

THE COURT OF CHANCERY OF THE STATE OF  
DELAWARE COUNTY OF NEW CASTLE

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DOLPHIN LIMITED PARTNERSHIP I, L.P., :  
RAMESH MEHAN, RENEE MEHAN, :  
RENEE MEHAN IRA, SAROJ MEHAN, :  
MANEESH MEHAN, RAHUL MEHAN, JOEL :  
MEHAN, LAJIA MEHAN, DARSHAN MEHAN :  
IRA, DANSHAL MEHAN (ROLLOVER IRA), :  
ARSH N. MEHAN, ARSH N. MEHAN (ROTH :  
IRA), ASHOK K. MEHAN and ASHOK K. :  
MEHAN IRA, :

Plaintiffs, :

C.A. NO. 19822-NC

-vs.-

JON H. OUTCALT, KEVIN E. SHAW, :  
BOAKE A. SELLS, RICHARD L. OSBORNE, :  
GENESIS HEALTH VENTURES, INC., :  
GENEVA SUB, INC. and NCS :  
HEALTHCARE, INC., :

Defendants. :

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ROBERT M. MILES and GUILLERMO :  
MARTI, :

Plaintiffs, :

C.A. No. 19786-NC

v.

NCS HEALTHCARE, INC., :  
JON H. OUTCALT, KEVIN B. SHAW, :  
RICHARD L. OSBORNE, BOAKE A. SELLS, :  
GENESIS HEALTH VENTURES, INC., and :  
GENESIS SUB, INC., :

Defendants. :

X

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ANTHONY NOBLE,

Plaintiff,

v.

NCS HEALTHCARE, INC., RICHARD L.  
OSBORNE, JON H. OUTCALT, BOAKE A.  
SELLS, and KEVIN B. SHAW,

Defendants.  
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C.A. No. 19807 NC

JEFFERY TREADWAY,

Plaintiff,

v.

JON H. OUTCALT, KEVIN E. SHAW, BOAKE  
A. SELLS, RICHARD L. OSBORNE, and NCS  
HEALTHCARE, INC.,

Defendants.  
-----X

C.A. No. 19810 NC

TILLIE SALTZMAN,

Plaintiff,

v.

JON H. OUTCALT, KEVIN E. SHAW, BOAKE  
A. SELLS, RICHARD L. OSBORNE, and NCS  
HEALTHCARE, INC.,

Defendants.  
-----X

C.A. No. 19812 NC

**REPLY MEMORANDUM OF LAW RE:  
APPOINTMENT OF PLAINTIFFS' LEAD COUNSEL**

Plaintiffs in Civil Action Number 19822<sup>1</sup> submit this reply memorandum of law in support of the application of their counsel, Lowey Dannenberg Bemporad & Selinger, P.C. ("Lowey Dannenberg") to be appointed lead counsel for plaintiffs in the above actions.

On August 12, 2002, Dolphin moved to consolidate the actions. It appears no party opposes the consolidation motion, so the only open issue concerns the appointment of plaintiffs' lead counsel. The firm of Beatie and Osborn, which represents plaintiffs in C.A. No. 19786, opposes Lowey Dannenberg's application, principally because Beatie and Osborn represent holders of 755,010 shares of Class A common stock of NCS Healthcare, Inc. ("NCS") and, according to Beatie and Osborn, Dolphin is an arbitrageur,<sup>2</sup> having acquired NCS shares after announcement of the merger agreement between NCS and Genesis Health Ventures, Inc. ("Genesis") which is challenged in this litigation.

The amended complaint filed on August 26, 2002 by Dolphin and the Mehan family directly addresses the Beatie and Osborn objection. The Mehan family owns 540,644 NCS shares and has owned those shares since prior to the events which are challenged in this litigation. Thus, Lowey Dannenberg represents clients owning 1,040,644 NCS shares.

On Monday, July 29, 2002, before the market opened, Omnicare, Inc. ("Omnicare") announced that it was offering to buy NCS for \$3 per share in cash and the assumption of all its debt.

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<sup>1</sup> Plaintiffs are Dolphin Limited Partnership I, L.P. ("Dolphin") which owns 500,000 shares of the Class A common stock of NCS Healthcare, Inc. and members of the Mehan family who collectively own 540,644 shares of NCS Class A common stock.

<sup>2</sup> In Joseph v. Shell Oil Co., 1985 WL 21125 (Del. Ch.), this Court favorably noted the decision in Greenfield v. Flying Diamond Oil Corp., S.D.N.Y., [1981 Transfer Binder], Fed. Sec. L. Rep. (CCH) ¶97,942 (1981) that the interests of arbitrageurs and of long term investors are not antagonistic as a matter of law. 1985 WL 21125 at \*\*2.

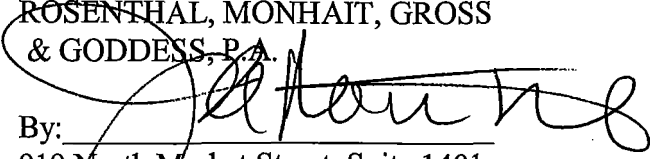
That announcement was followed by announcement of the Genesis merger agreement, but without the material terms which would thwart a spirited, open bidding contest. A few minutes after the market opened, Dolphin, an institutional investor located in Stamford, Connecticut, purchased 50,000 NCS shares. Although Dolphin subsequently learned of the "lock-up" features of the Genesis deal, it increased its holdings to 500,000 shares in the firm conviction, as set forth in its complaint, that the best welfare of the holders of 77% of the economic interest in NCS will determine who buys NCS.

Dolphin's interests are identical to the interests of all other holders of NCS Class A stock. If defendants prevail in this action, Dolphin will be injured in precisely the same manner as will all other holders of NCS Class A stock. Dolphin intends to pursue its rights and the rights of all other NCS Class A shareholders vigorously and faithfully. cf., Joseph V. Shell Oil Co., supra.

Dolphin and the Mehan family, the holders of over a million NCS shares, submit that Lowey Dannenberg is eminently qualified to lead the efforts of plaintiffs' counsel in this case. They are well-known to the Court, having been lead or co-lead counsel in noteworthy class actions litigated in this Court such as Joseph v. Shell Oil Co., supra, which resulted in a \$180 million settlement for the former shareholders of Shell Oil Company; Seagate Technologies Inc. Shareholders Litig., Cons. C.A. No. 1793, which produced a \$200 million settlement on the eve of the preliminary injunction hearing; and In re Triangle Indust. Inc. Shareholders Ligit., Cons. C.A. No. 10466 which produced a \$75 million settlement for Triangle Industries shareholders.

For the foregoing reasons, Dolphin and the Mehan family respectfully submit that Lowey Dannenberg should be appointed lead counsel for plaintiffs in this litigation.

ROSENTHAL, MONHAIT, GROSS  
& GODDESS, P.A.

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