

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

NOBILIS HEALTH CORP.

Plaintiff

- and -

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

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, 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 statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, 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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Issued: November 5, 2015

Issued by **Bruna Gagliardi**
Registrar
Local registrar

Address of Court office:
393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
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TO: SUNNY PURI
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AND TO: M5V ADVISERS INC. c.o.b. as ANSON GROUP CANADA
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AND TO: ADMIRALTY ADVISORS LLC
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AND TO: ANSON CATALYST MASTER FUND LP
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AND TO: ACF GP
5950 Berkshire Lane, Suite 210
Dallas, Texas
75225 United States

AND TO: JOHN DOE DEFENDANTS 1 to 20

CLAIM

1. The Plaintiff claims:

- (a) general and aggravated damages in the amount of \$300,000,000;
- (b) in the alternative, an accounting of any and all gains from transactions in Nobilis Common Stock and the derivative securities thereof on or after October 9, 2015, including without limitation gains from short positions covered on or after that date; and, to the extent that such amounts are greater than any amount of general damages awarded, disgorgement or such other equitable remedy in relation to such gains;
- (c) special damages for costs associated with the investigation of the tortious false allegations made by certain of the defendants as described below;
- (d) punitive damages in an amount to be determined by the Court;
- (e) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C-34;
- (f) payment of applicable Goods and Services Tax on any sums awarded in favour of the Plaintiff, including costs;
- (g) a permanent injunction prohibiting further republication of the defamatory statements by the defendants as described below;
- (h) costs of this action on a substantial indemnity scale; and,
- (i) such further and other relief as seems just.

Overview

2. 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.

3. The key to the scheme was the written attack (the “Article”) on Nobilis’s business which the defendants prepared and anonymously posted under the pseudonym “The Emperor Has No Clothes” to the website “Seeking Alpha” (www.seekingalpha.com) (“Seeking Alpha”). Investors world-wide read Seeking Alpha and rely upon content posted on Seeking Alpha when making decisions. This posting constituted a “broadcast” of the Article, as defined in the *Libel and Slander Act* of Ontario. The broadcast commenced on October 9, 2015, and is ongoing.

4. The Article made numerous statements of purported “fact” about Nobilis’s business that were false and defamatory, including allegations that the Company’s auditors resigned amid controversy, CFOs had been shuffled to hide impropriety, insiders had sold all of their Nobilis Common Stock, that the Company was hiding poor performance behind acquisitions, that major insurers would not pay for the medical procedures that constitute AccuraScope branded-procedures, and several other false, defamatory and misleading statements – many of which, if true, would have been criminal acts; in fact, the corporate offices of Nobilis were besieged by callers accusing management of criminal activities.

5. The mean closing market price of Nobilis common stock on the Toronto stock exchange during the ten trading days starting October 9, 2015, was \$4.19, 39.4 percent lower than the mean closing market price, \$6.92, on the ten trading days prior to October 9, 2015. Over the two weeks following the publication of the Article, the share price would fall as low as \$2.83, a

decrease of nearly 60% from the share price before the Article was broadcast online. That decline translates to a loss of over \$300 million in market capitalization.

6. After the Article was broadcast, Nobilis's management, along with the independent counsel hired by a Special Committee of Nobilis's independent Board of Directors to investigate the claims in the Article, publicly and accurately refuted the Article's false information in an effort to minimize the price decline. The share price, however, has yet to recover.

7. When asked by reporters from BNN, the defendants' representatives said they could not deny their involvement behind the Article.

8. The defendants made the Article's false and defamatory statements for the predominant purpose of injuring Nobilis, interfering with its economic relations, and winning profits for the defendants as a result.

9. 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.

The parties

10. Nobilis is a British Columbia incorporated corporation with headquarters in Houston, Texas. Nobilis owns and manages ambulatory surgery centres, surgical hospitals, and medical marketing services companies in the United States. Nobilis stock is publicly traded on the Toronto Stock Exchange under the symbol "NHC" and the NYSE MKT exchange (an affiliate of the New York Stock Exchange) under the symbol "HLTH".

11. The defendant M5V Advisors Inc., which carries on business as Anson Group Canada

("Anson Canada"), is a hedge fund incorporated in Ontario. At all relevant times, Anson Canada has entered into securities transactions on public markets, including short sales. Anson Canada is vicariously liable for the acts and omissions of its employees.

12. The defendant Sunny Puri ("Puri") resides in Toronto, Ontario. At all relevant times, he has been employed as an analyst at Anson Canada.

13. The defendant Admiralty Advisors LLC ("Admiralty") is a limited liability company organized pursuant to the laws of Texas. At all relevant times, Admiralty has engaged in securities transactions, including short sales. Admiralty is the general partner of Frigate Ventures LP, and is the controlling mind of the other Anson Defendants.

14. The defendant Frigate Ventures LP ("Frigate") is a limited partnership organized pursuant to the laws of Texas. Frigate is, at all relevant times, a registered investment fund manager with the Ontario Securities Commission. At all relevant times, Frigate has engaged in securities transactions, including short sales.

15. The defendant Anson Investments LP ("Anson LP") is a limited partnership organized under the laws of Texas. At all relevant times, Anson LP has engaged in securities transactions, including short sales.

16. The defendant Anson Capital LP ("Anson Capital") is a limited partnership organized under the laws of Texas. At all relevant times, Anson LP has engaged in securities transactions, including short sales.

17. The defendant Anson Investments Master Fund LP ("Anson Investment Fund") is a limited partnership organized under the laws of Texas. At all relevant times, Anson Investment Fund has engaged in securities transactions, including short sales.

18. The defendant Aimf Gp is the general partner to Anson Investments Fund. At all relevant

times, Aimf gp has engaged in securities transactions, including short sales.

19. The defendant Anson Catalyst Master Fund LP (“Anson Catalyst Fund”) is a limited partnership organized under the laws of Texas. At all relevant times, Anson Catalyst Fund has engaged in securities transactions, including short sales.

20. The defendant Acf Gp is the general partner to Anson Catalyst Fund. At all relevant times, Acf Gp has engaged in securities transactions, including short sales.

21. Anson Canada, Admiralty Advisors LLC, Frigate Ventures LP, Anson LP, Anson Capital, Anson Investment Fund, Aimf Gp, Anson Catalyst Fund and Acf Gp operate collectively as related entities under the business name “Anson Group of Funds”. They may be referred to herein as the “Anson defendants”.

22. The defendants John Does 1 through 20 are investors (hedge funds, investment funds, individuals, or other types of investors) who were told by the other defendants about the contents of the Article before it was broadcast, and who took short positions in Nobilis before the Article was broadcast in order to profit from expected declines in the market price of Nobilis shares after the Article was broadcast.

The Anson Defendants at all relevant times operated, acted, and marketed themselves as a single entity. The Anson Defendants are vicariously liable for the acts of omissions of one another. In the alternative, each Anson Defendant acted as agent for the others

The short attack

23. 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.

The posting on Seeking Alpha

24. Puri and the Anson Defendants sought out a strawman to publish the Article on the Seeking Alpha, because Seeking Alpha is widely read and relied upon by investors and because Seeking Alpha permits material to be anonymously posted.

25. 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.

26. Puri and the Anson Defendants not only knew that the allegations in the Article were false and defamatory, but also intended that they were false, defamatory and misleading. They caused the Article to be posted anonymously in an attempt to avoid legal liability for defamation and their other misconduct.

Specification of false and defamatory statements in the Article

27. A full copy of the Article is attached as "Schedule A" to this claim.

28. The essence of the Article is set out in the summary section of the Article:

Surgical center roll up with a management team having experience with prior roll ups losing 90%+ of shareholder value; defunct roll up and Nobilis have the same chairman, 3 CFOs, VP IR, GC.

Insiders have cashed out more than \$70 million in the year-to-date period through a combination of share sales and compensation (~14% of current market cap).

Accounting red flags: 4 CFO changes in a handful of years, along with recent auditor resignations; potentially overstated revenues; newly acquired acquisitions with Accounts Receivable issues.

Questionable marketing, with paid studies touting inappropriate success rates for its medical procedures.

The company is significantly overvalued, and appears to be guiding for unachievable targets; 65%+ downside in current stock price.

29. Throughout the Article, the defendants characterize Nobilis as a fraudulent enterprise, with misstated revenues and misleading marketing practices. The general tone and context of the Article is misleading and defamatory in its entirety. The Article also includes eight categories of specific defamatory statements -- to the effect that Nobilis or Nobilis' management:

- (a) has hidden serious side effects regarding AccuraScope surgical procedures, and that patients are likely to suffer those side effects;
- (b) engages in questionable marketing with paid studies;
- (c) inappropriately describes Louisiana State University as having vetted its AccuraScope procedures;
- (d) artificially inflates revenues through acquisition;
- (e) has experienced and participated in a large insider sell-off of Nobilis shares this year;
- (f) practices improper or illegal accounting, that may be fraudulent;
- (g) has had its auditor resign as a result of its accounting impropriety; and,
- (h) struggles to collect on its accounts receivable, further compounding its alleged accounting issues.

30. These statements and their conveyed meanings are false and defamatory, as set out below.

False and defamatory assertions that AccuraScope surgical procedures have serious hidden side effects that patients will likely suffer

31. The Article states, with respect to Nobilis' AccuraScope spinal surgical procedure:

Other sources describes [sic] issues with the procedure as follows: "*Complications*

stemming from the Accurascope DND include but are not limited to permanent nerve damage, pain, weakness, paralysis and incontinence.”

32. In its plain and ordinary meaning, that statement conveys that persons treated with AccuraScope procedures are likely to suffer severe complications and that doctors using the procedure are committing malpractice. The hyperlink to “Other sources” returns a message of “No longer published”. In fact, the quoted language is taken from a standard patient informed-consent document of the type used for virtually every spinal procedure performed in the state of Texas. The AccuraScope procedure does not entail unusually high risk for these complications.

33. The statement in the Article is false and defamatory.

False and defamatory assertions that Nobilis uses questionable marketing with paid studies

34. The Article states:

Questionable marketing with paid studies touting inappropriate success rates for its medical procedures.

35. In its plain and ordinary meaning, that statement conveys that Nobilis paid for the results of research studies supporting the clinical and economic efficacy of Nobilis’ procedures. The characterisation of Nobilis’ marketing as “questionable” conveys that the marketing is deceptive or unethical. In fact, the studies followed standard protocols for peer-reviewed medical research. As is customary, the physicians actually performing the procedures were instrumental in aggregation of data and publishing the results. All such activities were performed outside of the purview of Nobilis. The success rates published are fully appropriate and are a result of an independent third party’s survey.

36. The statement in the Article is false and defamatory

False and defamatory assertions that Nobilis inappropriately describes Louisiana State University as having vetted its AccuraScope procedures

37. The Article states:

Once again, Doug Swanson 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.

38. In its plain and ordinary meaning, that statement conveys that Nobilis falsely claims that Louisiana State University endorses the AccuraScope procedure. In fact, Erich Ritcher, a member of the LSU School of Medicine at the time, was an author of several research papers discussing the discectomy and neural decompression procedure, which is one of the AccuraScope procedures. This was not an endorsement of AccuraScope. Nobilis does not market or claim that AccuraScope is endorsed or vetted by LSU or any other university.

39. The statement in the Article is false and defamatory.

False and defamatory assertions that Nobilis artificially inflates revenues through acquisitions

40. The Article states:

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.

(...)

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).

Nobilis Facility	Net Patient Service Revenue (\$)(in thousands)	
	2014	2013
NHSC-H	\$ 22,052	\$ 6,676
KIRBY	12,933	11,503
MSID	31,320	12,635
NHSC-S	1,773	-
FNH	10,763	-
FNSC	1,444	-
Total	80,285	30,814

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).

2014 Revenue Adjusted for Kirby & MSID Ownership				
Sub	Per 10-k Rev.	Portion Owned	Portion Attributed	Adj. Revenues
	(A)		(B)	(A x B)
NHSC-H	\$22	100%	100%	\$22
Kirby	\$13	25%	25%	\$3
MSID	\$31	35%	35%	\$11
NHSC-S	\$2	100%	100%	\$2
FNH	\$11	51%	100%	\$5
FNSC	\$1	51%	100%	\$1
Total	\$80			\$44

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.

41. The plain and ordinary meaning of those statements is that Nobilis has been artificially inflating revenues through an acquisition strategy, rather than through organic growth, and that actual revenues are only 55% of stated revenues. The implication is that Nobilis' stated revenues are fraudulent. In fact, between 2013 and 2014, 82% of Nobilis' growth has been from organic (internal) sources. Nobilis has complied with all applicable accounting and legal standards.

42. The statements in the Article are false and defamatory. Indeed, these allegations if true, would be criminal acts and, therefore, are *per se* defamatory.

False and defamatory assertions that Nobilis management has engaged in extensive insider sell-offs of Nobilis shares

43. The Article states:

Insiders have cashed out more than \$70 million in the year-to-date period through a combination of share sales and compensation.

Lloyd ... was given the position of CEO ... so he could continue the roll up strategy created by his new friends Harry Fleming and Donald Kramer [T]he fundamental basis of the company seems very shaky. ... The first sign of this is key insiders selling one-third of their holdings in the year-to-date period.

44. That statement conveys that senior management and insiders lack faith in the company and are receiving inappropriate compensation. Contrary to the Article's assertion that Nobilis CEO Chris Lloyd sold 11.9% of his Nobilis shares, in fact he has not sold a single share. Large insider sales by Kramer and Fleming were extensively disclosed to the public. Other investors demanded that Kramer and Fleming sell shares in the company's May private placement to reduce the concentration of management-held shares and limit the dilutive effect of the placement.

45. The statement in the Article is false and defamatory.

46. The Article provides specifics regarding insider share transactions to support its allegation of a large sell-off this year:

Insider sales: Key insiders, including the former CEO and CFO and new CEO, have sold, on average, 1/3 of their total holdings year to date.

Nobilis Select Insider Sales				
Select Insiders	Holdings (Common Shares)			
	31-Dec-2014 ⁽¹⁾	Current ⁽²⁾	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%)
Total of Select Insiders	28,420,459	19,132,631	(9,287,828)	(32.7%)

Source: Company Filings, Sedi

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

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

47. That statement and accompanying chart conveys that Nobilis insiders are reducing their positions because they are not optimistic about the company's sustained success. The statement also conveys that personal profit-taking, rather than competent management, is the primary motivator of company directors and managers. In fact, the insider holding figures set forth in the Article are inaccurate. The column titled "31-Dec-2014" purports to show only common shares,

but instead includes all share classes and options, such as Restricted Share Units (RSUs), while the column titled "Current" excludes these other share classes and securities -- which creates false values in the "Change" and "%" columns.

48. Using Harry Fleming as an example: the "31-Dec-2014" column in the chart notes his reported holdings of 4,996,755 shares. This number reflects Mr. Fleming's December 31, 2014 holdings of 2,346,755 common shares and 2,650,000 RSUs. Subsequent to the end of 2014, Mr. Fleming sold 2,318,000 shares. His remaining common shares of 28,755, as of September of 2015, are reflected in the "Current" column.

49. The "Current" column, however, omits Mr. Fleming's substantial holding of 2,650,000 of RSUs. The "12/31/14" column and the "Current" column are thus measuring different things. By placing the columns next to each other, the defendants create the false impression that Mr. Fleming has sold 99.4% of his holdings. Indeed, that percentage change is noted in the chart. Mr. Fleming, in fact, has only sold 46.4% of his holdings and still holds substantial equity in Nobilis.

50. The chart's explanation of the insider sales with respect to Donald Kramer, Harry Fleming, Chris Lloyd and Andy Chen are false, materially misleading and defamatory.

False and defamatory assertions about "Accounting red flags"

51. The Article states:

Accounting red flags: 4 CFO changes in a handful of years, along with recent auditor resignations; potentially overstated revenues; newly acquired acquisitions with Accounts Receivable issues.

52. That statement conveys that Nobilis' accounting is unreliable and may be inaccurate. In fact, no accounting problems, red flags or otherwise, exist.

53. Successor CFOs have been engaged as the company quickly outgrew the expertise of existing personnel. Four of the last five CFOs remain with the company in the roles of chairman,

executive vice president of finance, tax counsel, and current CFO. They are available to assist in audits. No revenue recognition, consolidation, or accounts receivable issues with acquisitions exist.

54. Nobilis complies with all applicable accounting principles and audit standards.

55. The statement in the Article is false and defamatory.

False and defamatory assertions that the prior auditor resigned because of accounting improprieties

56. The Article further elaborates on its accounting allegations with this statement regarding Nobilis' auditors:

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. ...

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.

57. That statement conveys that Nobilis retained an inadequate audit firm (Calvetti Ferguson and Wagner) in order to conceal accounting or financial improprieties. In fact, Calvetti, which was a regional accounting firm, resigned at the company's request to make way for Crowe Horwath, which is nationally recognized. The change in auditor was discussed extensively with institutional investors and was the subject of a required 8-K filing by Nobilis, which specified, as required by law, that Calvetti's resignation was not the result of any dispute with the company. In addition, Calvetti continues to work as internal controls auditor for Nobilis.

58. The statement in the Article is false and defamatory.

False and defamatory assertions that Nobilis struggles to collect on its accounts receivable

59. The Article, in furtherance of its allegations of improper accounting, alleges that Nobilis struggles to collect on certain of its accounts receivable:

In the case of Nobilis, the company has guided to having picked up undervalued and bankrupt assets.

(...)

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.

(...)

Victory was shut down because of shift to in-network and the resulting inability to collect on accounts receivable that it was owed by large insurers.

60. That statement conveys that Nobilis will experience issues collecting on Victory's accounts receivable. The reason behind Victory's inability to collect on its accounts receivable was related to historical issues at Victory that are unrelated to Nobilis.

61. The statement in the Article is false and defamatory.

Overall context

62. The Article as a whole, and the defamatory statements described herein, take on additional and further defamatory meanings and implications simply from inclusion in the same Article with each other. The plain meaning of the statements taken together is that Nobilis is a fraudulent entity on the verge of business collapse.

63. The defamatory nature of each statement is thus compounded by the overall context of the Article.

Identification of Nobilis as the target of the false and defamatory statements

64. The defamatory statements identified above explicitly referred to Nobilis.

65. The defamatory statements identified above naming the former and current directors and

officers of Nobilis were defamatory against Nobilis because the persons referred to are closely identified with Nobilis in the public mind, so that the statements would be understood by the public to be defamatory of Nobilis, and because attacks on the directors and officers necessarily affect the business reputation of Nobilis.

Actual malice and reckless disregard

66. The defamatory statements referred to above were made with actual malice and/or with reckless disregard as to whether they were true or false. The defendants made the impugned statements without conducting any reasonable steps to determine whether such statements were true and without conducting sufficient diligence that would be expected before leveling such incendiary accusations.

67. Without limiting the generality of the foregoing, the defendants acted with actual malice by intentionally manipulating data to give the appearance of accounting misfeasance or management share sell-offs where there was none.

68. The defendants acted with reckless disregard by failing to consult with qualified and competent accountants to verify the defendants' claims regarding accounting misfeasance.

69. The defendants acted with reckless disregard by failing to consult with appropriate health care or insurance industry professionals in order to verify the defendants' claims regarding Nobilis' business operations.

The liability of the John Doe defendants

70. The volume of shares of Nobilis' stock subject to short sales spiked during the weeks prior to the publication of the Article.

71. John Doe Defendants 1-20 are persons or entities whose names are not known to Nobilis, but who:

- (a) received a draft of the Article or information about the contents of the Article prior to its broadcast;
- (b) knew or ought to have known that the Article contained false and defamatory assertions about Nobilis that would cause the market price of Nobilis' stock to decline;
- (c) decided thereby to take short positions in Nobilis' stock, and did so; and,
- (d) thereby stood to gain by covering their short positions after the Article was broadcast and the market price of Nobilis's stock had declined.

72. John Doe Defendants 1-20 are jointly liable for the wrongs committed by Gates, Puri, and the Anson Defendants.

Intentional interference with economic relations

73. The defendants' short attack on Nobilis included, without limitation, the following conduct: their tip-offs and previews to selected investors of their intention to disseminate false negative information into the market concerning Nobilis, and of the planned timing of such dissemination; their concerted accumulation of open short positions in advance of the publication so as to take advantage of market price declines when the Article was published; their suggestion that the other selected investors do the same; their preparation of the Article with its false and misleading negative content concerning Nobilis; their publication of the Article; and their actions after the article was published to continue the downward pressure on the price of Nobilis securities.

74. The defendants' short attack was intended to, and did, drive down the price of Nobilis securities to artificially low levels.

75. 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.

76. 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.

77. 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.

78. The defendants also knew, or reasonably ought to have known, that they would harm Nobilis by disrupting its ability to use or issue its shares for corporate purposes, and that the defendants were thereby interfering with the economic relations between Nobilis and its actual or potential business partners.

Damages

79. The defendants' statements identified above were false and defamatory of Nobilis, and Nobilis has suffered damages, and may suffer further damage, to its reputation and its ability to conduct its business.

80. The defendants' misconduct has aggravated the damages suffered by Nobilis, in that:

- (a) publication of the Article on Seeking Alpha caused global dissemination of the defamatory statements;
- (b) such publication meant that search engines would cause further publication and dissemination of the defamatory statements;
- (c) such publication caused the defamatory statements to be mirrored and/or linked to other websites, chatrooms, and bulletin boards;
- (d) such publication caused the defamatory statements to be archived and thereby accessible indefinitely in the future; and,
- (e) Nobilis further relies on the particulars pleaded for punitive damages.

81. Nobilis has suffered damages as a result of its:

- (a) loss of market capitalization;
- (b) loss of business reputation;
- (c) disruption of its business;
- (d) increased cost of credit;
- (e) lost business opportunities;
- (f) investigation costs;
- (g) costs to correct the false and defamatory statements broadcast by the defendants;
- (h) costs to defend against resulting shareholder litigation; and,
- (i) other consequential damages.

The defendants' failure to mitigate damages

82. On October 11, 2015, Nobilis posted a statement titled "Management's Initial Response to Seeking Alpha" (the "Nobilis Statement"). The Nobilis Statement attempted to correct the false and defamatory statements in the Article.

83. The defendants have not retracted or apologized for their false and defamatory statements, despite being given the opportunity to do so.

Punitive damages

84. The defendants' conduct was and is outrageous and reprehensible, showing no signs of feeling or concern for the harm caused by their scheme.

85. The defendants disseminated deliberately false and defamatory information about Nobilis.

86. The defendants' purpose was to harm Nobilis' reputation, and to manipulate and cause an unwarranted decrease in the market price of Nobilis' common stock

87. The defendants' further purpose was thereby to enrich themselves by covering the short positions they previously had taken in Nobilis' stock.

88. The defendants' misconduct warrants the imposition of punitive damages.

Nobilis' efforts to limit its damages

89. Nobilis has taken all reasonable steps to limit the damages it is suffering as a result of the defendants' misconduct. Nobilis management issued an initial rebuttal of the Article, and retained independent counsel, which issued a report on November 3, 2015, stating that the main allegations in the Article were false, misleading, or without foundation (attached as Exhibit 75).

90. Notwithstanding those efforts, Nobilis' share price remains depressed as compared to prevalent levels prior to the defendants' broadcast of the Article, and as a result, the damages caused by the Article, as described above, persist.

Injunctive relief

91. By reason of the facts set out above, Nobilis is entitled to a permanent injunction requiring the defendants to remove the Article from publication on Seeking Alpha's website and any other media platforms where it has been published or broadcast.

92. By reason of the facts set out above, Nobilis is entitled to a permanent injunction prohibiting the defendants from any further republication of the defamatory statements referred to herein.

93. Any continued republication of the defamatory statements will cause Nobilis further damages, including irreparable damages to its reputation.

94. Such injunctive relief can be enforced in the courts of the United States in accordance with the *SPEECH Act*, 28 U.S.C. ss. 4101-4105, based upon proof of the defendants' actual malice, as alleged in this claim.

Real and substantial connection to Ontario

95. This action has a real and substantial connection with Ontario because, among other things:

- (a) the Article was published in Ontario;
- (b) Puri resides in Ontario;
- (c) the defendants carry on business in Ontario;
- (d) the head office of Anson Canada is located in Toronto, Ontario;
- (e) the defendants raise money and market their business in Ontario;

- (f) Nobilis is traded on the Toronto Stock Exchange, in Ontario; and,
- (g) Substantial short selling transactions by the defendants took place on the Toronto Stock Exchange, in Ontario.

Service

96. This originating process may be served without court order outside Ontario because the claim is:

- (a) in respect of a tort committed in Ontario (rule 17.02(g));
- (b) in respect of damages sustained in Ontario arising from a tort or breach of contract however committed (rule 17.02(h));
- (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (rule 17.02(o)); and,
- (d) against a person carrying on business in Ontario (rule 17.02(p)).

Statutory provisions

97. Nobilis pleads and relies on:

- (a) *Libel and Slander Act*, R.S.O. 1990, c. L.12;
- (b) *Securities Act*, R.S.O. 1990, c. S.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.

Place of trial

98. Nobilis proposes that this action be tried at the City of Toronto.

Date Issued: November 5, 2015

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Lawyers for the Plaintiff

Court File No.: *CU-18-11162-0000*

NOBILIS HEALTH CORP. - and - **SUNNY PURI, M5V ADVISORS INC. c.o.b. as ANSON GROUP CANADA, et. al.**
Plaintiff Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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