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MODIFIÉ CE

Nov. 25/16

PURSUANT TO  
CONFORMÉMENT A

☒ RULE/LA RÈGLE 26.02 ( A )

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

Court File No.: 15-11162-00CL

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REGISTRAR  
SUPERIOR COURT OF JUSTICE  
C. Irwin  
BREFFIER  
COUR SUPÉRIEURE DE JUSTICE

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**Commercial List**

B E T W E E N:

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, ADAM SPEARS, BRUCE WINSON, MOEZ  
KASSAM and JOHN DOE DEFENDANTS 1-20

Defendants

A N D B E T W E E N:

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, ADAM SPEARS, BRUCE WINSON, AND  
MOEZ KASSAM

Plaintiffs by Counterclaim

- and -

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

Defendants by Counterclaim

**FRESH AS AMENDED STATEMENT OF DEFENCE AND  
COUNTERCLAIM OF THE DEFENDANTS/PLAINTIFFS BY  
COUNTERCLAIM, 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, ADAM SPEARS, BRUCE  
WINSON, AND MOEZ KASSAM**

## 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"

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Local registrar

Address of 330 University Avenue  
court office: 7<sup>th</sup> Floor  
Toronto, ON M5G 1R7

TO: CHRISTOPHER H. LLOYD  
3616 Vintage Pl  
Dallas, TX 75214  
USA

AND TO: HARRY FLEMING  
11700 Katy Freeway  
Suite 300  
Houston, Texas 77079  
USA

AND TO: STIKEMAN ELLIOTT LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L1B9

Alan L.W. D'Silva (LSUC #29225P)

Tel: 416.869.5204

adsilva@stikeman.com

Aaron Kreaden (LSUC #60157U)

Tel: 416.869.5565

akreaden@stikeman.com

Daniel Hamson (LSUC #6875011)

Tel: 416.869.5547

dhamson@stikeman.com

Fax: 416.947.0866

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

## FRESH AS AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM OF THE ANSON DEFENDANTS

1. Sunny Puri, M5V Advisors Inc. c.o.b. as Anson Group Canada (now Anson Advisors Inc.) ("**Anson Advisors**"), Admiralty Advisors LLC (now Anson Management GP LLC), Frigate Ventures LP (now Anson Funds Management LP), Anson Investments LP, Anson Capital LP, Anson Investments Master Fund LP, AIMF GP, Anson Catalyst Master Fund LP, ACF GP (the "**Original Defendants**"), Adam Spears, Bruce Winson, and Moez Kassam (together with the Original Defendants, the "**Anson Defendants**", and together with Sunny Puri, the "**Anson Individual Defendants**"), admit the allegations contained in paragraphs 2, 13, and the first sentence of paragraph 23 of the Fresh as Amended Statement of Claim (the "**Claim**").

2. The Anson Defendants deny that the Plaintiff, Nobilis Health Corp. ("**Nobilis**") 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.

### A. Overview

3. On October 9, 2015, the website *Seeking Alpha* posted a blog entry written by Mr. Puri, an analyst for Anson Advisors, entitled "Nobilis: About to Fall from Nobility, Part I, 65% + Downside" (the "**Blog**"). The Blog was extensively researched, and drafted in good faith. It identified numerous causes for concern about the share value of Nobilis, which Mr. Puri had identified from his research in the course of his duties at Anson Advisors.

4. Starting on October 11, 2015, Nobilis responded to the Blog entry with a concerted and bad faith public relations campaign, of which this action against the

Anson Defendants is a part. This public relations campaign was intended to vilify the Anson Defendants and convince investors, incorrectly, that the Blog was "unlawful", "false", "defamatory", contained intentionally "misleading statements", and that it should be ignored.

5. Nobilis' bad faith campaign to discount and discredit the Anson Defendants has included disseminating false and defamatory accusations against the Anson Defendants among the investment community, including on national television, social media, various other websites, and in its press releases.

6. On November 5, 2015, Nobilis issued its first Statement of Claim (the "**Original Claim**") as part of a multimedia public relations blitz against the Anson Defendants, without even bothering to serve the Claim on the Anson Defendants. Less than a week later, on November 11, 2015, Nobilis disclosed that its third quarter 2015 financial earnings would be delayed. Nobilis also became subject to a management cease trade order 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.

7. Since the time the Blog was posted in October 2015, Nobilis has experienced a number of other issues, including being named as the defendant in two class action lawsuits, having low cash flows, missing the 2015 guidance numbers that Nobilis had published prior to the Blog's publication, having its Chief Executive Officer and Chief Information Officer resign, having to restate its consolidated financial statements, having to strengthen its accounting team by hiring various individuals, and having to implement better internal controls and corporate governance.

8. In November 2016, Nobilis issued the Claim, which added Adam Spears, Bruce Winson, and Moez Kassam as personal defendants to the action. At this time Nobilis also significantly amended and broadened its lawsuit from the Original Claim.

9. Both the Original Claim and the Claim are part of a bad faith 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 Blog was exhaustively researched, relied extensively on public, credible sources, was prepared in good faith, and contained exclusively statements of true fact or fair comment. The Anson Defendants deny all liability or wrongdoing. On the contrary, in many ways the concerns raised in the Blog have been borne out.

## **B. The Defendants**

### **(i) Sunny Puri**

10. 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 Anson Advisors.

### **(ii) M5V Advisors Inc. (now Anson Advisors Inc.)**

11. M5V Advisors Inc. legally changed its name to Anson Advisors Inc. in the fall of 2016.

12. Anson Advisors is a Toronto-based investment advisory entity. It is registered as a Portfolio Manager and Exempt Market Dealer with the Ontario Securities Commission ("**OSC**"), and is also an Exempt Reporting Adviser with the US Securities and Exchange Commission ("**SEC**").

13. Anson Advisors functions as Co-Investment Advisor to Anson Investments Master Fund LP and Anson Catalyst Master Fund LP under a Co-Investment Management Agreement with Anson Funds Management LP.

**(iii) Admiralty Advisors LLC (now Anson Management GP LLC)**

14. Admiralty Advisors LLC legally changed its name to Anson Management GP LLC in the fall of 2016. Anson Management GP LLC is the:

- (a) Managing Member of AIMF GP LLC;
- (b) General Partner of Anson Funds Management LP; and
- (c) Managing Member of ACF GP LLC.

**(iv) Frigate Ventures LP (now Anson Funds Management LP)**

15. Frigate Ventures LP legally changed its name to Anson Funds Management LP in the fall of 2016.

16. Anson Funds Management LP is a Dallas-based investment advisory entity. It is both an SEC Registered Investment Adviser and an OSC Investment Fund Manager. It functions as Co-Investment Manager to Anson Investments Master Fund LP and Anson Catalyst Master Fund LP (under a Co-Investment Management Agreement with Anson Advisors Inc.).

17. Anson Funds Management LP is also the General Partner of Anson Investments LP.

**(v) Anson Investments LP**

18. Anson Investments LP is a US domestic feeder fund of the Anson Investments Master Fund LP, and falls under the Anson Investments Master Fund LP LPA. Anson Investments LP is also a General Partner of the Anson Investments Master Fund LP.

**(vi) Anson Capital LP**

19. Anson Capital LP is a defunct legacy entity, which was founded by Bruce Winson in January of 2003. This entity was closed and ceased to exist in December 2009.

**(vii) Anson Investments Master Fund LP**

20. Anson Investments Master Fund LP was launched on July 1, 2007. This fund is jointly advised under a Co-Investment Advisory Agreement by Anson Advisors Inc. and Anson Funds Management LP. Anson Investments Master Fund LP, as further described below, is the only Anson Defendant that traded in the securities of Nobilis at any time.

**(viii) AIMF GP**

21. AIMF GP LLC is the General Partner of Anson Investments Master Fund LP.

**(ix) Anson Catalyst Master Fund LP**

22. Anson Catalyst Master Fund LP is a special situations hedge fund that was launched in July of 2012. It is jointly advised under a Co-Investment Advisory Agreement by Anson Advisors Inc. and Anson Funds Management LP.

**(x) ACF GP**

23. ACF GP LLC is a General Partner of Anson Catalyst Master Fund LP.



**(xi) Adam Spears**

24. Adam Spears is a director of Anson Advisors Inc.

**(xii) Bruce Winson**

25. Bruce Winson is the Managing Member of Anson Management GP LLC. Bruce Winson also manages the Value Long investment strategy in Anson Investments Master Fund LP.

**(xiii) Moez Kassam**

26. Moez Kassam is a director of Anson Advisors Inc.

**C. The Plaintiff**

27. The Plaintiff Nobilis is a company incorporated in British Columbia, headquartered in Houston, Texas, with operations in Arizona and Texas. Nobilis has no operations in Canada. Nobilis was formerly known as Northstar Healthcare Inc. ("**Northstar**") until it changed its name effective December 4, 2014.

28. Northstar 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.

29. 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".

**D. Background**

30. 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 extensive research of publicly available information.

31. Relying on Mr. Puri's analysis, Anson Investments Master Fund LP took a "short" position against Nobilis. Essentially, this fund was making a bet that the share price of Nobilis would decline. If that bet were wrong, this fund and Anson Advisors faced considerable and indefinite financial risk. Mr. Puri therefore brought his considerable expertise to bear in ensuring that his research was as thorough, fair, and accurate as possible based on publicly available information.

32. None of the Anson Individual Defendants ever took a financial position on Nobilis for their own personal account.

33. *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.

34. Contrary to the allegation at paragraph 17 of the Claim, investors do not rely on *Seeking Alpha*. In fact, the terms of use for *Seeking Alpha*, which are applicable to all users of the website, make it explicitly clear that nothing on the site should be taken as a recommendation or as advice. The "Important Securities Disclaimer" for the site sets out the following, among other conditions:

You understand that no content published on the Site constitutes a recommendation that any particular security, portfolio of securities, transaction or investment strategy is suitable for any specific person. You further understand that none of the bloggers, information providers, App providers, or their affiliates are advising you personally concerning the nature, potential, value or suitability of any particular security, portfolio of securities, transaction, investment strategy or other matter.

...

The Site is not intended to provide tax, legal, insurance or investment advice, and nothing on the Site should be construed as an offer to sell, a solicitation of an offer to buy, or a recommendation for any security by Seeking Alpha or any third party.

35. Seeking *Alpha* also reviewed the Blog before posting it. Editors at *Seeking Alpha* approved the Blog, and took time to verify that appropriate sourcing and links were included and accurate. The editorial team at *Seeking Alpha* specifically requested that Mr. Puri provide additional sources, including links to quotes, and questioned some of his calculations before they were satisfied and posted the Blog.

36. The Blog was anonymously posted on *Seeking Alpha* under the name "The Emperor Has No Clothes". Anonymous postings are not unusual on *Seeking Alpha*, and other anonymous users have posted about Nobilis on this site. 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 Anson Advisors' current business activities and relationships; and to focus attention on the merits of the post's content as opposed to the author.

37. Although the Blog was published anonymously, it did include an explicit statement that the source of the Blog was short NHC/HLTH. In other words, it disclosed to readers that the entity responsible for the Blog was in a position to benefit if the share

price of Nobilis declined. This was referring to the short position of the Anson Investments Master Fund LP, as Mr. Puri personally had no financial interest in Nobilis.

38. 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 good faith analysis of these documents. Prior to writing or posting the Blog, Mr. Puri conducted reasonable, indeed exhaustive, diligence concerning the statements contained in the Blog. This investigation included the review of:

- (a) Nobilis' publicly filed information, including:
  - (i) its 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 date the Blog was posted;
- (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 (an early promoter of the AccuraScope procedure);
- (i) discussions with management on various occasions;
- (j) publicly available information about the companies Nobilis had acquired;
- (k) SEDI insider filings;
- (l) consultation with experts; and
- (m) review of published newspaper articles.

39. Later on October 9, 2015 after the Blog was published, Nobilis issued a statement that the company was not aware of any material undisclosed development. Nobilis did not refer explicitly to the Blog. Thereafter, Nobilis commenced a concerted and bad faith campaign to alter the markets' focus from fundamental weaknesses in its business, including specifically the points illustrated in the Blog, and onto Anson and its role as a short seller. Nobilis has falsely alleged that Anson's short position was somehow improper and manipulative. On the contrary, short sellers play an important role in increasing the overall efficiency of capital markets by accelerating efficient price discovery on overvalued companies, just as "long" purchasers do on undervalued companies.

40. 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. 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.

41. On October 16, 2015, Nobilis issued another 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".

42. 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 as previously set out in the October 11 and 16 Press Releases, but did not address a number of concerns raised in the Blog.

43. 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 had 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".

44. 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 defamatory statements accusing the Defendants of illegal stock manipulation would be repeated in the media.

45. Following Nobilis' press release, and also on November 4, 2015, 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 "Anson Investment Management" as the defendant in the lawsuit and had also contacted the Ontario Securities Commission about the "market-manipulators".

46. 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 Original

Defendants on her twitter account @AmberKanwar. Later that day, she tweeted Nobilis' accusations against the Original Defendants.

47. Nobilis continued its attack on the Blog the next day, November 5, 2015, when it issued the Original 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 Christopher Lloyd, Nobilis' then-CEO, gave a televised interview on BNN with Ms. Kanwar and Mr. Hainsworth during which he discussed the content of the Original Claim. Nobilis and Mr. Lloyd published the Original Claim to BNN before serving Mr. Puri and Anson Group Canada with a copy of the Original Claim, which they did not do until December 10, 2015. Notably, none of the other Original Defendants were served with the Original Claim until August 5, 2016.

48. During BNN's interview, Mr. Lloyd made a number of statements about the Blog. Also during the interview, Ms. Kanwar stated that Nobilis had found out that "Anson" was behind the Blog. Mr. Lloyd accepted this statement as true.

49. 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 Mr. Puri, Anson Canada, Anson LP, Anson Capital, Anson Investment Fund and Anson Catalyst Fund as well as "the Anson family of hedge funds and associated-individuals" 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.

50. 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 related numbers in four sentences of the Blog based on information in the Hopper-Davis Report. The original chart and numbers were put in the Blog based on information that Mr. Puri believed to be true at the time due to the confusing nature of Nobilis' filings. Nobilis never acknowledged Mr. Puri's good faith Correction.

51. The changes made in the Correction 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 Blog was also amended to reflect the Correction as of November 9, 2015.

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

53. 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.

54. On August 10, 2016, Mr. Fleming gave an interview on 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.

#### **E. Short Selling**

55. Short selling is a legitimate investment strategy that involves borrowing shares from a dealer and selling them in the hopes that the price will decline. The shares are repurchased by the borrower and returned to the dealer/lender at a later time. If the share price has fallen by the time the shares are repurchased and returned the borrower will earn a profit.

56. Short selling is a risky practice, as the general trend in equities markets is that shares will increase in value. Furthermore, theoretically there is no upward limit to how much a stock can rise. If shares do increase in value, while a short position is held in a stock, the short seller will be exposed and will be required to repurchase the shares at whatever price they may rise to. Given this risk, and other transaction costs involved in short selling, the Anson Defendants would not engage in short sales without conducting proper research and being honestly convinced that a company's shares are overvalued. The Anson Defendants owe fiduciary duties to their investors and all times acted in utmost good faith in order to advance their investors' best interests in a responsible and lawful manner.

#### **F. The Anson Defendants Did Not "Conspire" to Defame Nobilis or Interfere With Its Economic Relations**

57. Contrary to paragraphs 21-27 of the Claim, the Anson Defendants did not "conspire", either amongst themselves or with any other party, to engage or participate in an unlawful short selling scheme targeting Nobilis. At no time did any of the Anson

Defendants enter into a common intention or agreement to defame Nobilis or to interfere with Nobilis' economic relations. Nor was the predominant purpose of any acts carried out by the Anson Defendants to cause injury to Nobilis. The Blog simply published the results of Mr. Puri's research. Publication of public company analysis is a routine feature of the capital markets, even where the entity behind the publication has made an investment in the securities of the company in question.

58. As set out in further detail below, the Anson Defendants did not defame Nobilis or intentionally interfere with Nobilis' economic relations, let alone conspire to do so. Mr. Puri's intent in posting the Blog was not to create a malicious and largely false article, but rather to share the valid concerns arising from his analysis of Nobilis, based on his research of publicly available information.

59. Contrary to the assertions at paragraph 21-23 in the Claim, the Blog was not posted anonymously as part of a scheme to conceal unlawful actions on the part of the Anson Defendants. Rather, as detailed above at paragraphs 36, there were legitimate reasons for this anonymity and it was not unusual in the context of a website such as *Seeking Alpha*. Furthermore, the Blog clearly disclosed the short position of the author.

60. Contrary to paragraph 22 of the Claim, at no time did any representative of the Anson Defendants say that they could not deny their involvement in the Blog. Rather, Ms. Kanwar reported on BNN on November 4, 2015, that she "spoke with somebody at Anson Investment Management and they would neither confirm nor deny its role in the short behind Nobilis".

61. To the extent that Mr. Puri or any of the Anson Defendants did exchange research, thoughts or ideas regarding Nobilis with anyone outside of the Anson Defendants, the purpose of doing so was not to injure Nobilis. Rather, any such interaction was done for a proper purpose, including research and due diligence to verify the analysis ultimately posted in the Blog. To the extent that there is "consensus" between the Anson Defendants and any other individual, that consensus is simply the result of both the Anson Defendants and the other individual applying standard financial analysis to the same publicly-available information.

62. Even if the Anson Defendants and any other individuals were acting together (which is denied), they had no unlawful purpose and employed no unlawful means. Any communication was to conduct research, to share ideas, to stress test due diligence, to attain a potential variant view, and to possibly solicit other independent analysis. As will be described below, the Blog contained only justified and substantially true statements of fact and reasonable fair comments based on those publicly available facts.

63. As explained in more detail below, the Anson Defendants also specifically deny that Nobilis suffered any harm from the Blog, and put Nobilis to the strict proof thereof.

**G. The Blog Is Not Misleading, False, or Defamatory**

64. Contrary to the allegations in the Claim, including specifically in paragraphs 28-32, the Blog is not as a whole misleading, false, or defamatory. To the contrary, all of the factual statements made in the Blog, as amended by the Correction, are justified and are substantially true in their plain and ordinary meaning.

65. Further, or in the alternative, the statements made in the Blog comprise fair comment by Mr. Puri concerning Nobilis' past, present and future activities.

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

67. The Anson 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. The Anson Defendants also specifically deny that the purpose of the Blog was to falsely discredit and attack Nobilis or its past and present directors and officers for the purpose of causing damage to the value of the Nobilis' shares. Rather, the Blog was prepared in good faith by Mr. Puri based on proper and publicly available information and Mr. Puri's expertise in analyzing public companies. In particular:

- (a) Mr. Puri is a Chartered Professional Accountant with a Bachelor's of Business Administration. He has over ten years of experience in preparing, auditing and reviewing financial statements, including three years in investment banking at RBC, and three years in audit and assurance and tax at PriceWaterhouseCoopers. Mr. Puri was in the top 1% of Uniform Evaluation writers for accountancy in 2008,<sup>1</sup> and has passed levels 1 and 2 of the Chartered Financial Accountant examinations. With this background, he was qualified to make the analysis that he did in the Blog;

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<sup>1</sup> This was the final examination for becoming a Chartered Accountant in Canada.

- (b) Mr. Puri referred to and explicitly referenced a variety of publicly available credible, independent sources to support the factual assertions contained in the Blog; and
- (c) Mr. Puri did not act with malice by intentionally manipulating data regarding management share sell-offs as is alleged at paragraph 32 of the Claim. Rather, the oversight that resulted in the Correction was merely an error resulting from Nobilis' confusing public filings. Mr. Puri made the Correction promptly and in good faith, and the Correction did not materially change Mr. Puri's analysis or conclusions.

#### **H. The Specific Statements Complained of are Not Defamatory**

68. Nobilis has complained of a number of statements from the Blog, none of which can be taken as defamatory, either singly or together. Rather, they represent true statements or fair comment and were prepared in good faith based on exhaustive research into publicly available information relevant to Nobilis.

69. Without limiting the generality of the foregoing, the inexhaustive particulars of the Anson Defendant's replies to each of these specific allegations are as follows, listed in the order in which they appear in the Claim. The paragraph references correspond to those set out in the Blog as attached to the Claim at Schedule "A". Where a word or phrase was hyperlinked in the extracts from the Blog reproduced below, the word "hyperlink" has been added in square brackets. All other emphasis is original.

#### **Paragraphs 7-8: The Nature of "Roll Ups"**

Roll ups have a recurring pattern of being bad stock market investments. The strategy sounds appealing to investors as an acquiring entity goes out

picking up businesses and putting them together with the promise of significant synergies and cost reductions. Investment banks and their analysts love roll ups as well, as the constant stream of acquisitions provide continuing opportunities for transaction advisory and financings related to paying for them, both of which all add up to rich fees.

For investors, roll ups are not nearly as attractive. Acquisitions give the impression of growth, even if the actual businesses are not growing, or even in decline. Management can continue to pay themselves handsome wages as top line expansion continues to reinforce the market excitement about the company's underlying "growth" story. Even the traditional earnings measures of the most conservative value investors can be distorted by all the opportunities in merger accounting to shift expenses and pad post-acquisition results. Synergy realizations are rare, and are more often than not unlikely to be realized.

70. These paragraphs contain statements of true fact or fair comment. In their plain and ordinary meaning, these paragraphs do not bear the meaning attributed to them in Nobilis' characterization as set out in paragraphs 34-37 of the Claim. Specifically, these paragraphs do not mean and cannot be taken to mean that all roll ups are unequivocally negative, historically unprofitable, or an indicator of management's inclination to conduct shoddy practices, self-dealing, or fraud. Rather, these paragraphs offer a brief summary of the strengths and weaknesses of roll up strategies.

71. A roll up occurs where an investor buys companies in the same market and integrates them. Nobilis is a highly acquisitive corporation in the healthcare field, including in the fields of ambulatory surgery centers and surgical hospitals, and has itself recognized some of the risks of roll ups. In Nobilis' 10-K for the fiscal year ended December 31, 2014, Nobilis warns that it may encounter "risks in acquiring additional facilities", and "may have difficulty operating and integrating these facilities".

72. Although roll ups can be effective in appropriate circumstances, there are also well-documented issues that can often accompany this strategy, including:

- (a) inability to achieve synergies;
- (b) difficulty in sustaining high levels of growth;
- (c) increase in operational costs;
- (d) difficulties in integrating acquisitions;
- (e) fees related to acquisitions;
- (f) corporate culture clashes;
- (g) overpayment for acquisitions; and
- (h) issues calculating profitability for investors.

73. Specifically, Mr. Puri notes in these paragraphs that acquisition can give the impression of growth, even if the underlying business is not growing. This observation is not unique or original to Mr. Puri, and is a shortcoming associated with roll ups that is well-understood in the investment community.

74. At paragraph 37 of the Claim, Nobilis claims that it is not a roll up. The Anson Defendants plead that it is, for the reasons described above. In the alternative, Mr. Puri was entitled to rely on the statement of Nobilis' former CEO, Harry Fleming, who in a January 2015 interview with the Life Sciences Report, described Nobilis as being "originally a roll up of ambulatory surgery centres-outpatient centers". Similarly, the current CFO of Nobilis, Kenneth Klein, has also described his work as CFO at Northstar (the predecessor corporation to Nobilis) as overseeing "financial operations for rollup of Ambulatory Surgery Centers".



75. In the alternative, even if Nobilis cannot technically be considered a roll up as paragraph 37 of the Claim alleges, the above paragraphs from the Blog are fair comment. The Nobilis business model included acquiring and consolidating businesses in the same markets. This model would result the same potential issues as those experienced by roll ups, and would not eliminate the concerns expressed in the Blog.

#### **Paragraphs 9-10: Background of Nobilis Management**

Management teams of public companies often give comfort to investors in their stocks by listing a history of successes at prior companies and with experience in the underlying industry. As a result, stockholders can hang their hats on the likelihood of success based on management's skills and history of success. Nobilis' management does not follow this pattern, as it has no successes, as far as I can see, that resulted in any creation of shareholder value.

One would expect to see a recurring pattern in the backgrounds of a management team for a medical company to have lots of like experiences in the medical industry. But Nobilis has a different pattern. Instead, we see a common background in a company called Acro Energy Technologies.

76. These paragraphs contain statements of true fact or fair comment. In their plain and ordinary meaning, these paragraphs do not bear the meaning attributed to them in Nobilis' characterization as set out in paragraphs 38-41 of the Claim.

77. Nobilis is a corporation that operates in the healthcare industry. As described in paragraph 37 of the Claim, Nobilis acts as a management company that acquires medical facilities and medical equipment, and markets to consumers of healthcare. Given this highly specialized business model, it was open to Mr. Puri to expect to see medical expertise in the management of Nobilis.

78. With regards to the two executive officers held out by Nobilis at paragraph 39 of the Claim as having a medical background, the first, Andy Chan, was the Executive

Vice President of Finance at the time the Blog was posted. This was a financial role. The second individual noted in the Claim, Donald Kramer, resigned as director of Nobilis in April 2015, months before the Blog was posted.

79. Contrary to the allegations at paragraph 40 of the Claim, revenue growth is questionable as a proxy for shareholder value creation, as it does not necessarily reflect overall profit to a corporation and ultimately to shareholders.

80. Contrary to the assertions at paragraph 38 of the Claim that Nobilis' management has appropriate qualifications and expertise in the medical industry, Nobilis has in fact suffered significant turnover that is indicative of inadequate management. In addition to Mr. Kramer's resignation, since the Blog was posted on October 9, 2015, both the Chief Executive Officer, Mr. Lloyd, and the Chief Information Officer, Vance Wells, have left the company.

### **Paragraphs 12-13: Mr. Fleming and Acro Energy**

Current Nobilis chairman of the Board, Harry Fleming, was Acro Energy's founder and chairman. He tells us all about his plan for Acro in a July 2009 interview [\[hyperlink\]](#). Harry explained that *"a couple of years ago, we formed a shell, and we took it public on the Toronto stock exchange. The reason we did this, we wanted a vehicle to roll in other integrators throughout the country."* After noting that he didn't really have any background in the solar industry, he confidently stated: *"we saw an opportunity. We think it's really going to take off even more than it has the last two years. And the market's really being driven by the Chinese panel manufacturers that are day-to-day driving down prices, which really is going to make this a mainstream product starting in the year 2010".*

He further exclaimed: *"and we can really take advantage of what we see is going to be a just tidal wave of business as we hit the year 2010. So we want to get as big a footprint as we can to really take advantage of the huge increase in business that we're seeing"*. The tidal wave did not work out like Harry expected, as we see that in February 2013, Acro Energy filed for Chapter 7 bankruptcy [\[hyperlink\]](#). And investors were not the only ones who suffered in this roll up. A poster claiming to be a former

Acro Energy employee responded to Harry's 2009 interview by saying: *"Harry Fleming is a disgrace to the state of Texas...If you are contemplating doing any business with Harry Fleming, my only words are... don't do it"* (Source: the BusinessMakers [\[hyperlink\]](#)).

81. These paragraphs contain statements of true fact or fair comment. In their plain and ordinary meaning, these paragraphs do not bear the meaning attributed to them in Nobilis' characterization as set out in paragraphs 42-43 of the Claim. The Anson Defendants specifically deny the allegation at paragraph 42 of the Claim that these paragraphs "convey that Nobilis will suffer the same fate as Acro and wind up in bankruptcy".

82. These paragraphs consist of a short summary of Mr. Fleming's business history, particularly in relation to his time at Acro Energy. The primary portion of these paragraphs quotes directly from Mr. Fleming. Nobilis has not alleged that Mr. Fleming was misquoted or that his statements were taken out of context.

83. Nobilis has alleged at paragraph 42 of the Claim, that the quote from a "poster claiming to be a former Acro Energy employee" was included without context. However, Mr. Puri clearly indicated that the poster was "claiming" this position, not that the poster had indeed been an employee. Furthermore, Mr. Puri accurately recorded what the poster had written and included an embedded hyperlink to the primary source. Any reader of the Blog could easily have read the poster's quote in its entire context if this was important.

84. Mr. Fleming was the CEO of Acro Energy until December 2012. The Chapter 7 bankruptcy of Acro Energy Technologies Inc. occurred in February 2013. At no point does the Blog state that Mr. Fleming was the CEO of Acro at the time of this

bankruptcy. However, it is notable that Mr. Fleming was in charge of the entity mere months before the Acro bankruptcy.

85. The Blog clearly hyperlinks to a site listing filings relating to the Chapter 11 bankruptcy of Acro Energy Technologies Inc. There can be no question that the Blog is specifically referring to this entity. In any event, the Blog was simply stating that Mr. Fleming had been in charge of an entity that subsequently went into bankruptcy. This is true.

### Paragraphs 14-15: Quality of Acquired Assets

In the case of Nobilis, the company has guided to having picked up undervalued and bankrupt assets. But with this management team and these assets, this story is likely to end very badly. However, the reality is that these assets were undervalued and bankrupt for a reason. If the underlying acquisitions are garbage, accumulating various acquisitions just yields a larger pile of garbage (Source: Bloomberg).

Nobilis Acquisitions Since 2014			
Announce Date	Target Name	Announced Value	Acquired %
23-Sep-15	Freedom Pain Hospital	\$3.2	60%
11-May-15	Victory Plano Hospital LP	\$12.5	100%
05-May-15	Peak Surgeon Innovations	\$1.5	100%
20-Apr-15	Victory Healthcare Houston LP(1)	\$3.9	100%
01-Dec-14	Athas Health LLC (North American Spine)	\$34.0	100%
03-Sep-14	First Nobilis LLC (First Surgical)	\$7.5	51%
21-Jan-14	Two Imaging Centers & Urgent Care Clinic	\$1.4	100%

(1) Plus certain payment obligations  
Source: Bloomberg and Company Filings

Out of the above noted acquisitions, Athas is the largest, and will be well documented throughout the rest of this report. The Victory Plano & Healthcare acquisitions come from a bankruptcy on the back of inability to collect accounts receivable, and Nobilis seems just as unlikely to change

this reality. The third largest acquisition, First Nobilis, was formerly public and fell over 80% due to lawsuits against the company.

86. These paragraphs contain statements of true fact or fair comment. In their plain and ordinary meaning, these paragraphs do not bear the meaning attributed to them in Nobilis' characterization as set out in paragraphs 44-46 of the Claim. Specifically, the Blog does not state or imply that "it is a bad business strategy to acquire undervalued and/or bankrupt assets". On the contrary, the Blog expressed the opinion that specific companies acquired by Nobilis may not represent good investments.

87. The Blog focussed on four of the seven entities that Nobilis had acquired since 2014: Athas, Victory Plano, Victory Healthcare, and First Nobilis. Freedom Pain, which was acquired approximately two weeks before the Blog was posted, Peak Surgeon Innovations, and Two Imagine & Urgent Care, were not mentioned in the Blog, other than in the chart of Nobilis' acquisitions reproduced above.

88. With respect to Nobilis' four acquisitions that are discussed, the statements in the Blog are true or are fair comment based upon Mr. Puri's research. On June 12, 2015, Victory Parent Company, LLC, which managed the Victory Plano medical center, voluntarily filed under Chapter 11 of the US Bankruptcy Code. The assets of Victory Plano were then sold to Nobilis. The Blog did not purport to distinguish between share and asset sales and Nobilis did acquire "bankrupt assets" out of the Victory Plano bankruptcy proceeding.

89. Victory Healthcare was acquired by Nobilis from Victory Parent Company, LLC less than two months before it entered into bankruptcy. Although the bankruptcy had not yet occurred at the point of sale, it was imminent and foreseeable. In any case, the

primary point about the Victory entities expressed in the Blog is that they had experienced an inability to collect accounts receivable, and that this problem may persist under new Nobilis management. Given the Victory entities' history of issues with accounts receivable at the Victory entities, Mr. Puri's opinion regarding the issues Nobilis would face was fair comment.

90. Regarding Nobilis' third largest acquisition, First Nobilis, Mr. Puri made clear in his chart of Nobilis acquisitions that First Nobilis is not wholly-owned by Nobilis, but rather that Nobilis acquired a 51% stake in the company. This is still a significant investment. It is a true statement of fact that First Nobilis' stock was distressed and may have dropped over 80% due to lawsuits against the company. This distress was clearly relevant to the viability of First Nobilis.

91. Nobilis is dependent on acquisitions for achieving its financial targets and it was fair comment to raise concerns about the quality of past acquisitions in predicting the future performance of the company.

#### **Paragraph 16: Parallels between Nobilis and Acro**

We have already seen the striking overlap of management between Nobilis and Acro. But the similarities go even further. Just like Acro, Nobilis is based in Houston, Texas. And just like Acro, it listed on the Canadian exchange, despite having no business operations in Canada. And just like Acro, Nobilis chose Calveti Ferguson & Wagner, a small accounting firm with limited public company experience, to be its auditor. But the one minor difference is that unlike Acro, Nobilis jumped on the scene with a bang.

92. This paragraph contains statements of true fact or fair comment. In its plain and ordinary meaning, this paragraph does not bear the meaning attributed to it in Nobilis' characterization as set out in paragraphs 47-48 of the Claim, and does not suggest that

there is anything inherently improper about being a Texas company listed on a Canadian exchange, or employing a mid-sized accounting firm. Rather, the Blog was drawing specific parallels between Nobilis and Acro Energy, which is relevant given Mr. Fleming's prominent role in both companies.

#### **Paragraph 17: History of Northstar and Donald Kramer**

In May 2007, Nobilis (named Northstar Healthcare at that time) went public with a \$150 million IPO. Just like Acro Energy, Nobilis was planned to be a roll up, although this time it chose ambulatory surgical centers as the place to find a new "*tidal wave of business*". Donald Kramer started out as the CEO of Northstar, and showed every bit as much talent as Harry Fleming. With fresh investor money burning a hole in his pocket, Kramer quickly purchased 55% interest in the Palladium for Surgery and 60% in Medical Ambulatory Surgical Suites. It is pretty interesting to note that Palladium was an asset that was already partially owned by Kramer, so he basically paid both himself and his partners a significant sum of money using shareholder cash (there has got to be some kind of related party issue here, but we will get to that in a moment). But just as fast as they were purchased, Northstar's two acquired assets were performing poorly, and the stock price followed suit. Inside a year and a half, Northstar wrote off \$131 million of the acquired assets (through a hit to goodwill and intangibles).

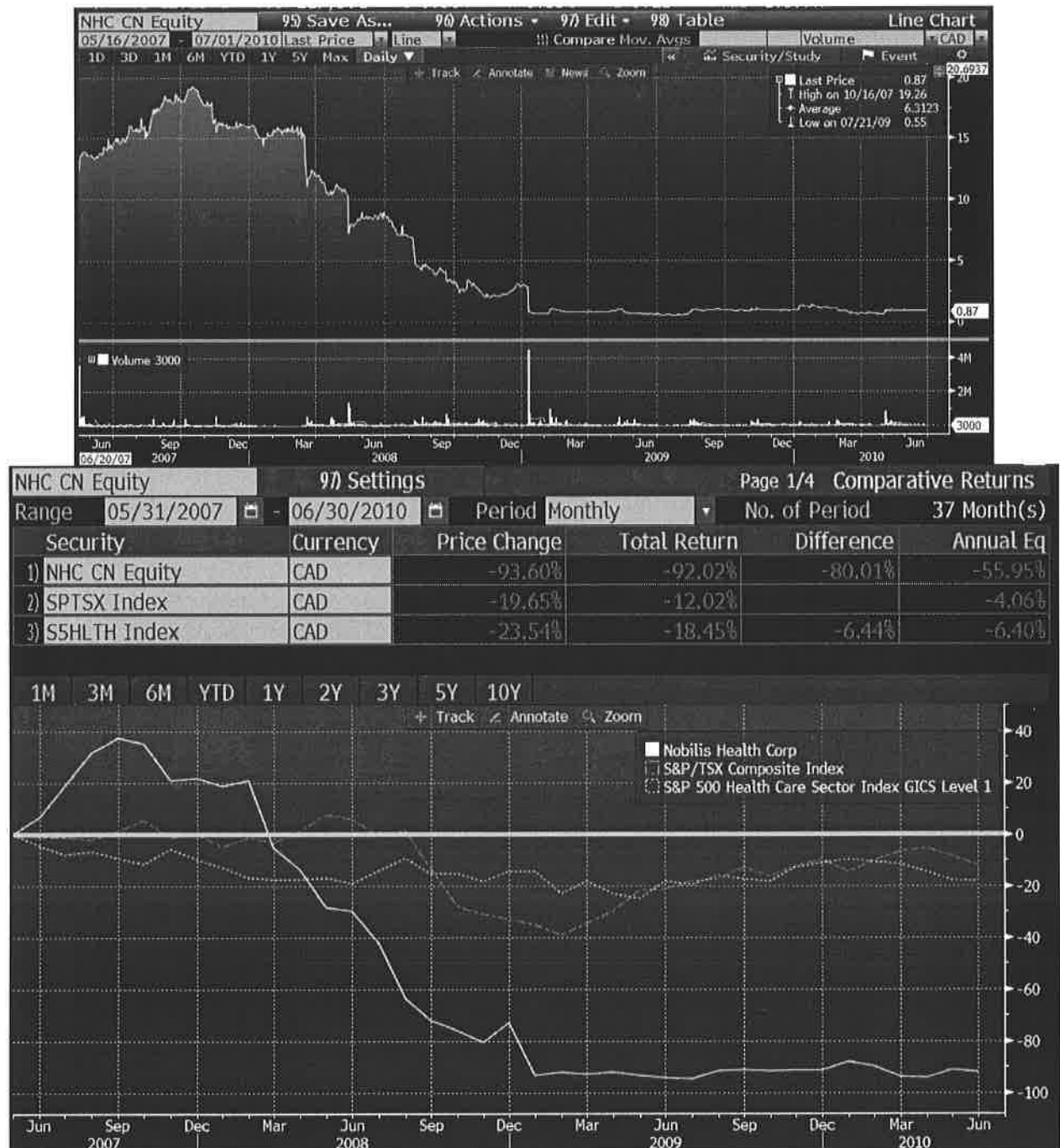
This was followed by Kramer being kicked to the curb from his CEO position. He was also concurrently served with a lawsuit by Northstar. Presumably afraid of the suit, Kramer participated in an emergency financing by Northstar (easy, as it had no other shareholder demand for its shares) and regained control of Northstar. And, of course, he immediately squashed the lawsuit against himself and sold the remaining portion of Palladium into Northstar, which shortly thereafter went bankrupt (Source: TheStreet [\[hyperlink\]](#)). Suffice to say that Kramer proved very adept at making money for himself, even if his shareholders did not fare as well. In the end, Northstar's share value fell over 90% the first time Kramer was at the helm (the stock price achieved highs of \$19.26, before trading below \$1; Source: Bloomberg).

93. This paragraph contains statements of true fact or fair comment. In its plain and ordinary meaning, this paragraph does not bear the meaning attributed to it in Nobilis' characterization as set out in paragraphs 49-53 of the Claim. The Blog simply points

out that Mr. Kramer fared better than shareholders of Northstar, not that his conduct was "fraudulent" or "in violation of corporate law".

94. This paragraph contains a brief summary of Donald Kramer's history with Nobilis. During Mr. Kramer's first period of leadership at Nobilis, the share price of the company did suffer a dramatic decline, as is shown by the following chart, which was included in the Blog:





95. The Blog does not deny that Northstar paid dividends to shareholders in the ordinary course during Mr. Kramer's tenure. However, it was reasonable not to emphasize that point in light of the extraordinary erosion of share value overseen by Mr. Kramer during his first term as CEO, and Northstar's subsequent bankruptcy. As the

above chart illustrates, the total return to shareholders over the period June 2007 through June 2010, including dividends received and kept as cash, was minus 80%. In other words, and contrary to the insinuation at paragraphs 49 to 53 of the Claim, dividends did not substantially mitigate the massive losses incurred by Northstar shareholders over the period in question.

96. It is also notable in light of the metrics of success cited at paragraph 50 of the Claim that Palladium is discussed in the Blog, the MicroSurgery Institute of Houston ceased operating as an ambulatory surgical centre in October 2013, the MicroSurgery Institute of Dallas was no longer in operation by the end of Q1 2016, and Northstar wound up in bankruptcy.

97. With respect to the allegation at paragraph 51 of the Claim that the Blog alludes to related party conduct without ever addressing it, the Blog refers to a number of insider issues, including the decision by Northstar to end its lawsuit against Mr. Kramer, significant management salaries and share sales, the return of Joe Sam Bailey to Nobilis through strategic alliance with Renew Spinal Care, Northstar Healthcare's purchase of Palladium (which Kramer had ownership of) and the 2015 sale of Nobilis shares by Mr. Kramer and Mr. Fleming (especially as Nobilis attached warrants to these shares). Compliance with related party transaction rules and proper disclosure by Nobilis does not change these facts, and they can still be considered relevant issues for investors.

98. A "pump and dump" scheme is a fraudulent practice of encouraging investors to buy shares in a company to artificially inflate the price, and then selling one's own

shares at this artificial price. Contrary to the allegations at paragraph 52 of the Claim, there is no allusion in this paragraph to Mr. Kramer artificially seeking to increase the stock price of either Northstar or Palladium, or that he sold his shares at an artificially inflated price that he was responsible for creating. This paragraph in no way refers to or could be taken to refer to a "pump and dump" scheme.

#### **Paragraphs 19-24: North American Spine and Accurascope Procedures**

Our story now turns to anesthesiologist Lawrence Rothstein. In 2001, he lost his medical license for the first (but not the last) time: *"Rothstein's medical license had been suspended by the state of Ohio in 2001, medical board records stated after his arrest for possession of cocaine. It was reinstated after he underwent rehab and attended AA meetings."* (Source: The Dallas Morning News) [\[hyperlink\]](#).

Despite his obvious affinity for the pharmaceutical side of medicine, Rothstein proved to be amazingly energetic, and decided to pursue advances in surgery. Although not actually a surgeon, he developed a minimally invasive spine surgery, which was ultimately trademarked as AccuraScope. This procedure offered patients a treatment that seemed miraculous. The procedure involved entry through the base of the spine with an endoscope, followed by moving up the spinal canal to work on disks and burn off nerves with a tiny laser; it did not cut through muscle or bones like traditional back surgery, and thus, had greatly reduced recovery time. Further, since it involved using a laser, it naturally sounded advanced. These features resonated as a very marketable product. The allure of the outpatient procedure made it quite marketable and was soon discovered by someone else in the miracle business, Joe Sam Bailey.

Joe Sam Bailey was a Baptist preacher who claimed to have a Ph.D. in theology (but from an unaccredited university). Joe heard about Rothstein's miracle procedure and went to visit and observe the magic. He quickly understood the marketing potential of the procedure and phoned business partner Chris Lloyd to tell him the good news. Bailey, Lloyd and Rothstein soon formed a company called North American Spine.

North American Spine performed no surgeries, but took a cut for focusing on the marketing of the surgery. The company marketed this using online ads and celebrity endorsements. It also used seminars, led by Joe Sam Bailey, to convince patients that this miracle surgery would cure their chronic back pain quickly and with very little pain or recovery time. Once potential patients were hooked, North American Spine would refer them to

anesthesiologists and "*pain management specialists*" to perform the surgery. While the sales pitch of cured chronic back pain was easy, the reality could be very different.

Normally, spinal surgery is performed by orthopedic surgeons who specialize in the musculoskeletal system, or by neurosurgeons who specialize in the nervous system. Both of these specialties require years of training and experience with the components that make up the very complicated and highly vulnerable spine. Yet, other doctors, such as anesthesiologists, have pursued this area of practice and have capitalized on the promise of a simple-sounding surgery to relieve pain. From the early stages of the emergence of these procedures, prestigious institutions, such as the Mayo Clinic, have warned **[hyperlink]** of the risks involved: "*At Mayo Clinic, we don't use or recommend laser spine surgery*".

Other sources **[hyperlink]** describe issues with the procedure as follows: "*Complications stemming from the AccuraScope DND include but are not limited to permanent nerve damage, pain, weakness, numbness, paralysis, and incontinence*". Whilst using this surgery, Rothstein accumulated over 40 malpractice lawsuits against him. He settled lawsuits at \$5 million and \$1.4 million **[hyperlink]** where "*judgment [was served] after a jury found he performed a surgical procedure that permanently maimed a patient*". The \$5 million judgement was settlement where the patient suffered brain damage.

After settling a few lawsuits, Rothstein inevitably disappeared, but not before filing for bankruptcy to avoid having to deal with his remaining malpractice suits. He also lost his medical license for a second time, and this time for good, on April 9, 2013 (Source: State Medical Board of Ohio **[hyperlink]**). The document justifies revoking his license, because "*from in or about 2002 to in or about April 2009, you undertook the care of Patients, you inappropriately utilized laser endoscopic technique, performed procedures that were not medically indicated and/or were clinically contraindicated, and/or failed to provide appropriate follow-up care*".

99. These paragraphs contain statements of true fact or fair comment. In their plain and ordinary meaning, these paragraphs do not bear the meaning attributed to them in Nobilis' characterization as set out in paragraphs 54-56 of the Claim. The Blog raises valid concerns about the AccuraScope procedures and its promoters affiliated with

Nobilis. It did not state that it was "created by unqualified fraudsters who marketed an unsafe product".

100. These paragraphs consist of a short history of Lawrence Rothstein, the AccuraScope procedure, and some of the risks associated with the procedure. In large part, this history derives from the *Dallas Morning News* article linked to in paragraph 19 of the Blog ("**Dallas News Article**"). This article was written by Doug Swanson, an investigative reporter who has twice been named the top reporter in Texas. Mr. Swanson has also been a finalist for the Pulitzer Prize in feature writing, and was a John S. Knight Fellow in Journalism at Stanford University. The *Dallas Morning News* itself has nine Pulitzer prizes and a history in journalism going back 130 years. It is incorrect to say, as Nobilis did at paragraph 55 of the Claim, that the characterizations of AccuraScope in these paragraphs "are not supported by any reputable source". The Blog responsibly relied on a reputable source in this regard.

101. The Blog's description of the AccuraScope procedure in these paragraphs is consistent with representations that Nobilis itself has made about the procedure. As stated in an April 7, 2015 press release by Nobilis referenced in the Blog, "North American Spine is the exclusive provider of the AccuraScope® Procedure, a minimally invasive spine surgery – which typically lasts less than 45 minutes – to treat chronic back pain". As such, the Blog's description of the trademarked "AccuraScope" procedure was not misleading.

102. Nowhere in the Blog does it state that either Mr. Rothstein or Joe Sam Baily were ever directors, officers or employees of Nobilis. Rather, it accurately states that they

founded North American Spine with Mr. Lloyd. The Blog then goes on to explain how North American Spine was sold to Nobilis via Athas.

#### **Paragraph 25: Athas Transactions**

Despite the fall of AccuraScope's developer and founder, North American Spine's two other founders were undeterred. Though their entity, **Athas, had purchased North American Spine's facility for a measly \$1.3 million, they were able to sell Athas to Nobilis for \$34 million less than 24 months later.** North American Spine has relationships with physicians and facilities, and refers patients through its marketing channel to both physicians and facilities. No sale of a questionable spinal procedure to a patient who does not need it could ever be as impressive as the sale of Athas for 26x the price it was valued at less than 24 months earlier (note that there appears to be no major change in financials or operations over this time). Nobilis shareholders may have been deceived (or maybe just desperate) in this transaction, but the dynamic marketing duo of Lloyd and Bailey were able to pull off another miracle, but as you would expect, only for their benefit.

103. This paragraph contains statements of true fact or fair comment. In its plain and ordinary meaning, this paragraph does not bear the meaning attributed to it in Nobilis' characterization as set out in paragraphs 57-58 of the Claim. Nowhere does the Blog state or imply that North American Spine was a "valueless asset". The undisputed prices of the two transactions is explicitly stated.

104. Contrary to paragraph 57 of the Claim, the Blog does not conflate the purchase of North American Spine to Athas and the sale of Athas to Nobilis. The purchase of North American Spine by Athas is explicitly identified as a separate transaction from the purchase of Athas by Nobilis. Nor is the Claim correct to suggest that one of these transactions (presumably the first) "had nothing to do with Nobilis". Athas acquired assets of North American Spine, and Nobilis thereafter acquired Athas. Both

transactions are clearly relevant to Nobilis, and Athas is in fact Nobilis' largest acquisition since 2008.

105. Mr. Bailey's LinkedIn profile states that he was the chairman of North American Spine until December 2014, the month that Athas was sold to Nobilis. The Blog does not state that Mr. Bailey was an owner of Athas at the time of the sale, nor that he was paid for any share ownership. However, the Anson Defendants do plead that Mr. Bailey benefitted from the sale of Athas, particulars of which are known to Nobilis.

106. Contrary to the allegations at paragraph 58 of the Claim, the Blog did not portray the acquisition of Athas as a cash deal. Rather, the Blog correctly described this deal in more detail at paragraph 42 of the Blog, when Mr. Puri wrote that: "Chris Lloyd and his fellow Athas founders have cashed out an additional \$15 million (\$3 million on closing of the deal, and an additional \$12 million of debt that was paid back with the GE Capital financing)". This sets out the specific cash amounts that were implicated in the Athas deal, which did not amount to the full \$34 million.

107. The use of the phrase "questionable spinal procedure" is a fair comment. As described at length in the Blog, the spinal procedures associated with North American Spine do raise numerous questions in the medical community and elsewhere. There are well-documented issues associated with these procedures.

#### **Paragraphs 26-27: Concerns with AccuraScope Procedures**

And despite the departure of Rothstein, problems with AccuraScope continue to be reported. In a September 11 2015 article [\[hyperlink\]](#), we learn about a family that is suing North American Spine for their father's death as a result of a surgery at its facility, where spinal fluid leaked through his body to his brain. Here is a key expose [\[hyperlink\]](#) which illustrates just how bad North American Spine is. In summary, it appears

that North American Spine might be overcharging for its surgeries, and the article further demonstrates that patients' lives are being ruined, but surgeries continue to be performed by anaesthesiologists (not surgeons, which appears wrong given the experimental nature of the surgery, and its very questionable results). The company has been sued on the basis that "There has been no reliable testing of [the] surgery to show that it is a medically valid procedure, nor what the associated complication rate is". Online reviews of this experimental surgery are questionable, at best, and some describe it as terrible (Source: Complaints Board [\[hyperlink\]](#)).

The results of the AccuraScope surgery have not changed even with other doctors performing the surgery.

108. These paragraphs contain statements of true fact or fair comment. In their plain and ordinary meaning, these paragraphs do not bear the meaning attributed to them in Nobilis' characterization as set out in paragraphs 59-60 of the Claim. Specifically, the implication of this paragraph is that the AccuraScope procedure has risks that have not been fully reflected in Nobilis' market capitalization, not that Nobilis' business is inherently illegitimate.

109. This paragraph accurately states that issues with AccuraScope continue to be reported, and then highlights some of these reports. The Blog cites three sources for this proposition: the Dallas News Article cited above, an article from WFAA (a part of TEGNA Media), and online reviews posted at [www.complaintsboard.com](http://www.complaintsboard.com). Mr. Puri accurately summarized and reproduced statements from these sources. He never claimed that the problems outlined in these sources applied to every surgery associated with Nobilis.

#### **Paragraph 28: Insider Share Sales**

Not only was Chris Lloyd rewarded with a very large payout from Athas (at the cost of Nobilis shareholders), he was even given the position of CEO in the new company so he could continue the roll up strategy created by his new friends Harry Fleming and Donald Kramer, both of whom



relinquished their positions in Nobilis as quickly as they could. Chris has continued his marketing strategy at Nobilis, and the stock price of is thriving for now. Despite this reprieve, the fundamental basis of the company seems very shaky, and I think this too shall pass. The first sign of this is key insiders selling one-third of their holdings in the year-to-date period.

110. This paragraph, as amended by the new information contained in the Correction, contains statements of true fact or fair comment. In its plain and ordinary meaning, it does not bear the meaning attributed to it by Nobilis as set out in paragraphs 61-63 of the Claim. In particular, this paragraph does not imply that Mr. Lloyd improperly profited from the Athas transaction. It is a true fact that Mr. Lloyd profited from the sale of Athas to Nobilis, and became CEO of Nobilis at the same time. The Blog also sets out a fair comment, based on true facts, that the shareholders of Nobilis did not benefit from the acquisition of Athas.

111. Both Messrs. Fleming and Kramer did leave Nobilis after the Athas acquisition. This paragraph says nothing about the involvement of Mr. Fleming or Mr. Kramer after they left their positions at Nobilis after the Athas transaction.

112. The statement that key insiders sold one-third of their holdings in the year-to-date period was based on Nobilis' December 31, 2015 Management Information Circular, which led Mr. Puri to incorrectly include derivatives in his calculation of insider sales. This was a mistake and was not a manipulation motivated by malice. In good faith, and after carefully reviewing the Hopper-Davis report and other materials published by Nobilis in response to the Blog, Mr. Puri promptly acknowledged this specific error in his update on November 9, 2015. Despite the Correction, the point conveyed in this

paragraph remains the same. Key insiders sold significant amounts of their holdings in the time leading up to the Blog post in October 2015.

### **Paragraphs 29-32: Further Concerns with AccuraScope Procedures**

At North American Spine, Joe Sam Bailey would hold seminars touting his education (Ph.D), in addition to touting AccuraScope success rates, despite his unaccredited education in Theology and questionable success rate data. An extract from a lawsuit against the company illustrates that North American Spine exaggerated success rates - Nicholas Vanderburg (plaintiff) vs. Defendants (Riverview Health, Lawrence Rothstein, Steven Rothstein and Dayton Laser Spine) [\[hyperlink\]](#), *paragraph 40: "Thereafter, on or about June 23, 2009, Nicholas Vanderburg contacted North American Spine and received information for his review. During his telephone conversation, Vanderburg was assured that the procedure was safe, he would have no down time and it was about one hundred (100%) effective".*

First and foremost, per this source [\[hyperlink\]](#), the company itself appears to have stated that success rates are difficult, as the studies are difficult: *"as with other types of minimally invasive spine surgery, no such trials have been done for the AccuraScope. 'Doctors don't like to do them,' Wells said 'Secondly, those are massively expensive."* Now, there are multiple holes to poke in this statement, the first of which is that if trials have not been done, how does Nobilis continues to put out success rates? Further, if studies have not been done, would it not be in Nobilis' interest to sponsor a study? Now, if it has not, does that imply that the company is scared of the results or unwilling to find out?

However, Nobilis continues with the Athas style of publishing success rates. As of its April 7, 2015 [\[hyperlink\]](#) press release, the company said: *"Medical research has shown that the AccuraScope procedure has an 82% success rate and saves patients an average of \$23,190 in out-of-pocket costs over 5 years by reducing expenses including medical visits and medications."* In this article written by Doug Swan, he references five studies that North American Spine previously used as sources: one was written by Rothstein and a related doctor, another was once again written by a doctor related to North American Spine (Dr. Kenneth Alo), the third is of current trends in the industry, the fourth is a Korean report which Dr. Alo was once again linked to, and the final study had nothing to do with North American Spine-like procedures. This all begs the question of how Nobilis is still standing by the 82% success rate noted in the April 7, 2015 press release.

Once again, Doug Swanson [\[hyperlink\]](#) catches North American Spine with misleading statements, given the company claims to have been

vetted by a major university, when in fact, it was not. See the following quotes: *"Last year, North American Spine sought to have a judge stop a Florida woman from complaining about the AccuraScope procedure on a website. In its petition, the company said the AccuraScope is 'the only minimally invasive procedure vetted by a major university (Louisiana State University) establishing both the procedure's efficacy as well as its overall cost savings'... This was a reference to Erich Richter, who formerly taught at LSU. He disputes the company's assertion. **'It is not vetted or approved by LSU,'** he said. **'There was no study by LSU.'** Nor has there been a study by West Virginia University, where Richter now teaches".*

But not to worry, although Athas was acquired for its marketing prowess, it was missing an integral piece, and that was resolved on April 29, 2015 [\[hyperlink\]](#), when Nobilis entered into an agreement with Renew Spinal Care. Renew Spinal is effectively a marketing firm and run by Joe Sam Bailey. *"Nobilis is excited to work with the innovative marketing team at Renew. Renew currently operates in Texas and Florida as it contemplates expansion into strategic markets nationwide," said Chris Lloyd, CEO of Nobilis".*

113. These paragraphs contain statements of true fact or fair comment. In their plain and ordinary meaning, these paragraphs do not bear the meaning attributed to them in Nobilis' characterization as set out in paragraphs 64-67 of the Claim. Specifically, these paragraphs in no way imply that Nobilis is being run by either Mr. Bailey or Mr. Rothstein. Nor do they imply that Nobilis' financial results cannot be trusted. Rather, these paragraphs ask reasonable questions regarding the success rate of the AccuraScope procedure promoted by Mr. Rothstein and Nobilis at various points in time. The Blog accurately summarized, linked to, and quoted from the sources on which it relied in this regard.

114. Contrary to the allegations at paragraph 65 in the Claim, the quotes from the Vanderburg lawsuit referred to in this paragraph were not cited as proven fact or as a finding by a court of law. Rather, the Blog linked directly to the Complaint filed in this matter. No reasonable reader would have been misled.

115. Mr. Puri accurately cited and quoted the Dallas News Article for the proposition that Nobilis has claimed the AccuraScope procedure has been vetted by a major university when it had not been. As discussed above, the *Dallas Morning News* is a reputable news organization, and this article was a legitimate source.

### **Paragraphs 33-38: Concerns Regarding Insurance Coverage**

For a surgery that is supposed to cost \$25-30k, it is pretty unbelievable that there are cases where it has cost \$94,000 [\[hyperlink\]](#) and \$90,176 [\[hyperlink\]](#) in certain cases, especially for an outpatient procedure, which typically lasts 45 minutes. A Bloomberg article [\[hyperlink\]](#) also highlights that a 45-minute surgery by an anesthesiologist cost \$95k in some cases - seems a little excessive, if you ask me. And this patient's surgery had poor results, just like the rest, as they exclaimed *"this has just devastated my life"*.

From what I have found, **most of the big insurance companies do not cover AccuraScope** or similar minimally invasive spine surgeries. See the following quote from the previously linked Dallas Morning News article, where neither Aetna nor Blue Cross cover it: *"Some insurance plans cover treatments such as the AccuraScope - and other types of minimally invasive spine surgery - partially or not at all. Aetna, for example, considers the AccuraScope-type procedure to be 'experimental and investigational'... An Aetna policy bulletin says the effectiveness of such measures is unproven and may entail 'significant risk' of injury and infection... An Anthem Blue Cross insurance policy statement classifies the procedures as 'not medically necessary'.* I have also spoken with Humana (NYSE: HUM [\[hyperlink\]](#)) - the company indicated the surgery is experimental and not covered.

Here is a blog post [\[hyperlink\]](#) from just under 2 years ago, which flags various issues: *"I had a consult with this North American Spine for what is essentially percutaneous laser discectomy on a herniated disc. This is a 15k procedure I found out at other practices throughout the country. They want to bill my insurance company 35k for a regular discectomy and also inquired about acupuncture and other non-related surgical procedures. Then they said they have \$900 administrative fee if I get the procedure. They said insurance doesn't cover this fee and its their own fee. I asked what it was for and they only could state for administrative fee"*.

One part of the excitement surrounding Nobilis' stock relates to growing the mix of in-network surgeries, but this is odd, given insurance already appears to be skeptical of the surgery. Additionally, one of its recent acquisitions, Victory, was shut down because of shift to in network and the

resulting inability to collect on accounts receivable that it was owed by insurers. On June 12, 2015, [\[hyperlink\]](#) the Victory CEO said, *"Unfortunately, as out-of-network providers, we came under attack by large insurance carriers. Even though we were able to execute in-network agreements with three large insurers, the extreme slowness and lack of payment from the carriers constrained liquidity significantly. We have responded by reducing expenses and changing our facilities to provide fewer services and kept our emergency rooms open. Unfortunately, now we have no other choice except to sell our facilities with the intent of remunerating secured and unsecured creditors alike"*. It appears that Nobilis' strategy has substantial risk.

Considering that major insurers are not insuring this procedure, yet somehow, per the Dallas Morning News article, *"Her total bill was \$94,514. Harrison's share of that was \$9,500. Insurance paid some of the rest"*, and the July 31, 2015 review here, [\[hyperlink\]](#) *"You give them your Insurance they call and say, You Qualify"*, it appears that the company is getting it through insurance somehow - I just cannot see how. Perhaps the secret sauce of the "marketing engine" is really just the ability to get normally not insurable procedures reimbursed by insurers. And it is easy to see the results, as Nobilis' Revenue per Procedure is dramatically higher than that of its competitors (even with a significant year over year drop). Their competitors include Amsurg Corp. (NASDAQ: AMSG [\[hyperlink\]](#)), Surgical Care Affiliates Inc. (NASDAQ: SCAT [\[hyperlink\]](#)), United Surgical Partners (formerly USPI) and Surgery Partners Inc. (NASDAQ: SGRY [\[hyperlink\]](#)) (Source: Company Filings).

This issue is corroborated by the Athas financial statements [\[hyperlink\]](#), which state that "Approximately 10% of the Company's patient volume consists of cash paying ('selfpay') patients without any reliance on third-party support." But how is it possible that insurance is paying for this if they do not allow it? Per my review, Aetna (NYSE: AET [\[hyperlink\]](#)), Anthem Blue Cross (NYSE: ANTM [\[hyperlink\]](#)) and Humana do not insure AccuraScope or similar procedures; so, who exactly is insuring this? How is it being put through insurance? Is there risk of not being paid by insurers? (emphasis added)

116. These paragraphs contain statements of true fact or fair comment. In their plain and ordinary meaning, these paragraphs do not bear the meaning attributed to them in Nobilis' characterization as set out in paragraphs 68-73 of the Claim. Nowhere does the Blog state that none of Nobilis' procedures are covered by insurance. Rather, it notes

specific concerns, and fairly comments that there are questions that have yet to be answered.

117. Regarding insurance coverage, Mr. Puri cited the Dallas News Article for the proposition that neither Aetna nor Blue Cross covered AccuraScope. He also obtained information from a number of insurance companies directly. These insurance companies included Anthem, Florida Blue, Aetna and Humana. All of these insurance providers appeared not to be covering the minimally invasive spine surgeries (which would include the AccuraScope procedure).

118. The paragraphs quoted also fairly disclose that much of Nobilis' procedures are insured. The Blog notes that Athas' financial statements indicate 10% of the patient volume consists of self-pay patients, which necessarily implies that 90% are covered by insurance and other means. Furthermore, the Bloomberg article cited for the fact that a procedure had cost \$90,176 clearly stated that the patient's insurer had paid this amount.

119. Given these conflicting sources of information, the Blog merely asked a number of questions which had not been resolved by Mr. Puri's research. These questions cannot be taken to imply that Nobilis' business as a whole may have significant problems recovering payments, but rather that greater clarity is needed regarding Nobilis' procedures and insurance coverage.

120. The Blog post in no way makes any representations or implies that AccuraScope comprises any particular portion of Nobilis' business.

### **Paragraph 39: Executive Compensation**

In 2014 alone, three individuals were paid \$8.4 million. When you consider this in context of the entire Nobilis company posting a net income figure of \$3.6 million, the number becomes pretty troubling. The key takeaway is that Kramer, Lloyd and Fleming took home 2.3 times what shareholders could (they were paid \$8.4 million, compared to net income of \$3.6 million). What is even more weird is that Chris Lloyd (new and current CEO) only officially became involved with the company on December 1, 2014, when Nobilis purchased Athas - so, if Chris was only working at the company for 30 days (of which some would be holidays), did he really deserve total compensation of \$1.9 million. Does this imply that on a run-rate basis, Chris could have made over \$20 million in 2014? Something appears amiss?

121. This paragraph contains statements of true fact or fair comment. In its plain and ordinary meaning, this paragraph does not bear the meaning attributed to it in Nobilis' characterization as set out in paragraphs 74-75 of the Claim.

122. At paragraph 75, the Claim admits that Nobilis paid Mr. Lloyd total compensation in 2014 of \$1.87 million, which rounds to the \$1.9 million stated in the Blog. The Blog made no comment regarding the breakdown of this amount between cash and stock options, or whether this compensation was in line with industry standards. It merely questioned the total rate of compensation given the short period of time that Mr. Lloyd worked for Nobilis in 2014. This was a fair comment on true facts.

### **Paragraph 40: Valuation Concerns**

Current valuation: Even with the most bullish of expectations, Nobilis is still overvalued, despite the retreat of its stock price in the last few months. If the company achieves the very debatable guidance that it has laid out, it will still be valued at 12x 2015E EBITDA. The following table illustrates how significant Nobilis' valuation is. There is no way a glorified marketing engine deserves any of these multiples.

123. This paragraph contain statements of true fact or fair comment. In its plain and ordinary meaning, this paragraph does not bear the meaning attributed to it in Nobilis' characterization as set out in paragraphs 76-78 of the Claim. The Blog's conclusions on Nobilis' overvaluation were the results of Mr. Puri's research, which was well documented in the Blog as a whole.

124. Contrary to paragraph 77 of the Claim, Nobilis actually missed its adjusted revenue guidance in 2015. Although Nobilis may have originally projected revenue between \$220 and \$230 million and an adjusted EBITDA of between \$37 and \$42 million, it updated these projections in its guidance of August 14, 2015. This updated guidance indicated that Nobilis had increased its expected revenue in 2015 to \$233 million and EBITDA to \$42 million. This was the most recent guidance to which the Blog was responding. Nobilis ultimately disclosed that at year end it had only earned \$229.2 million in revenue and \$42.1 million in EBITDA. In any event, the Blog merely questioned whether Nobilis would meet its guidance. There was no statement that it would not, which in any event could only be a forward-looking opinion or comment.

125. Nobilis has held itself out as owning and managing medical marketing service companies rather than just medical facilities. As such, Mr. Puri's reference to Nobilis as a marketing engine is not inconsistent with Nobilis' business practices.

#### **Paragraphs 41-42: Insider Share Sales**

*More shares for management:* It is important to note that the company has a mostly unnoticed 3.8 million shares that are virtually certain to be granted, but are currently not included in analyst reports (most analysts have shares outstanding in the low-70 million range), Google Finance (below 70 million shares outstanding) or Bloomberg (71 million shares outstanding). If valuations are kept constant at \$519 million market capitalization, this would imply a stock price of 5% lower (\$519 million



market cap / 77M shares outstanding). Note: 77M shares comes from 70.9M o/s from the company's latest 10-Q, additional 3.8M aforementioned. 3.7M in-the-money options with average strike of \$2.13). *Insider sales:* Key insiders, including the former CEO and CFO and new CEO, have sold, on average, 1/3rd of their total holdings year to date.

This implies that insiders have sold over \$50 million of stock this year alone (equivalent to at least 10% of the company). Chris Lloyd and his fellow Athas founders have cashed out an additional \$15 million (\$3 million on closing of the deal, and an additional \$12 million of debt that was paid back with the GE Capital financing). This implies that insiders have sold at least \$65 million this year. If Chris is really excited about being CEO of Nobilis, why has he cashed out such significant amounts of money this year?

126. These paragraphs, as amended by the Correction, contain statements of true fact or fair comment. In their plain and ordinary meaning, these paragraphs do not bear the meaning attributed to them in Nobilis' characterization as set out in paragraphs 79-81 of the Claim. The Blog does not conclude that "Nobilis insiders have lost faith in the Company". Rather, it fairly states that there is an unresolved tension between Nobilis executives' expressions of confidence in Nobilis, and stock sales by some of those same insiders, and that this tension raises questions that have yet to be answered.

127. As noted above, the original insider sales calculations in the Blog were based on a mistaken review of the Nobilis December 31, 2015 Management Information Circular. The original calculations set out in the Blog are as follows:

Nobilis   Select Insider Sales				
Select Insiders	Holdings (Common Shares)			
	31-Dec-2014 <sup>(1)</sup>	Current <sup>(2)</sup>	Change	%
Donald L. Kramer (Former CEO)	19,372,282	15,870,282	(3,502,000)	(18.1%)
Harry Fleming (Former CFO, Current Chairman)	4,996,755	28,755	(4,968,000)	(99.4%)
Chris Lloyd (Current CEO)	3,566,434	3,143,746	(422,688)	(11.9%)
Richard Ganley, Director	55,200	58,550	3,350	6.1%
Thomas O. Foster, III (Former CFO)	126,788	28,298	(98,490)	(77.7%)
Andy Chen (Former CFO)	303,000	3,000	(300,000)	(99.0%)
<b>Total of Select Insiders</b>	<b>28,420,459</b>	<b>19,132,631</b>	<b>(9,287,828)</b>	<b>(32.7%)</b>

Source: Company Filings, Sedi

(1) Per December 2014 Annual Information Form filed on Sedar

(2) Per Sedi.ca on Sep 14, 2015

128. Mr. Puri has acknowledged this mistake, which was not done maliciously but rather through inadvertent error. Indeed, Mr. Puri changed these calculations in the Blog, in good faith, in his Correction of November 9, 2015. The updated chart is now as follows:

Nobilis   Select Insider Sales (Updated)					
Select Insiders	Holdings (Common Shares Only)				% Notes
	31-Dec-14	Current	Change		
Donald L. Kramer (Former CEO)	17,370,282	15,870,282	(1,500,000)	Sold in private placement announced Apr 21, 2015	(8.6%)
Harry Fleming (Former CFO, Current Chairman)	4,996,755	2,678,755	(2,318,000)	Sold in private placement announced Apr 21, 2015, 4,996,755 includes 2,650,000 RSUs which were converted to shares on Oct 15, 2015.	(46.4%)
Chris Lloyd (Current CEO)	2,066,434	3,143,746	1,077,312	Per company press release on Nov 3, 2015, "the Form 4 noting his receipt of shares as part of Nobilis's payment for the acquisition of Athas" - it would be assumed that no \$ changed hands for these as it was related to shares owed for the Athas acquisition	52.1%
Richard Ganley, Director	65,200	58,550	(6,650)		(10.2%)
Thomas O. Foster, III (Former CFO)	78,298	28,298	(50,000)		(63.9%)
Andy Chen (Former CFO)	3,000	3,000	-		0.0%
<b>Total of Select Insiders</b>	<b>24,579,969</b>	<b>21,782,631</b>	<b>(2,797,338)</b>		<b>(11.4%)</b>

Source: Company Filings, Sedi

129. Again, the point of these amended paragraphs remains unchanged. There were considerable sales of shares by insiders during this period. It was a fair comment to raise questions about these insider dispositions.

### **Paragraphs 43-45: Concerns Regarding Recent Financing and Guidance**

*Peculiar last financing:* On April 21, 2015, Nobilis initially announced a \$40 million offering [\[hyperlink\]](#) with \$35 million in gross proceeds for the company and \$5 million for insiders (Donald Kramer, former CEO, and Harry Fleming, current chairman). However, once initial indications confirmed the market's appetite for a Nobilis offering, the offering was expanded to raise \$70 million [\[hyperlink\]](#) - now, I will be the first to agree that this is pretty normal. However, there were multiple issues with the details of this offering for anyone who decided to read through the minutiae. First, the entire incremental amount of capital being raised, \$30 million, was for shares being sold by insiders Donald Kramer and Harry Fleming. In addition to this, Nobilis would attach warrants to all shares sold by Donald and Harry, and this appears to have happened at no additional cost to them. In the end, Donald and Harry sold 3.8 million shares for \$34.3 million.

*Nobilis' overly optimistic guidance:* Although the company's guidance is highlighted above, I wanted to poke some holes in its likelihood. One example of the current team's prowess in providing financial guidance can be observed in its commentary on share-based compensation guidance. During its Q1 2015 earnings call [\[hyperlink\]](#): "[Question] Sheila Broughton, Analyst: Do you have any kind of guidance on looking ahead where we should think of share-based comp on a quarterly number?... [Answer] Andy Chen, Chief Financial Officer: No, actually right now, we basically have accruing expenses all of those share-based compensations on the annual basis. So we don't expect to have any more increase unless, there is other new senior staff joining us. **So at this point, the current number is pretty much steady.**" Q1 2015 [\[hyperlink\]](#) share-based compensation was \$2.8 million. Anyone who took the effort to check if Andy Chen's guidance was correct, with share-based compensation staying steady going forward, would have learned that the Q2 2015 share-based comp was over 120% higher than that in Q1 2015, at \$6.2 million for the quarter.

Per the Q2, 2015 conference call [\[hyperlink\]](#) on August 14, 2015, CEO Lloyd gives us some pretty vague insight into how Nobilis comes up with its guidance through discussion of its forecasted budgets, "*we're dealing with millions of page views, thousands of inquiries, you kind of get a predictability based on statistics. So you can kind of look forward and understand what the budget will hold*". Normally, if we were talking about a technology company, I would understand utilizing page views to help drive forecasts. First off, the company provides no details as to how page views have progressed or changed over time. But even more important is that we are talking about medical procedures, and it is unlikely that Nobilis is able to forecast 2016E guidance based on page views today. It is

important to note that Nobilis' guidance will get a little better with the Victory acquisitions this year, but only from a top line perspective as we have described with roll ups. In the end, what is important is that the company is driving profitability, and I do not think that Nobilis will drive profitability, given the accounting issues that it has, potential overcharging, the various lawsuits that are outstanding and all the issues in this report (Source: Q2 2015 financials [\[hyperlink\]](#), which drive the run-rate numbers).

In addition to the above, I challenge any shareholders to call management or Investor Relations of Nobilis to ask how they attain comfort over their guidance for 2016E. More likely than not, you will not be able to get any rational response as to why Nobilis' management expects such significant improvements in both revenue and EBITDA. Instead, you are more likely to get a response like the following, which Chris said during the companies Q4 2014 conference call [\[hyperlink\]](#): *"Because we're in such a hyper growth mode, trust me, we're scratching our head to try to give you guys the best information to showcase how well we're doing because we are doing very well"*. Does this mean that Chris Lloyd, the former accountant who started North American Spine in 2009, after over six years in this business and having a background in accounting, is unable to provide any color as to how he has come up with his overly optimistic guidance. Color me skeptical.

130. These paragraphs contain statements of true fact or fair comment. In their plain and ordinary meaning, these paragraphs do not bear the meaning attributed to them in Nobilis' characterization as set out in paragraphs 82-83 of the Claim.

131. These paragraphs contain Mr. Puri's predictions regarding Nobilis' financials. In light of his research and analysis as set out in the Blog, Mr. Puri outlined certain concerns with regards to information provided by Nobilis regarding its guidance.

132. Mr. Puri's predictions expressed in the Blog were fair comment based on known true facts and publicly available information. The reasonableness of those comments is borne out of subsequent events. Nobilis delayed filing its third quarter financial statements in 2015 for several months, to the point that a management cease trade order was made against it in November 2015. This order was only lifted in January

2016. Furthermore, as of the publication of the Blog Nobilis had not provided quarterly guidance in 2015 in the normal course of disclosure, so it is unclear how Nobilis can allege that it met its forecast for the third quarter of 2015 as claimed in paragraph 83 of the Claim.

### Paragraphs 47-51: Accounting Concerns

Any roll up with multiple mergers is going to lead to some complicated accounting. And Nobilis takes this even further with many subsidiaries and partial ownership of entities. Appendix A shows Nobilis's complicated organization, with 31 different entities and multiple ownership percentages. All this for a company that brought in only \$49 million in revenue last quarter, for a shockingly low revenue per entity of less than \$2 million. And of all the accounting firms to audit that complexity, which one did Nobilis pick? None other than tiny Calvetti Ferguson, with a total of 38 professionals. Barely more than the number of entities it audited at Nobilis. And the company's CFO situation inspires no more confidence. Since 2010, Nobilis has changed CFOs four times (Source: Bloomberg, Company Filings).

In August, Calvetti resigned as auditor. This follows closely after the last CFO change in July. A new CFO and a new auditor are now charged with figuring out all the complicated arrangement and deals built up over the years. While this does not guarantee that any problems will be found, it definitely increases the uncertainty.

Even my outsider's review of Nobilis' financial statements uncovered some potential issues. Per the organization chart or the following statements. *"The Company assigned 100% of its equity interest in MSID to NHC ASC - Dallas, of which **the Company owns 35% as a result of syndication...** In November 2013, the Company sold 15.1% of its ownership interest in the Kirby Partnership to existing physician limited partners, **effectively decreasing the Company's ownership interest to 25%**"* - so this means the company owns 35% of MSID and 25% of Kirby. However, it appears to be fully consolidating both entities. The effect of this would be to inflate revenues so that the growth story appears better than it really is (Source: Nobilis' latest 10-K) [\[hyperlink\]](#).

If the company were to proportionally consolidate revenues, its 2014 revenues would be meaningfully lower by \$36 million for a total of \$44 million, as reflected in the following adjusted chart (Source: Nobilis' latest 10-K).

It appears that Nobilis does not have control over these two subsidiaries. Also, if \$44 million is the right number for revenue for 2014, then revenue growth is 44%, not the astronomical 161% the company reported. It is noted that Nobilis retains the benefit of fully consolidating FNH and FNSC in the chart above.

133. These paragraphs contain statements of true fact or fair comment. In their plain and ordinary meaning, these paragraphs do not bear the meaning attributed to them in Nobilis' characterization as set out in paragraphs 84-86 of the Claim. The Blog does not imply in any way that Calvetti Ferguson "resigned under a cloud" or because of any dispute with the company.

134. Contrary to paragraph 84 of the Claim, these paragraphs explicitly state that the issues identified do "not guarantee" that there are accounting irregularities at Nobilis. Rather, they identify "uncertainty", "potential issues", and possibilities. These are fair comment on true facts.

135. As it turned out, the concerns expressed in the Blog about potential accounting issues were well-founded. On January 5, 2016, Nobilis announced that it was restating its financial statements for the year ending December 31, 2014 and the fiscal quarters ending March 31, 2015 and June 30, 2015 which included adjustments to the acquisition accounting for the Athas transaction, and reclassification of the contingently redeemable noncontrolling interests to temporary equity. These accounting problems relating to acquisitions were among the issues identified as potential areas for concern in the Blog based on Mr. Puri's research of publicly available sources.

136. It is a true fact that there was a high turnover rate at Nobilis, relating to both the four CFO changes and the change in auditors. As set out in a chart in the Blog, Nobilis changed CFOs four times from 2010 until the Blog was posted in 2015:

Nobilis  CFO Position Is a Revolving Door			
Company	Name	Start Date	End Date
Nobilis	Kenny Klein	09-Jul-15	Present
Nobilis	Andy Chen	29-Jul-14	09-Jul-15
Northstar Healthcare	Thomas O. Foster III	27-Apr-11	04-Mar-12
Northstar Healthcare	David Richardson	15-Mar-10	27-Apr-11
Northstar Healthcare	Kenny Klein	30-Mar-07	15-Mar-10

137. Moreover, the appointment of Kenneth Klein as CFO to replace Andrew Chen was done by Nobilis specifically to address material weaknesses in the company's internal controls on financial reporting, which existed in 2015 at the time of the Blog but were not publicly acknowledged by Nobilis until 2016. Nobilis also created new positions of Chief Accounting Officer in September 2015, hired a new Chief Accounting Officer and a Vice President of Information Technology in May 2016, in order to address these material weaknesses that existed at the time the Blog was published.

138. As the Blog notes, a change in CFO or auditors does not guarantee that there will be problems found with a company. Rather, the Blog fairly states that given complicated arrangements and deals built up over the years at the company, a change in CFO and auditors increases uncertainty.

#### **I. Subsequent Nobilis Issues**

139. To the extent that the Blog expressed opinions, they were fair comment as described above. Many were also specifically forward-looking statements. The reasonableness of those statements has been borne out by subsequent events. Since

the Blog was posted in October 2015, Nobilis has experienced a number of issues that tend to substantiate Mr. Puri's analysis.

**(i) Delayed Release of 3Q 2015 Financial Statements**

140. Concerns about uncertainty surrounding Nobilis' accounting issues as set out in paragraphs 47 to 51 of the Blog were justified on November 11, 2015, when Nobilis issued a press release announcing that it was unable to file its third quarter 2015 financial statements. Crowe Horwath, Nobilis' auditors, and management had identified certain non-cash accounting differences arising in Nobilis' 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.

141. 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". The Ontario Securities Commission also issued 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.

**(ii) Class Action Suits Started Against Nobilis**

142. On October 21, 2015, a class action claim was filed against Nobilis in Texas seeking to recover damages caused by Nobilis' alleged violations of federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. This class action alleged, among other things, that Nobilis' public statements were materially false and misleading at all relevant times.



143. A second class action was filed against Nobilis on January 20, 2016, in the Ontario Superior Court of Justice. This action alleged that Nobilis published core documents and made other statements containing misrepresentations of material fact regarding Nobilis' accounting for its acquisition of Athas and First Nobilis, as found in its FYE 2014 and Q1 and Q2 2015 financial statements. The claim further alleged that these misstatements resulted in an overstatement of goodwill and provided the investing public with a misleading view of the Company's revenues, expenses, and general business operations.

144. While the allegations in these claims have yet to be proven, their existence is consistent with the reasonableness of the various concerns expressed and questions raised in the Blog.

**(iii) No Cash Flow Growth**

145. From 2012 to 2015, Nobilis experienced almost no free cash flow growth (according to Bloomberg). Free cash flow refers to the net amount of cash and cash-equivalents moving in and out of a business. Positive free cash flow is important, as it indicates a company is increasing its liquid assets, which allows it to settle debts, reinvest, and have a safety net if there are future issues with the business. This is consistent with the Blog's concerns at paragraph 8 about roll ups concealing a lack of organic growth, as well as over-arching concerns about Nobilis' future financial performance.

**(iv) Missed 2015 Guided Numbers**

146. As explained above at paragraph 124, Nobilis actually narrowly missed its adjusted revenue guidance as updated in August 14, 2015. This guidance showed Nobilis expected revenue in 2015 of \$233 million and EBITDA of \$42 million. However, on December 31, 2015, Nobilis disclosed that at year end it had only earned \$229.2 million in revenue and 42.1 million in EBITDA.

**(v) Losing both CEO and CIO in the Same Month; Additional Management and Board Changes Soon Thereafter**

147. Paragraph 47 of the Blog identified CFO turnover as a potential risk factor. That turnover has only accelerated in the months since. On January 6, 2016, Mr. Lloyd resigned as CEO of Nobilis. According to the 8-K form that was filed by Nobilis upon his departure, Mr. Lloyd entered into a Separation Agreement with Nobilis pursuant to which, in lieu of the compensation and severance benefits in his existing employment agreement and in consideration of a general release of claims in favor of Nobilis, Mr. Lloyd received severance payments totaling \$660,000.

148. In January 2016, Vance Wells, the Chief Operating Officer, also resigned from his position at Nobilis.

149. On September 21, 2015, Nobilis appointed Dr. Lee McMillian to serve as the Company's Vice President of Information Technology

150. On May 16, 2016, Marcos Rodriguez was hired as Chief Accounting Officer.

151. On May 26, 2016, Harry Fleming did not stand for re-election to the board.

152. On June 28, 2016, Richard Ganley and Jennifer Hauser resigned as directors of Nobilis.

153. On or around November 2015, Jeff Horn, Director of Sales and Business Development left the company.

154. On or around November 2016, former CFO and current Executive VP of Finance Andy Chen left the company.

155. On or around January 2016, Executive VP of Business Development, Alex Noffsinger left the company.

**(vi) Significant Financial Restatements**

156. Nobilis announced on January 5, 2016 that it was restating its financial statements for the year ending December 31, 2014 and the fiscal quarters ending March 31, 2015 and June 30, 2015. Nobilis identified five major categories of error with regards to its financial statements:

- (a) accounting for warrants and options issued in the Company's private placements in 2013, 2014 and 2015 and options granted to non-employees;
- (b) business combination accounting with respect to the Athas and First Nobilis transactions that occurred in December and September 2014, respectively;

- (c) re-classification of contingently redeemable non-controlling interests to temporary equity;
- (d) share-based compensation matters; and
- (e) calculations of fully diluted shares outstanding for application of the treasury stock method.

157. All of these were areas that the Blog had identified at various points as sources of possible concern. Nobilis did indicate that it did not believe there would be any significant changes in revenue or Adjusted EBITDA for the periods covered by the financial reports that were being restated, except for approximately \$700,000 in additional reported revenue and an anticipated minor positive impact on Adjusted EBITDA for the three months ended March 31, 2015 and the six months ended June 30, 2015.

**(vii) Material Weaknesses in Internal Controls**

158. On January 8, 2016, Nobilis 10-Q filing noted a material weakness in connection with the preparation of their financial statements and a plan for remediation, which is consistent with weaknesses identified in the Blog at paragraphs 47-51.

- (a) *We did not maintain a sufficient complement of personnel with an appropriate level of accounting knowledge, experience, and training in the application of U.S. GAAP necessary to support our operations, resulting in a restatement of previously issued financial statements as discussed in Note 1 to the financial statements; and*

- (b) *We did not apply the appropriate level of review and oversight to the accounting and disclosure for significant, infrequently occurring transactions such as for business combinations and private placements.*

159. As of October 28, 2016, these internal controls weaknesses were still being remediated. The company has had to hire a new Chief Accounting Officer as noted above, hired various new professionals on the accounting team, hired a new VP of Information Technology, added various professionals to the IT department and adopted various other control procedures.

**(viii) Potential Accounts Receivable Collection Issues**

160. The Blog highlighted potential challenges in collecting accounts receivable for Nobilis and some of its newly acquired companies, which are now subsidiaries. A common measure of how difficult it is to collect accounts receivables is Days Sales Outstanding ("DSOs"), which measures the average time it takes to collect a receivable. The higher a company's DSOs, all things being equal, the greater likelihood that there are challenges for the collectability of revenue.

161. As at the quarter ended September 30, 2016, Nobilis' DSOs have materially increased from a range of 93 to 100 days for 2015, up to a range of 112 to 132 for 2016. Over the same period, Nobilis' accounts receivable balance has grown roughly 51% year-over-year, even though total revenues were only up by approximately 35%. While Nobilis current claims not to have any bad debts expense, this growing divergence with accounts receivable growth outpacing sales growth is consistent with concerns expressed in the Blog regarding accounts receivable.

**(ix) Concerns Regarding Adjusted EBITDA**

162. At paragraph 46, the Blog expressed concern about Nobilis' valuation in terms of implied EBITDA multiples. Subsequent events have confirmed these concerns. In Q3 2015, Nobilis reported \$9.7 million of adjusted EBITDA. This adjusted EBITDA included a "bargain purchase gain" of \$4.4 million, which appeared to be a one-time gain which is unlikely to be recurring. If deducted to reflect the one-time nature of this gain, it would reduce adjusted EBITDA to \$5.3 million. In Q3 2016, Nobilis reduced its prior year Q3 2015 adjusted EBITDA for the bargain purchase gain without explanation (or update), illustrating that the \$9.7 million adjusted EBITDA appeared to be incorrect.

**J. Fair Comment**

163. As set out in detail above, 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. These issues are matters of public interest.

**K. No Injurious Falsehood**

164. Contrary to paragraphs 88 to 91 of the Claim, the Anson Defendants did not publish any of the words in the Blog with malice or with the intent to cause harm to Nobilis' products, business or services.

**L. No Breaches of the *Securities Act***

165. Contrary to paragraphs 92 to 93 of the Claim, the Anson Defendants did not engage in any conduct relating to the Nobilis Shares that they knew or reasonably ought to have known, or intended, would result in or contribute to an artificially low price for Nobilis shares in violation of section 126.1 of the *Securities Act*. Nor did each or any of the Anson Defendants make any statement or statements that they knew or reasonably ought to have known was misleading or untrue, and that would reasonably be expected to have a significant effect on the market price or value of Nobilis' shares, in violation of section 126.2 of the *Securities Act*.

166. Specifically, and as detailed above, the Anson Defendants did not and did not intend to disseminate any false or misleading negative information into the market concerning Nobilis.

**M. No Causing Loss by Unlawful Means or Intentional Interference with Economic Relations**

167. Contrary to paragraphs 96-98 of the Claim, the Anson Defendants did not intentionally interfere with Nobilis' economic relations with third party market participants.

168. Specifically, the Anson Defendants did not "deceive" any third parties into believing that Nobilis' shares were overvalued or that Nobilis was at risk of future losses. The Anson Defendants put Nobilis to the strict proof thereof. As set out above, the Blog post was not deceptive or false, or in the alternative comprised fair comment by Mr. Puri.

169. In any event, even if conduct by any of the Anson Defendants did induce Nobilis' shareholders to sell existing shares, or caused Nobilis patients, customers or other counterparties to cease doing business with Nobilis, such conduct was not otherwise unlawful and the Anson Defendants had no intention to harm Nobilis.

**N. No Breach of Fiduciary Duty**

170. The Anson Defendants did not owe a fiduciary duty to Nobilis. They did not have the scope to exercise any power or discretion so as to affect Nobilis' interests. They were under no duty to prefer Nobilis' interests to their own and Nobilis was not vulnerable to any power or discretion that any of the Anson Defendants may have had.

171. Further, or in the alternative, the Anson Defendants deny that they breached any fiduciary duties that they might have owed to Nobilis.

**O. No Personal Liability of the Anson Individual Defendants**

172. This is not an appropriate case to pierce the corporate veil. None the Anson Individual Defendants dominated the affairs of the Anson Corporate Defendants, nor did any of them cause the Anson Corporate Defendants to engage in tortious or unlawful conduct. Nor did any of the Anson Individual Defendants obtain personal financial benefits from the short sale of Nobilis stocks, other than through their interests in the corporate entities among the Anson Defendants (the "**Anson Corporate Defendants**"). No conduct on the part of the Anson Individual Defendants in relation to the Blog involved malice or dishonesty.



173. In addition, there was no defamatory or otherwise unlawful conduct carried on by the Anson Individual Defendants that constituted independent wrongful acts that were contrary to the best interest of the Anson Corporate Defendants.

174. It is also expressly denied that the Anson Corporate Defendants acted as agents for the Anson Individual Defendants with regard to the Blog post.

**P. No Unjust Enrichment**

175. The Anson Defendants have not been unjustly enriched by any conduct on the part of all or any one of them. Nor has Nobilis suffered any corresponding deprivation. In the alternative, the Anson Defendants had juristic reasons for their conduct as described above.

**Q. No Damages**

176. The Anson Defendants deny that Nobilis has suffered any harm as a result of the Blog and put Nobilis to the strict proof thereof. Nobilis' forecasts, customer relations, financial performance, ability to attract investments, and acquisitions have been completely unaffected by the Blog. In fact, in March 2016 Nobilis cancelled a previously announced share buyback plan given its positive 2015 financial results, positive trends in its stock price, and aggressive growth plans for 2016.

177. The Anson Defendants also deny that short sales by Anson Investments Master Fund LP negatively affected the share price of Nobilis. A short sale, as described above, involves borrowing shares to sell them, and then buying them to return the loan. Buying shares tends to put upwards pressure on share price, and selling shares tends to put downward pressure. A short sale, like a traditional "long" trade, involves the

buying and selling of stock; the order of transactions is simply reversed, with the sale occurring before the purchase. Therefore once the short sale is completed, there is no net negative pressure on the stock.

178. In any event, the Anson Defendants explicitly deny that any decline in Nobilis' stock price is a form of damage that may be recovered by the company.

179. In the alternative, if Nobilis 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) Management and board turnover at the company as described above;
- (c) Internal controls weaknesses at the company;
- (d) Various class action lawsuits as described above. In addition, 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;
- (e) underlying weakness and uncertainty in Nobilis' business identified in the Blog, as evidenced by the fact that by October 9, 2015, Nobilis stock had already fallen by 32% from a closing high reached on April 20, 2015;
- (f) declines experienced by other roll up healthcare industry stocks, including, but not limited to, Valeant Pharmaceuticals International Inc., Concordia

Healthcare Corp., Patient Home Monitoring Corp. and Convalo Health International Corp. This widespread decline in healthcare stocks impacted Nobilis by association;

- (g) underlying weaknesses in the business of Nobilis already discussed in the public domain;
- (h) other fluctuations in the stock market unrelated to company-specific factors; and
- (i) Nobilis' failure to disclose facility level financial information starting in the second quarter of 2016.

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

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

182. The Anson Defendants request that this action be dismissed with costs.

### **COUNTERCLAIM**

183. The Anson 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 deem just.

184. The Anson Defendants incorporate by reference and rely upon the allegations contained in the Fresh as Amended Statement of Defence.

**A. The Additional Defendants by Counterclaim**

**(i) Christopher Lloyd**

185. 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.

**(ii) Harry Fleming**

186. 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.

## **B. Background**

187. Following publication of the Blog on *Seeking Alpha*, neither Nobilis nor Mr. Lloyd contacted any of the Anson Defendants in order to understand and address the concerns identified in the Blog. Instead, Nobilis and Mr. Lloyd commenced a public relations campaign against the Anson Defendants, alleging that they had engaged in illegal behaviour.

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

189. Nobilis and Mr. Lloyd undertook this crusade against the Anson Defendants for the predominant purpose of injuring their reputation and business relationships. Their intention was to alter the markets' focus from fundamental weaknesses in Nobilis' business, and specifically the points illustrated in the Blog, and onto Anson and its role as a short seller. Nobilis and Mr. Lloyd acted with malice and in bad faith in order to deliberately harm the reputations of the Anson Defendants.

190. After Mr. Lloyd left Nobilis, Mr. Fleming personally continued Nobilis' attack on the Anson 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 Anson Defendants.

191. These attacks were carried out for the improper 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 in bad faith 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) and to cause retribution and damage to the Anson Defendants.

**C. The False and Defamatory Statements**

**(i) The November 4 Press Release**

192. Nobilis and Mr. Lloyd began their defamatory crusade against the Anson Defendants on November 4, 2015. In their November 4 Press Release, Nobilis and Mr. Lloyd accused the authors of the Blog (whom they would name later that day and the following day as Anson 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."

193. In their plain and ordinary meaning, these statements convey that the Anson 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 Blog was not "manipulative", nor

did it "distort" any facts or "unfairly" cause Nobilis losses. Rather, as described above, the Blog was a good faith attempt to analyze Nobilis' stock, and the Blog plainly disclosed that the entity behind it was short Nobilis.

**(ii) The November 4 BNN Coverage**

194. Also on November 4, 2015, Nobilis and Mr. Lloyd named Anson as the author of the Blog and announced to BNN that Nobilis was commencing legal action against Anson 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..."

195. In their plain and ordinary meaning, these statements convey that the Anson 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.

196. There was nothing illegal about the Blog. Mr. Puri honestly believed the statements made in the Blog and Anson Investments Master Fund LP made a good

faith short investment in Nobilis in reliance on those beliefs. There is nothing unlawful about sharing one's view that a public company is overvalued, and trading on that belief.

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

197. On November 5, 2015, as set out above, Mr. Lloyd was interviewed on BNN. Nobilis had published the Original 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 Original Claim against the Anson Defendants named in the Claim. The Original 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."

198. In their plain and ordinary meaning these statements convey that the named defendants to the Claim 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 the Anson Defendants have engaged in such illegal activity previously. The

clear implication of these statements is that the Anson Defendants cannot be trusted and are criminals.

199. 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."

200. The plain and ordinary meaning of these comments was that the Anson 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 Anson Defendants were engaged in unlawful and illegal behaviour. As described above, there was nothing unlawful about the Anson Defendants' conduct, nor to their knowledge have any law enforcement agencies pursued any investigation in that regard.

**(iv) The November 6 Press Release**

201. 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 Nobilis' lawsuit in the Ontario Superior Court. 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."

202. In their plain and ordinary meaning, these statements convey that the Anson 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 Defendants are criminals engaged in unlawful behaviour. None of these statements are true.

**(v) The November 17 [www.midasletter.com](http://www.midasletter.com) Interview**

203. On November 17, 2015, Nobilis and Mr. Lloyd continued to make defamatory remarks about the Anson Defendants in an interview with James West at [www.midasletter.com](http://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.

204. In their plain and ordinary meaning, these statements by Mr. Lloyd, both personally and on behalf of Nobilis, accuse the Anson Defendants of intentionally publishing false statements about Nobilis in the Blog. These statements also convey that the Anson Defendants had misleading and misrepresentative interactions with Nobilis. Understood in the context of the other statements Nobilis and Mr. Lloyd had made about the Anson 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.

205. In reality, Mr. Puri had a meeting with Mr. Lloyd on September 15, 2015. During that meeting, Mr. Puri said nothing about the Anson Defendants' intentions, nor did they "act like they were interested in a long position" in Nobilis. They simply asked relevant

questions. On September 21, 2015, Mr. Puri held a call with Vance Wells (CIO) and separately another call with Chris Lloyd (CEO).

**(vi) The August 10, 2016 BNN Interview**

206. Almost nine months later, on August 10, 2016, Mr. Fleming personally continued Nobilis' and Mr. Lloyd's ongoing public relations campaign against the Anson Defendants, on his own behalf and on behalf of Nobilis. In an interview on 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.

207. In the context of this lawsuit, these statements by Mr. Fleming clearly referred to and were understood to refer to the Anson Defendants. In their plain and ordinary meaning, Mr. Fleming's statements accuse the Anson 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. None of these allegations are true.

**D. Overall Context**

208. The statements described above are each, 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 against the Anson Defendants over a nine-month period, the defamatory nature of the individual statements is compounded and intensified. The campaign of defamation against the Anson Defendants by Nobilis, Mr. Lloyd and Mr. Fleming was conducted in bad faith and with malice, as part of a public relations strategy to distract investors from the problems with Nobilis exposed by the Blog.

**E. Identification of Mr. Puri and the Anson Defendants**

209. The defamatory statements identified above explicitly referred to Anson and Mr. Puri. Further, once Nobilis had publicized the Original Claim, all of the Anson Defendants 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 Anson Defendants. When Nobilis issued its Fresh as Amended Statement of Claim in November 2016, its addition of Messrs. Spears, Winson and Moez also had the effect of creating an understanding that they were the authors of the Blog, so that any of the statements made above by Nobilis, Mr. Lloyd or Mr. Fleming would also be understood to refer to them.

**F. Malice and Reckless Disregard**

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

211. 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.

**G. Personal Liability of Mr. Lloyd and Mr. Fleming**

212. 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](http://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.

213. 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 Anson Defendants in order to discredit the legitimate questions and concerns raised in the Blog, and thereby inflate Nobilis' share price.

214. Furthermore, Mr. Lloyd and Mr. Fleming made these statements with malice and with intent to harm the reputation of the Anson 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.

## **H. Damages**

215. These defamatory accusations have impacted the Anson Defendants' business relationships and detrimentally affected their reputation in the business community.

216. The Anson 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 OSC; and
- (k) other consequential damages.



217. At all times, Nobilis acted without proper cause, and with malicious intent and improper purpose to unjustly vex the Anson Defendants. In so doing, the Defendants by Counterclaim effected an intentional and wanton interference with the Anson Defendants' interests, or in the alternative acted with reckless indifference to those interests. The Anson Defendants request aggravated, exemplary and punitive damages.

**I. Injunctive Relief**

218. 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.

219. 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.

**J. Statutory Provisions Relied On**

220. The Plaintiffs by Counterclaim plead and rely on:

- (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

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 Wellington Street West  
Toronto, ON M5V 3J7

Matthew Milne-Smith (LSUC #44266P)  
mmilnesmith@dwpv.com  
Christie Campbell (LSUC #67696E)  
chcampbell@dwpv.com

Tel.: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendants/Plaintiffs by  
Counterclaim, 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, Adam  
Spears, Bruce Winson, and Moez Kassam

**NOBILIS HEALTH CORP.**  
(Plaintiff)

and

**SUNNY PURI et al**  
(Defendants)

Court No: 15-11162-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FRESH AS AMENDED STATEMENT OF DEFENCE  
AND COUNTERCLAIM OF THE DEFENDANTS/PLAINTIFFS  
BY COUNTERCLAIM, 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, ADAM SPEARS,  
BRUCE WINSON, AND MOEZ KASSAM**

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 Wellington Street West  
Toronto, ON M5V 3J7

Matthew I. Milne-Smith (LSUC #44266P)

mmilne-smith@dwpv.com

Christie M. Campbell (LSUC #67696E)

chcampbell@dwpv.com

Tel.: 416.863.0900

Fax: 416.863.0871

Lawyers for the Defendants/Plaintiffs by Counterclaim  
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, Adam Spears,  
Bruce Winson, and Moez Kassam