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DAYTONA BEACH NEWS-JOURNAL FEATURES BERGER SINGERMAN IN "LEGAL WAR ESCALATES BETWEEN DAYTONA'S BROWN & BROWN, CROSSTOWN UPSTART FOUNDATION RISK"

The legal battle between Brown & Brown and the upstart competitor founded by its former executives continues to escalate. Foundation Risk Partners has made three new court filings in November including a challenge to claims that it illegally obtained "trade secrets" that it says Brown & Brown made publicly available nearly eight years ago.

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DAYTONA BEACH — The business community gathered in November for separate events hosted by two fast-growing companies: Foundation Risk Partners, which hosted a Daytona Regional Chamber of Commerce's monthly business after-hours meeting; and Brown & Brown Inc., which held a topping-off ceremony for its future 11-story headquarters tower on North Beach Street.

But while executives for both insurance agencies were all smiles at the events, behind the scenes a legal battle between the two crosstown rivals that began last year continues to heat up.

Three new court filings in November have further intensified the legal battle that began a little over a year ago between Brown & Brown and Foundation Risk, an upstart rival founded by some of Brown & Brown's former executives.

The latest court filing by Foundation Risk was made on Nov. 22: a challenge to Brown & Brown's key claim in its case against Foundation Risk that the newer company stole "trade secrets" that it continues to hold on its computer server.

Foundation Risk, in its latest court filing, argues that those documents in question that Brown & Brown did not identify until Nov. 11 cannot be considered "confidential" because the insurance brokerage already made the two documents public "for all the world to see" when it deposited them with the U.S. Copyright Office in 2012.

"Just as Foundation Risk did, the Court, the newspaper, and any competitor can request the documents from the U.S. Copyright Office and the Copyright Office will gladly provide them with a copy of the very documents Brown & Brown now disingenuously asserts are confidential and trade secret," the Nov. 22 filing by Foundation Risk states.

Foundation Risk in its latest court filing included an attachment showing a copy of the certification certificate from the Library of Congress verifying that a Brown & Brown document was deposited with the U.S. Copyright

Office titled “The First 100 Days Manual.”

Lawrence Ingram, an attorney representing Brown & Brown in the case, did not immediately respond to a request for comment regarding Foundation Risk’s latest court filing.

The other recent two court filings by Foundation Risk include a lawsuit filed on Nov. 7 by Chris Tolland, now a senior vice president with the new company, who is asking a judge to void his non-compete agreement with Brown & Brown.

On Nov. 12, Kim McBee, a former senior vice president at Brown & Brown who now works in the employee benefits division for Foundation Risk, filed a lawsuit of her own also asking a Seventh Judicial Circuit Court judge in Volusia County to void the non-compete agreement she signed with her ex-employer.

The three court filings in November come on the heels of several other lawsuits Brown & Brown and Foundation Risk have filed against each other.

They include a lawsuit Foundation Risk Partners filed in May against one of its former employees now employed by Brown & Brown for violating a non-compete agreement.

Foundation Risk is accusing Brown & Brown Account Executive Jeffrey Kulzer and a Brown & Brown subsidiary of using confidential information to persuade a client to drop its coverage with Foundation Risk.

The battle between the two companies began when Brown & Brown in October 2018 sued its former retail division chief financial officer Thomas Tinsley, Foundation Risk and one of the firm’s subsidiaries, Daytona Beach-based Halifax Insurance Partners.

Tinsley, who left Brown & Brown in 2016, is now chief administrative officer for Foundation Risk.

Brown & Brown in that original lawsuit accused Tinsley, Foundation Risk CEO Charlie Lydecker, and several other Foundation Risk founders of conspiring when they were still employed at the insurance giant to form the new company, and of stealing “trade secrets.”

The lawsuit also accuses Lydecker and the other former Brown & Brown executives now with Foundation Risk of using “burner phones” to conceal their their actions and of holding a “clandestine meeting” at Tinsley’s Ormond Beach home in 2015.

Lydecker, former retail division president for Brown & Brown, and the company’s other founders, which include a handful of other ex-Brown & Brown executives, have refuted their ex-employer’s accusations.

In December 2018, Tinsley and Foundation Risk sued Brown & Brown, accusing it of “anti-competitive behavior with the sole goal of eliminating a competitor.” The accusations included threatening vendors doing business with Foundation Risk, filing “frivolous lawsuits” and making “superfluous and unnecessary allegations, intended to damage competitors’ reputations.”

Despite the dueling lawsuits and claims on both sides that they are being harmed by the other, both Brown & Brown and Foundation Risk continue to grow.

Brown & Brown, the nation’s sixth-largest independent insurance brokerage, saw its annual revenues top the $2 billion mark for the first time in its 80-year history in 2018. The company is on track to exceed that mark this year.

Foundation Risk, which formed in February 2017, saw its annual revenues more than double to $155 million last year, making it the nation’s 30th largest independent insurance brokerage. The company has continued to accelerate its growth, making 58 acquisitions since November 2017.

Tinsely and Alan Florez, a senior vice president with Foundation Risk who is also CEO of two subsidiaries that share the parent company’s Daytona Beach headquarters, said the company is on track to exceed $220 million in revenues this year that would propel it to become one of the nation’s 25 largest independent insurance brokerages.

Fast forward to November.

Foundation Risk in its Nov. 22 court filing argues that Brown & Brown's discovery requests including one seeking to examine Foundation Risk's computer servers to find the alleged "confidential" documents "are so broad that its true intent is revealed: Brown & Brown's goal is and always has been to make this litigation as costly to Foundation Risk as possible."

The Nov. 22 court filing also states, "To date, Foundation Risk has produced 14,149 documents consisting of 422,021 pages, while Brown & Brown has produced 2,016 documents consisting of 9,811 pages.

"Despite this massive fishing expedition, Brown & Brown now comes and identifies only two documents to support its misappropriation claim against (Foundation Risk)."

Tolland and McBee in their lawsuits argue that the two-year restriction for soliciting Brown & Brown clients should be voided because of the overly broad language of the agreements and also because the national insurance brokerage has so many subsidiaries that operate under different names across the country.

Brown & Brown last year made 23 acquisitions and so far this year has announced plans for 22 more, according to the investor relations page of its website.

"In the case of Mr. Tolland, he was (also) mishandled and mistreated in so many ways (at Brown & Brown)," said Leonard Samuels, an attorney with Berger Singerman LLP in Fort Lauderdale who is representing Foundation Risk.

"Now they (Brown & Brown) want to restrict (Tolland's) activities in an overly broad way to limit his ability to compete fairly against Brown & Brown," Samuels added. "Similarly, they're trying to preclude Ms. McBee from competing fairly as well."

Ingram, the Brown & Brown attorney with Freeborn & Peters LLP in Tampa, said in an interview earlier in November that Tolland and McBee are suing on a noncompete provision in their contracts that Foundation Risk also has in its contracts.

"It's standard in the industry," he said.

"Brown & Brown filed a single lawsuit to protect its rights," Ingram said. "To date, Foundation Risk or its employees have filed five separate lawsuits against Brown & Brown. Like the Tolland case, all are without merit.

"Clearly, Foundation Risk and its employees believe that the filing of these merit-less suits will somehow change the fact that they covertly took confidential information from Brown & Brown and used that information for personal gain."

Foundation Risk Partners in an email to The News-Journal stated that it "continues to defend against the baseless claims brought by Brown & Brown, and as recently as last week Brown & Brown threatened more lawsuits — this time against Chris Tolland."

James Gassenheimer, an attorney with Berger Singerman, said his firm has filed a motion for a summary judgment to dismiss a majority of Brown & Brown's claims against Foundation Risk.

"The Brown & Brown case is moving toward a resolution in trial (but) I do not expect a trial this year," said Ingram.

Foundation Risk stated that it is continuing efforts to reach an out-of-court settlement, but wrote, "Brown & Brown refuses to engage in any substantive conversations that could de-escalate the tensions between the two companies.

"These latest threats by Brown & Brown are just more steps designed to quash competition and to try and slow down Foundation's incredible success in Daytona Beach and across the country. But we aren't going away. Foundation didn't fire the first shot, but we have no intentions to sit back and take punches from a bully."

Ingram responded, “Because the facts and law are against it, Foundation Risk is apparently attempting to try this case in the newspaper. Brown & Brown intends to try its case solely in the court, based on the law and the facts.”

Related Team Member(s)

James D. Gassenheimer

Leonard K. Samuels