

AMENDED THIS Nov. 9, 2016 PURSUANT TO
MODIFIÉ CE A CONFORMÉMENT À
☒ RULE/LA RÈGLE 26.02 (A)

☐ THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____

Court File No.: 15-11162-00CL

C. Irwin
Registrar / Greffier
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE
ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

BETWEEN:

NOBILIS HEALTH CORP.

Plaintiff

- and -

SUNNY PURI, M5V ADVISORS INC. c.o.b. as ANSON GROUP CANADA,
ADMIRALTY ADVISORS LLC, FRIGATE VENTURES LP, ANSON INVESTMENTS LP,
ANSON CAPITAL LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP, ANSON
CATALYST MASTER FUND LP, ACF GP, and JOHN DOE DEFENDANTS 1-20

Defendants

AND BETWEEN:

SUNNY PURI, M5V ADVISORS INC. c.o.b. as ANSON GROUP CANADA,
ADMIRALTY ADVISORS LLC, FRIGATE VENTURES LP, ANSON INVESTMENTS LP,
ANSON CAPITAL LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP, ANSON
CATALYST MASTER FUND LP, and ACF GP

Plaintiffs by Counterclaim

- and -

NOBILIS HEALTH CORP., CHRISTOPHER H. LLOYD and HARRY FLEMING

Defendants by Counterclaim

AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM
OF THE ANSON DEFENDANTS
SUNNY PURI AND M5V ADVISORS INC.
c.o.b. as ANSON GROUP CANADA

TO THE DEFENDANTS TO THE COUNTERCLAIM

A LEGAL PROCEEDING has been commenced against you by way of a counterclaim
in an action in this court. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or an Ontario lawyer acting for you must prepare a defence to counterclaim in Form 27C prescribed by the Rules of Civil Procedure, serve it on the plaintiff by counterclaim's lawyer or, where the plaintiff by counterclaim does not have a lawyer, serve it on the plaintiff by counterclaim, and file it, with proof of service, in this court, WITHIN TWENTY DAYS after this statement of defence and counterclaim is served on you.

If you are not already a party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

If you are not already a party to the main action, instead of serving and filing a defence to counterclaim, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your defence to counterclaim.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Issued: ~~December 11, 2015~~
November 9, 2016

Issued by:

**C. Irwin
Registrar**

Local registrar

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Lawyers for the Plaintiff Nobilis Health Corp., Defendant by Counterclaim

AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM
OF THE ANSON DEFENDANTS
SUNNY PURI AND M5V ADVISORS INC.
c.o.b. as ANSON GROUP CANADA

1. Sunny Puri, M5V Advisors Inc. c.o.b. as Anson Group Canada, Admiralty Advisors LLC, Frigate Ventures LP, Anson Investments LP, Anson Capital LP, Anson Investments Master Fund LP, AIMF GP, Anson Catalyst Master Fund LP, and ACF GP (the "Defendants") ~~Mr. Sunny Puri and M5V Advisors Inc. c.o.b. as Anson Group Canada (the "Anson Group Canada" and together with Mr. Puri, the "Defendants")~~, admit the allegations contained in paragraphs 10, 12 and 28 of the Statement of Claim.

2. ~~The Defendants have insufficient knowledge to plead to the allegations contained in paragraphs 13 to 16 and 18 to 21 of the Claim.~~

3. The Defendants deny that the plaintiff is entitled to the relief claimed in paragraph 1 of the Claim, and except as otherwise expressly admitted herein, deny all other allegations in the Claim.

Overview

4. On October 9, 2015, the website *Seeking Alpha* posted a blog entry written by Mr. Puri, an analyst for the Anson Group Canada, entitled "Nobilis: About to Fall from Nobility, Part I, 65% + Downside" (the "**Blog**"). The Blog identified numerous causes for concern about the share value of the plaintiff, Nobilis Health Corp., which Mr. Puri had identified from his research.

5. Starting on October 11, Nobilis responded to the Blog entry with a concerted public relations campaign, of which this action against the Defendants is a

part. This P.R. campaign was intended to vilify the Defendants and convince investors that the Blog was "unlawful", "false", "defamatory", contained intentionally "misleading statements", and that it should be ignored.

6. The plaintiff's campaign to discount and discredit the Defendants has included disseminating false and defamatory accusations among the investment community, including on national television, social media, various other websites, and in its press releases.

7. On November 5, 2015, Nobilis issued this Claim as part of a multimedia P.R. blitz against the Defendants, without even bothering to serve the Claim on the Defendants. Less than a week later, on November 11, 2015, Nobilis disclosed that its third quarter 2015 financial earnings would be delayed, ~~and as of the date of this pleading those earnings have yet to be released.~~ Nobilis has also ~~been~~ became subject to a management cease trade order ~~since~~ on November 23, 2015, in connection with their failure to file financial statements in a timely manner. This cease trade order was only lifted in January 2016. Nobilis' Claim is an attempt to distract investors from the substantial issues surrounding the company, all of which were matters of public record, and discussed in the Blog.

The Defendants

(a) Sunny Puri

8. Mr. Puri resides in Toronto, Ontario. He is a Chartered Professional Accountant with practical auditing experience. At all material times Mr. Puri was and continues to be employed as an analyst at the Anson Group Canada.

(b) M5V Advisors Inc.

9. M5V carries on business as Anson Group Canada, an investment management company incorporated in Ontario. The Anson Group Canada, together with other entities, advises multiple investment funds. The Anson Group Canada is based out of Toronto, Ontario.

The Plaintiff

10. The plaintiff Nobilis is a company incorporated in British Columbia, headquartered in Houston, Texas, with operations in Arizona and Texas. Nobilis was formerly known as Northstar Healthcare and conducted a C\$148 million IPO in 2007. By fiscal year ended December 31, 2008 the company had a goodwill and intangible impairment of C\$131 million and struggled, until a series of acquisitions in 2014 and 2015.

11. Nobilis owns ambulatory surgical centres and medical service companies, and markets a controversial spinal surgery technique through its surgical centres. Nobilis is publicly traded on the Toronto Stock Exchange under the symbol "NHC", and on an affiliate of the New York Stock Exchange, the NYSE MKT, under the symbol "HLTH".

Background

12. On October 9, 2015 Mr. Puri posted the Blog on *Seeking Alpha*. A full copy of the Blog is attached as "Schedule A" to the Claim. The Blog contained Mr. Puri's analysis of Nobilis based on his research of publicly available information.

13. Relying on Mr. Puri's analysis, one of the funds that the Anson Group Canada co-advises took a "short" position against Nobilis. Essentially, the fund was making a bet that the share price of Nobilis would decline. If that bet were wrong, the Anson Group Canada faced considerable and indefinite financial risk.

14. *Seeking Alpha* is a website offering stock market insights and financial analysis of companies. The content presented on *Seeking Alpha* is crowd-sourced, meaning that it is obtained from an online community rather than from employees of *Seeking Alpha*. The *Seeking Alpha* website contains a broad range of articles and research used by those involved in the financial sector.

15. The Blog was anonymously posted on *Seeking Alpha* under the name "The Emperor Has No Clothes". Mr. Puri chose to remain anonymous when he posted the Blog for numerous reasons, including to protect against possible threats to his safety and security; to avoid unnecessarily risking his or the Anson Group Canada's current business activities and relationships; and to focus attention on the merits of the post's content as opposed to the author.

16. Mr. Puri honestly believed (and still believes) the facts and opinions set out in the Blog, which was prepared based on his review of publicly available documents and his analysis of these documents. Prior to writing or posting the Blog,

Mr. Puri conducted reasonable diligence concerning the statements contained in the Blog. This investigation included the review of:

- (a) Nobilis' publicly filed information, including:
 - (i) form 10-k 2014;
 - (ii) investor calls and transcripts of calls;
 - (iii) all Northstar and Nobilis filings available on Sedar and Edgar from the company's inception to the present date;
- (b) information available relating to Nobilis in the public domain;
- (c) publicly available information about Nobilis' management team;
- (d) publicly available information about the AccuraScope marketed procedures and related lawsuits, including:
 - (i) North American Spine AccuraScope marketing documentation from August 2013;
- (e) lawsuits involving Nobilis' management;
- (f) the lawsuit filed against Cheryl Pohl;
- (g) lawsuits filed against Nobilis' subsidiaries, including:
 - (i) First Nobilis;
 - (ii) First Surgical Partners;
 - (iii) Athas; and
 - (iv) North American Spine;
- (h) lawsuits filed against Lawrence Rothstein (one of the founders of the AccuraScope procedure);

- (i) discussions with management on various occasions;
- (j) publicly available information about the companies Nobilis had acquired;
and
- (k) SEDI insider filings.

17. Later on October 9, 2015, Nobilis issued a statement that the company was not aware of any material undisclosed development. Nobilis did not refer explicitly to the Blog.

18. On October 11, 2015, Nobilis escalated its response to the Blog by issuing another statement, this time specifically responding to the claims in the Blog (the **"October 11 Press Release"**). Nobilis characterized the statements in the Blog as being inaccurate, inflammatory accusations containing several misrepresentations about the company. Nobilis also stated that it had appointed and retained outside independent counsel Robert Hopper (**"Hopper"**) and Lanny Davis (**"Davis"**), lawyers from Hopper & Associates and Davis and Associates respectively, to conduct a "full review of each and every allegation raised" in the Blog. Importantly, in this statement, Nobilis stated that it stood by its "updated summer forecast" and thereby denied that the Blog had had any impact on its business.

19. On October 16, 2015, Nobilis again issued a press release (the **"October 16 Press Release"**). The October 16 Press Release repeated statements about Nobilis' decision to hire Hopper and Davis to conduct an independent review of the Blog's allegations. It also directly attacked the Blog before receiving the benefit of the

announced "independent review", by characterizing the Blog as a "spurious and misleading posting".

20. On November 3, 2015, Nobilis issued a press release stating that Hopper and Davis had finished their investigation, and included the results of the investigation (the "**Hopper-Davis Report**") in the text of the press release. Nobilis also stated that the Hopper-Davis Report would be available on Nobilis' website. The Hopper-Davis Report supported and reiterated Nobilis' position, but did not address a number of concerns raised in the Blog.

21. The following day, November 4, 2015, Nobilis announced in a press release (the "**November 4 Press Release**") that the Special Committee of the Board of Directors of Nobilis authorized Nobilis' management "to engage litigation counsel in the United States and in Canada to commence litigation against the hedge fund and individuals behind the Seeking Alpha blog".

22. The November 4 Press Release repeated the assertions in the Hopper-Davis Report that "...the allegations [in the Blog] are false, misleading, or without foundation". Nobilis went so far as to say that the Blog was a "scheme to 'short and distort' and manipulate Nobilis's stock". The November 4 Press Release also characterized the Blog as a "manipulative action[s]". Nobilis' intention was that these statements would be repeated in the media.

23. Following Nobilis' press release, and also on November 4, 2015, the Business News Network ("**BNN**") ran multiple pieces on Nobilis and Nobilis' announcement that it planned to sue what it called "market-manipulators" in an action it

planned to commence on November 5, 2015. Reporter Amber Kanwar discussed Nobilis and the Blog at length, including stating that Nobilis had named the Anson Group Canada as the defendant in the lawsuit and had also contacted the Ontario Securities Commission about the "market-manipulators".

24. Before issuing the Claim, Nobilis first published it to Ms. Kanwar with the intention of having her publish its defamatory contents. Still on November 4, 2015, Ms. Kanwar tweeted a picture of the first page of Nobilis' claim against the Defendants on her twitter account @AmberKanwar. Later that day, she tweeted Nobilis' accusations against the Defendants.

25. Nobilis continued its attack on the Blog the next day, November 5, 2015, when it issued this Claim. In addition to Ms. Kanwar, Nobilis (or its representatives) transmitted a copy to Michael Hainsworth and other representatives of BNN, the identity of whom are known to Nobilis. On November 5, 2015 Chris Lloyd, Nobilis' then-CEO, gave a televised interview on BNN with Ms. Kanwar and Michael Hainsworth during which he discussed the content of the Claim. Nobilis published the Claim to BNN before serving the Defendants with a copy of the Claim, which they did not do until December 10, 2015.

26. During the BNN interview, Mr. Lloyd made a number of statements about the Blog. During the interview with Mr. Lloyd, the BNN reporters stated that Nobilis had named Mr. Puri and the Anson Group Canada as the "shortsellers" behind the Blog. Mr. Lloyd accepted this statement as true.

27. On November 6, 2015, Nobilis issued a press release entitled "Nobilis Sues Anson Funds and Anson Analyst Sunny Puri for \$300 Million" (the "**November 6 Press Release**"). In the November 6 Press Release, Nobilis accused the Anson Group Canada and Mr. Puri of perpetrating a scheme to damage Nobilis' reputation and business relationships "in order to profit through short-selling of Nobilis stock". It goes on to call this scheme a "short attack" against Nobilis.

28. Contrary to paragraphs 46-49 of the Claim, on November 9, 2015, Mr. Puri, acting in good faith, corrected one factual item in the Blog posted on *Seeking Alpha* (the "**Correction**"). The Correction involved updating a chart and revising numbers in four sentences of the October 9, 2015 Blog based on information in the Hopper-Davis Report. The changes were not material and did not affect either Mr. Puri's views or the opinions he delivered in the Blog. In addition to posting the Correction on *Seeking Alpha*, the original October 9, 2015 Blog was also amended to reflect the corrections on November 9, 2015.

29. On November 17, 2015, Mr. Lloyd gave another interview during which he again made further comments on the Blog, and the Anson Group Canada. This interview was posted on the website "www.midasletter.com".

30. On January 7, 2016, Nobilis announced that Mr. Lloyd had resigned as CEO of Nobilis, effective January 6, 2016. Mr. Harry Fleming, the then-current executive Chairman of the Board of Directors of Nobilis, was named CEO with immediate effect.

31. On August 10, 2016, Mr. Fleming gave an interview on the BNN with Jon Elrichman and Ms. Kanwar. During this interview, Mr. Fleming made a number of statements regarding the "short attack", its effect on Nobilis' business, and the ongoing claim. In this interview, Mr. Fleming specifically stated that the short sellers had "zero impact" on Nobilis' business.

The Blog Is Not Misleading and/or False and Defamatory

32. Contrary to the allegations in the Claim, including specifically in paragraphs 29 and 62, the Blog is not as a whole misleading and/or false and defamatory. To the contrary, all of the statements presented in the Blog, as amended by the Correction, are justified and are substantially true in their plain and ordinary meaning.

33. The Defendants specifically deny that they were, in any way, actuated by malice or that they acted with "reckless disregard" for the truth or falsity of the contents of the Blog.

34. Further, or in the alternative, the statements presented in the Blog comprise fair comment by Mr. Puri concerning the plaintiff's history and activities.

35. In the further alternative, all of the statements presented in the Blog are responsible communications for which Mr. Puri conducted reasonable diligence before publishing based on publicly available facts and documentation.

The Specific Statements Complained Of

36. While the Claim alleges that the Blog is misleading and/or false and defamatory in its entirety, in paragraph 29 the plaintiff alleges the Blog contains eight categories of specific defamatory statements (the "**Impugned Statements**"). Contrary to the allegations in the Claim, these are true statements of fact, or fair comment:

- (a) Mr. Puri's statements about the risks associated with the AccuraScope marketed procedure are justified statements of fact;
- (b) Mr. Puri's statements concerning Nobilis' use of "questionable marketing" are fair comment based on an assessment of the facts surrounding Nobilis' marketing practices;
- (c) Mr. Puri's statement that North American Spine made misleading claims of having been vetted by a major university, is a justified statement of fact;
- (d) the Blog contains fair comment based on Mr. Puri's assessment of the facts concerning Nobilis' acquisitions and consolidations;
- (e) the Blog, as corrected, accurately reflects insider sales of Nobilis shares in 2015;
- (f) the Blog states the true fact that Nobilis has changed CFO's four times;
- (g) Mr. Puri's statements that the accounting firm of Calvetti Ferguson is a firm with a total of 38 professionals, and that Nobilis has a complex structure, are justified statements of fact and fair comment respectively; and

- (h) Mr. Puri's statements regarding Victory Plano & Healthcare's inability to collect accounts receivable were fair comment based on an assessment of the facts known.

37. Moreover, in their plain and ordinary meaning, the Impugned Statements in the Blog do not bear the meaning attributed to them in the plaintiff's characterization, as set out in paragraphs 31-33, 35-36, 38-39, 41-42, 44-45, 47, 50, 52, 55, or 57-63 of the Claim, and in particular:

- (a) do not mean, nor could they be understood to mean, that the risks identified in the Blog with respect to the AccuraScope procedure will occur with any particular frequency, including making potential patients either "likely to suffer" or unlikely to suffer such consequences;
- (b) do not mean, nor could they be understood to mean, that the marketing practices undertaken by Nobilis were "deceptive" or "unethical";
- (c) do not mean, nor could they be understood to mean, that Nobilis claimed that the AccuraScope procedure was vetted by Louisiana State University;
- (d) do not mean, nor could they be understood to mean, that Nobilis artificially inflates revenues;
- (e) do not mean, nor could they be understood to mean, that Nobilis' CFOs or auditors resigned because of accounting improprieties;

- (f) do not mean, nor could they be understood to mean, that Nobilis' accounting is inaccurate;
- (g) do not mean, nor could they be understood to mean, that Nobilis retained an "inadequate" accounting firm "in order to conceal accounting or financial improprieties"; and
- (h) do not mean, nor could they be understood to mean, that Nobilis had difficulty collecting on certain accounts receivable.

38. The Blog's concerns about uncertainty surrounding Nobilis' accounting issues were further confirmed and justified on November 11, 2015, when Nobilis issued a press release announcing that it was unable to file its third quarter 2015 financial statements. Nobilis' CFO stated that Crowe Horwath, Nobilis' auditors, and management had identified "certain non-cash accounting differences arising in our conversion from U.S. GAAP and IFRS rules and opening balance sheet valuations" which would result in delaying the Company's filing and release of its' quarterly financial statements. The press release stated that Nobilis would "update shareholders as soon as possible regarding the release date of final numbers and the timing of the rescheduled earnings call".

39. On November 24, 2015, Nobilis issued another press release stating that "it is uncertain as to when the Company will be able to finalize its financial statements and related disclosures". Nobilis also announced that the Ontario Securities Commission had approved the issuance of a management cease trade order which took

effect on November 23, 2015. This cease trade order became permanent on December 4, 2015 and was only lifted on January 22, 2016.

40. ~~To date, Nobilis has not yet filed its quarterly financial statements.~~

Fair Comment

41. The Blog is not false and defamatory of Nobilis. Rather, the statements in the Blog are recognizable as Mr. Puri's fair comment about Nobilis, a publicly traded company. Mr. Puri, relying on publicly available information concerning Nobilis, commented on various substantial issues he honestly believed surrounded the company. Mr. Puri's comments on these issues are matters of public interest.

No Damages

42. The Defendants deny that the plaintiff has suffered any harm as a result of the Blog and put Nobilis to the strict proof thereof. In the October 11 Press Release, issued two days after the Blog was published, Nobilis stated that it stood by its "updated summer forecast", which is inconsistent with the Blog having a negative effect on Nobilis' business.

43. Further, on November 5, 2015, during Mr. Lloyd's interview on BNN, he stated that the Blog did not impact Nobilis' business outlook for the following year. When asked whether he had seen any change in Nobilis' interactions with customers since the Blog was published on October 9, 2015, Mr. Lloyd emphatically stated "no, none".

44. Similarly, on or about November 17, 2015, during Mr. Lloyd's interview with James West at www.midasletter.com, in response to questions about the current financial condition of the company with specific reference to cash on hand, revenue per quarter, profitability, EBITDA, rate of growth, and other financial measures, Mr. Lloyd stated that the company is "very, very healthy financially".

45. On November 6, 2015, Nobilis announced that it had closed a joint venture transaction to jointly own and operate a hospital in Scottsdale, Arizona. The successful closing of this joint venture is further evidence that the Blog did not negatively impact Nobilis' business.

46. As of August 2016, the Blog had not affected Nobilis' business. This is consistent with Mr. Fleming's interview with BNN on this date, in which he stated that the short sellers had "zero impact" on the business of Nobilis. As Nobilis' operations were completely unaffected it has therefore suffered no damages.

47. The Defendants explicitly deny that any decline in Nobilis' stock price is a form of damage that may be recovered by the company.

48. In the alternative, if the plaintiff has suffered any harm (which is denied), any harm suffered was caused by factors other than the publication of the Blog, including:

- (a) Nobilis' failure to release its third quarter financial statements in a timely manner;

- (b) Nobilis and/or Nobilis controlled subsidiaries were sued on October 29, 2015 in relation to non-payment of fees for equipment received from supplier Corin USA for approximately \$300,000;
- (c) by October 9, 2015, Nobilis stock had already fallen by 32% from a closing high reached on April 20, 2015;
- (d) this decline, both before and after October 9, 2015, was commensurate with declines experienced by other roll-up health care industry stocks, including, but not limited to, Valeant Pharmaceuticals International Inc., Concordia Healthcare Corp., Patient Home Monitoring Corp., CRH Medical Corp. and Convalo Health International Corp.;
- (e) other underlying weaknesses and uncertainty in the business of Nobilis identified in the Blog;
- (f) underlying weaknesses in the business of Nobilis already discussed in the public domain; and
- (g) other fluctuations in the stock market unrelated to company-specific factors.

49. An award of punitive damages is neither justifiable nor appropriate in this case. The Defendants at all times acted in good faith.

50. In the alternative, the damages claimed by the plaintiff in this action are excessive, remote and not recoverable at law.

51. The Defendants request that this action be dismissed with costs.

COUNTERCLAIM

52. The Defendants claim against Nobilis, Mr. Lloyd and Mr. Fleming:
- (a) general and aggravated damages in the amount of \$50 million;
 - (b) pre-judgment interest in accordance with the provisions of the *Courts of Justice Act*, R.S.O., 1990, c. C-34, as amended;
 - (c) a permanent injunction prohibiting further publication or utterance of the defamatory statements by the defendants by counterclaim;
 - (d) an apology and retraction of the defamatory statements by the defendants by counterclaim;
 - (e) costs of this counterclaim on a scale this Honourable Court deems to be just; and
 - (f) such further and other relief as this Honourable Court may sdeem just.

The Additional Defendants by Counterclaim

- (a) **Christopher Lloyd**

53. Christopher Lloyd was the CEO at Nobilis from December 2014 until he resigned from the position effective January 6, 2016. He was previously the CEO at Athas Health LLC, which was acquired by Nobilis in December 2014.

(b) Harry Fleming

54. Harry Fleming is the current CEO of Nobilis. He obtained this position when Mr. Lloyd left the company on January 6, 2016. Mr. Fleming formerly served as the CEO of Nobilis, and served as its President from November 2014 to April 2015. Mr. Fleming was also the Executive Chairman of Nobilis and a Director from September 2010 until June 2016.

Background

55. ~~Mr. Puri and the Anson Group Canada~~ The Defendants plead and rely upon the allegations contained in the Statement of Defence.

56. Following publication of the Blog on *Seeking Alpha*, ~~the defendant by counterclaim Nobilis did not contact either~~ neither Nobilis nor Mr. Lloyd contacted any of the Defendants in order to understand and address the concerns identified in the Blog. Instead, Nobilis and Mr. Lloyd commenced a public relations campaign against ~~Mr. Puri and the Anson Group Canada~~ the Defendants, alleging that they had engaged in illegal behaviour.

57. Nobilis and Mr. Lloyd perpetrated this attack not only through multiple press releases, but also by publishing the Claim to reporters at BNN, including Amber Kanwar and Michael Hainsworth, and to James West at the website "www.midasletter.com".

58. Nobilis and Mr. Lloyd undertook this crusade against ~~Mr. Puri and the Anson Group Canada~~ the Defendants for the predominant purpose of injuring their

reputation and business relationships. Nobilis and Mr. Lloyd acted with malice and in bad faith in order to deliberately harm the reputations of the Defendants.

59. After Mr. Lloyd left Nobilis, Mr. Fleming personally continued Nobilis' attack on the Defendants through his BNN interview on August 10, 2016. In this interview he acted with malice and in bad faith in order to deliberately harm the reputations of the Defendants.

60. These attacks were carried out for the purpose of diverting attention away from the ongoing issues being experienced by Nobilis and in a specific attempt to attribute Nobilis' share price decline to a purportedly unlawful "short-seller attack". Nobilis' plan was designed to exploit the public's lack of understanding about the practice of short-selling (that is, taking a position in a company's stock that profits if the company's share price declines).

The False and Defamatory Statements

(c) The November 4 Press Release

61. Nobilis and Mr. Lloyd began ~~its~~ their defamatory crusade against ~~Mr. Puri and the Anson Group Canada~~ the Defendants on November 4, 2015. In ~~its~~ their November 4 Press Release, Nobilis and Mr. Lloyd accused the authors of the Blog (whom ~~it~~ they would name later that day and the following day as the Anson Group Canada and Sunny Puri) of having engaged in a scheme to manipulate Nobilis stock. The November 4 Press Release stated:

- "The Special Committee has also instructed management to contact securities regulatory authorities in the United States and Canada to make a formal complaint."

- "Yesterday, the Special Committee released the findings of the independent review it commissioned to investigate the allegations of the short-selling anonymous blogger...The Company believes that Nobilis and its shareholders are the victims of a scheme to 'short and distort' and manipulate Nobilis's stock."
- "These manipulative actions have caused the Company and the Company's shareholders to unfairly suffer losses."

62. In their plain and ordinary meaning, these statements convey that ~~Anson Group Canada and Sunny Puri~~ the Defendants engaged in illegal activity to manipulate Nobilis stock by intentionally making false and misleading statements about Nobilis in order to drive down Nobilis' stock price and profit from a short-sale strategy.

(d) The November 4 BNN Coverage

63. Also on November 4, 2015, Nobilis and Mr. Lloyd named the Anson Group Canada as the author of the Blog and announced to BNN that it Nobilis was commencing legal action against the Anson Group Canada for engaging in market-manipulation. These statements were broadcast on BNN throughout the day of November 4, 2015. The statements Nobilis relayed to BNN that were repeated and broadcast were:

- "The company plans to sue short-sellers that it calls market-manipulators."
- "I know that Nobilis has notified the OSC about their concerns regarding what they said were market-manipulators..."

"What I do know is that the OSC has at least had, or Nobilis I should say has at least had a one way conversation with the OSC, ah, notifying them that they're concerned about short-sellers, they went so far as to call them market-manipulators, of course you have to wait for a thorough investigation before you can say something like that..."

64. In their plain and ordinary meaning, these statements convey that ~~Anson Group Canada and Mr. Puri~~ the Defendants engaged in illegal activity to manipulate

Nobilis stock by intentionally making false and misleading statements about Nobilis in order to drive down Nobilis' stock price and profit from a short-sale strategy. Further, these statements convey that the OSC is interested in the Defendants' conduct and that the conduct was therefore unlawful.

(e) The November 5 BNN Interview and Publication of the Claim

65. On November 5, 2015, as set out above, Chris Lloyd the then-CEO of Nobilis was interviewed on BNN. Nobilis had published the Claim to Ms. Kanwar and Mr. Hainsworth of BNN by this time. This publication had the effect of publicizing each of the allegations contained in the Claim against the Defendants named in the Claim.

The Claim states that:

- "The defendants, a family of hedge funds and associated-individuals identified below, devised and participated in an unlawful 'short attack' scheme against the Plaintiff, Nobilis Health Corp. in which the defendants broadcast false and defamatory information about Nobilis in order to drive down the price of Nobilis's publicly traded stock (the "Nobilis Common Stock") so that the defendants could illegally profit from short positions they had taken in Nobilis Common Stock and derivative securities thereof."
- "Nobilis is entitled to damages for reputational harm, disruption of its business and affairs, loss of corporate opportunities, costs of investigating and correcting the false and defamatory statements, costs of defending against investor litigation initiated as a result of the false and defamatory information, and other consequential damages resulting from the defendants scheme and market manipulation."
- "Legitimate short sellers transact based on their assessment that the market value of a stock is inflated as compared to its "real" value. In the present case, however, by preparing and publishing the false and defamatory Article, the defendants artificially created conditions in which the market value would decline, not based on any true over-valuation of the stock, but rather based on the defendants' release of false and defamatory information into the market."

- "Puri and the Anson Defendants credited the Article (which they had prepared or helped prepare) to an anonymous pseudonym, "The Emperor Has No Clothes" (the "Emperor"), whose reputation the Anson Defendants helped bolster through their involvement in prior schemes similar to the one perpetrated against Nobilis starting on October 9, 2015."
- "Indeed, the Article touts the Emperor's history of "being right" about stocks that are likely to decline; the Anson Defendants' manipulative actions in the market ensured that the stocks about which The Emperor had written would, in fact, lose value."
- "The defendants' short attack was intended to, and did, drive down the price of Nobilis securities to artificially low levels."
- "By participating in the short attack, each defendant, directly or indirectly, engaged or participated in a course of conduct relating to Nobilis securities that the defendant knew or reasonably ought to have known, and intended, would result in or contribute to an artificially low price for Nobilis securities, in violation of section 126.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S-1."
- "By participating in the short attack, each defendant, directly or indirectly, made a statement that the defendant knew or reasonably ought to have known was misleading or untrue, or that did not state a fact that was required to be stated or was necessary to make the statement not misleading, and that would reasonably be expected to have a significant effect on the market price or value of Nobilis securities, in violation of section 126.2 of the Ontario *Securities Act*, R.S.O. 1990, c. S-1."
- "The defendants conspired together to orchestrate the short attack in order to profit from the artificially reduced share price. Their conduct constitutes an unlawful means by which the share price of Nobilis was attacked."
- "The defendants knew, or reasonably ought to have known, that the short attack would harm the public investors in Nobilis shares, among others, and thereby interfered with economic relations between Nobilis and those investors."

66. In their plain and ordinary meaning, these statements convey that the named defendants to the Claim, ~~including Mr. Puri and the Anson Group Canada,~~ engaged in illegal activity to manipulate Nobilis' stock by intentionally making false and misleading statements about Nobilis in order to drive down Nobilis' stock price and profit

from a short-sale strategy. The statements not only allege that the Blog was an illegal attack amounting to "market-manipulation", but also assert that ~~Mr. Puri and the Anson Group Canada~~ the Defendants have engaged in such illegal activity previously. The clear implication of these statements is that ~~Mr. Puri and the Anson Group Canada~~ the Defendants cannot be trusted and are criminals.

67. In addition to publicizing each of the allegations in the Claim, Mr. Lloyd made the following specific defamatory comments in the interview:

- "We're just not the type of people to sit back and let people spread lies and say disingenuous things."
- "We engaged outside investigators and law enforcement individuals to go in and try to figure out who perpetrated this act."
- "I knew the moment this story came out was that it was baseless."
- "The truth is the facts as they laid out in the article just were misleading and false."

68. The plain and ordinary meaning of these comments was that the Defendants were spreading baseless and disingenuous lies in order to mislead the public. In addition, the reference to law enforcement individuals being engaged to figure out who "perpetrated" the acts discussed conveys that the Defendants were engaged in unlawful and illegal behaviour.

(f) The November 6 Press Release

69. The campaign by Nobilis and Mr. Lloyd continued on November 6, 2015. In the November 6 Press Release, Nobilis and Mr. Lloyd announced the filing of its Nobilis' lawsuit in the Ontario Superior Court ~~against Mr. Puri and the Anson Group Canada~~. The press release stated:

- "The claim alleges that these individuals perpetrated a scheme to damage Nobilis' reputation and business relationships in order to profit through short-selling of Nobilis stock."
- "The complaint specifically alleges that the Anson family of hedge funds and associated-individuals devised and participated in a "short-attack" scheme against the Plaintiff, Nobilis Health Corp., in which the defendants broadcast false and defamatory information about Nobilis in order to drive down the price of Nobilis' publicly traded stock (the "Nobilis Common Stock") so that the defendants could profit from short positions they had taken in Nobilis Common Stock and derivative securities thereof."
- "The key to the scheme was the written attack (the "Article") on Nobilis' business which the defendants prepared and anonymously posted under the pseudonym "The Emperor Has No Clothes"."
- "Nobilis believes it is entitled to damages for reputational harm, disruption of its business and affairs, loss of corporate opportunities, costs of investigating and correcting the false and defamatory statements, costs of defending against investor litigation initiated as a result of the false and defamatory information, and other consequential damages resulting from the defendants' scheme and market manipulation."

70. In their plain and ordinary meaning, these statements convey that ~~the Anson Group Canada, including Mr. Puri, the Defendants~~ engaged in illegal activity to manipulate Nobilis stock by intentionally making false and misleading statements about Nobilis in order to drive down Nobilis' stock price and profit from a short-sale strategy. The statements convey the meaning that ~~the Anson Group Canada and Mr. Puri~~ the Defendants are criminals engaged in unlawful behaviour.

(g) The November 17 www.midasletter.com Interview

71. On November 17, 2015, Nobilis and Mr. Lloyd continued to make defamatory remarks about ~~the Anson Group Canada and Mr. Puri~~ the Defendants in an interview with James West at www.midasletter.com. In the interview, Mr. West and Mr. Lloyd had the following dialogue:

Lloyd: So we continue to say, even though we think we're hopefully moving past the Seeking Alpha time in our life, we continue to say that there was a lot of just flat-out lies in that post, and then there was a lot of innuendo and sort of misdirection that was used to benefit people and confuse investors that just didn't really know any better. So as we continue to execute on our business model, the truth continues to come out, and investors are going to see that there's a lot of falsities that were put into that blog post.

...

West: Sure. How did Anson get involved with Nobilis in the first place?

Lloyd: I personally met with them earlier this year; they presented themselves as a potential long shareholder, and then from there, I didn't hear from them again until it was brought to our attention that they were the ones likely behind – or possibly behind, the blog post.

West: So they misrepresented their intentions in their first meeting?

Lloyd: Well, they certainly didn't come in and say hey, we're a short seller who likes to write articles and drive prices down and benefit that way. No, they didn't say one way or the other, but they certainly acted like they were interested in a long position in our stock.

72. In their plain and ordinary meaning, these statements by Mr. Lloyd, both personally and on behalf of Nobilis, accuse ~~Mr. Puri and the Anson Group~~ the Defendants of intentionally publishing false statements about Nobilis in the Blog. These statements also convey that ~~the Anson Group Canada and affiliated persons~~ the Defendants had misleading and misrepresentative interactions with Nobilis. Understood in the context of the other statements Nobilis and Mr. Lloyd had made about ~~Mr. Puri and the Anson Group Canada~~ the Defendants, the clear implication of these statements is that they had been engaged in a well-planned scheme to defraud Nobilis through underhanded and misleading tactics.

(h) The August 10, 2016 BNN Interview

73. Almost nine months later, on August 10, 2016, Mr. Fleming personally continued Nobilis' and Mr. Lloyd's ongoing public relations campaign against the Defendants, on his own behalf and on behalf of Nobilis. In an interview on the BNN, Mr. Fleming had the following conversation with Ms. Kanwar:

Kanwar: Are you still pursuing your lawsuit of the short sellers?

Fleming: You know, that lawsuit is still in process, our attorney is at Stikeman's in Toronto, Alan D'Silva, and, you know, he is dealing with that; that is not something that really we look into on a day to day basis, we really stay focused on the, the operations.

Kanwar: It has been raised though, a company, and you are not the only one to sue short sellers, a company like Concordia has recently taken similar moves, so why a company takes that route rather than just focusing purely on the operations?

Fleming: Well because it, it doesn't take a lot of focus from management. You know, if you were to go back and look at the short attack and look at the lawsuit that was drafted by Alan D'Silva, it is very clear the fraud and the intent that was part of this short attack and we're going to leave it in his hands to prosecute for us.

74. In the context of this lawsuit, these statements by Mr. Fleming clearly referred to and were understood to refer to the Defendants. In their plain and ordinary meaning, Mr. Fleming's statements accuse the Defendants of intentionally defrauding Nobilis and/or shareholders or potential shareholders of Nobilis, and intentionally engaging in illegal activity to manipulate Nobilis stock by making false and misleading statements about Nobilis in order to drive down Nobilis' stock price and profit from a short-sale strategy.

Overall Context

75. The statements in the press releases and those made to reporters at both BNN and www.midasletter.com by Nobilis, Mr. Lloyd and Mr. Fleming are, when taken alone, defamatory. When considered as a whole, in the context of the concerted and repeated attack launched by Nobilis, Mr. Lloyd, and Mr. Fleming on Mr. Puri and the Anson Group Canada the Defendants over a nine-month period, the defamatory nature of the individual statements is compounded and intensified. Nobilis' The campaign of defamation against Mr. Puri and the Anson Group Canada the Defendants by Nobilis, Mr. Lloyd and Mr. Fleming was conducted in bad faith, as part of a public relations strategy to distract investors from the problems with Nobilis exposed by the Blog.

Identification of Mr. Puri and the Anson Group Canada the Defendants

76. The defamatory statements identified above explicitly referred to the Anson Group Canada and Mr. Puri. Further, once Nobilis had publicized the Claim, all of the Defendants the Anson Group Canada and Mr. Puri were understood to be the authors of the Blog, and as a result, any statement Nobilis, Mr. Lloyd or Mr. Fleming made referring to the authors of the Blog was understood to be a reference to the Defendants Anson Group Canada and Mr. Puri.

Malice and Reckless Disregard

77. The defamatory statements identified above were actuated by malice and/or reckless disregard as to whether they were true or false.

78. In the alternative, Nobilis, Mr. Lloyd and Mr. Fleming made the identified statements above without conducting reasonable due diligence to determine whether the statements were true or false.

Personal Liability of Mr. Lloyd and Mr. Fleming

79. This is an appropriate case to impose personal liability on Mr. Lloyd and Mr. Fleming. Mr. Lloyd's comments in his November 5, 2015 BNN interview and in his November 17, 2015 www.midasletter.com interview were defamatory and tortious in nature. Likewise, Mr. Fleming's comments in his August 10, 2016 BNN interview were defamatory and tortious in nature. Both sets of comments constituted independent wrongful acts that exhibited a separate identity or interest from that of Nobilis, so as to make the defamation Mr. Lloyd and Mr. Fleming's own.

80. Mr. Fleming and Mr. Lloyd both held shares of Nobilis at the time they made or participated in the making of the defamatory statements described above, or otherwise were entitled to compensation based on the performance of Nobilis' stock. They therefore had a personal financial interest in defaming the Defendants in order to inflate Nobilis' share price.

81. Furthermore, Mr. Lloyd and Mr. Fleming made these statements with malice and an intent to harm the reputation of the Defendants. In these circumstance, Mr. Lloyd and Mr. Fleming are personally liable for the damages that they caused, separate and apart from the liability of Nobilis.

Damages

82. These defamatory accusations have impacted ~~Mr. Puri and the Anson Group Canada's~~ the Defendants' business relationships and detrimentally affected their reputation in the business community.

83. ~~Mr. Puri and the Anson Group Canada~~ The Defendants have suffered incalculable damages, and may suffer further damages in the future, as a result of the false and defamatory statements identified above. To date, these damages include:

- (a) loss of business reputation;
- (b) loss of personal reputation;
- (c) disruption of their business;
- (d) lost business opportunities;
- (e) costs to defend the Claim;
- (f) costs of the Counterclaim;
- (g) having to go through additional audits to raise funds;
- (h) public relations fees;
- (i) having candidates drop out of a recent recruiting process;
- (j) Mr. Puri's inability to obtain advising representative approval from the Ontario Securities Commission; and

- (k) other consequential damages.

Injunctive Relief

84. In light of the facts set out above, the plaintiffs by counterclaim are entitled to a permanent injunction requiring Nobilis, Mr. Lloyd and Mr. Fleming to cease and desist in making defamatory comments of the above nature to reporters.

85. In light of these same facts, the plaintiffs by counterclaim are entitled to a permanent injunction prohibiting Nobilis from further publishing the Claim to reporters and other members of the media.

Statutory Provisions Relied On

86. The plaintiffs by counterclaim plead and rely on: ~~the statutory provisions relied upon in the Claim.~~

- (a) Libel and Slander Act, R.S.O. 1990, c. L.12;
- (b) Securities Act, R.S.O. 1990, c. 5.5;
- (c) Business Corporations Act (Ontario), R.S.O. 1990, c. B.16;
- (d) Business Corporations Act (British Columbia), SBC, 2002 c. 57
- (e) Partnership Act, R.S.O. 1990, c. P-5;
- (f) Negligence Act, R.S.O. 1990, c. N-1;
- (g) SPEECH Act, 28 USC 4101-4105; and
- (h) Courts of Justice Act, R.S.O. 1990, c. C-34, s. 101.

December 11, 2015
November 9, 2016

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NOBILIS HEALTH CORP.

Plaintiff

and

SUNNY PURI et al

Defendants

Court No: 15-11162-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AMENDED STATEMENT OF DEFENCE AND
COUNTERCLAIM OF THE ANSON DEFENDANTS
SUNNY PURI and M5V ADVISERS INC. c.o.b. as
ANSON GROUP CANADA**

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