

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

) ~~Monday~~ **Thursday** ✓PMP, THE 14th
)
) **June** ✓PMP.
) OF ~~May~~, 2018

MR. JUSTICE PERELL

BETWEEN:

VINCE CAPPELLI

Plaintiff

and

NOBILIS HEALTH CORP., HARRY JOSEPH FLEMING, CHRISTOPHER H. LLOYD, ANDREW CHEN, KENNETH J. KLEIN, and CALVETTI FERGUSON, P.C.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Settlement Approval)**

THIS MOTION made:

- (a) by the plaintiff, Vince Cappelli, for an Order approving the partial settlement of the action; and
- (b) by Class Counsel for approval of the fee agreement and interim payment of legal fees and disbursements;

was heard this 14th of May ,2018 at Toronto, Ontario.

ON READING the amended fresh as amended statement of claim and the materials filed in relation to this motion;



AND WHEREAS this action has not been certified against any of the Defendants;

AND WHEREAS Nobilis has an existing action in Texas against Calvetti Ferguson in respect of the issues in this action;

AND WHEREAS the deadline for objecting to the Settlement Agreement has passed, and there has been one written objection to the Settlement Agreement and no potential Class Member appeared to object to the Settlement Agreement;

AND ON BEING ADVISED that the parties consent to this Order;

1. THIS COURT ORDERS AND DECLARES that, except to the extent that they are modified by this Order, the definitions set out in the document attached as Schedule "A" to this Order, apply to and are incorporated into this Order.
2. THIS COURT ORDERS that the action is certified for the purpose of settlement against Calvetti Ferguson only.
3. THIS COURT ORDERS that Vince Cappelli is appointed as representative plaintiff for the Settlement Class.
4. THIS COURT ORDERS that the claim asserted on behalf of the Settlement Class are negligence and negligent misrepresentation.

5. THIS COURT ORDERS that the common issue certified is "Was Calvetti Ferguson negligent with respect to its audit opinion?"

6. THIS COURT DECLARES that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

7. THIS COURT ORDERS that the Settlement Agreement is approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms and the terms of this Order.

8. THIS COURT ORDERS AND ADJUDGES that, except as aforesaid, this action is dismissed against Calvetti Ferguson and the Individual Defendants, without costs and with prejudice.

9. THIS COURT ORDERS that on the Effective Date, Calvetti Ferguson, by its professional liability insurer, shall pay to Strosberg Sasso Sutts LLP, in trust, the sum of US\$ 1 million dollars.

10. THIS COURT ORDERS that Nobilis shall take steps to dismiss the Texas Action against Calvetti Ferguson without costs and with prejudice;

11. THIS COURT ORDERS that on the Effective Date and upon delivery by Nobilis to Calvetti Ferguson of an executed mutual release in the Texas Action, Calvetti

Ferguson, by its professional insurer, shall pay to Lenczner, Slaght, in trust, the sum of US\$ 1 million.

12. THIS COURT ORDERS AND DECLARES that, upon the Effective Date, Nobilis and each Releasor have released and shall be conclusively deemed to have forever, finally and absolutely released and discharged Calvetti Ferguson from the Released Claims.

13. THIS COURT ORDERS that Nobilis and each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against Calvetti Ferguson or any other person who may claim contribution or indemnity, or other claims or relief, from Calvetti Ferguson in respect of any Released Claim or any matter related thereto, except for the continuation of this action against Nobilis and are permanently barred from doing so.

14. THIS COURT ORDERS that the claim of the Settlement Class and the claim of each Releasor as against Nobilis shall be limited to a claim for damages, costs and interests attributable only to Nobilis' several share of liability and that the recovery of the Settlement Class and of each Releasor as against Nobilis shall be limited to recovering the damages, costs and interest attributable to Nobilis' several share of liability.

15. THIS COURT ORDERS that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the action or otherwise, by Nobilis or any other person or party, against Calvetti Ferguson are barred and prohibited in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who validly opts out of this action).

16. THIS COURT ORDERS that:

- (a) Calvetti Ferguson will produce to counsel in the Action its file and working papers related to Nobilis' 2014 consolidated financial statements and its Q1 and Q2 2015 financial statements, including any files and working papers related to the restatement of said financial statements;
- (b) Manish Seth will be made available to counsel in the Action for one (1) interview which will not exceed three hours on a date and time agreed to between Manish Seth and counsel in the Action and that Manish Seth will be reimbursed at his customary professional rate, paid in U.S. Dollars for the time spent in the interview to be paid by party conducting the interview;
- (c) The interview referred to in 16(b) will be conducted in Houston, Texas, at a location agreed to between Manish Seth and counsel in the Action. If a party wishes to conduct the interview in a location other than Houston, Texas, Manish Seth's reasonable travel, lodging and meal expenses will be paid for in advance by said party;
- (d) Manish Seth will be produced for one day of examinations for discovery in the Action, with said examinations for discovery to be conducted in Houston, Texas, at a location agreed to between Manish Seth and counsel in the Action. Manish Seth will be reimbursed at his customary professional rate, paid in U.S. Dollars for the time spent attending at the examinations for discovery by the party conducting examinations for discovery;

- (e) If a party wishes to conduct the examinations for discovery referred to in item 16(d) in a location other than Houston, Texas, Manish Seth's reasonable travel, lodging and meal expenses will be paid for in advance by said party;
- (f) Manish Seth will respond to any subpoena issued to attend at trial in the Action. Manish Seth will be reimbursed at his customary professional rate, paid in U.S. Dollars for the time spent preparing for trial and for attending at trial by the party who issued the subpoena; and
- (g) No other director, officer or employee of Calvetti Ferguson shall be required to participate in an interview, attend at the examinations for discovery or be subpoenaed to attend at trial unless a court order is granted requiring such an attendance.

17. THIS COURT ORDERS AND DECLARES that this Order, including the Settlement Agreement, is binding upon each member of the Settlement Class who does not validly opt out of this action including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.

18. THIS COURT ORDERS that the Notice attached as Schedule "B" to this Order is approved.

19. THIS COURT ORDERS that the Notice shall be distributed and published in the following manner:

- (a) posted by Class Counsel on the website www.strosbergco.com/class-actions/nobilis;
- (b) provided by Class Counsel to any person who requests it;
- (c) disseminated by Class Counsel by a press release in English and French on www.businesswire.com; and

- (d) posted by Nobilis in a prominent location on its website at www.nobilishealth.com.

20. THIS COURT ORDERS AND DECLARES that there shall be no order with respect to opting-out and no right to opt out at this stage of the action.

21. THIS COURT ORDERS that, except as provided herein, the Order does not affect any claims or causes of action that any Settlement Class Member has or may have against Nobilis, who is not a Releasee in this Action.

22. THIS COURT ORDERS that the Fee Agreement between the plaintiff and Morganti Legal is approved and that Class Counsel shall be paid \$300,000, plus HST for interim fees, plus disbursements of \$158,568.27, including taxes.

23. THIS COURT ORDERS that the remainder of the settlement funds paid to the plaintiff may be used to pay further disbursements incurred in the prosecution of the action.

24. THIS COURT ORDERS that there shall be no order as to costs.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

#1550042v19

JUN 18 2018

PER / PAR:



JUSTICE

SCHEDULE A

DEFINITIONS

1. **"Action"** means Comi File No. CV-16-544173, *Cappelli v. Nobilis Health Corp., et al.* issued in the Ontario Superior Court of Justice;
2. **"Agreement" or "Settlement Agreement"** means the settlement agreement between the plaintiff and the defendants dated February 12, 2018;
3. **"Calvetti Ferguson"** means Calvetti Ferguson, P.C. and all current and former patients, current and former managers, and current and former employees of Calvetti Ferguson, P.C. including without limitation, Manish Seth, and any insurer, including the professional liability insurer of Calvetti Ferguson, P.C.;
4. **"Class Counsel"** means Strosberg Sasso Sutts LLP and Morganti Legal;
5. **"Class Period I"** means the period from and including March 23, 2015 to and including October 8, 2015;
6. **"Class Period 11"** means the period from and including October 9, 2015 to and including January 5, 2016;
7. **"Defendants"** means Nobilis, the Individual Defendants, and Calvetti Ferguson, P.C.;
8. **"Effective Date"** means the date on which the Order approving the settlement is final;
9. **"Excluded Persons"** means Nobilis' subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and any member of the Individual Defendants' families and any entity in which any of them has or had during Class Period I and/or Class Period II any legal or de facto controlling interest;
10. **"Fleming"** means Harry Joseph Fleming;
11. **"Individual Defendants"** means Fleming, Lloyd, Chen and Klein;
12. **"Klein"** means Kenneth J. Klein;
13. **"Lloyd"** means Christopher H. Lloyd;

14. **"Manish Seth"** means Manish Seth, a former partner in Calvetti Ferguson, P.C. and the principal primarily responsible for the Nobilis account;
15. **"Nobilis"** means Nobilis Health Corp and all current and former directors, officers and employees, including but not limited to the Individual Defendants;
16. **"Notice"** means the notice of the certification of the action against Calvetti, Ferguson, and the dismissal of the action against Calvetti Ferguson and the Individual Defendants, without costs and with prejudice;
17. **"Released Claims"** means the claims asserted in the amended fresh as amended statement of claim bearing court file no. CV-16-544173 and any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature including interest, costs, expenses, class administration expenses penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees, relating in any way to the purchase, sale, pricing, marketing or distributing of Nobilis' securities during the Class Period I or Class Period II, or to any representations, including but without limiting the generality of the foregoing, the alleged misrepresentations made by the Releasees during the Class Period I or the Class Period II to anyone concerning Nobilis, or related to any services provided by Calvetti Ferguson to Nobilis, and any other conduct alleged or which could have been alleged in this Action, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted as a result of the purchase of Nobilis' securities during the Class Period I or the Class Period II;
18. **"Releasees"** means Calvetti Ferguson, P.C. their current and former principals, current and former managers, current and former employees, as well as any of the foregoing persons' and entities' insurers, including the professional liability insurer of Calvetti Ferguson, and the Individual Defendants;
19. **"Releaser"** means a Settlement Class Member;
20. **"Settlement Amount"** means USD \$2,000,000.00, inclusive of damages, fees Class Counsel Fees, and any other costs or expenses payable as follows:
 - (a) USD \$1,000,000 (total) payable to Nobilis in the Action and the Texas Action, inclusive of damages, fees and any other costs or expenses related to the Texas Action; and

(b) USD \$1,000,000 payable to the Plaintiff in the Action, inclusive of damages, Class Counsel Fees, and any other costs or expenses related to the Action or the Settlement;

21. **"Settlement Class" or "Settlement Class Member"** means all persons, other than Excluded Persons, who acquired Nobilis' securities during Class Period I, other than on the NYSE MKT and who held some or all of those securities at the close of trading on October 8, 2015, and/or who acquired Nobilis' securities during Class Period II, other than on the NYSE MKT and who held some or all of those securities at the close of trading on January 5, 2016 and did not opt out of the settlement; and
22. **"Texas Action"** means Cause No. 2017-33362, *Nobilis Health Corp. v. Calvetti Ferguson, P.C.*, issued in 127th Judicial District Comt of Harris County, Texas.

SCHEDULE "B"

NOTICE OF THE CERTIFICATION AND SETTLEMENT OF THE NOBILIS SECURITIES CLASS ACTION AGAINST CALVETTI FERGUSON

Read this notice carefully as it may affect your rights.

This notice is directed to all persons, excluding certain persons associated with the defendants, who acquired common shares of Nobilis Healthcare Corp. ("Nobilis") in Canada during the period from: (1) March 23, 2015 to and including October 8, 2015 ("First Class Period") and held some or all of those shares at the close of trading on October 8, 2015; and/or (2) October 9, 2015 to and including January 5, 2016 ("Second Class Period") and held some or all of those shares at the close of trading on January 5, 2016 (collectively, the "Class or Class Members").

On January 8, 2016, a proposed class action was commenced against Nobilis and Calvetti Ferguson, P.C. ("Calvetti"), and others, in the Ontario Superior Court of Justice, *Cappelli v Nobilis*, Court File Number CV-16-544173 (the "Class Action"). The plaintiff alleges that the defendants misrepresented the financial status of Nobilis.

The settlement of the Class Action, without an admission of liability on the part of Calvetti, was approved by Justice Perell on ●. This notice provides a summary of the settlement.

SUMMARY OF THE SETTLEMENT TERMS

The action was dismissed against Harry Joseph Fleming, Christopher H. Lloyd, Andrew Chen and Kenneth J. Klein.

Calvetti has paid US\$2 million, in full and final settlement of all claims against it in the Class Action and in full and final settlement of an action commenced in Texas by Nobilis against Calvetti, for all loss and damages said to be caused or contributed to by Calvetti being Cause No. 2017-33362, *Nobilis Health Corp. v. Calvetti Ferguson, P.C.*, in 127th Judicial District Court of Harris County, Texas (the "Texas Action"). The US\$2 million will be divided equally between the Class and Nobilis. The settlement for the Class, less the approved lawyers' interim fees, disbursements and taxes, of \$●, will not be distributed to the Class at this time but will be held in trust to pay ongoing disbursements in the continuing litigation against Nobilis with the residue to be distributed after the final resolution of the action. The Settlement Agreement and the order of Justice Perell may be reviewed at www.strosbergco.com/class-actions/nobilis.

QUESTIONS

Questions for the Class Members' lawyers may be directed to:

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**This notice has been approved by the Court.
Questions about it should NOT be directed to the Court.**

VINCE CAPPELLI
Plaintiff

- and -

**NOBILIS HEALTH CORP., HARRY JOSEPH FLEMING, CHRISTOPHER
H. LLOYD, ANDREW CHEN, KENNETH J. KLEIN, and CALVETTI
FERGUSON, P.C.**
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at **Toronto**

ORDER
(Settlement Approval)

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