

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, COMMERCIAL DIVISION**

QBE AMERICAS, INC., d/b/a QBE NORTH
AMERICA,

Petitioner,

vs.

STEVEN ALLEN and GREGORY DEKKER,

Respondents.

Index No.

**PETITION IN SUPPORT OF MOTION
BY ORDER TO SHOW CAUSE FOR A
TEMPORARY RESTRAINING
ORDER, PRELIMINARY
INJUNCTION, AND EXPEDITED
DISCOVERY IN AID OF
ARBITRATION**

QBE Americas, Inc., d/b/a QBE North America ("QBE" or "Petitioner"), by its undersigned counsel, Jackson Lewis P.C., hereby brings the following Petition for injunctive relief in aid of arbitration against Respondents Steven Allen ("Allen") and Gregory Dekker ("Dekker"), on its claims for breach of contract, misappropriation of confidential information, breach of the duty of loyalty, and unfair competition.

OVERVIEW

1. This special proceeding is brought pursuant to Section 7502(c) of the New York Civil Practice Law and Rules ("CPLR") to maintain the status quo pending resolution of arbitration proceedings between the parties that have been commenced with the American Arbitration Association ("AAA").

2. To prevent continued irreparable harm to QBE, QBE seeks immediate injunctive relief in the form of a temporary restraining order and a preliminary injunction enforcing the April 9, 2016 Employment Agreement between Allen and QBE, and the May 9, 2016 Employment Agreement between Dekker and QBE, pending the resolution of the arbitration before the AAA. Specifically, QBE seeks to: enjoin Allen and Dekker from: breaching their contractual commitments to QBE; breaching their fiduciary obligations to QBE;

and from using and disclosing QBE's confidential information and trade secrets in breach of their common-law duties and to engage in unfair competition. QBE also seeks to obtain expedited discovery regarding Allen's and Dekker's unlawful activities.^{1/}

BACKGROUND, JURISDICTION, AND VENUE

3. Petitioner QBE is a Delaware corporation, with its principal place of business at 55 Water Street, New York, NY 10041.

4. QBE is a global insurance company that provides its customers with, among other things, specialty insurance policies. One of QBE's specialty insurance divisions is Aviation, which provides clients nationwide - who own or lease aircraft and/or provide products or services to the aviation industry - with competitive and flexible insurance underwriting by a seasoned team of underwriters with real world aviation experience that delivers affordable, comprehensive aviation insurance coverage.

5. Respondent Allen is an individual who resides in Cumming, Georgia.

6. Respondent Dekker is an individual who resides in Morris Plains, New Jersey.

7. The Court may exercise jurisdiction over the Respondents pursuant to CPLR Section 7502(c) and venue is proper because the arbitration provision in the Employment Agreements (defined below) provides for arbitration in the state of New York and permits the parties to petition any state or federal court having jurisdiction to provide equitable relief to enjoin or prohibit ongoing and irreparable injury to the petitioning party due to any violation of the Employment Agreements.

^{1/} QBE will also file a related Complaint in this Court against Kristina Orcutt ("Orcutt"), Kristina Mulligan ("Mulligan"), and Applied Underwriters, Inc. ("Applied"), who are not parties to an arbitration agreement with QBE, arising out of the same facts and circumstances as set forth herein. QBE will also file a motion seeking a temporary restraining order and preliminary injunctive relief against Orcutt, Mulligan, and Applied.

ALLEN'S AND DEKKER'S OBLIGATIONS TO QBE

8. Allen began his employment with QBE in July 2015 as a Vice President, and was promoted in April 2016 to Senior Vice President, General Aviation at QBE, tasked with leading QBE's Aviation division. He was directly responsible for the performance of QBE's Aviation division, and overseeing all its personnel.

9. Dekker began his employment with QBE in May 2016. He held the title of Vice President, Aviation Underwriting at QBE, tasked with overseeing the Aviation division's underwriters. Dekker reported to Allen.

10. Allen and Dekker were well-compensated by QBE. In 2021 Allen earned approximately \$350,000 in gross compensation, and Dekker earned Approximately \$270,000 in gross compensation. QBE also paid Allen's and Dekker's travel, entertainment and other expenses which were used to create, facilitate and expand relationships with brokers and QBE policyholders.

11. As trusted employees of QBE, Allen and Dekker were provided access to and gained knowledge of confidential information and trade secrets belonging to QBE regarding its business, including but not limited to policyholder lists, business summaries, business strategy, market analyses, employee compensation information, policyholder claims data, and pricing/rate data.

12. Such confidential information and trade secrets are of significant economic value to QBE, and would be of significant economic value to QBE's competitors, including Applied.

13. QBE goes to great lengths to protect its confidential information and trade secrets, such as promulgating and disseminating policies to its employees that prohibit the use or

disclosure of QBE's confidential information and trade secrets for non-business purposes, requiring employees who have access to such confidential information and trade secrets to sign agreements that restrict their use or disclosure of QBE's confidential information and trade secrets and restrict certain post-employment activities, requiring employees to complete security awareness training modules regarding the importance of, and means by which, to protect QBE's confidential information, and password-protecting and otherwise limiting individual access to computers and systems containing QBE's confidential information and trade secrets.

14. Allen's and Dekker's respective employment agreements (the "Employment Agreements") with QBE set forth various obligations of Allen and Dekker as employees, or former employees, of QBE. The Employment Agreements are identical apart from title and compensation. Copies of the Employment Agreements are attached hereto as Exhibits "A" (Allen's Agreement) and "B" (Dekker's Agreement).

15. Under the "Employee Covenants" section of the Employment Agreements, in 6(a), Allen and Dekker agreed to hold all of QBE's Confidential Information in a fiduciary capacity and to safeguard it for the benefit of QBE. They further agreed not to directly or indirectly use or disclose QBE's Confidential Information without its prior written consent except to perform their duties to QBE. They also agreed not to disclose any printed or electronic documents containing QBE's Confidential Information to anyone outside QBE's organization or use them for any purpose other than the advancement of QBE's interests. Finally, they agreed to return all printed or electronic documents (including copies) containing QBE's Confidential Information to QBE's.

16. Under the "Broker, Agent, and Policyholder Non-solicitation" section of the Employment Agreements, in paragraph 6(c), Allen and Dekker agreed to the follow 12-

month non-solicit obligation:

The Employee agrees that during the Employee's employment with the Company and for 12 months following a termination of employment that occurs for any reason, the Employee will not solicit any broker, agent or policyholder of the Company on behalf of the Employee or any other person, firm, company, or organization, either directly or indirectly, for the purpose of soliciting or obtaining insurance business or any account that was business or an account of the Company's during the 12 months prior to the Employee's termination of employment from the Company. The Employee further agrees that during the Employee's employment with the Company and for 12 months following a termination of employment that occurs for any reason, the Employee shall not contact any broker, agent or policyholder of the Company to discourage such entity or individual from doing business with Company, nor accept any business or account from any broker, agent, or policyholder that was business or an account of Company's during the 12 months prior to the Employee's termination of employment from the Company. For the avoidance of doubt, nothing in this paragraph shall be construed to prohibit Employee from soliciting any broker, agent, or policyholder for insurance business or accounts that were not Company business or accounts in the 12 months prior to the Employee's termination of employment from the Company.

17. Under the "Employee Non-solicitation" section of the Employment Agreements, in paragraph 6(d), Allen and Dekker each agreed to the following twelve-month non-solicitation obligation:

The Employee agrees that during the Employee's employment with the Company and for 12 months following a termination of employment that occurs for any reason, the Employee will not:

- i. recruit, hire, or attempt to recruit or hire, directly or by assisting others, any then- current employee of the Company for employment with an entity other than the Company; or
- ii. entice or attempt to persuade the Company's then-current employees to leave employment with the Company.

For purposes of this Section 6, "solicit" means any direct or indirect communication of any kind, regardless of who initiates it, that in any way invites, advises, encourages or requests any person to take or refrain from taking any action..

18. Under the "Restrictive Covenants" section of the Employment Agreements, in paragraph 7, Allen and Dekker each agreed to the following 90-day notice obligation regarding termination of their employment with QBE: "[t]he Employee may terminate this Agreement and his employment by providing at least 90 days' advance notice to the Company."

19. Under the "Miscellaneous" section of the Employment Agreements, in paragraph 7(i), Allen and Dekker each agreed to the following arbitration provision:

Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration, conducted before a single arbitrator in the state of New York in accordance with the rules of the American Arbitration Association then in effect. An arbitrator cannot award any amount to the Employee greater than the Employee would have otherwise received under this Agreement. The Company shall pay all the costs and expenses of any such arbitration proceeding, and the parties shall each pay their own attorneys' fees and expenses. Notwithstanding the foregoing, either party hereto may petition any state or federal court having jurisdiction to provide equitable relief to enjoin or prohibit ongoing and irreparable injury to the petitioning party due to any violation of this Agreement, including but not limited to a violation of Section 6 of this Agreement.

20. In their roles leading and managing the Aviation division, Allen and Dekker had access to, among other things, highly confidential business plans, summaries of all QBE Aviation business, and compensation information for all Aviation personnel. Their responsibility was to provide oversight and management to the Aviation underwriting and claims teams, which are made up of employees (including Orcutt and Mulligan) who also have access to QBE's confidential information, including highly confidential business plans and procedures, and summaries of all QBE Aviation business. Allen and Dekker, along with the Aviation underwriters and claims representatives, also interacted with brokers and policyholders on a

regular basis, to help strengthen and/or maintain those relationships, securing both new business and renewals.

21. In addition to the obligations Allen and Dekker agreed to in their respective employment agreements, as senior employees of QBE, Allen and Dekker (along with Orcutt and Mulligan) also agreed to be bound by, honor, and be exemplars for QBE's Code of Ethics and Conduct.

22. QBE Code of Ethics and Conduct provides, in relevant part, that "Confidential information includes non-public financial, corporate and personal information. It incorporates technical information about products or processes, vendor lists, pricing, marketing or service strategies, non-public financial reports, and information on asset sales, mergers and acquisitions." Moreover, it states that employees "will have access to confidential information in the course of [their] employment and must protect it and manage it responsibly. [Employees] must never use it for personal advantage."

23. Allen, Dekker, Orcutt and Mulligan completed training modules regarding the Code of Ethics and Conduct.

24. Allen, Dekker, Orcutt and Mulligan also reviewed and received QBE's employee handbook upon their respective hires, which contains a section titled "Confidentiality of Information About Company, Insureds, Co-Workers," which provides that "All employees are required to maintain the confidentiality of confidential information that they receive during the course of their employment whether related to the company, insureds, claimants or co-workers. For more information about employees' obligations, review the Corporate Security Information policy and Confidentiality sections of the Group Code of Ethics and Conduct."

25. Allen and Dekker, along with the underwriters and claims representatives

who worked in the Aviation division, were responsible for maintaining personal relationships with brokers and policyholders and securing that business revenue through new policies and renewals.

**ALLEN'S AND DEKKER'S VOLUNTARY RESIGNATION FROM EMPLOYMENT
WITH QBE AND THEIR SUBSEQUENT EMPLOYMENT WITH APPLIED**

26. On the morning of September 20, 2021,^{2/} Allen called his manager, Steven Gransbury, QBE's Head of Specialty Insurance, to inform Mr. Gransbury that (to Allen's purported shock) 12 individuals on his Aviation team (including a QBE employee who solely supported Aviation, in Underwriting Operations) had resigned:

- Greg Dekker – Vice President, Underwriting (New York, NY)
- Brian Neal – Vice President, Underwriting (Atlanta, GA)
- David Gray – Vice President, Underwriting (Atlanta, GA)
- Peter Guy – Vice President, Claims (Atlanta, GA)
- William Harwell – Vice President, Underwriting (Atlanta, GA)
- Scott Stewart – Assistant Vice President, Underwriting (Atlanta, GA)
- Kristina Mulligan – Senior Underwriter (Atlanta, GA)
- Kristina Orcutt – Senior Underwriter (Arizona)
- Josh Wilcoxon – Aviation Claims Manager (Atlanta, GA)
- Portia Butsko – Senior Claims Specialist (Atlanta, GA)
- Jennifer Reynolds - Senior Underwriter (Atlanta, GA)
- Donna D'Oria – Underwriter Operations (New York, NY)^{3/}

27. During that conversation Allen also told Mr. Gransbury that none of those individuals had informed Allen where they were going to be employed upon leaving QBE. Allen also said that he was unaware if they were all moving to a new employer together, and he was not involved in their collective decision to resign their employment with QBE. Allen suggested

^{2/} All dates referenced herein are from 2021, unless otherwise indicated.

^{3/} The parentheticals in this list note the QBE office in which the employee worked.

to Mr. Gransbury that they could all be moving on to different opportunities and different employers.

28. Later in the day, Allen contacted QBE's human resources department and said that he was considering "retiring" given the wave of resignations in Aviation. Mr. Gransbury spoke to Allen soon thereafter and told him that whether he chose to retire was his prerogative. Mr. Gransbury reminded Mr. Allen of his 90-day notice obligation.

29. Also on September 20, Allen sent an email to the entire Aviation division informing the group he was resigning. Mr. Gransbury learned about the email, and then called Allen, who informed Mr. Gransbury directly that he was resigning. Mr. Gransbury again reminded Allen of his employment obligations and that QBE wanted his assistance in the aftermath of the mass departure.

30. On or about September 22, Allen spoke with both Todd Jones (QBE's CEO) and Andrew Horton (QBE Insurance Group Limited's CEO) regarding his decision to resign.

31. Allen subsequently emailed QBE human resources on September 22 informing HR that he had spoken to Mr. Jones and Mr. Horton about how QBE leadership's response to this crisis disenchanted him and led to his "breaking point" and decision to resign. The leadership response to which Allen appears to have alluded involved QBE leadership's desire to understand the scope and reason behind the mass departure, determine whether any misconduct had occurred, and appropriately address the mass departure.

32. On September 23, Jacklyn Thies, QBE's Associate General Counsel, sent identical letters to both Allen and Dekker, reminding them of their continuing contractual obligations to QBE, including their 90-day notice period and employee/policyholder non-

solicitation obligations. She attached their respective employment agreement to each letter. She also informed each of them that their last date of employment with QBE would be December 19, although they might be placed on non-working status (i.e. "garden leave") before that point.

33. In the weeks that followed, Allen did not respond to QBE employees' requests for information aimed at locating files and assisting with the transition of the Aviation division to new leadership.

34. Dekker was initially responsive and cooperative with offering transition assistance, but he too ceased responding well before the last day of his notice period and employment with QBE (December 19).

35. QBE terminated Allen's and Dekker's access to its network and systems (including email and Aviation-related document systems) on October 1.

36. On October 27, Allen's attorney, Steven Mintz, Esq., called Jacklyn Thies regarding her letter to Allen and maintained that Allen no longer considered himself an employee of QBE (notwithstanding his 90-day notice provision) as of October 1.

37. Ms. Thies expressed that QBE disagreed with Allen's position. Mr. Mintz suggested this dispute could potentially be resolved if Allen could, on behalf of Applied Underwriting, enter into a renewal rights deal for the entire aviation book of business from QBE, and for the first time QBE became aware of Allen's apparent connection with Applied, but the short discussion was not productive.

38. Mr. Mintz followed up the conversation with an October 28 letter which, among other things, stated that Allen no longer considered himself an employee of QBE as of October 1.

QBE LATER LEARNS OF RESPONDENTS' UNLAWFUL ACTIVITIES*Allen's Unlawful Activities*

39. Beginning in and around November 2021, after learning Allen was in league with Applied, QBE began reviewing and investigating Allen's and the other former employees' emails and files connected to the suspicious nature of the sudden and mass departure of 11 employees in the Aviation division (and 1 employee who supported the group), followed by Allen's allegedly unconnected resignation.

40. QBE discovered that Allen had—in breach of his employee non-solicitation obligations and his duty of loyalty—orchestrated a poaching scheme in coordination with his new employer, Applied.

41. While still employed with QBE, for example, Allen travelled from Atlanta to New York and met with one or more representatives of Applied, in person, at least twice in the three months prior to his departure. Allen attended those clandestine meetings armed with (i) documents he created containing QBE's confidential information; and (ii) a two-phased target list of QBE employees in the Aviation division whom he intended to poach from QBE (along with the revenue each employee had generated for QBE) to form his new aviation group at Applied. Every employee that Allen included in "phase one" of his raiding scheme subsequently resigned their employment with QBE on September 20 and then joined Applied.

42. On June 23, Allen emailed himself (from his QBE email to his QBE email) a Microsoft Word document entitled "RIV" which, according to its metadata, was created on June 22nd at 2:34 PM, authored by Allen, and last modified on June 22nd at 3:56 PM by Allen. The document contains an outline for a "Meeting with Jamie Sahara (RIV Partners); 6/23/21," which is the text written in the first line of the document.

43. According to Applied Underwriters' website, Jamie Sahara is the President of Applied Underwriters. According to Rivington Partners' website, Mr. Sahara is also the founder and Chief Executive Officer of Rivington Partners, another insurance company.

44. The first section of the "RIV" document contains financial metrics of QBE's Aviation division, noting that the business grew about 150% in 5 years, and consisted of a team of 36, including 30 underwriters and 6 in claims.

45. The second section of the document is titled "Questions" and contains, in an outline format, items including "Team makeup, #, salary, equity," "Internal Support," "Which segments in Aviation?" "Timing?" and "Home office v Commercial location."

46. The third section contains information about a "Team," broken into three sub-sections: "minimal (8)," "optimal (12)," and "Phase II (16)."

47. The "minimal (8)" section in the "RIV" document names and describes eight QBE employees who worked in the Aviation division, including Steve Allen, David Gray, William Harwell, Greg Dekker, Donna D'Oria, Peter Guy, and Josh Wilcoxon, and includes monetary figures adjacent to 4 of the employees' names.

48. The section also states the group of 8 employees represents an eight-figure sum "in 2020 GWP; focus on IA, GA, APL, Specialty, Pax/Cargo." "IA, GA, APL, Specialty, Pax/Cargo" are acronyms for different segments of Commercial and General Aviation insurance (i.e. Industrial Aid, General Aviation, Aviation Products Liability, Specialty and Limited Passenger/Cargo), which were the lines of business that those 8 named employees focused on within QBE's Aviation division.

49. The "optimal" section in the "RIV" document names and describes the same eight employees listed in the preceding section, and names 4 additional QBE employees:

Kristina Mulligan, Brian Neal, Jen Reynolds, and Portia Butsko. The section also states the group of 12 employees represents a nine-figure sum in 2020 GWP, brings in AWC.” AWC is an acronym for Aviation Workers Compensation insurance, which was Brian Neal’s area of specialization.

50. All the above-named employees included in Allen’s document resigned from QBE on the morning of September 20.

51. The “Phase II” section includes 4 additional names of QBE Aviation employees, including Kristina Orcutt (who has a monetary figure adjacent to her name). The section also states the group of 16 employees represents a nine-figure sum “in 2020 GWP, brings in Airports and additional IA, GA.” Airports, Industrial Aid (IA) and General Aviation (GA) were the lines of business that those 4 additional employees focused on for QBE’s Aviation division.

52. Three employees named in the Phase II section remain employees of QBE, while Kristina Orcutt is among the group that resigned on September 20.

53. The document entitled “RIV” contains confidential information concerning the QBE Aviation division’s performance, as well as the makeup and revenue generated by its workforce.

54. On June 23, Allen used his QBE corporate credit card to make a purchase for an Uber. Allen submitted an expense report for the Uber charge as an Atlanta-area taxi.

55. On or about June 24, Allen also used his QBE corporate credit card to make two purchases at a restaurant/bar named “Biergarten” located in Flushing, New York. According to an internet search, there is a “Biergarten” located at LaGuardia Airport in New

York. Allen submitted an expense report for these two charges as a “broker mixer” in North Carolina, misrepresenting where and why the charges had been incurred.

56. On or about June 24, Allen also used his QBE corporate credit card to make a purchase for airport parking at Hartsfield-Jackson Airport in Atlanta, which he submitted as part of an expense report.

57. According to Applied Underwriters’ website, it is headquartered and maintains offices in New York City (at 1120 6th Ave, New York, NY 10036). There is no legitimate QBE-related business reason for Allen to have travelled to New York in or around June 23.

58. QBE policy at the time required all employees to receive approval for air travel from their manager. Allen was not approved to travel for this period (to New York or anywhere else).

59. On or about August 9, Allen used his QBE corporate credit card to purchase a Delta first-class seat upgrade, which he categorized in an expense report submitted for reimbursement to QBE as “Atlanta area / Airfare.” The upgrade was for an August 12 flight from Atlanta to New York City. Allen once again had QBE unknowingly fund his trip to meet and scheme with Applied.

60. On August 11, Allen sent an email from his QBE email account to his personal Hotmail email account with several attachments, including a Microsoft Word document titled “Applied” which, according to its metadata, was created on August 9 at 12:00 PM, authored by Allen, and last modified on August 9 at 3:19 PM by Allen. The document contains an outline for a “Meeting with Applied on 8.12.21,” which is the text written in the first line.

61. The email Allen sent to his personal email account on August 11 also included the following attachments:

- a presentation converted into a .pdf document named “Aviation 2021 June Results Deck;”
- a Microsoft PowerPoint presentation named “Aviation Cell Review April 2021 v9;”
- a Microsoft PowerPoint presentation named “Aviation Performance Review DRAFT v2;”
- a Microsoft Word document named “Cell Review talking points 012021 v2;” and
- a pdf of an article from “Insurance Journal” named “In His Own Words_Q&A with Applied Underwriters’ Menzies on Buffet, California and ‘Pumping Entrepreneurial Power.’”

62. The documents attached to Allen’s email, aside from the Insurance Journal article, are confidential QBE documents containing financial and performance metrics detailing 2021 year-to-date profits and losses for the QBE Aviation division, market trend analyses, outlooks for 2021 and beyond, and QBE Aviation’s strategic business goals. There is no legitimate QBE-related business reason for Allen to have sent these materials to his personal email address on or around August 11.

63. The “Applied” document that Allen authored (which states in the first line: “Meeting with Applied on 8.12.21”) contains three sections.

64. The first section sets forth a three-page detailed performance and financial history of the QBE Aviation division from 2011 to 2021, including screenshots of slides from confidential internal QBE presentations containing aviation insurance market and competitor analysis, business development strategy and threat analysis, and forecasts through 2023.

65. The second section, titled “Details” begins with: “1. Proposed team composition (12) – Allen, Gray, Guy, Harwell, Dekker, Stewart, Mulligan, Wilcoxon, Butsko, Neal, Reynolds and D’Oria.” The remainder of the “Details” section outlines various topics

regarding how an aviation insurance division would operate (e.g., “Compensation – base + Commission + distribution,” “Paper – Applied Underwriting (A rating),” “Does Applied have filed ‘following form’ so we can immediately bind coinsurance business?”).

66. The third section, titled “Team,” is identical to the “optimal” and “Phase II” sections which were included in the “RIV” document that had been authored by Allen in June 2021.

67. On or about August 12, Allen used his QBE corporate credit card to purchase items at a midtown Manhattan restaurant/bar called Point Break, located at 12 W 45th St, New York, New York. Point Break is located one block from Applied Insurance’s New York office. Allen did not include these purchases in a QBE expense report.

68. On or about August 12, Allen also used his QBE corporate credit card to make a purchase for a New York City taxi service. Allen submitted an expense report for the taxi as an Atlanta-area taxi.

69. Upon information and belief, Allen met with Applied on or about August 12, to discuss the scheme to poach QBE Aviation division employees in order to start up Applied’s aviation insurance group and solicit QBE policyholders.

70. On or about August 13, Allen used his QBE corporate credit card to make a purchase for an Uber car service, for which Allen submitted an expense report for an Atlanta-area taxi.

71. On or about August 13, Allen also used his QBE corporate credit card to make a purchase for airport parking at Hartsfield-Jackson Airport in Atlanta, which he submitted as part of an expense report.

72. On August 14, Allen also used his QBE corporate credit card to make two purchases at "Food Hall C" located in Flushing, New York. Allen did not submit an expense report for this charge.

73. There is no QBE business-related reason for Allen to have travelled to New York from in or around August 12 to August 14. Allen was not approved to travel for this period (to New York or anywhere else).

74. On August 12 at 9:36 PM, the same day as Allen's "Meeting with Applied," Kristina Orcutt, a Senior Underwriter in QBE's Aviation division and one of the employees who resigned on September 20, emailed 18 files containing QBE confidential information from her QBE email to her personal Gmail email account. These files, including Microsoft Excel spreadsheets and Microsoft Word documents are titled:

- Tracking Sheet - Policies Bound - WINS CLOSE 2021.xlsx;
- Tracking Sheet - Policies Bound - WINS CLOSE 2020.xlsx;
- Tracking Sheet - Policies Bound - WINS CLOSE 2019.xlsx;
- Tracking Sheet - Policies Bound - WINS CLOSE 2018.xlsx;
- 01 - PB Rating Worksheet with Cover Sheet.xls;
- 01 - Products_Quote_Sheet.xls;
- 01 - Commercial Worksheet (AC & GL).xlsx;
- 01 - IA Rating Worksheet with Cover Sheet.xls;
- commissions.xlsx;
- rating issues.docx;
- Q- RATING ISSUES (003).docx;
- Sample Purpose of Use Wordings.docx;
- Final Pilot Wording.docx;
- 2021-22 Underwriting Pricing Rationale Template.docx;
- 2021 Final No-Go decline list.xlsx;
- 2020 UW PRINCIPLES.docx;
- SF HANDOFF SHEET - REV 07-09-21.xlsx; and
- Sample Pilot Wordings.docx

75. Three minutes later, on August 12 at 9:39 PM, Orcutt sent a second email from her QBE email to her personal email, this time attaching additional files containing QBE

confidential information. These files, including Microsoft Excel spreadsheets and Microsoft Word documents are titled:

- 021 Final No-Go decline list.xlsx;
- 2020 UW PRINCIPLES.docx;
- Sample Pilot Wordings.docx;
- Sample Purpose of Use Wordings.docx;
- Final Pilot Wording.docx;
- 2021-22 Underwriting Pricing Rationale Template.docx; and

76. The QBE confidential documents Orcutt copied and transmitted from QBE's secure systems on August 12 contain, among other things, information about QBE policyholders (including current, expiring, and renewal rates), broker contacts and commissions rates, sample policy wording, and an internal QBE memo marked "private and confidential" that contains "best practices" for aviation insurance underwriting. Orcutt effectively emailed herself an aviation underwriting "starter kit." There is no legitimate QBE-business related reason for Orcutt to have sent these materials to her personal email address on or around August 12.

77. Also on August 12, at 9:45 PM, Orcutt emailed, from her QBE email to her personal email address, information concerning her QBE 401k plan. Upon information and belief, prior to sending any of the August 12 emails, Orcutt had been informed by Allen, Dekker, and/or Applied that Allen was planning on poaching a team to start Applied's aviation insurance group, and Orcutt (as an employee would typically do upon contemplating or in advance of departure) sent herself the 401k information for future use following her employment with QBE.

78. Upon information and belief, Orcutt misappropriated QBE confidential documents for the purpose of using the information contained therein in her new job with Applied, and did so at the direction of, and/or with the blessing of Allen, Dekker, and/or Applied.

79. On August 13, the day after Allen's "Meeting with Applied," Kristina Mulligan, a Senior Underwriter in QBE's Aviation division and one of the employees who resigned on September 20, emailed a Microsoft excel spreadsheet containing QBE confidential information from her QBE email to her personal Gmail email account. This file is titled "2021 ATL Branch Log updated alt.xlsx" and contains confidential information of QBE's aviation insurance policyholders, including both new and renewal business, premium rates, and notes regarding the accounts. There is no legitimate QBE-business related reason for Mulligan to have sent this file to her personal email address on or around August 13.

80. Upon information and belief, Mulligan misappropriated a confidential QBE document for the purpose of using the information contained therein in her new job with Applied, and did so at the direction of, and/or with the blessing of Allen, Dekker, and/or Applied.

81. On August 17, Allen sent an email from his QBE email account to his personal Hotmail email account with several .pdf attachment named as follows:

- APPENDIX 1 – AVIATION DOCUMENT CHECKLIST 2020;
- Appendix 2 – Corporate UW Manual 2021;
- APPENDIX 3 – ImageRight Handbook v4; and
- AVIATION UNDERWRITING RULES AND GUIDELINES effective July 2021 FINAL.

82. The documents attached to Allen's email are confidential QBE documents containing proprietary manuals and business methods developed and created by QBE's Aviation team. There is no legitimate QBE-business related reason for Allen to have sent these materials to his personal email address on or around August 17.

83. Upon information and belief, Allen and Dekker are using the misappropriated QBE manuals and business methods to jump-start Applied's new aviation insurance group and compete with QBE.

84. On August 26, Allen emailed QBE's Vice President of HR inquiring about how QBE treats bonuses for departing employees, under the guise of asking about a recently departed employee. Allen believed that QBE should offer pro-rated bonuses to departing employees, notwithstanding that HR informed him that employees who resign are ineligible for bonuses. Upon information and belief, Allen was surreptitiously inquiring whether or not he could assure the dozen employees he was poaching to join him at Applied that they would receive pro-rated bonuses from QBE notwithstanding their resigning 4 months prior to the end of the year.

85. According to the website of the Department of State of the State of Delaware, Applied Underwriters Aviation, LLC was incorporated in the State of Delaware on September 9.

86. Upon information and belief, on or before September 20, Applied extended offers of employment to Allen, Dekker, and the other QBE employees who resigned on September 20.

87. On September 24, Peter Guy, QBE's Vice President, Claims Leader for the Aviation Division emailed Senior Claims Specialist Portia Butsko attaching a list he had authored that day, of over a dozen insurer and broker contacts (containing names and email addresses) operating in the aviation coinsurance business, asking Butsko if she could "think of any others? Insurers or brokers." Both Guy and Butsko had provided QBE, on September 20, with two weeks' notice of their intent to resign from QBE. Upon information and belief, Guy had

acquired the contact names and email addresses from confidential QBE documents. There is no legitimate QBE-business related reason for Guy to have created this list and inquired about such contacts with Butsko on September 24.

88. Upon information and belief, Guy and Butsko misappropriated confidential QBE information for the purpose of using the information in their new jobs with Applied for the benefit of Applied's new aviation insurance group, and did so at the direction of, and/or with the blessing of Allen, Dekker, and/or Applied.

89. Upon information and belief Applied was aware of the Employment Agreements, and Allen's and Dekker's obligations contained therein, including their 90-day notice period, when it hired Allen and Dekker in or about September 2021.

90. Upon information and belief, Applied was aware of Allen's non-solicitation obligations when it met with him on at least two occasions prior to September 20, and discussed the QBE employees and business Allen intended to target and steal from QBE. Applied approved Allen's direct targeting and solicitation of QBE's workforce, and/or indirectly facilitated Allen's scheme by recruiting and hiring the 12 QBE employees that Allen had identified for Applied.

91. Upon information and belief, given Allen's pitch to Applied during his clandestine meetings involved highlighting the revenue generating capability of the dozen poached QBE employees (earned through their business with QBE policyholders), Applied hired Allen, Dekker, and the other QBE employees because it intended for the new Applied aviation insurance group to target QBE's policyholders, misuse QBE's confidential information, and unfairly compete to steal QBE's business.

92. Upon information and belief, Applied was also aware Allen and other QBE employees had misappropriated QBE's confidential information and trade secrets in order to jump start the Applied aviation group and provide it with an unfair competitive advantage over QBE.

Dekker's Unlawful Activities

93. On or about December 2, David Watkins (the current QBE SVP, Head of Aviation) learned from a broker that Dekker had been soliciting the business of a QBE Aviation policyholder on behalf of Applied Underwriting. Dekker had emailed a brokerage company from an Applied Underwriters email address regarding proposed terms for an aviation insurance policy for a QBE policyholder whose policy with QBE was soon expiring and coming up for renewal. Dekker—who knew the specific terms of the QBE policyholders' expiring policy, and that QBE would have proposed a rate increase for its renewal terms—attempted to undercut the renewal terms that QBE had quoted its policyholder.

94. Through the operation of his Employment Agreement, Dekker remained an employee of QBE on December 2; while he was not actively performing work for QBE during the notice period, he continued to receive compensation and benefits through December 19.

95. On December 6, Kathryn Rouker (QBE VP, Aviation Underwriting) participated in a virtual renewal meeting held and hosted by a broker for the purpose of providing prospective insurance carriers with the opportunity to learn about several insureds' aviation businesses and any changes thereto. She had been invited to join the meeting because some participating insureds were QBE policyholders. Several insurance carriers and insureds with aviation businesses attended the meeting.

96. Ms. Rouker observed Dekker join and participate in this virtual renewal meeting, including by asking questions of other participants. Through the operation of his Employment Agreement, Dekker remained an employee QBE as of December 6, although he was not actively performing work for QBE. There was no legitimate QBE-related business reason for Dekker to participate in that virtual meeting.

97. On or about December 14, Dekker sent an email to a broker with and through whom QBE conducts business, in which Dekker attached a contact list of Applied Underwriters Aviation named "11-01-21 Contact Sheet." The broker forwarded the email and its attachments to David Watkins. The contact list contained the following names and titles, along with phone numbers, and Applied Underwriters email addresses (i.e., @auw.com):

Underwriting:

- Steven Allen – President, Aviation
- David T. Gray – EVP Deputy Head of Aviation
- William C. Harwell – SVP, Underwriting Leader
- Gregory N. Dekker – SVP, Branch Manager
- Donna A. D'Oria – AVP Underwriting Operations Manager
- Kristina B. Mulligan – Executive Underwriter
- Kristina L. Orcutt – Executive Underwriter
- Scott Stewart – VP, Underwriting Lead

Workers Comp:

- Brian Neal – SVP, Head of Aviation Worker's Compensation
- Jennifer J. Reynolds – Executive Underwriter

Claims Department:

- Peter F. Guy – EVP, Head of Aviation Claims
- Portia K. Butsko – AVP, Vertical Claims Manager
- Joshua Wilcoxon – AVP, Aviation Claims

98. According to the website LinkedIn, as of December 16, David Gray, William Harwell, Donna A. D'Oria, Kristina Mulligan, Kristina Orcutt, Scott Stewart, Brian Neal, Jennifer Reynolds, Peter Guy, and Portia Butsko all identified their employer as Applied Underwriting.

99. The covenants contained in the Employment Agreements signed by Allen

and Dekker, including the 90-day notice period and non-solicitation covenants, are reasonably necessary to protect QBE's legitimate business interests.

100. In coordination with his new employer, Applied, with whom Allen clandestinely met on at least two occasions to hatch his plot, Allen orchestrated a poaching scheme to steal one third of QBE's Aviation division and, along with Orcutt and Mulligan, misappropriate QBE's confidential information—including market analyses, business strategy, and underwriting policy and procedure manuals, checklists, and model policy language—in order to jumpstart Applied's new aviation insurance group. Armed with an experienced group of former QBE employees, and QBE's misappropriated confidential information, Allen, Dekker, and the other former QBE employees wasted no time in beginning to market their new Applied aviation insurance group, and target and solicit QBE's policyholders.

101. Because QBE's policyholder, broker, and employee relationships and related goodwill, and QBE's knowledge and expertise, which have been built and fostered over time at considerable expense to QBE, are essential to its business success, Respondents must be enjoined from breaching Allen's and Dekker's Employment Agreements, unlawfully utilizing QBE's confidential information and trade secrets and unfairly competing with QBE.

102. Only through the issuance of an injunction can Respondents be prevented from irreparably harming and unlawfully competing with QBE to its severe detriment.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

103. Petitioner repeats and realleges each and every allegation contained in Paragraphs "1" through "102" above, with the same force and effect as though set forth herein at length.

104. By retaining, using, and/or disclosing QBE's Confidential Information on

behalf of themselves and Applied, Allen and Dekker have breached their confidentiality, non-use, non-disclosure and other obligations in the Employment Agreements.

105. By Allen's conduct in targeting, soliciting, and poaching a dozen QBE employees (directly or indirectly through Applied), Allen has breached the employee non-solicitation restrictions contained in the Agreements.

106. By Allen's and Dekker's conduct in soliciting QBE policyholders (directly or indirectly through brokers/agents), Allen and Dekker have breached the broker, agent, and policyholder non-solicitation restrictions contained in the Agreements.

107. By failing to provide QBE with 90 days' advance notice of their desire to work with Applied, Allen and Dekker have breached their notice obligation under the Employment Agreements.

108. Unless enjoined, upon information and belief, Allen and Dekker will continue to violate the covenants contained in the Employment Agreements.

109. As a result of the foregoing actions of Allen and Dekker and their breaches of the Employment Agreements, QBE has suffered and will continue to suffer irreparable harm.

110. QBE has no adequate remedy at law to prevent these breaches of contracts or injuries.

111. Accordingly, QBE is entitled to an injunction prohibiting Allen and Dekker from violating the terms of the Employment Agreements.

AS AND FOR A SECOND CAUSE OF ACTION
(Misappropriation of Confidential Information)

112. Petitioner repeats and realleges each and every allegation contained in Paragraphs "1" through "111" above, with the same force and effect as though set forth herein at

length.

113. By virtue of their conduct, Allen and Dekker breached their duty not to misappropriate QBE's confidential information.

114. By virtue of Allen's and Dekker's conduct, Applied misappropriated QBE's confidential information and trade secrets.

115. By virtue of their employment by Applied and their possession of significant and vital confidential information regarding QBE and its policyholders, it is inevitable that Allen and Dekker will continue to use and disclose QBE's confidential information.

116. Allen and Dekker are continuing to use, disclose to others and misappropriate QBE's confidential information.

117. Respondents have acted with intentional, malicious and/or otherwise wanton disregard of QBE's rights.

118. Upon information and belief, Respondents have profited and will continue to profit from the aforesaid misappropriation of QBE's confidential information.

119. Unless enjoined, Respondents' misappropriation of QBE's confidential information will continue and will cause QBE to suffer irreparable harm.

120. QBE has no adequate remedy at law to prevent this irreparable harm, and is entitled to an injunction prohibiting Respondents from misappropriating QBE's confidential information.

AS AND FOR A THIRD CAUSE OF ACTION
(Breach of Duty of Loyalty Against Allen and Dekker)

121. Petitioner repeats and realleges each and every allegation contained in Paragraphs "1" through 120" above, with the same force and effect as though set forth herein at

length.

122. Allen and Dekker were employed by QBE in a position of trust and confidence.

123. By virtue of their position at QBE, Allen and Dekker each owed a fiduciary duty and a duty of loyalty to QBE both during and after their employment and was obligated not to divert QBE's business in which QBE had a tangible expectancy, not to target, poach, or otherwise interfere with QBE's workforce, and not to subvert or misappropriate QBE Confidential Information.

124. Allen and Dekker each breached their fiduciary duties and duties of loyalty owed to QBE by subverting or misappropriating QBE's Confidential Information and Trade Secrets, beginning to work for a competitor while still employed by QBE, and, at least as to Allen, directly or indirectly targeting, poaching, and interfering with QBE's workforce.

125. As a direct and proximate result of Allen's and Dekker's breaches of their fiduciary duties and duties of loyalty, QBE has suffered and will continue to suffer extensive irreparable injury, loss of goodwill, harm to its business, and other injury and damages for which there is no adequate remedy at law. QBE will continue to suffer this harm unless and until Allen and Dekker are restrained from taking further actions in breach of their fiduciary duties and duties of loyalty to QBE.

AS AND FOR A FOURTH CAUSE OF ACTION
(Unfair Competition)

126. Petitioner repeats and realleges each and every allegation contained in Paragraphs "1" through "125" above, with the same force and effect as though set forth herein at length.

127. By virtue of the conduct as alleged herein, Respondents have intentionally,

knowingly and maliciously competed unfairly with QBE, including but not limited to their conduct in using, disclosing and/or misappropriating QBE's confidential and proprietary information and trade secrets.

128. Respondents have acted with intentional, malicious and/or wanton disregard of QBE's rights.

129. Unless enjoined, Respondents will continue to engage in unfair competition against QBE.

130. QBE has no adequate remedy at law to prevent this irreparable harm.

131. Accordingly, QBE is entitled to an injunction prohibiting Respondents from continuing to engage in unfair competition against it.

* * *

WHEREFORE, Petitioner QBE requests that the Court enter an Order:

1. Enjoining and restraining Respondents from breaching the covenants contained in the Employment Agreements;
2. Enjoining and restraining Respondents from using, disclosing, or misappropriating QBE's trade secrets and confidential business information;
3. Enjoining and restraining Respondents from breaching their duty of loyalty to QBE;
4. Enjoining and restraining Respondents from engaging in unfair competition against QBE; and
5. Directing Respondents to return any and all original and copies of documents or electronic data containing QBE's confidential information and trade secrets;
6. Granting QBE leave to conduct expedited discovery in aid of its

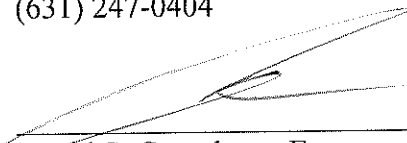
application for injunctive relief; and

7. Granting QBE all allowable costs, attorneys' fees and other litigation expenses, and such other and further relief as is just and proper.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

Dated: January 18, 2022
Melville, New York

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