acquisition: an insurance brokerage in New Jersey.

#### **Brown & Brown also on the grow**

Brown & Brown has also grown in recent years in part by acquiring smaller competitors.

On Jan. 16 it announced its first acquisition of 2019: Bloomingdale, Illinois-based Izzo Insurance Services Inc.

Brown & Brown this past fall began site work on its future headquarters on North Beach Street in downtown Daytona Beach. Its plans call for the construction of an 11-story office tower that is set to open in October 2020.

The company employs more than 300 at its leased headquarters offices at 220 S. Ridgewood Ave. It expects to bring at least 625 more workers to downtown when it opens its new headquarters, including both new hires as well as workers transferred from other parts of the country.

The company also intends to continue leasing its offices on Ridgewood.

Brown & Brown is a public company whose common stock shares are traded on the New York Stock Exchange under the symbol BRO.

It is set to report its fourth quarter and full year 2018 earnings and revenues Monday.



**Tinsley**



**Hyatt Brown**



**Lydecker**