

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NETPOSITIVE CORPORATION,

Plaintiff,

v.

QBE AMERICAS, INC., d/b/a QBE
REGIONAL COMPANIES (N.A.) INC.,

Defendant.

CASE NO. C18-0858-JCC

ORDER

I. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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II. “CONFIDENTIAL” MATERIAL

Documents, ESI, and other tangible things produced or otherwise exchanged in this action which include confidential material as defined by law shall be treated as “Confidential” for purposes of this lawsuit, and may include client roles and customer lists, including newly-acquired customers, pricing lists or information, and other proprietary or trade secret business information.

III. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

IV. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

(a) the receiving party’s counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

1 (b) the officers, directors, and employees (including in house counsel) of the
2 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
3 agree that a particular document or material produced is for Attorney's Eyes Only and is so
4 designated;

5 (c) experts and consultants to whom disclosure is reasonably necessary for
6 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
7 (Exhibit A);

8 (d) the Court, court personnel, and court reporters and their staff;

9 (e) copy or imaging services retained by counsel to assist in the duplication of
10 confidential material, provided that counsel for the party retaining the copy or imaging service
11 instructs the service not to disclose any confidential material to third parties and to immediately
12 return all originals and copies of any confidential material;

13 (f) during their depositions, witnesses in the action to whom disclosure is
14 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
15 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
16 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
17 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
18 under this agreement;

19 (g) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information.

21 4.3 Filing Confidential Material. Before filing confidential material or discussing or
22 referencing such material in court filings, the filing party shall confer with the designating party
23 to determine whether the designating party will remove the confidential designation, whether the
24 document can be redacted, or whether a motion to seal or stipulation and proposed order is
25 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
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1 standards that will be applied when a party seeks permission from the Court to file material
2 under seal.

3 **V. DESIGNATING PROTECTED MATERIAL**

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
5 or non-party that designates information or items for protection under this agreement must take
6 care to limit any such designation to specific material that qualifies under the appropriate
7 standards. The designating party must designate for protection only those parts of material,
8 documents, items, or oral or written communications that qualify, so that other portions of the
9 material, documents, items, or communications for which protection is not warranted are not
10 swept unjustifiably within the ambit of this agreement.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
12 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
13 unnecessarily encumber or delay the case development process or to impose unnecessary
14 expenses and burdens on other parties) expose the designating party to sanctions.

15 If it comes to a designating party's attention that information or items that it designated
16 for protection do not qualify for protection, the designating party must promptly notify all other
17 parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
19 agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
20 ordered, disclosure or discovery material that qualifies for protection under this agreement must
21 be clearly so designated before or when the material is disclosed or produced.

22 (a) Information in documentary form: (*e.g.*, paper or electronic documents
23 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
24 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
25 contains confidential material. If only a portion or portions of the material on a page qualifies for
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1 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
2 making appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
4 parties must identify on the record, during the deposition, hearing, or other proceeding, all
5 protected testimony, without prejudice to their right to so designate other testimony after
6 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
7 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

8 (c) Other tangible items: the producing party must affix in a prominent place
9 on the exterior of the container or containers in which the information or item is stored the word
10 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
11 the producing party, to the extent practicable, shall identify the protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
13 designate qualified information or items does not, standing alone, waive the designating party’s
14 right to secure protection under this agreement for such material. Upon timely correction of a
15 designation, the receiving party must make reasonable efforts to ensure that the material is
16 treated in accordance with the provisions of this agreement.

17 VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
19 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
20 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
21 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
22 challenge a confidentiality designation by electing not to mount a challenge promptly after the
23 original designation is disclosed.

24 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
25 regarding confidential designations without court involvement. Any motion regarding
26 confidential designations or for a protective order must include a certification, in the motion or in

1 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
2 conference with other affected parties in an effort to resolve the dispute without court action.
3 The certification must list the date, manner, and participants to the conference. A good faith
4 effort to confer requires a face-to-face meeting or a telephone conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
6 intervention, the designating party may file and serve a motion to retain confidentiality under
7 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
8 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
9 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
10 other parties) may expose the challenging party to sanctions. All parties shall continue to
11 maintain the material in question as confidential until the Court rules on the challenge.

12 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED** 13 **IN OTHER LITIGATION**

14 If a party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
16 party must:

17 (a) promptly notify the designating party in writing and include a copy of the
18 subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to
20 issue in the other litigation that some or all of the material covered by the subpoena or order is
21 subject to this agreement. Such notification shall include a copy of this agreement; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued
23 by the designating party whose confidential material may be affected.

24 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
26 material to any person or in any circumstance not authorized under this agreement, the receiving
party must immediately (a) notify in writing the designating party of the unauthorized

1 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
2 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
3 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5 **IX. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 When a producing party gives notice to receiving parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of the
9 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
10 provision is not intended to modify whatever procedure may be established in an e-discovery
11 order or agreement that provides for production without prior privilege review. The parties agree
12 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

13 **X. NONTERMINATION AND RETURN OF DOCUMENTS**

14 Within 60 days after the termination of this action, including all appeals, each receiving
15 party must return all confidential material to the producing party, including all copies, extracts
16 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
17 destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
19 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,
20 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
21 work product, even if such materials contain confidential material.

22 The confidentiality obligations imposed by this agreement shall remain in effect until a
23 designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED this 15th day of October, 2018.

3 SUMMIT LAW GROUP PLLC
4 Attorneys for Plaintiff

GORDON REESE SCULLY
MANSUKHANI, LLP
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10 **ORDER**

11 PURSUANT TO STIPULATION, IT IS SO ORDERED.

12 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
13 documents in this proceeding shall not, for the purposes of this proceeding or any other
14 proceeding in any other court, constitute a waiver by the producing party of any privilege
15 applicable to those documents, including the attorney-client privilege, attorney work-product
16 protection, or any other privilege or protection recognized by law.

17 DATED this 17th day of October 2018.

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22 John C. Coughenour
23 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____ [date] in the case of *Netpositive Corporation v. QBE Americas, Inc., d/b/a QBE Regional Companies (N.A.) Inc.* I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

(Signature)

(Printed Name)

(City and State where sworn and signed)

(Dated)