

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT  
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTNERS STABLE-VALUE FUND, LP,  
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,  
FOUNDING PARTNERS GLOBAL FUND, LTD., and  
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

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**THE RECEIVER’S MOTION FOR APPROVAL  
TO PAY LITIGATION CONSULTANT**

The Receiver Daniel S. Newman, not individually, but solely in his capacity as the Court-appointed receiver (“Receiver”) for Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. (collectively, the “Receivership Entities”), respectfully files this Motion for Approval to Pay (“Motion”) The Rybar Group (“TRG”), the Receiver’s Litigation Consultant, for professional fees incurred during the period of December 1, 2021 through February 28, 2022 (the “Application Period”).

The requested payment of fees and costs, if approved, will be made from the Receivership Estate. The SEC has reviewed this Motion and has no objection.

**I. RETENTION OF RECEIVER, DISCLOSURE OF COMPENSATION, AND REQUESTED AWARD**

**A. The SEC's Motion**

On April 20, 2009, the SEC filed its Complaint [D.E. 1] and its Emergency Motion to Appoint a Receiver [D.E. 3]. This Court granted the SEC's Emergency Motion to Appoint a Receiver on the same date. [D.E. 9].

In its Complaint, the SEC sought to permanently enjoin Founding Partners and its owner and principal William L. Gunlicks from violating antifraud provisions of the federal securities laws and a December 2007 Commission cease and desist order against them. [D.E. at 1]. The Commission also sought to protect and preserve approximately \$550 million of investor assets at risk. *Id.* On May 13, 2009, the SEC filed a Motion to Appoint a Replacement Receiver. [D.E. 71].

**B. The Court Appoints Daniel Newman, Esq., as Replacement Receiver**

On May 20, 2009, the Court entered its Order Appointing Replacement Receiver and appointed Daniel Newman, Esq., as Receiver for the Receivership [D.E. 73, the "Receivership Order"]. The Order placed the Receiver in charge of the Receivership Entities. *Id.* at 2-3. Pursuant to the Receivership Order, the Receiver was granted "full and exclusive power, duty, and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of Founding Partners and the Founding Partners Relief Defendants; marshal and safeguard all of the assets of Founding Partners and the Founding Partners Relief Defendants; and take whatever actions are necessary for the protection of investors." *Id.* at 1-2. The Receivership Order required the Receiver to, among other things:

- Institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary;

- Employ professionals as the Receiver deems necessary to take possession of the assets and business;
- Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities; and
- Make payments and disbursements from the funds and assets taken into control as necessary in discharging the Receiver's duties.

*Id.* at 3-6.

### **C. The Receiver's Special Counsel Retains TRG**

Beus Gilbert McGroder PLLC is the Receiver's Court-approved special counsel ("Special Counsel") in the Broward County, Florida litigation (the "Broward Litigation") against Mayer Brown LLP and Ernst & Young ("E&Y"). On October 12, 2021, Special Counsel, at the Receiver's direction and upon his approval, retained TRG as a healthcare litigation consultant for the Broward Litigation. A copy of the TRG retainer agreement is attached as **Exhibit A**.

Pursuant to the TRG retainer agreement:

- TRG is providing services to Special Counsel and assisting Special Counsel in rendering legal advice to the Receiver. (Ex. A at 1)
- TRG is serving as a "consultant expert" in the Broward Litigation. (*Id.*)
- The scope of TRG's services includes: (1) review and evaluation related to DSH and unadjudicated workers compensation claims; (2) development of materials explaining DSH and workers compensation; and (3) if the matter continues with litigation, provision of expert witness and support documentation, as appropriate. (*Id.*)
- TRG is billing at discounted and reduced hourly rates. (*Id.* at 5).

The Receiver was involved with the negotiation of the TRG retainer agreement and approved Special Counsel's entry into the retainer agreement, for the benefit of the Receivership Estate in the Broward Litigation.

## **II. REQUEST FOR FEES**

TRG has worked diligently to assist with the fulfillment of the Receiver's obligations, including providing consultant services as to the Receiver's remaining claims in the Broward Litigation against E&Y.

The Receiver respectfully requests approval to pay TRG its fees for work performed during the Application Period, totaling \$40,961.80. As demonstrative of TRG's efforts on behalf of the Receiver, the Receiver attaches TRG's individualized and detailed invoices for services rendered during the Application Period as composite **Exhibit B**.

## **III. THE MOTION SHOULD BE APPROVED**

The Court's Receivership Order requires the Receiver to "administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court." [D.E. 73 at 3]. The Receivership Order also allows the Receiver to appoint "one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business...." *Id.* at 4-5.

TRG expended considerable time and effort to perform the work necessary to assist the Receiver in the Broward Litigation. This work included, among other things:

- Meetings and video conferences with Special Counsel;
- Review of documents concerning regulatory matters at issue;
- Review of other documentation relating to the Broward Litigation; and
- Preparation of a report on matters at issue in the Broward Litigation.

TRG's work during the Application Period relates to the Broward Litigation, which, as the Court is aware, has been a complex and time-consuming litigation. The Broward Litigation has been ongoing for over ten years. The remaining portion of the litigation, related to E&Y, involves two different arbitrations with different panels, as well as claims that were assigned by investors.

Finally, TRG agreed to bill the Receivership at discounted rates.

**CONCLUSION**

For these reasons, the Receiver, Daniel S. Newman, respectfully requests that this Court enter an Order authorizing the payment of \$40,961.80 to TRG, the Receiver's litigation consultant, for fees incurred during the Application Period, and granting any other relief the Court deems just and proper.

Dated: March 28, 2022.

Respectfully submitted,

**NELSON MULLINS BROAD AND CASSEL**

Attorneys for Receiver  
One Biscayne Tower, 21<sup>st</sup> Floor  
2 South Biscayne Boulevard  
Miami, FL 33131  
Tel: (813) 225-3011  
Fax: (813) 204-2137

By: /s/ Christopher Cavallo  
Christopher Cavallo, Esq.  
Florida Bar No. 0092305  
Jonathan Etra, Esq.  
Florida Bar No. 0686905

**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Christopher Cavallo  
Christopher Cavallo, Esq.

**SERVICE LIST**

<p><b>Robert K. Levenson, Esq.</b> Miami Regional Trial Counsel Securities and Exchange Commission 801 Brickell Avenue, Suite 1800 Miami, FL 33131 305-982-6341 (direct dial) 305-536-4154 (facsimile) <a href="mailto:levensonr@sec.gov">levensonr@sec.gov</a> <i>Counsel for U.S. Securities and Exchange Commission</i></p> <p><u>Service via CM/ECF</u></p>	<p><b>Gabrielle D'Alemberte, Esq.</b> The D'Alemberte Trial Firm, P.A. 1749 N.E. Miami Ct. Suite 301 Miami, FL 33132 <a href="mailto:gabrielle@dalemberte.com">gabrielle@dalemberte.com</a> <i>Counsel for William &amp; Pamela Gunlicks</i></p> <p><u>Service via CM/ECF</u></p>
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Attorney Client and Work Product Privileged Communication

July 26, 2021

Leo R. Beus  
Beus Gilbert McGroder PLLC  
701 N 44th Street  
Phoenix, AZ 85008

Dear Mr. Beus:

Thank you for contacting The Rybar Group, Inc. (TRG) and allowing us the opportunity to submit this proposal to Beus Gilbert McGroder PLLC. The purpose of this letter is to set forth the services TRG is offering to Beus Gilbert McGroder under the attorney client privilege and work product doctrine to assist Beus Gilbert McGroder in rendering legal advice to its client, Founding Partners Stable Value Fund, LP; Founding Partners Stable Value Fund II, LP; Founding Partners Global Fund, LTD.; and Founding Partners Hybrid-Value Fund, L.P. (Client).

Nature and Scope

TRG shall serve as a consultant expert for Beus Gilbert McGroder and its Client in support of their activity in Case No. 10-49062 (12) in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida. The scope of the activity will include the following:

- Review and evaluate the financing package risk factors to ensure that the disclosures were complete and appropriately representative of the risks associated with financing related to California Medi-Cal DSH and un-adjudicated workers compensation claims.
- Develop a document explaining DSH and workers compensation in layman's terms, to include the collection process, costs and the associated risks.
- In the event that the associated case should go to litigation, TRG will provide assistance by providing expert witness and support documentation, as appropriate.

Confidentiality Statement

All services provided pursuant to this engagement are intended to be protected as attorney-client and attorney work product privileged. Our review, and any communications and reports, will be treated as confidential and privileged. Any disclosures of our review, or any request for additional information, will be directed only to Beus Gilbert McGroder. Our final report, as well as any preliminary reports and written correspondence, will be labeled as "Privileged/Confidential" and "Attorney/Client Privilege" and will be sent directly to the law firm of Beus Gilbert McGroder in care of Leo R. Beus.

Roles

To provide an effective framework for this engagement, both parties must have a clear understanding of their respective roles.

Leo R. Beus  
Beus Gilbert McGroder PLLC  
July 26, 2021  
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**Our role encompasses the following:**

At the start of the engagement, our consultants will conduct a conference call with the designated representatives of Beus Gilbert McGroder and its Client. The purpose of the call is to discuss the goals of the engagement, data requirements, findings to date and reporting requirements.

The consultant services will be provided as follows:

*Analytical Analysis*

- TRG will work with Beus Gilbert McGroder to understand the premise of its Client's case and the data that has been compiled to date in support of the case. We will provide guidance and insight on additional data needs based on the allegations and our understanding of the financial risk disclosures.
- Our consultants will perform an analysis on the financial risks disclosures and provide a written report that includes an explanation of DSH and worker compensation, the associated costs and the risks associated with using Medi-Cal DSH receivables and unadjudicated workers compensation claims as collateral for financing purposes.

The report will be sent in draft format, approximately thirty (30) days following the review dates.

- Following submission of the report draft, TRG will conduct a conference call with Beus Gilbert McGroder and identified associates of its Client to discuss any questions and to review the document. A final copy of the report will be provided after this time.

*Expert Testimony*

- It is understood that TRG may be called upon as an Expert Witness on this case at some date in the near future. Included in this testimony will be the charge of explaining to the jury in the process of obtaining Medicaid DSH and workers compensation payments, including the requirements, costs and risks associated with these programs. The scope and related timeline for this service will be further defined and finalized at a later date as an addendum to this engagement letter.

TRG will provide communication with Beus Gilbert McGroder through the course of the engagement, contacting the identified individuals with any significant initial findings that may impact the outcomes of the review.

**Your role encompasses the following:**

It is important for Beus Gilbert McGroder to understand the depth of our proposal. Although TRG works to keep the required time and resources of its clients at a minimum, there are necessary activities that will be requested that will assist in ensuring that the overall goal of the engagement is successful. While it is our responsibility to handle the other components of these projects, we will ask for Beus Gilbert McGroder 's assistance as follows:

- Assist us in mapping out a strategy for the engagement to help ensure that our mutual





Leo R. Beus  
Beus Gilbert McGroder PLLC  
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activities meet Beus Gilbert McGroder and its Client's needs. Provide oversight and guidance to the engagement consistent with your expectations.

- Designate an Engagement Coordinator who will assist with acquisition of any necessary data, the scheduling of all meetings, and who will be available to assist our consultants through the course of this engagement.
- Provide access to information related to our engagement for analysis. Details as to the required reports will be provided upon signage of this engagement letter.
- Process all required correspondence in a timely manner.
- Review the draft report and forward comments back to TRG within ten (10) days of its receipt to facilitate its finalization.

### Regulatory Statement

During the course of the engagement, our consultants may need access to Protected Health Information (PHI). All PHI will be handled confidentially, and as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Upon completion of the engagement, and at the will of Client, all records, vouchers, and reports will be returned or destroyed, consistent with our retention policy.

TRG may obtain information related to the business and operations of your organization. All information will be handled in a confidential manner and will not be disclosed unless required to do so in performance of the scope of this engagement or as required to do so by law.

Beus Gilbert McGroder understands that the information and methods utilized in preparation of the engagement work product and recommendations has taken many years to develop and is of a highly proprietary nature. Documents and recommendations provided by TRG in performance of services under this agreement are for Client's use only and as stated in the Scope of Services. The Client shall not transfer them to others or use them or permit them to be used at other projects for which they were not prepared, without TRG's express written consent. In addition, TRG will not accept liability for any loss, injury, claim or damage arising directly or indirectly from any unauthorized use or reliance on such documents.

Any information provided by TRG in or pursuant to this engagement which is privileged, proprietary, confidential, or otherwise protected by statute or case law, including but not limited to any technical or pricing information, shall not be disclosed by Beus Gilbert McGroder to any other person or entity without the express prior written consent of TRG.

TRG shall not be liable to Beus Gilbert McGroder for any claims relating to the Services for an aggregate amount in excess of the fees paid by Beus Gilbert McGroder to TRG for the services giving rise to the claim. In no event shall TRG be liable for consequential, special, indirect, incidental, punitive, or exemplary losses or damages relating to the engagement.

TRG shall be entitled to reasonably rely on and assume, without independent verification, that



Leo R. Beus  
Beus Gilbert McGroder PLLC  
July 26, 2021  
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all representations, assumptions, information and data supplied by Beus Gilbert McGroder and its representatives shall be complete and, to the best of Beus Gilbert McGroder's knowledge, accurate and have not been altered. Unless otherwise agreed to by the parties, TRG shall not assume any responsibility for any financial reporting or verification with respect to the Services.

TRG will conduct all activity in compliance with the laws, regulations and rules that govern federal and third-party payor reimbursement.

Until the expiration of four (4) years after the furnishing of the services provided under this contract, TRG will make available to the Secretary, U.S. Department of Health and Human Services, and the U.S. Comptroller General, and their representatives, this contract and all books, documents, and records necessary to certify the nature and extent of the costs of those services. If TRG carries out the duties of the contract through a subcontractor worth \$10,000 or more over a twelve (12)-month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their representatives to the related organization's books and records.

All photocopies, facsimiles, and/or electronic copies of documents provided by TRG will serve in the same function as an original hard copy of the document. Original signed copies of all agreements and reports are available as requested. Prepared, without TRG's express written consent. In addition, TRG will not accept liability for any loss, injury, claim or damage arising directly or indirectly from any unauthorized use or reliance on such documents.

#### Results and Benefits

The tangible results of this engagement will be the support of industry recognized Healthcare Reimbursement experts, guidance as to the data needed to support the given case and documentation to support Client's claims.

#### Time and Duration

TRG will make a best effort to provide the necessary reporting within the required timeframes. It is understood that a trial date has not been set at this time. The defined timeframe will be met contingent on the receipt of the necessary documentation and data in a timely and agreed upon timeframe.

Should we encounter unanticipated obstacles that will impact on our delivery, or change the scope of this project, we will notify you immediately to determine the best course of action.

We will consider this engagement to be complete when we have provided the final written summary report and it is determined no additional consultant support or testimony is required.



Leo R. Beus  
Beus Gilbert McGroder PLLC  
July 26, 2021  
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Professional Fees

Our professional fees for this engagement will be invoiced using the following discounted fees:

Services	Fees
Analytical Assessment	\$473/hour, Senior Consultant Level
Expert Testimony	\$675/hour

These fees represent a ten percent (10%) from the standard proposed rates. Reasonable travel and out-of-pocket expenses will be invoiced in addition to the above noted fees.

Our normal practice is to issue invoices monthly as the work progresses for the fees and expenses incurred. Our invoices are payable within 30 days of receipt. TRG acknowledges that payment is contingent on court approval of our submitted fees

The professional fee arrangements and engagement terms outlined above are valid contingent on this letter being signed within thirty (30) days from the date of this letter. TRG reserves the right to modify the proposed fees and terms following this time.

Conclusion

If any of the contents of this letter differ from your understanding of this engagement, please notify us at once so that we can establish a proper mutual understanding.

We appreciate this opportunity to serve Beus Gilbert McGroder PLLC and its Client. Please feel free to contact us with any questions you may have.

We look forward to the opportunity to assist you in these matters.

Sincerely,

The Rybar Group, Inc.

*Richard S Reid*

Its: President

If this engagement letter meets with your approval, please sign a copy and return it to us.

APPROVED:

BY: *Leo R. Beus*  
Leo R. Beus (Oct 12, 2021 10:24 PDT)

DATE: Oct 12, 2021



# Beus Gilbert\_Litigation Support\_Revised









## 7.26.21

Final Audit Report

2021-10-12

Created:	2021-10-11
By:	Claudine Hildreth (childreth@theybargroup.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAi9-u4unVSPVN9MrHmRil6zkjSLmfu00

## "Beus Gilbert\_Litigation Support\_Revised 7.26.21" History

-  Document created by Claudine Hildreth (childreth@theybargroup.com)  
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-  Document emailed to Leo R. Beus (lbeus@beusgilbert.com) for signature  
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-  Document e-signed by Leo R. Beus (lbeus@beusgilbert.com)  
Signature Date: 2021-10-12 - 5:24:05 PM GMT - Time Source: server- IP address: 184.185.173.158
-  Document emailed to Richard Reid (rreid@theybargroup.com) for signature  
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-  Agreement completed.  
2021-10-12 - 5:24:54 PM GMT



Beus Gilbert McGroder PLLC  
 701 N. 44th Street  
 Phoenix, AZ 85008

February 28, 2022  
 Engagement No: OT12146.0000  
 Invoice No: 0102250  
 Due Date: March 30, 2022

OT12146.0000 Beus Gilbert - Litigation Support

December Services Provided 37.2 hours:

- Meeting with plaintiff counsel in Ann Arbor MI
- Various Zoom calls with plaintiff counsel to discuss documentation
- Review of historical documents on Federal and California DSH regulatory history
- Review of documentation

January Services Provided 23.5 hours

- Zoom and telephone calls with plaintiff counsel to discuss care and update on status of written report
- Review of additional case supporting documentation
- Progress billing for preparation of draft report

February Services Provided 25.9 Hours

- Several telephone calls with plaintiff counsel to discuss case and review draft report
- Review of supporting documentation
- Additional research on California DSH regulations

**Professional Services from January 30, 2022 to February 26, 2022**

<b>Fee</b>			
Number of units	86.60		
Fee Each	473.00		
Total Fee	40,961.80		
	Total Earned	40,961.80	
	Previous Fee Billing	0.00	
	Current Fee Billing	40,961.80	
	<b>Total Fee</b>		<b>40,961.80</b>
	<b>Total this Invoice</b>		<b>\$40,961.80</b>

**THANK YOU FOR UTILIZING THE SERVICES OF THE RYBAR GROUP, INC.**  
 A 1.0% finance charge will be applied to outstanding invoices after 30 days.

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**Please remit payment to:**

The Rybar Group, Inc.  
 PO BOX 1125  
 Fenton, MI 48430

*If you would like to remit payment electronically please contact [bhodge@theybargroup.com](mailto:bhodge@theybargroup.com) for service assistance.*